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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 16.11.2016

Coram:

The Hon'ble Mr. Justice M.SUNDAR

C.S.No.916 of 2008

The Deveton Corrie Protestant
Schools Association now known as
Doveton Protestant Schools Association
rep. By its Preseident Mr.H.E.Willkins
Nos.1-12A, Ritherdon Road,
Vepery, Chennai 600 007.
(Amended as per order dt:15.3.2013
in Appl.No.783 of 2013)

... Plaintiff

Vs.

1. M/s. Bharat Petroleum Corporation Ltd.,
rep. By its Territory Manager (Retail)
Chennai

2.M/s. Prasad Agencies,
No.4, Ritherdon Road,
Vepery, Chennai 600 007.

... Defendants

Suit filed under Order II Rule 1 & 3 and Order IV Rule 1 of Original Side Rules and Order VII Rule 1 of Civil Procedure Code, 1908 with the following prayers; (i) to quit and hand over vacant possession to the plaintiff of the land in the Plaintiff's premises, bearing No.3, Ritherdon Road, Vepery, Chennai 600 007, and morefully described in the schedule hereunder; (ii) to pay to the Plaintiff a sum of Rs.27,000/- (Rupees Twenty Seven Thousand Only) towards the arrears of rent for the years 2005, 2006 and 2007 @ Rs.9,000/- (Rupees Nine Thousand Only) per annum, in respect of the land in the Plaintiff's premises bearing No.3, Ritherdon Road, Vepery, Chennai 600 007; (iii) to pay to the Plaintiff a sum of Rs.9,00,000/- (Rupees Nine Laksh Only) as damages for the illegal use and occupation of the land in the Plaintiff's premises bearing No.3, Ritherdon Road, Vepery, Chennai 600 007, commencing from 01.06.2008 onwards, @ Rs.3,00,000/- (Rupees Three Lakhs Only) per month and to be paid till possession is handed over by the defendants to the Plaintiff; (iv) to pass an order of mandatory injunction directing the defendants to remove any buildings, erections, pumps, installations, pipe-lines or any other fixtures/structures erected or placed on the land in the Plaintiff's premises bearing No.3, Ritherdon Road, Vepery, Chennai 600 007, morefully described in the Schedule hereunder; to pay to the Plaintiff the costs of the suit and to grant such further or other reliefs.

For plaintiff :: Mr. N.D.Bahety

For defendant-1 :: Mr.O.R.Santhanakrishnan

For defendant-2 :: Mr.A.Palaniappan

J U D G M E N T

The suit has been filed by the plaintiff, seeking a decree directing the defendants to quit and hand over vacant possession to the plaintiff of the demised land and to pay to the Plaintiff arrears of rent and to pay to the Plaintiff damages for illegal use and occupation of the demised land and for mandatory injunction directing the defendants to remove any buildings, erections, pumps, installations, pipe-lines or any other fixtures/structures erected or placed on the demised land and to pay to the Plaintiff the costs of the suit and to grant such further or other reliefs.

2. The brief averments made in the plaint are as follows :

Plaintiff is a Society registered under the Societies Registration Act XXI of 1860 and the Tamil Nadu Societies Registration Act, XXVII of 1975, with the office at Nos.1-12A, Ritherdon Road, Vepery, Chennai 600 007. Plaintiff having been constituted under the trust of the Doveton Institution is over 150 year old governing body, owning, running, managing and administering its schools and properties, and being the Doveton-Corrie Boys Higher Secondary School, the Doveton-Corrie Girls

Higher Secondary School, the Doveton Matriculation Higher Secondary School, the Doveton-Oakley Nursery School and the Doveton Academy, in its land admeasuring 13 Gaw 04 Grd 0233 sq.ft., or about 7 Hectres 10 Acres 32 sq.ft. and also in other places wherein more than 6,500 children, both boys and girls, are studying, and these schools and institutions of the Plaintiff are one of the premier, renowned, reputed and respected schools and institutions in the City of Chennai, especially in the area of Vepery in Chennai. It is the case of the plaintiff that it had leased a portion of its land in the western side in R.S.No.665/1, of a total extent of 11,900 sq.ft., to the first defendant for its retail outlet of dispensing its petroleum products on a rental basis at Rs.9,000/- per annum. The second defendant as an agent of first defendant is carrying on the retail outlet business of the first defendant in the plaint schedule land.

3. It is the further case of the plaintiff that the said lease expired on 03.12.2003. Although the first defendant sought for extension of the said lease vide its letter dt: 11.11.2003, the plaintiff was not willing to do so. The first defendant continued to occupy the plaint schedule land, but it did not pay the plaintiff the annual rent from the year 2004

onwards and hence, there is an arrears of rent for the periods 2005, 2006, 2007 and 2008 also. Once again, the first defendant sought for extension of lease vide its letter dt: 08.05 2008, but the plaintiff did not accede to the request. It is further averred in the plaint that the first defendant apart from dispensing petroleum products, started using the scheduled mentioned premises for selling fruits, juices, eatables and other sundry items. The first defendant has also sub-let the plaint Schedule land for parking of private buses, vans and other vehicles in the night and collected fees and made further money out of the same. Above all, the first defendant had started digging up the plaint schedule land, trying to put up further illegal constructions on the same.

4. Plaintiff's schools have since grown, are expanding and the space available with the plaintiff is not sufficient to meet the growing demand and need, the plaintiff requires the portion occupied by the defendants for expansion of the Plaintiff's school. Therefore, the plaintiff vide letter cum notice dt: 02.04.2008, terminated the lease of the first defendant with the expiry of 31.05.2008 and called upon the first defendant to quit and deliver vacant possession of the plaint schedule land by removing any

buildings, erections, pumps, installations, pipe-lines or any other fixtures/structures erected or placed on the plaint schedule land and to pay a sum of Rs.3 Lakhs as damages for the illegal occupation from 01.04.2008 to till the date of delivery of possession. Though the first defendant received the said notice-cum-letter, neither they gave any reply nor they vacated the demised land. Hence, the plaintiff had preferred the above suit with the aforementioned prayers.

5. The defence raised in the written statement of the first defendant runs as follows:

The plaint scheduled land was leased out to the first defendant vide lease deed dated 15.04.1964 with effect from 01.01.1964 for a period of 20 years on an yearly rental of Rs.6,000/- with an option clause of renewal for a further period of 20 years from 01.01.1984 on fixed monthly rent of Rs.750/-. Eversince from the date of lease, the first defendant was using the premises for storing, selling, distributing petroleum products and they are having the right to erect and maintain on the demised land, building, machinery and other facilities for servicing or attending to vehicles together with the right to erect compound wall,

fencing, lay out a garden and provide such other conveniences as the lessee may at its discretion provide. Hence, a superstructure had been put up on the demised land for the purpose of storing, selling distributing the petroleum products. It is also pleaded that in terms of Clause 3(iii) of the lease deed dated 13.04.1964 the first defendant exercised its contractual option and vide letter dated 10.11.1983 sought the plaintiff to execute a fresh lease deed from 01.01.1984. Since no fruitful results were forthcoming, the first defendant filed O.S.No.2043 of 1987 before the III Assistant Judge, City Civil Court, Chennai, for specific performance directing the lessor to execute and register the renewed lease deed for a further period of 20 years from 01.01.1984 to 31.12.2003 on a monthly rent of Rs.750/-. The said suit was decreed in favour of the first defendant on 23.02.1993.

6. Subsequently, the lease for the demised land expired on 31.12.2003. The first defendant vide letter dated 11.11.2003 requested the plaintiff to renew the lease and the plaintiff neglected to do so. Another communication was also sent to the plaintiff requesting to renew the lease. However, the plaintiff vide letter dated 05.12.2003 rejected

the plea of the first defendant for renewal and requested the first defendant to vacate and hand over vacant possession of the demised land. Though another attempt was also made by the first defendant to renew the lease deed, the same was rejected by the plaintiff. The first defendant has also paid the rentals through RPAD vide letter dt:18.12.2008 for the period of 01.01.2004 to 31.12.2008 at the rate of Rs.9,000/- per annum. Hence, the first defendant prays for dismissal of the suit.

7. The defence raised in the written statement of the second defendant runs as follows:

Second defendant is an agency engaged in the business of vending petroleum products of the first defendant in the scheduled mentioned premises. They are the retail outlets of Bharat Petroleum Corporation Limited. It is further stated that the tenancy commenced in the year 1964 and from the date of commencement of lease, the retail business of vending petroleum products were run by the second defendant. From the inception of the said tenancy, the fruit juice stall is being run by them and they have got sufficient proof for the existence of the said

juice stall. As the retail outlet is the petroleum product and the demised land is situated in very prime area, it would very difficult for the second defendant to vacate and hand over vacant possession of the same. Though extension of lease had been sought for by the defendants, and the second defendant were ready and willing to pay the current market value, the plaintiff did not do so. The plaintiff wantonly evaded to extend the lease and the reasons as set out in the plaint for the purpose for which the plaintiff requires the premises is totally wrong. Only to evict the second defendant the plaintiff has instituted the suit and only in the plaint averments the plaintiff has given his objection regarding the juice shop whereas, the same has been running from the date of inception. The allegation made against this defendant are vague and baseless and the damages as claimed by the plaintiff is also on the higherside.

8. Based on the pleadings, after hearing both sides, the issues that were framed are as follows:

"1. Whether the termination of the defendant's tenancy by the plaintiff in respect of the plaintiff's land in premises No.3, Ritherdon Road, Vepry, Chennai 600 007, by notice dated 02.04.2008 is legally valid and proper ?

2. Whether the defendants are liable to quit and

handover the vacant possession of the land morefully described in the plaint schedule to the plaintiff ?

3. Whether the defendants are liable to pay damages to the plaintiff to the extent of Rs.3,00,000/- (Rupees Three lakhs Only) perr month for the defendants' illegal use and occupation of the land specified in the plaint schedule ?

4. Whether the defendants are liable to pay the plaintiff a sum of Rs.9,00,000/- as damages for the illegal use and occupation of the plaint schedule land, commencing from 01.06.2008 onwards till the possession thereof is handed to the plaintiff calculated @ Rs.3,00,000/- (Rupees Three Laksh only) ?

5. Whether the defendants had failed to pay the rents to the plaintiff for the year 2005, 2006 and 2007 @ Rs.9,000/- per year ?

6. Whether the defendants are using the premises for purchases other than for which the premises had been let-out which was to carry on business in motor spirits etc., but which the defendants are also illegally using for selling fruits, juices, eatables, sundry items parking of buses and other vehicles on rental basis etc., ?

7. Whether the plaintiff is entitled to an order of mandatory injunction directing the defendants to remove any buildings, erections, pumps, installations, pipelines or any other fixtures/structures erected or placed on the plaint scheduled land ?

8. To what relief the parties are entitled to ?"

Additional Issues :

(i) Whether the alleged President H.E.Wilkins has locus standi to file the suit on behalf of plaintiff association ?

(ii) To what relief the plaintiff is entitled to ?

Further Additional Issue :

Is the suit as filed, bad in law / not maintainable as the plaintiff society has been represented by the President and not the Secretary ?

9. The plaintiff is the lessor. The first defendant is the lessee. The second defendant is the retail dispensing agent of the first defendant. An extent of about 11900 sq.ft. of vacant land at No.3, Ritherdon Road, Vepery, Chennai 600 007 is the demised land. Suit has been filed by the plaintiff for recovery of vacant possession of the demised land from the defendants. There are also prayers for arrears of rent; damages and mandatory injunction to remove the superstructure besides residuary prayers.

10. Plaintiff, legally speaking, is a Society registered under the Tamil Nadu Societies Registration Act, 1975 as well as the Central Societies and Registration Act, 1860. The first defendant is a public sector undertaking which is a retail out let of petroleum public Oil Company. Second defendant is the dispensing agent selling fruits, eatables and other sundry items. Lease was initially entered into with Burma shell which was subsequently taken over by the first defendant. Lease was for a period of 30 years from 01.01.1964 to 31.12.1984. Lease was renewed for a further period upto 31.12.2003. There was no extension thereafter. A termination notice dated 02.04.2008 (Ex.D3) was issued by the plaintiff to the first defendant calling upon him to vacate and hand over vacant possession by 31.05.2008. Suffice to state that the lessee did not comply. Therefore, on 29.08.2008, plaintiff filed the instant suit for recovery of possession of the demised land and other prayers as set out supra. The suit was filed arraying the retail dispensing agent of the first defendant as the second defendant. The defendants entered appearance and filed written statements. Pleadings were completed. On the rival pleadings, 8 issues were framed on 17.04.2012, one Additional Issue was issued on 08.04.2003 and I framed a further Additional Issue on 03.11.2016. All the

11 issues have been set out supra. Therefore, 11 issues in all fall for consideration.

11. Parties went to trial. President of the Plaintiff's Society one Mr. H.E.Willkins, was examined as P.W.1. No oral evidence was let in by the first defendant. On behalf of the second defendant, one Fairoze Khan, Partner of the second defendant firm was examined as D.W.1. Exs.P1 to P5 were marked on the side of the plaintiffs and Exs.D1 to D9 were marked on the side of the defendants while Exs.P1 to P5 were marked through P.W.1, Exs.D1 and D2 were also marked through D.W.1, obviously, in the course of cross examination Exs.D2 and P4 are one and the same. Ex.D3 to D9 were marked through D.W.1. Though 11 issues fall for consideration, the sheet anchor submissions made at the Bar on behalf of the defendants were two. One is that the suit as filed/as framed is bad in law and entails dismissal as the Plaintiff which is a Registered Society has been represented by its President and not by its Secretary as adumbrated in its bye laws. The second issue dwells on termination notice Ex.D3. Some reasons have been assigned in the termination notice Ex.D3, which has been described as a letter cum notice by Plaintiff in the pleadings. It is the submission of the defendants, particularly, the learned counsel for

the second defendant that once such reasons are given in the termination notice, the plaintiff is duty bound to prove the same. The legal aspect of this submission was that as reasons have been given in Ex.D3 termination notice, the case become one of breach under Section 111(g) of Transfer of Property Act, which is determination of tenancy and not termination of lease simplicitor and recovery of possession. It was contended that determination of lease under Section 111(g) of Transfer of Property Act necessarily means that the alleged breach has to be proved. We may examine, the above two issues in the sequence in which they have been set out above. Answer to the above said sheet anchor issues will pave the way for answers to all the 11 issues.

12. We have to necessarily turn to Ex.D1 which is the Memorandum of Association and Bye laws of the Plaintiff's Society. Attention was drawn to Rule 19 of the bye laws which reads as follows:

"The Association may sue and be sued in the name of the Secretary ".

It was argued that as per Rule 19, the Society may sue and be sued in the name of 'The Secretary' and therefore, the suit filed by the President has rendered the suit bad in law and entails dismissal. In answer to this, the

learned counsel for the plaintiff drew the attention of the Court to bye laws 10 and 11 which read as follows:

“10. Except during the summer vacation of Schools the Association shall meet in committee atleast once in every calendar month, and more often if summoned by the Secretary under the directions of the President to decide subject to these Bye Laws, all questions which may arise in the administration of the Association or the management of the Schools”.

11.The Association at a Governor's meeting shall have power to make Rules for the management of the Schools and standing order for the conduct of the Association's business provided that all such Rules and standing order are consistent with these Bye Laws and the Memorandum of Association.”

13. Relying on Rules 10 and 11 of the bye laws, learned counsel for the plaintiff would contend that Ex.P1 resolution (authorising the President to file the suit on behalf of the Plaintiff's Society) was passed in accordance with bye laws 10 and 11 and therefore, there is no infirmity in the suit as filed. Ex.P1 is an extract of minutes book of the meeting of the Board of Governors of the Plaintiff's Society held on 28.08.2008.

Ex.P1 reads as follows:

“ Extract from the Minutes Book of the Meeting of the Board of Governors of Doveton-Corrie Protesant Schools

Association, held on 28.08.2008, at 6.30p.m. In the Flag Office.

RESOLVED that the President Mr.H.E.Wilkins is authorized to take necessary legal proceedings and to file a suit against M/s. Bharath Petroleum Corporation Ltd., for the recovery of our land, arrears of Rent, arrears of damages etc.,”

14. Attention of Court was drawn to Clause 10 of the Memorandum of Association also and the same reads as follows:

“10. To institute conduct, defend, compound or abandon any legal proceedings by or against the Association or its members or otherwise concerning the affairs of the Association and also to compound and allow time for payment or satisfaction of any debts due to and of any claims or demands by or against the Association.”

Defendants would contend that Rules 10 and 11 of the bye Las pertain to certain subjects and subsequent circumstances and that does not apply to the facts of the instant case. It was also argued that Rules 10 and 11 are subject to Rule 19 or in other words Rule 19 controls Rules 10 and 11. Two support his contention learned counsel for the fist defendant relied on three judgments. They are as follows:

(i) Uttar Pradesh Cricket Association, Uttar Pradesh vs. The Uttar Pradesh Cricket Association, Lucknow, Uttar Pradesh reported in (2007 (2) L.W.1079)

(ii) Society of the Sisters of the Belssed Virgin Mary vs. Madras -e- Bakiyanthus Salihath reported in 1989(4) CTCOL 1

(iii) M.Sudakar vs. The District Registrar (Societies) Virudhunagar District reported in 2009 (5) CTC 124

15. In Uttar Pradesh Cricket Association's case reported in (2007 (2) L.W.1079), it has been held thus:

Any authorisation by a Resolution of the Annual General Meeting or Extraordinary General Meeting can be used only in the absence of a specific provision in the Bye-laws or if the Bye-laws themselves provide for the Annual General Meeting or Extraordinary General Meeting to grant such authorisation. The Annual General Meeting or Extraordinary General Meeting cannot pass a Resolution contrary to the Bye-laws. This position is also made clear by the Supreme Court in the very same judgment in paragraph-31, which has been extracted in paragraph-10 above. In the said paragraph-31, the Supreme Court made it clear that a Society “is to be sued in the name of the President, Chairman or Principal Secretary or Trustees as shall be determined by the Rules and Regulations of the Society or in the name of such person as shall be appointed by the Governing Body for the occasion in default of such determination”. Therefore, in the first instance, a Society can sue only in the name of a person as appointed by the Bye-laws. In the absence of any such appointment under the Bye-laws, it can sue in the name of a person appointed by the Governing Body. In the present case, the Bye-law No. 34 specifically authorises the plaintiff-Society to sue through the Honorary Secretary. Hence, it cannot institute a suit

through the Honorary Treasurer on the basis of a Resolution of the Extraordinary General Body.

16. In *Society of the Sisters* case (1989(4) CTCOL 1) it has been held in paragraphs 7,8,9 as:

7. As regards substantial question of law No.1 it is seen from the plaint allegations that the defendant is a registered Society registered under the Tamil Nadu Societies Registration Act 1975. Under S.20 of the said Act, the committee or any officer of the registered society authorised in this behalf by its by-laws may be sued in respect of a legal proceeding touching or concerning any property, right or claim of the registered society. The by-laws produced in the instant case does not authorise Superior Sister Augustine to sue or to be sued on behalf of the Society. It is not in dispute that as per the provision of the said Act, the property of the defendant-society shall vest in the committee. The learned counsel for the appellant relied on the decision of this court in *Chainraj Ramchand v. V.S. Narayanaswamy*¹, wherein it was held:

“S. 19(2) of the Partnership Act makes it clear that unless there is an express authority given to a partner by all the partners, that partner cannot compromise or relinquish any claim by the firm. An authority express or implied on the part of a partner to compromise suit claim cannot be assumed merely because he had been conducting the suit filed by the firm or had been claiming the suit amount from defendants even before filing of suit. Hold on the facts and circumstances of the cast that the petition filed by defendants under O. 23, R. 3, Civil P.C. is liable to be dismissed.”

That was a case which arose under the partnership Act. But, the ratio

laid down in the above decision is equally applicable to the facts of the case of an agent on behalf of a society.

8. In the instant case, it is the contention of the appellant that since summons were received by Superior Sister Augustine, she entered appearance through Counsel. But from the mere fact that she appeared in the case, it cannot be said that she is empowered to defend the Society under the By-laws of the Society or the Act. Prima facie, the said contention has to be accepted. No doubt, in the instant case, written statement was not filed and it is the contention of the respondent that the very same Superior Sister Augustine filed rent control proceedings and that it is a matter to be ultimately decided in the suit on evidence. But prima facie, on the materials now available before this court, it has to be held that the suit as framed against the defendant-Society represented by Superior Sister Augustine is not maintainable in view of S. 20 of the Tamil Nadu Societies Registration Act, 1975.

9. As regards the question whether Superior Sister Augustine has any power or authority to enter into compromise, it is to be noted that as per S. 18 of the Tamil Nadu Societies Registration Act, all the properties, movable or immovable, belonging to a registered society, shall vest in the committee; and any such property may in any legal proceedings, be referred to as the property of the committee. Thus, it is clear that the property, subject matter of the suit, is one which is vested with the committee, and not with an individual, as rightly contended by the learned counsel for the appellant, 'Committee' is defined under S. 2(a) of the said Act which means the governing body of a registered society to whom the management of its affairs is entrusted. As already found, under S. 20 it is only the Committee or

any officer of the registered society authorised in this behalf by its by-laws may sue or be sued in respect of any property, right or claim. On a perusal of the by-laws produced it is seen that Superior Sister Augustine has not been em-powered to represent the defendant-Society. But, on the other hand, as per by-law VI, the governing body shall consist of not less than five and not more than ten members inclusive of the President and Vice President for the time being. Under by-law VII, it is only the governing body which shall have the entire control and management of the business and affairs of the Society, the administration of all properties, movable and immovable, all its institutions and assets and shall have all such powers of the Society and do all such things generally to carry out the objects of the Society as are by the act not required to be exercised or done by the Society in general meeting. Under by-Law XVI, all the properties of the Society, movable and immovable and all assets shall vest in the governing body and all documents affecting or relating to such property shall stand in the name of the society. Under by-Law XVII, all writings, deeds and documents which are to be executed for and on behalf of the society shall be executed for and on behalf of the Society by the President or such member of the governing body who may have been authorised in writing to do by the President or Vice-President or by a meeting of the governing body. Major Superior is the President. In view of Ss. 18 and 20 of the Tamil Nadu Societies Registration Act, 1975, read with the By-laws of the Society, Sister Augustine has no authority to enter into the compromise in respect of the property of the society. Though such contention was raised before the court below. It was not considered with reference to the provisions of the Societies Registration Act or the By-laws. The mere fact that she represented the Society in other

proceedings would not mean that she is clothed with the authority to enter into such compromise unless she is empowered to do so by virtue of the provisions of the Act and the By-laws of the Society framed thereunder. The mere fact that Superior Sister Augustine represented the society would not also clothe her with the extraordinary power to enter into compromise in view of the ratio in the decision reported in *Chainraj Ramchand v. V.S Narayanaswamy*¹, already quoted. When once it is found that she is not competent to enter into the compromise, it cannot be circumvented by observing that it is the duty of the sister to obtain necessary sanction or authority from the Counsel. The Appellant-Society is not bound by the compromise if it is held that Superior Sister Augustine was not empowered to enter into compromise. When once it is held that the compromise was not entered into by a competent authority, it cannot be said that the compromise is lawful and binding on the appellant-Society. Thus, substantial questions 1 and 2 are answered only in favour of the appellant.

17. Relying on the above judgments and drawing my attention to Section 20 of the Tamil Nadu Societies Registration Act, 1975 as well as Rule 6(h) of Rules thereunder, learned counsel would contend that the bye laws cannot run contrary to the Statute and that the suit filed by the plaintiff as framed is bad and liable for dismissal. Though this submission appears impressive on first blush, on a closure scrutiny, it only stands to be rejected. The very judgment cited by the learned counsel for the first defendant i.e., Uttarpradesh Cricket Association's case (2007(2) L.W.1079)

itself contains the answer.

18. Rigour of the Sports Act as found in the extracted paragraph 9 of the cited judgment would not apply in the instant case. Rules 10 and 11 of the Bye Laws provide adequate elbow space and the same is permissible under the Tamil Nadu Societies Registration Act. Section 20 of Tamil Nadu Societies Registration Act says, 'committee or any affilux' (inability to supply emphasis) 'committee is defined in Section 2(a). Rule 6(h) has to read in harmony with Sections 20 and 2(a). Therefore elbow space provided by Rules 10 and 11 of the Bye Laws is contrary to the Statute.

19. In Society of the Sisters' case, it was a case where sister did not have any authority whatsoever to enter into a compromise whereas in Venkataramana Bhatta's case, it was a case where the trustee initiated the suit, while the bye laws did not provide for such a course.

20. In Sudakar's case, a perusal of facts would show that the resolution passed by the society/trust debarring the petitioner was called in question by the debarred members, on the ground that the bye laws do

not provide for such debarring while in Society of Sister's case, the concerned individual neither had authority nor had a resolution in her favour. In Uttar Pradesh Cricket Association's case, the Treasurer, who laid the suit had no authority at all, but in the instant case a perusal of resolution being Ex.P1 would show that the Secretary of the Plaintiff's Society himself has certified the resolution that has been passed. In otherwords, the Secretary of the Plaintiff's Society, who under Rule 19 is the individual, who can sue and be sued has certified the resolution making it clear that there is no *interse* disagreement between the parties. Therefore, the above cited three authorities sought to be pressed into service by the learned counsel for the first defendant are clearly distinguishable on facts and are resultantly not applicable to the instant case.

21. Furthermore, Ex.D1, Memorandum of Association and bye laws of the Plaintiff's Society cannot be read as a Statute. Rules 19, Rules 10 and 11, mentioned therein cannot be read as provisions in a Statute. The law is too, very well settled that a set of bye laws is a contract between all the members of the entity and are not Rules *per se*.

Therefore, Rules 19, 10 and 11 of the bye laws and Clause 10 of the Memorandum of Association of the Plaintiff have to be read like covenants in a contract and not as provisions of law in a Statute.

22. Be that as it may, Mr.N.D.Bahety, learned counsel for the plaintiff drew my attention to the Rules 19, 10 and 11 and submitted that, language used in Rule 19 is 'may' and therefore, it is an option given to the plaintiff's Society. He contra distinguished this with Rules 10 and 11 in which the language used is 'shall'. It is therefore clear that though the bye laws are mere covenants in a contract the bye laws have been drafted consciousness of the distinction between 'shall' and 'may'.

23. The Bye laws being a contract amongst members, this Court reads the Rules as covenants in a contract, considering the language used in Rule 19 coupled with complete absence of lack of *interse* disagreement between the members or office bearers of the Trust, this Court holds that the suit as filed herein by the plaintiff's Society has been represented by the President and not by the Secretary is not bad in law and is maintainable.

24. This takes us to the second question as to whether the plaintiff Society has to prove the reasons for seeking recovery as well as the breaches set out in Ex.D3 notice. This is dovetailed the question as to whether this would be determination under Section 111(g) or termination simplicitor under 106 of the Transfer of Property Act.

25. For the above purpose, learned counsel for the second defendant Mr.Palaniappan would rely on the following 8 judgments:

(1) Shiam Behari Lal Gour and Others vs. Madan Singh (1944 ILR 245)

(2) Geetabai Namdeo Daf, vs. B.D.Manjrekar (AIR 1984 Bombay 400)

(3) Raja Sri Krishna Chanda Manasingh Harichandan Mardaraj Bhramarbar Roy and another vs. M/s. National Chemical and salt Works Ltd., (AIR 1957 Orissa 35 (V 44 C 12 Mar.)

(4) Raghuram Rao and Others vs. Eric P. Mathilas and Others (2002(2) SCC 624)

(5) V.N.Selvaraj vs. Dr.B.Padmanaban, M/s.Bharat Petroleum Corporation Ltd., (2012 (5) L.W.413)

(6) Udipi Seshagiri vs. Seshamma Shettathis and Others (XII L.W.45)

(7) Society of the Sisters of the Blessed Virgin Mary vs. Madras -e- Bakiyanthus Saiihath (1990(1) L.W. 606)

(8) A.Venkataramana Bhatta vs. Krishna Bhatta and others reported in (1924 L.W. 294)

26. Shiam Behari Lal Gour and Others vs. Madan Singh (1944 ILR 245) it has been held as the law leans against forfeiture. The principle governing the constructions of a clause for forfeiture is that it must always be construed strictly as against the person who is trying to take advantage of it and effect should be given to it only so far as it is rendered absolutely necessary to do so by the wording of the clause.

27. In Geetabai Namdeo Daf's case (AIR 1984 Bombay 400) it is held in paragraph 3 as:

The legal position to be noted is that there is a world of difference between liability of the tenant for eviction on the ground of forfeiture of tenancy and his liability on the ground of termination of the tenancy by a notice of termination *simpliciter*. The law

relating to determination of tenancy is incorporated in section 111 of the Transfer of Property Act. There are various reasons for determining the tenancy and there exist various modes by which the tenancy comes to an end. If the tenancy is to come to an end by virtue of the principle of forfeiture, what is required under the law is that the tenancy should be for a particular period and the lease deed must contain a clause of forfeiture on the ground of breach of certain conditions of the tenancy. If the breach is committed, the tenancy becomes liable for forfeiture even before the expiry of the agreed period of the tenancy. When the tenant incurs forfeiture, there is a further thing required to be done by the landlord, namely, that the landlord must exercise his right of forfeiture either expressly or by necessary implication. If he exercises the right of forfeiture, then the tenancy comes to an end even before the agreed period of tenancy. In such a case no question of notice of termination of tenancy as provided by section 106 of the Transfer of Property Act arises, although, in certain cases, some kind of notice indicating exercise of the right of forfeiture by the landlord may be advisable. On the other hand, when the lease is not for a particular fixed period but is only a periodical lease like a yearly lease or a monthly lease and if the agreement of tenancy provides that the lease can be terminated by notice of termination as contemplated by section 106 of the Transfer of Property Act, no question of forfeiture as such arises. The tenant might happen to be a paragon of virtue and he might have been paying every single farthing of the rent with strict punctuality and might have been performing every term of the tenancy with enviable devotion; still, if the tenancy is terminated by the notice to quit provided for expressly or impliedly by the

agreement of tenancy, the conduct of the tenant and absence of breach of termination of tenancy on his part are irrelevant factors.

28. In *Raja Sri Krishna Chanda Manasingh Harichandan Mardaraj Bhramarbar Roy and another case* (AIR 1957 Orissa 35 (V 44 C 12 Mar.)) it has been held as:

Reliance is also place upon the provisions of S.111 of the T& P Act. It would be necessary here to quote the relevant position of the section

S.111. A lease of immovable property determines.

(a) by efflux of time limited thereby.

(b) where such time is limited conditionally on the happening of some event by the happening of such event:

xxxx

(g) by forfeiture that is to say

(1) in case the lease breaks on expiry condition which provides that an breach thereof the lessor may re-enter or (2) in case the leasee renounces his character oas such by setting up a title in a third person or by claming title, in himself or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event: and in any of these case the lessor or his transferee given notice in writing to the lessee of his intention to determine the lease:

xxx

It is contended on behalf of the appellant that this lease is determined as the time for which lease was granted is limited conditionally on the happening of the event that the lessees carry on any other business. ON the face of it, the present case can never come within the language of Clause (b). In the present case, the lessee is for a fixed period of 40 years and it is

not a case where the time for which the lease is granted is limited conditionally. On the contrary, the condition is one of defeasance that if the lessees carry on any other business than manufacture of salt or its bye-products the lease shall stand cancelled automatically.

10... The question for determination was whether such a clause satisfied the condition of S.111(g) of the T & P Act. Indeed it was conceded before their Lordships that there was no clause for re-entry in the lease. The question for determination consequently was whether there was an express provision which provided that the lease would become void. Their Lordships opined that there was no such express condition on the breach whereof the lease would become void.

29. In *Raghuram Rao and Others* case (2002(2) SCC 624) it has been in paragraph 21 as:

In the present case, the aforequoted lease deed was executed by the lessee and not by the lessor. In the lease deed it is provided that the lessee (*I*) will not have any right to alienate the property, either the right of permanent tenancy or the buildings etc. (which may be built by the lessee on the property) by way of sale of mulgeni or in whatsoever manner to others and if such alienation is affected, the permanent lease shall be liable to be totally cancelled and the property shall be reverted to the possession and enjoyment of (*you*) lessor, on receiving the value of the buildings and improvements estimated by four gentlemen. Therefore, there is express condition accepted by the lessee not to alienate the leasehold property. However, there is no express condition to the effect that the lessee will have no right to alienate part of the property. With regard to the nature of the

mulgeni tenure, it has been observed by the Bombay High Court in *Vyankatraya Bin Ramkrishnapa case* [ILR (1883) 7 Bom 256] that this class of people may be considered rather as subordinate landlords than as tenants of the soil, more especially as though many of them cultivated their lands by means of hired labourers or others sub-rented them to the temporary tenants.

30. In V.N.Selvaraj case (2012 (5) L.W.413), it has been held as:

17. It was contended that the first respondent was aware of the sub-lease and he was also given consent to the Corporation permitting the second respondent to put up construction and therefore, the first respondent has acquiesced himself to the lease granted by the appellant in favour of the second respondent and the first respondent also admitted in the evidence that he was aware of the lease in favour of the second respondent by the appellant and he also gave consent to the second respondent to put up construction and therefore, there was no breach of condition. Ex. B1 is the letter given by the first respondent to the Coimbatore Municipal Corporation wherein it has been specifically stated that he has leased out a portion of his land to the appellant, a dealer for M/s. Bharath Petroleum Corporation, for running a Petrol Bunk and Bharath Petroleum Corporation selected the said property for developing the out-let and applied for building permit to raise some constructions and he has no objection for issuing the building permit to M/s. Bharath Petroleum Corporation Ltd. A reading of Ex. B1 would not prove that consent was given by the first respondent to the appellant to sub-lease the premises or a consent can be inferred from Ex. B1. According to me, a reading of Ex. B 1 only makes it clear that the appellant was granted dealership by the second respondent and the second respondent also selected the leasehold property for developing their outlet and wanted to

put up a construction and having given the property of lease, appellant/first respondent had no objection for the second respondent to put up construction during the period of the lease. Therefore, from Ex. B1 it cannot be inferred that the first respondent had given consent or first respondent was aware of the lease deed between the appellant and the second respondent. Therefore, when the lease deed prohibits the grant of sub-lease by the lessee and the lessee contrary to the terms of lease entered into sub-lease with the second respondent, the lessee/appellant has committed breach of condition and therefore, I hold that the appellant has committed breach of the conditions of the lease dated 22.03.1996 and the lease between the appellant and the second respondent is not legal and is not binding on the first respondent. Having held that the lease between the appellant and first respondent is not binding and is not valid, the next question that would arise for consideration is whether the lease can be forfeited for breach of lease condition, in the absence of any clause for re-entry in the lease agreement. Admittedly, there is no clause in the lease deed which enables the lessor to re-enter and take possession in the event of breach of condition of the lease deed. As per the section 111 of Transfer of Property Act, a lease of immovable property can be determined by forfeiture in the event of happening of the following:—

- “a. by efflux of the time limited thereby;
- b. where such time is limited conditionally on the happening of some event-by the happening of such event;
- c. where the interest of the lessor in the property terminates, on, or his power to dispose of the same extends only to, the happening of any event-by the happening of such event;
- d. in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the

same right;

e. by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them;

f. by implied surrender;

g. by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides, that on breach thereof, the lessor may re-enter; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; or (3) the lessee is adjudicated an involvement and the lease provides that the lessor may re-enter on the happening of such event; and [in any of these cases] the lessor or his transferee[gives notice in writing to the lessee of his intention to determine the lease; h.on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.”

Therefore, as per the 111(g)(1) when the lessee breaks an express condition which provides that, on breach thereof, a lessor may re-enter, the lease can be forfeited. In this case, there is no provision for re-entry in the event of any breach of express condition by the lessee. Therefore, by committing breach of the condition the lessor cannot forfeit the lease unless there is clause in the lease deed which enables the lessor to re-enter in the event of any breach of conditions. Hence, having regard to the provisions 111(g) and in the absence of any provision for re-entry in the lease deed, the first respondent is not entitled to forfeit the lease on the ground that the appellant has breached the express condition of the lease by subletting the property in favour of the second respondent. Hence, the substantial question of No. 2 is answered in favour of the appellant.

18. Though a lease cannot be forfeited on the ground that the

lessee breaks some express condition of the lease, unless there is a clause in the lease deed enabling the lessor to re-enter, in the event of breach committed by the lessee, a lease can be forfeited for non-payment of rent and that is made clear under section 114 of the Transfer of Property Act.

31. In Udipi Seshagiri case (XII L.W.45), it has been held as:

Then we come to Sect. III, which deals with the determination of the lease. It is to be noted that there is no provision terminating a lease on the breach of every condition in the lease: that is to say every breach of a contract would not determine a lease *ipso facto*. By cl. (g), it is provided that the lessee would incur forfeiture if he breaks an express condition to the effect that on breach thereof, the lessor may re-enter or the lease shall become void. If there is no provision for re-entry, or declaring that, on the breach of a condition, the lease shall become void, forfeiture is not incurred. Consequently a bare stipulation, that the lessee shall not transfer the property would not render the transfer inoperative.

32. In Society of the Sisters 's case it has been held as:

(extracted supra in paragraph 16 of this judgment)

33. In A.Venkataramana Bhatta vs. Krishna Bhatta and others reported in it has been held as follows:

It is always open to the landlord to put into his lease a covenant against alternative either complete or partial, if he

intends that forfeiture should result from a partial alteration as well; but where he does not do so, the constructions adopted in England is that the covenant will not apply to a partial alienation. As this view is based upon general principles of equity, I do not see why that same view should not be adopted and followed in India. Following the view adopted in *Gorve vs. Portal*, I consider that the alienation here, even though it affected a major portion of the property leased, cannot be held to have worked a forfeiture of the period of the lease or the covenant in the document before me does not refer to partial alienation of property.”

34. Though elaborate arguments were advanced on this aspect of the matter, I am of the view that this turns on a very short narrow compass. Determination under Section 111(g) arises only when the lease is subsisting and operating. In the instant case, it is the admitted case of the parties that the lease expired on 31.12.2003. Therefore, on the date of issue of the termination notice i.e., Ex.D3 (02.04.2008) no lease was subsisting and there was no written contract. Therefore, Section 111(g) would not come into play. Termination of lease simplicitor under 106 of the Transfer of Property Act alone will apply.

35. A careful reading of the above said 8 judgments cited at the Bar reveals that the obtaining settled position of law that no reasons need be assigned for termination of a lease under Section 106 of the Transfer of Property Act has not been unsettled in any manner. The lessee does not enjoy any protection as under the Rent Control Acts of various States. Only under the Rent Control Acts where the lessees/tenants enjoy certain protections, the landlord has to establish and prove the breach that has been being alleged. In the case of termination of lease under Section 106 of the Transfer of Property Act no reasons need be assigned as long as the termination notice perambulates within the four corners of Section 106. With regard to date of termination, end of a calendar month etc., these aspects of the termination notice are not in dispute. Therefore, I answer this also in favour of the plaintiff and hold that the termination vide termination notice Ex.D3 (02.04.2008) is perfectly valid. This takes us to the question of arrears of rent. In the light of the submissions at the Bar that the arrears has been cleared for the years 2005, 2006 and 2007 at the rate of Rs.9,000/- per year nothing survives. This takes us to the issue pertaining to damages. Though certain computations have been circulated at the Bar to establish that the damages claimed at the rate of Rs.3,00,000/- per month for illegal use and occupation is tenable, this

Court is of the view that the quantum of damages have to be proved by letting in evidence. Therefore, this Court holds that the plaintiff is entitled to damages but the quantum has to be proved by letting in oral and documentary evidence. If the plaintiff so wishes, it is open to the plaintiff to take out an application for letting in oral and documentary evidence for establishing the quantum of damages. With regard to the prayer for mandatory injunction, with regard to removal of superstructure, erections, pumps, installations, pipe-lines or any other fixtures/structures etc., in the demised land, the law is well settled that for a lessee while vacating/delivering possession, can either remove the same or if he chooses not to do so he is not entitled to claim any compensation for the same. This issue is answered on those terms.

36. As stated supra, President of the plaintiff's Society H.E.Willkins was examined as P.W.1 and partner of the second defendant firm Mr.Fairose Khan, was examined as D.W.1. A perusal of the deposition of these two witnesses shows that they merely supported the respective pleadings. Other than the exhibits being marked through them nothing that impacts the discussions and findings in this judgment come out of it.

Therefore, appreciation of depositions in this case leads to the findings that the depositions merely support the respective pleadings and nothing more. Therefore, this much about the appreciation of oral evidence in the instant case will suffice.

37. To reiterate, issue number 1, which is about validity of termination notice is answered in favour of the plaintiff and the termination notice held to be valid.

38. Issue No.2 pertaining to entitlement of plaintiff for possession is also answered against the defendants and in favour of the plaintiff. Defendants are liable to vacate and hand over vacant possession of the demised land. Issue No.3 and 4 pertaining to damages are partially answered in favour of the plaintiff to the extent that the plaintiffs are entitled to damages but they have to establish the quantum of damages by letting in oral and documentary evidence by taking out a separate application. Issue No.5 is answered holding that the defendants have paid arrears of rent for three years as per submissions made at the Bar.

39. Issue number 6 pertains to usage of the demised land for

a purpose other than the one for which it is let out. As this Court holds that no reason need be assigned for termination of lease under Section 106 of Transfer of Property Act, attempting to answer this issue will be an exercise in futility. It is otiose.

40. With regard to issue No.7 which touches upon the removal of the superstructure, erections, fixtures/structures etc., the same is answered by holding that it is open to the defendants to remove the superstructure, uninstall the pipe lines and take away whatsoever they can and if they choose not to do so, and they would not be entitled to claim any damages. Further Additional issue framed by me on 03.11.2016 deals with whether the suit as filed (represented by the President) and not by the Secretary is answered in favour of the plaintiff owing to various discussions/reasons supra.

41. Additional Issue No.1 and Further Additional Issue framed by me go together. In the light of the discussions in various paragraphs supra, particularly paragraphs 12 to 22 these two issues are also answered in favour of the plaintiff, holding that the suit as filed (Plaintiff Society being represented by the President and not Secretary) is not bad in law

and is not liable to be dismissed on that ground, particularly, in the light of Ex.D1.

42. Issue No.8 and additional issue No.2 are residuary issues. No separate issue regarding costs have been framed. Therefore, this Court answers the issue of costs under these residuary slot issues. The plaintiff is a 150 year old institution running, managing and administering centers and institutions which are renowned and reputed. The plaintiff has also stated that the space now available for its school are not sufficient and that the demised land is required for expansion of the plaintiff's school. Such pleadings of the plaintiff have not been disputed or disproved. The suit was laid in the year 2008, about eight years ago therefore, this Court is of the view that it would be proper to award costs. It is made clear that the specific purpose for which the plaintiff needs the demised land has been taken into account only for the purpose of awarding costs and it is without deviation of even one shred from the settled legal principle that no reasons need be assigned by a lessor for recovery of possession under Section 106 of Transfer of Property Act.

43. Suit decreed with costs on the above terms.

16.11.2016

Index : Yes
Internet : Yes
smi

When the judgment was pronounced in open Court, Mr.Sidharth Bahety, learned counsel for the plaintiff was present. Mr.O.R.Santhanakrishnan, learned counsel on behalf of the first defendant and Mr.A.Palaniappan, learned counsel on behalf of the second defendant were present.

2. There was a request from both the learned counsel for defendants that some reasonable time may please be granted to the defendants with regard to that limb of the decree regarding recovery of possession. Such submission was made primarily on the basis of nature of business activities that are being carried on in the demised land.

3.Considering the submission made at the Bar, the defendants are granted six months time from the date of receipt of a copy of this

judgment and decree (for vacating and handing over possession of the demised land) as far as that limb of the decree pertaining to recovery of possession is concerned.

4. Though obvious, this is strictly without prejudice to the rights of the defendants with regard to whatever rights of appeal they have.

5. This post script shall form part of the judgment.

16.11.2016

rts/smi

M. SUNDAR, J.

smi

**Pre- Delivery
Judgment in
C.S.No.916 of 2008**

16.11.2016

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