

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No. 12852 of 2016
DATE OF DECISION :- July 01, 2016**

M/s Welspun Enterprises Limited

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL

Present:- Mr. Vikram Nankani, Senior Advocate
with Mr. Vaibhav Narang
and Mr. Karan Bharioke, Advocate for the petitioner.

Mr. P.S. Bajwa, Additional Advocate General, Punjab.

M.JEYAPPAUL, J.

1. The petitioner was the Concessionaire with respect to the Jalandhar Bus Terminal and Ludhiana Bus Terminal under Concession Agreements dated 22.06.2005 and 16.8.2005 respectively. The present petition, inter alia, relates to disputes regarding the handing over of shops at the Jalandhar Bus Terminal and Ludhiana Bus Terminal by the petitioner.

2. It is not in dispute that both the Jalandhar Bus Terminals was handed over by the petitioner on 20.01.2016 and the Ludhiana Bus Terminal on 17.01.2016. The lis between the parties concerns the handing over of some shops at the two terminals. In short, at the time of handing over of the two bus terminals, various shop-keepers who were licensees of these shops, obtained orders of stay against dispossession from various Courts, including this Court. The petitioner contends that it has complied

with the terms and conditions of the Concession Agreements to the fullest and handed over the vacant possession to the respondents. Further, having surrendered possession to the Respondents, the petitioner has no means or standing to have these shops vacated. It is also submitted that in most cases, at least with regard to the Jalandhar Bus Terminal, the respondents are receiving the license fees from the remaining shopkeepers. The respondents have also initiated actions against some such shopkeepers under the Punjab Public Premises Act, 1973. Given the aforesaid, it is contended that entire situation having arisen due to the directions given in various Court Orders, the petitioners are covered by Clause 19 of the Concession Agreements, i.e., Force Majeure.

3. The respondents on the other hand allege that the petitioner has failed to provide vacant possession of the shops and, therefore, is liable to make good any loss caused to the Concessioneing Authority. The respondents have also threatened to invoke the Performance Bank Guarantees of the petitioners for both the Bus Terminals. Some proceedings regarding the invocation of the Performance Bank Guarantees with respect to Jalandhar, are also pending with Punjab Infrastructure Regulatory Authority.

4. Learned State counsel vehemently submitted referring to Clause 20.2 and Clause 20.3 of the Concession Agreement entered into between the parties that the petitioner should have resorted to negotiation proceedings through “direct discussion” and “arbitration or negotiation” proceedings before ever resorting to the extraordinary remedy under Article 226 of the Constitution of India.

in connection with the eviction of the tenants from the shop portion of the Bus Terminal. Resorting to the above mode contemplated under the Concession Agreement would be an exercise in futility. Therefore, in the peculiar facts and circumstances of this case, I find that the petitioner has rightly resorted to the extraordinary remedy under Article 226 of the Constitution of India.

6. Suffice it to say, the only other question that arises in the present petition is whether the petitioner complied with its obligation to surrender and hand over possession of the Bus Terminals in terms of the Concession Agreements. A perusal of the documents shows that the licenses granted by the petitioner were co-terminus with the Concession Agreement. The petitioner had also sent notices well in time, terminating the licenses and informing the shopkeepers that the concession periods will be expiring and they would be required to vacate the shops. However, once stay orders against dispossession were obtained by the shopkeepers from competent Courts, it is difficult to fathom how the respondents could insist on handing over of the shops in question. No one, let alone a government authority, can direct a person to violate orders of Court.

7. Viewed from another angle, the petitioner is no longer a Concessionaire with respect to the two bus terminals. It has, therefore, no legal right or authority to either continue or discontinue the shopkeepers. The respondents are already receiving license fees and electricity charges from some shopkeepers. They have also initiated actions under the Punjab Public Premises Act, 1973 against some shopkeepers. Given the same, they are in the best position to mitigate the situation. In such circumstances, to

impossible. It is for such situations that Clause 19.2 of the Concession Agreement specifically excluded actions taken in accordance with Court Orders as a Force Majeure situation. I am inclined to accept the contention of the petitioner that their responsibilities with respect to the Bus Terminals ended with the handing over of the Jalandhar Bus Terminal on 20.01.2015 and of the Ludhiana Bus Terminal on 17.01.2016.

8. Given the aforesaid, the Writ Petition is allowed and the respondents are directed to forthwith cancel and return the four Performance Bank Guarantees submitted by the petitioners with regard to the Concession Agreements for the Jalandhar and Ludhiana Bus Terminals. I further direct that the vesting certificates with respect to the Jalandhar Bus Terminal and the Ludhiana Bus Terminal be issued to the petitioners in terms of the Concession Agreements.

9. As regards the possession of the shops, the respondents are in the best position to either have the same vacated under the Punjab Public Premises Act, 1973 or, till such time the pending cases are decided, to accept license fee from the remaining shopkeepers as it has been doing in some cases. Needless to add, the petitioners would extend their full cooperation to the respondents wherever required.

(M. JEYAPPAUL)
JUDGE

July 01, 2016
p.singh