* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: November 22, 2018
Pronounced on: December 21, 2018

\+ **W.P.(C) 12133/2018 & CM 47131/2018**

THE ASSOCIATED JOURNALS LTD AND ANR. .....Petitioners

Through: Dr. Abhishek Manu Singhvi, Senior Advocate with Mr. Dev Datt Kamat, Mr. Sunil Fernandes, Ms. Priyansha Indra Sharma, Mr. Rajesh Inamdar, Mr. Javedur Rahman, Ms. Madhavi Khanna and Mr. Aditya Bhatt, Advocates

Versus

LAND AND DEVELOPMENT OFFICE .....Respondent

Through: Mr. Tushar Mehta, Solicitor General with Ms. Maninder Acharya, ASG and Dr. Rajesh Gogna, CGSC

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

1. Associated Journals Limited was incorporated on 20th November, 1937 and in the year 2002, it's Chairman-cum-Managing Director was Mr. Motilal Vora, who was also the Treasurer of All India Congress Committee *(for short 'AICC')*. AJL was an unlisted public company, which was having 1057 shareholders as of 2010. Way back in the year 1962-63, land measuring 0.3365 acres was allotted to petitioner-AJL on Delhi Mathura Road being 5-A, Bahadur Shah Zafar Marg, New Delhi *(hereinafter referred to as 'subject premises')*, which is the Registered

Office of AJL, at concessional rates for construction of five storied building *(in addition to basement)* for the purpose of running a Press on the ground floor and its offices on the first, second, third and fourth floors. As per the Perpetual Lease-Deed of 10th January, 1967 executed by respondent in favour of petitioner-AJL, the *'subject premises'* was to be used by petitioners for construction of building for the *bona fide* use of their Press and for no other purpose. On the request of petitioner-AJL, respondent vide letter of 7th January, 2013 had permitted the use of basement and any one floor of the building for the Press and offices of the lessee and remaining four floors of the building could be let out to commercial concerns as Office Accommodation. When it came to the notice of respondent that no Press is functioning in the *'subject premises'* for years and it was being used mainly for commercial purposes through sub-letting to various organizations, the Technical Team of Land and Development Office *(for short 'L&DO')* inspected the *'subject premises'* and did not find any press activity in the entire building and also that the basement of the *'subject premises'* was lying vacant and the ground floor as well as the first floor was let out to Passport Office, whereas second and third floors were let out to Tata Consultancy Agency and fourth floor was being used by petitioner/lessee-AJL. The *'Breach Notice'* was sent by respondent to petitioners on 5th October, 2016 and according to respondent, it was not replied to. To confirm the present status of the *'subject premises'*, a Three Member Team constituted by respondent had inspected the *'subject premises'* on 9th April, 2018 in the presence of Sh. Motilal Vora, CMD of AJL, and the relevant portion of the said inspection report of 9th April, 2018 has been extracted in the impugned order. Show-Cause Notice issued to petitioners on 18th June, 2018 was replied to, on 17th July, 2018. When additional violations came to the notice of respondent, subsequent Show-Cause Notice was issued to petitioners on 24th September, 2018 and Reply thereto from petitioners was received by respondent on 9th October, 2018. Upon examination of petitioners' Reply, respondent in the impugned order has concluded as under: -

> *"The reply of AJL vide their letter dated 16.07.2018 to the Show Cause Notice dated 18.06.2018 and reply dated 09.10.2018 to the Show Cause Notice dated 24.09.2018 issued by this Office has been examined in detail as above and have not been found satisfactory. Finally, it may be concluded that:*
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> *(i) It has been proved beyond doubt that no press has been functioning in the said premises for atleast last 10 years and it is being used only for commercial purposes. This is violation of Clause III(7) of the Lease Deed.*
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> *(ii) There have been misuses in the building as without fulfilling the primary purpose of running a press in the premises, ground, first, second and third floor have been rented out for commercial income. Also, the front side mezzanine floor in the basement is being used by Akash Gift Gallery in an area of 84 sq. ft. Further, area measuring 1010.03 sqft at ground floor has been found as unauthorized pucca construction used as panel room. This is violation of Clause III(13).*
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> *(iii) The property (almost 100% shares) has been transferred to another company without the permission of the Lessor in violation of Clause III(13).*
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> *Therefore, it is observed that AJL has violated the Clauses III(5), III(7) and III(13) of the Lease Deed and have not been*

able to give any satisfactory reply to these violations which attract action against it under Clause V and VI of the Perpetual Lease."

2. Based upon the aforesaid conclusion, respondent vide impugned order of 30th October, 2018 *(Annexure P-1)* has decided to re-enter in the *'subject premises'* allotted to petitioner-AJL with immediate effect by invoking Clauses V and VI of the Perpetual Lease-Deed *(Annexure P-5)*. However, petitioners were granted two weeks' time to hand over the physical possession of the *'subject premises'* to respondent, failing which respondent was to take possession of the *'subject premises'* on 15th November, 2018. It is made clear in the impugned order that if possession of the *'subject premises'* is not handed over by petitioners to respondent, then action under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 *(hereinafter referred to as 'the PP Act')* for eviction of petitioners shall be initiated, in addition to recovery of government dues on account of misuse and damage charges.

3. Challenge to impugned order/Notice *(Annexure P-1)* by learned senior counsel for petitioners is on the ground that it has been issued without any application of mind and is arbitrary, *mala fide*, motivated and has been issued with ulterior political motives. It was pointed out by learned senior counsel for petitioners that in the Show-Cause Notice of 18th June, 2018, there is no whisper of *'Printing Press'* being not operational in the *'subject premises'*. It was submitted that first inspection of the *'subject premises'* was carried out by respondent to find out whether any printing activity is there in the *'subject premises'* or not. It is asserted on behalf of petitioners that in the Reply to the Show-Cause

Notice, it is maintained by petitioners that printing activity was being carried out by petitioners in the *'subject premises'* for the last several decades and was also there on the date of issuance of Show-Cause Notice. According to learned senior counsel for petitioners, there was a brief suspension of publication of newspaper due to financial crisis, but formal newspaper and digital media operations had fully resumed about two years prior to issuance of Show-Cause Notice. It was also pointed out that necessary licences/authorizations for the purposes of publication have been obtained by petitioners and it is denied that any inspection was carried out by respondent.

4. According to learned senior counsel for petitioners, impugned order fails to appreciate that with latest technological advancement, digital publication of newspapers takes place and does not involve the traditional modes of printing. It was highlighted that the activities of press also include *'digital publication'* apart from 'traditional printing'. It was further pointed out that publication of newspapers involves multiple, critical and important activities such as, content gathering, typography, story commissioning, pagination, etc., text and photo editing, layout designing, colour marking; production, circulation, etc., pre/post printing activities including transportation and distribution of the copies of newspaper to respective subscribers. Learned senior counsel for petitioners submitted that AJL is publishing the online edition of its newspaper, which can be accessed by visiting the websites i.e. *epaper.nationalheraldindia.com* and *epaper.navjivanindia.com.* It was submitted on behalf of petitioners that the online edition is replica of the physical newspaper and it can be downloaded in PDF files on

desktop/mobile and these PDF files can be printed on paper and distributed by local outlets.

5. According to learned senior counsel for petitioners, impugned order fails to take note of the fact that petitioner-AJL had re-launched its newspapers on 12th June, 2017 and on 1st July, 2017. Learned senior counsel for petitioners vehemently contends that when petitioners' printing Press was not functional during the years 2008-2016, no Show-Cause Notice was issued to petitioners and the issuance of Show-Cause Notice, when the printing activity has been re-launched by petitioners, is malicious and is vitiated by *mala fides*. It is asserted on behalf of petitioners that at no point of time, the basement of *'subject premises'* was put to any other use than running of newspapers. It was pointed out that a photocopy shop, i.e. *Akash Gift Gallery,* is there in the *'subject premises'* to serve and cater the tenants of petitioners and that prior to issuance of Show-Cause Notice, a suit for eviction has been filed against the said tenant-*Akash Gift Gallery*, which is pending. According to learned senior counsel for petitioners, no rent is being paid by the tenant-*Akash Gift Gallery*, which is occupying a small space of 84 sq.ft.. So far as unauthorized construction of 1010.03 sq.ft. in the *'subject premises'* is concerned, it was pointed out that a 'Panel Room' has been constructed in accordance with the *'Unified Building Bye-Laws for Delhi'* and *'Model Building Bye-Laws, 2016'* issued by the Ministry of Urban Development.

6. As regards violation of Clause III(13) of the Lease-Deed, it was submitted on behalf of petitioners that the transfer of shares of petitioner-Company does not infringe the aforesaid Clause of Lease-Deed, as this transfer of shares is neither a sale, mortgage, gift or otherwise. According

to learned senior counsel for petitioners, the change of shareholding pattern of petitioner-Company does not tantamount to transfer of interest in the *'subject premises'* to a third party as the lease-hold rights of *'subject premises'* still continue to vest in petitioner-Company, which is very much in existence. Reliance was placed upon decisions in *Industrial Promotion and Investment Corporation of Orissa v. New India Assurance,* (2016) 15 SCC 315 and *Bank of India v. K. Mohandas,* (2009) 5 SCC 313 to submit that impugned order fails to appreciate that *'shareholding of a company'* and *'property held by a company'* are completely two different concepts and the issue of shares by a company does not in any manner transfer the immovable property of that company. Attention of this Court was drawn to Supreme Court's decision in *Bacha F. Guzdar, Bombay v. Commissioner of Income Tax, Bombay,* AIR (1955) SC 74 to submit that it is the company which owns the property and not its shareholders. So, it was submitted on behalf of petitioners that Young Indian is a company formed under Section 25 of *the Companies Act,* 1956, which is run in public interest and it cannot declare any profit or dividend, as it is not for profit.

7. According to learned senior counsel for petitioners, impugned order is clear affront to the 'freedom of speech and expression' guaranteed under Article 19(1)(g) of *the Constitution of India* and a deliberate attempt to suppress and destroy the legacy of the first Prime Minister of the country and that the impugned order is vitiated by *mala fides* and bias as it has been issued with oblique political motives. Learned senior counsel for petitioners further contends that impugned order is a covert measure to erase, efface and defame the legacy of *Pt. Jawaharlal Nehru*

and that the instant proceedings have been initiated under the pressure and directions of the Ruling Party. It was submitted that it is so evident from the fact that impugned order was served upon petitioners in the afternoon of 1st November, 2018, but the news about it was published in the National Newspaper in the morning of 1st November, 2018 itself.

8. It was emphatically submitted by learned senior counsel for petitioners that the provisions of *the PP Act* cannot be invoked against petitioners by resorting to summary proceedings as the impugned order is vitiated by extraneous factors. Reliance was placed upon Supreme Court's decision in *Express Newspapers Pvt. Ltd. and Others vs. Union of India and Others,* (1986) 1 SCC 133 to submit that the provisions of *the PP Act* cannot be invoked to evict petitioners from the *'subject premises',* as the *'subject premises'* cannot be regarded as *'public premises'* and that the remedy, if any, is to file a suit, provided breach of terms of the Lease-Deed is established. It is maintained on behalf of petitioners that since the newspaper is being published by petitioners prior to the issuance of Show-Cause Notice, therefore, impugned order cannot be sustained and is liable to be quashed. In support of above submissions, reliance is placed by learned senior counsel for petitioners upon decisions in *Ashoka Marketing Ltd. and Another v. Punjab National Bank and Others,* (1990) 4 SCC 406; *Escorts Heart Institute & Research Centre Ltd. v. D.D.A. & Anr.,* 2007 SCC OnLine Del 1180; *D.D.A v. Ambitious Gold Nim Manufacturi* in LPA No.976/2004 rendered on 21st February, 2006 by High Court of Delhi*; D.D.A v. Parsu Ram & Ors.,* 2007 (96) DRJ 548; *Delhi Automobiles Ltd. & Anr. v. Union of India & Ors.,* 2012 SCC OnLine Del 5337; *UOI & Anr. v. Mohinder Pratap Soni & Ors.,* 2016

SCC OnLine Del 2600; *Ocean Plastics & Fibres (P) Limited v. Delhi Development Authority & Anr.,* ILR (2012) IV Delhi 134; *Balaji Enterprises v. Delhi Development Authority,* 2012 SCC OnLine Del 4885 and *Ramesh Kumar & Ors. v. D.D.A & Anr.,* 2012 SCC OnLine Del 2726.

9. On the contrary, learned Solicitor General of India vociferously refutes the aforesaid stand taken on behalf of petitioners and staunchly supports the impugned order by heavily relying upon the inspection report. It was pointed out that as per amended Lease-Deed, the remaining floors in the *'subject premises'* were to be let out as *'Office Accommodation'.* It was pointed out that in common parlance, *'Office Accommodation'* refers to the selection of most appropriate office location, office building and other facilities required for office so as to achieve a business objective by creating sound working environment and bringing efficiency in office work.

10. It was pointed out by learned Solicitor General of India that the stand of petitioners in the Income Tax proceedings is that entire business of publication of National Herald Newspaper had stopped in April, 2008 and petitioner-AJL had offered voluntary retirement to all its employees, who had accepted it and so, resumption of publication of weekly newspaper is a feeble attempt to retain the *'subject premises'* and that no worthwhile press activity is being carried out from the *'subject premises'.* According to learned Solicitor General of India, it is so evident from the inspection report, and that the inspection was carried out in the presence of Sh. Motilal Vora, CMD of AJL. It was also pointed out that the office of Young Indian is being also run from the *'subject premises'* and the

entire functioning of petitioner-AJL has been surreptitiously taken on over by Young Indian. It was also pointed out that petitioner-AJL had made a book entry in its accounts by substituting Young Indian in place of AICC/Indian National Congress as the entity entitled to recover the debt and by *'Deed of Assignment'* of December, 2010, right to recover the debt of ₹90 crores was illegally assigned to Young Indian for a consideration of just ₹50 lacs and by virtue of Young Indian taking over AJL, the entire control of AJL now vests with *Smt. Sonia Gandhi, Sh. Rahul Gandhi, Sh. Motilal Vohra* and *Sh. Oscar Fernandez* and that in the year 2011, Young Indian had acquired beneficial interest in AJL's property worth ₹413 crores. According to learned Solicitor General of India, the printing activity of AJL is taking place in Noida since the year 2017-18 and the presence of petitioners' newspaper in the country is insignificant. According to learned Solicitor General of India, transfer of 99% shares of petitioner-AJL to another company-*Young Indian* violates Clause III(13) of the Lease-Deed, which justifies cancellation of allotment and resumption of *'subject premises'*.

11. With much vehemence, it was submitted by learned Solicitor General of India that petitioners had ceased to use the *'subject premises'* for the predominant purpose of printing newspapers, as was originally envisaged, and the breaches pointed out have not been rectified by petitioners despite multiple Notices given to petitioners. Reliance was placed upon decisions in *State of Rajasthan and Others v. Gotan Lime Stone Khanij Udyog Private Limited and Another,* (2016) 4 SCC 469; *Allenbury Engineers Pvt. Ltd. v. Ramkrishna Dalmia and Others,* (1973) 1 SCC 7; *Boddu Narayanamma v. Venkatarama Aluminium Co. And*

Others, (1999) 7 SCC 589; *Precision Steel & Engg. Works and Another v. Prem Deva Niranjan Deva Tayal,* (2003) 2 SCC 236; *Waller and Son, Limited v. Thomas,* 1 K.B. King's Bench Division 541; *Feyereisel v. Turnidge,* 2 Q.B. Queen's Bench Division 29 and upon Full Bench decision in *T. Dakshinamoorthy v. Thulja Bai and Another,* 65 L.W. 242 to submit that *'piercing of corporate veil'* is essential to ascertain the actual intention of the parties and in the instant case, surreptitious transfer of a lucrative interest in the *'subject premises'* by petitioners to another entity-*Young Indian* and use of *'subject premises'* for earning huge rental income, justifies respondent's re-entry in the *'subject premises'*. Reliance was placed upon Supreme Court's decision in *Estate Officer, UT, Chandigarh and Others v. ESYS Information Technologies PTE. Limited,* (2016) 12 SCC 582 to justify invocation of proceedings under *the PP Act* to get petitioners evicted from the *'subject premises'*.

12. After having heard both the sides at length and on perusal of impugned order, material on record and the decisions cited, I find that the jurisdiction of this Court is sought to be invoked by petitioners by alleging *mala fide*. In normal course, the aspect of determination of a Lease is required to be gone into in proceedings under *the PP Act*. It is so said as Supreme Court in *Express Newspapers (supra)* way back in the year 1986 had pertinently observed as under: -

> *"Nothing stated here should be construed to mean that the Government has not the power to take recourse to the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 where admittedly there is unauthorized construction by a lessee or by any other person on Government land which is public premises within the*

meaning of Section 2 (e) and such person is in unauthorized occupation thereof"

13. A Constitution Bench of Supreme Court in *Ashoka Marketing Ltd. (supra)* has clearly reiterated that *"Public Premises"* under the PP Act means any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Central Government, and includes any such premises which have been placed by that government, whether before or after the commencement of the Public Premises (Eviction of Unauthorized Occupants) Amendment Act, 1980.

14. A Division Bench of this Court in *Escorts Heart Institute (supra), Ambitious Gold Nim Manufacturi (supra)* and other several Single Bench decisions of this Court, as referred to above, has ruled that correctness or otherwise of the allegations regarding determination of a Lease has to be decided by the concerned authority under *the PP Act.*

15. Since the aspect of *mala fide* is vehemently raised on behalf of petitioners, therefore, this Court had heard both the sides not only on the *mala fide* aspect, but also on merits and thereafter, I find that the issue of *mala fide* is to be first addressed. Supreme Court in *Indian Railway Construction Co. Ltd. v. Ajay Kumar,* (2003) 4 SCC 579 has reiterated that the burden of establishing the *mala fide* is very heavy on the person who alleges it and that the allegations of *mala fide* are often more easily made than proved and the very seriousness of such allegations demands proof of high order of credibility. On scrutiny of averments made in this writ petition, I find that it is simply averred therein that the impugned order is vitiated by *mala fide,* bias and has been issued with oblique

motives, which is a clear affront to Article 19 of *the Constitution of India* and that the ruling dispensation has adopted covert and overt measures to erase, efface and defame the legacy of *Pt. Nehru*. No instances have been provided by petitioners in the writ petition in support of the serious allegations of *mala fide* levelled against the ruling dispensation. It has not been shown as to how the impugned order is vitiated by *mala fide* or what is the bias. It is not spelt out as to what is the oblique motive in passing of the impugned order. One fails to understand as to how the ruling dispensation has in any way erased, effaced or defamed *Pt. Nehru*. To say the least, the allegations of *mala fide* are preposterous and no note of these allegations is required to be taken. In the instant case, the allegations of *mala fide* levelled by petitioners are bald and unspecific and so, no notice of these allegations is taken.

16. So far as merits of the impugned order is concerned, I find that it adheres to the principles of natural justice as a Show-Cause Notice was issued, which was duly replied to, and thereafter, inspection of the *'subject premises'* was conducted, whereupon it was found that no *'press activity'* was being carried out, even on the fourth floor of the *'subject premises'*. In this regard, the observations of the Inspection Committee are required to be adverted to and they are as under: -

> *"Shri Moti Lal Bora, Chairman AJL alongwith his associates was present during the inspection. It was observed that no printing press is functioning at any floor of the premises and no paper stock was found anywhere. However, 4th floor is being bused by the AJL for their press related office. It was informed by the AJL representative that the organisation is presently publishing National*

Herald weekly paper since 24.9.2017. However, it sprinting takes place in the Printing Press of Indian Express at Noida. He further informed that employees working at 4th floor are associated with this weekly only and working as content writers. The visiting team was also made available the Newspapers since it started being published against on 24.9.2017. When enquired if the paper was not being published before 24.9.2017, it was also informed that the publishing of Weekly was earlier stopped and employees were given VRS due to poor financial condition of the company. As there was no printing activity seen anywhere in the entire premises, it is prima-facie observed that the terms & conditions of the lease agreement are not being fully adhered to."

17. Publication of a newspaper may be outsourced to Noida or elsewhere, but the essential *'press activity'* of the editorial team was not discernible when the inspection of the *'subject premises'* was done in the presence of the Chairman of AJL. It is easier to assert that inspection of the *'subject premises'* was done at the back of petitioners, but the substance of the inspection report is not effectively refuted by petitioners. Strangely, petitioners have not cared to disclose as to what is the volume of the publication of their newspaper. What has been disclosed is that National Herald is a weekly newspaper and as regards the online publication of petitioners' Newspaper, no data is forthcoming. Petitioners are silent as to what is the extent of circulation of petitioners' newspaper, both in print and online, across the country. It is not the case of petitioners that any leading articles are published in their newspaper nor is there anything on record to indicate as to what are the editorial policies.

Also, the audited accounts of AJL are not forthcoming to gauge the extent of presence of petitioners' newspaper.

18. The *'subject premises'* was leased out to legendary AJL for its publication, but the dominant purpose is now practically lost. This Court is constrained to observe that major portion of the *'subject premises'* has been rented out and petitioners' newspaper, which was to be housed originally in the basement and ground floor, has now been shifted on the top floor with hardly any *'press activity'*.

19. The occasion to give second Show-Cause Notice to petitioners was the result of a Communication received by respondent from CIT in June, 2018, which had made startling revelations regarding takeover of the AJL by Young Indian Company, whose shareholders are *Smt. Sonia Gandhi, Sh. Rahul Gandhi, Sh. Motilal Vohra* and *Sh. Oscar Fernandez.* By transfer of AJL's 99% shares to Young Indian Company, the beneficial interest of AJL's property worth ₹413.40 crores stands clandestinely transferred to Young Indian Company. Infact, AJL has been hijacked by Young Indian Company, which brings the instant case within the purview of Clause III(13) of the Lease-Deed of *'the subject premises'*, which reads as under: -

> *"The Lessee shall not be entitled to sub-divide the demised premises or transfer by sale, mortgage, gift* ***or otherwise*** *the said premises or building erected thereon or any part thereof without obtaining the prior approval in writing of the Lessor or such officer or body as the Lessor may authorize in this behalf and all transferees shall be bound by all the covenants and conditions herein contained*

and be answerable in all respects therefor." **<u>(Emphasis supplied)</u>**

20. Though in the instant case, beneficial interest of petitioner-AJL is not technically transferred by way of sale/mortgage/gift, but it falls under the last category of *'or otherwise'*, as by the afore-noted novel *modus operandi*, AJL has been taken over by Young Indian Company for all practical purposes. This Court is conscious of the fact that Young Indian Company is a charitable company, but *modus operandi* to acquire 99% of AJL's shares speaks volumes. The manner in which it has been done is also questionable.

21. In view of afore-noted peculiarity of this case, the decisions relied upon by petitioners are of no avail to take a contrary view. Since the dominant purpose for which the *'subject premises'* was leased out to petitioners no longer exists, therefore, rectification of the alterations made for the Panel Room on the ground floor, purportedly, in conformity with the *United Building Bye-Laws for Delhi*, is also inconsequential, as the main purpose for which the *'subject premises'* was let out to petitioners, is lost. This Court is of the considered view that by no process of reasoning, can it be said that the *'subject premises'* is not liable to be proceeded against under *the PP Act*. In the opinion of this Court, impugned order is well reasoned and it amply justifies the re-entry of respondent in the *'subject premises'*. There is no impediment in the way of respondent to invoke the provisions of *the PP Act* to seek eviction of petitioners, in case petitioners do not voluntarily vacate the *'subject premises'* and hand over

its vacant possession to respondent-*Land and Development Officer*, within a period of two weeks from today.

22. With aforesaid observations, this petition and the application are accordingly disposed of.

(SUNIL GAUR)
JUDGE

DECEMBER 21, 2018
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