IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION (L) NO. 83 OF 2018

Abha Singh and Anr. .. Petitioners

Vs.

The State of Maharashtra and Ors. .. Respondents

....

Mr. Aditya Pratap Advocate for Petitioners

Mr. Shardul Singh, Special Counsel a/w Mr. Abhay L. Patki Additional Government Pleader for Respondent Nos. 1 & 2

Mr. Sharan Jagtiani a/w Mr. Mutahar Khan, Mr. Mahernosh J. Humranwala, Ms. Kirtida Chandarana & Ms. Sonali Mehta for Respondent No.4

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CORAM : PRADEEP NANDRAJOG, C.J. &
N.M. JAMDAR, J.

RESERVED ON : APRIL 11, 2019
DECLARED ON: APRIL 22, 2019

ORDER [PER PRADEEP NANDRAJOG, C.J.]:

1. The instant petition under Article 226 of the Constitution of India has been preferred by the petitioners as a 'Public Interest Litigation' laying challenge to the subsequent permission granted by the revenue authorities of State of Maharashtra in favour of India Film Combine Pvt. Ltd, to radically redevelop a leased tract of land for diverse commercial purposes which was initially demised with a circumscribed object of building and operating a 'Drive-In Theatre' along with certain specified amenities.

2. The petitioners contend that it was impermissible for the revenue authorities to have subsequently widened the purposes for which the leased land could be utilised. It is alleged that such concessions were sought by India Film Combine Pvt. Ltd. (hereinafter referred to as the 'lessee') upon addressing an application to the then Chief Minister and such permissions were doled out in haste. It is submitted that provisions of the Maharashtra Land Revenue Code, 1966 and Maharashtra Land Revenue (Disposal of Government Land Rules), 1971 do not support such exercise of power. It has further been submitted that the tract of land in question was liable to revert to the State owing to the alleged breaches

committed by the 'lessee' and a fresh auction ought to have been conducted to fetch greater revenue or alternatively, the land ought to have been utlised for pressing public purposes such as construction of a new Court complex. It is urged that the 'lessee' is in breach of the terms of lease in view of the fact that the leased land has in effect been disposed by the 'lessee' on multiple occasions by wholesale alteration of its own share-holding pattern, without the requisite permission of the Government. The petitioners have also highlighted that the lease executed by the revenue authorities of the State in favour of the 'lessee' is not registered though compulsorily registrable in law and therefore, the 'lessee' is liable to be ousted on this count aswell.

3. Before we venture to endow our anxious consideration to the contentions canvassed on behalf of the petitioners, it would be apposite to succinctly trace the sequence of events leading to the subsequent permission granted by the State authorising the 'lessee' to utilise the demised land for purposes beyond those specified in the terms of lease.

4. On 31 July 1968 it was resolved by the Revenue and

Forests Department, Government of Maharashtra that the land in question be reserved for developing a 'Drive-In Theatre'. Consequent thereto, Public Notice was issued in leading newspaper inviting tenders for a period of 99 years.

5. In response to the said public notice, tenders were received from two concerns, including the Respondent No.4. Since the bid of the fourth Respondent offered higher rate, the Government was pleased to accept his tender. The said fact was communicated to the Respondent vide letter dated 27 May 1969.

6. In pursuance thereof, possession of land was handed over to the fourth Respondent on 28 April 1971. The land is said to have been reclaimed as portions thereof were marshy. Sometime in the year 1977, the construction of the 'Drive-In Theatre' was completed and Certificate of Occupation was granted.

7. Records reveal that certain Show Cause Notices were issued by the authorities to the fourth Respondent for certain violations of Memorandum of Terms and Conditions. Suffice would it be to observe that the breaches alleged were in the

nature of sub-letting. Vide Order dated 12 July 1989 the fourth Respondent was directed to make certain payments and rectify the breaches. As evidenced from the Affidavit submitted on behalf of State of Maharashtra/Respondent No.1, the said Order was duly complied by the fourth Respondent and the dispute on the said count did not precipitate further.

8. That ultimately on 19 October 1991 a formal lease agreement was executed between the Collector and the fourth Respondent.

9. Significantly, the Government of Maharashtra-Urban Development Department vide Notification No. TPB. 4391/1103/CR-53/92/UD-11 (RDP) dated 10 March 1992 expressed its policy to permit redevelopment of cinema theaters.

10. In terms of the redevelopment policy already in vogue, the 'lessee' sought requisite permission from the Government to redevelop the demised land with a view to operate, *inter-alia*, hotels, office spaces, shopping and recreational facilities upto 50% FSI whereas balance permissible FSI would be utilised for use permissible under the existing

terms of the lease. It would be pertinent to highlight that the said application was preferred on 19 March 1999.

11. The request made by the 'lessee' in terms of already existing policy of the Government was acceded to and necessary orders were passed on 08/15 July 1999. As a consequence of the said permission, the 'lessee' was permitted to sub-lease the land alongwith buildings to any third parties/institutions after the land was developed for commercial purpose. Further, the 'lessee' was also permitted to mortgage its leasehold rights to financial institutions for raising funds for the purpose of redevelopment.

12. The MMRDA issued the first Commencement Certificate on 05 December 2001. Premium of ₹ 38.82 Crores was recovered from the 'lessee' for utilising approximately 50% FSI for other commercial purposes.

13. That a perusal of the records also reveals that on 17 October 2002 and certain subsequent occasions, Notices were issued by the Collector to the `lessee' highlighting the instances of complete transfer of shareholding of the 'lessee' company. It was indicated that such wholesale transfer of shares would

tantamount to transfer of assets, including the demised land. Consequently, the 'lessee' was show caused as to why levy of 75% unearned income be not imposed.

14. Significantly, vide a detailed Order dated 26 September 2003 the Show-Cause Notice dated 17 October 2002 and further letters dated 16 November 2002, 02 December 2002 & 02 July 2003 were withdrawn upon taking into consideration the response tendered the 'lessee' and after having duly obtained Legal Opinion in this regard from Additional Solicitor General of India. The Order took note of the settled jurisprudential principles that a Company is a distinct juristic entity and the view expressed by various Courts of the land that sale of shares of a company does not amount to transfer of interest in the assets of the company. Reliance was placed upon the decisions of the Apex Court reported as (1999) 4 SCC 458 titled *Electronics Corporation of India Ltd. v. Secretary Revenue Department Government of Andhra Pradesh* and 1955 25 Co. Cases I titled *Mrs. Bacha F. Guzdar v. Commissioner of Income Tax, Bombay*. The Collector also noticed the authoritative pronouncements of the Apex Court wherein it was observed that shares of a company were freely transferable and were only subject to the restrictions comprised

in the Articles of Association.

15. In view of the transfer of shareholding in the 'lessee' company on a subsequent occasion, another Notice dated 20 January 2006 came up to be issued. However, the same was also discharged vide Order dated 06 February 2006 for similar reasons as expressed on the earlier occasion.

16. In the interregnum the development works progressed and on 14 July 2008 four Office Buildings were granted Occupation Certificates by the municipal authorities. The 'lessee' entered into agreements for sale of office premises with different purchasers. Further, in the year 2011 ICICI sanctioned credit facility to the tune of ₹ 1600 crores in favour of the 'lessee' against security of part of the land and the construction to come up thereon. Requisite approvals were obtained before creating such mortgage. On 03 May 2013 MMRDA granted Full Occupancy Certificate in respect of an Office Building.

17. That on 30 January 2014 amendments to the Lease Deed were formally executed as necessitated by the Orders dated 08/15 July 1999. It would be pertinent to highlight that

it is the admitted case as pleaded by the respondents that the two Lease Deeds were not registered, however requisite stamp duties were paid by the 'lessee'.

18. In the year 2017 Petitioner No.2 addressed representations to different quarters within the Government highlighting the perceived illegalities in grant of permissions. However, since the relevant authorities did not respond favourably, the Petitioners invoked the jurisdiction of this Court by instituting the instant Public Interest Litigation.

19. The grievances sought to be ventilated by the petitioners have been set out by us *in extensio* at the very outset before penning the factual narrative. One of the principal grievances voiced by the petitioners is that the subsequent permission granted by the authorities to substantially widen the scope of use of the demised land was arbitrary, fraught with illegality and impelled by extraneous considerations. However, the said submission clearly overlooks the attending circumstances enwombing the grant of such permission. As highlighted by us in the narrative, the Government of Maharashtra- Urban Development Department vide Notification No. TPB. 4391/1103/CR-53/92/UD-11 (RDP)

dated 10 March 1992 itself promulgated a new policy to permit redevelopment of cinema theaters. It is not the case that concessions were granted to the 'lessee' as a stand alone case. As a matter of fact, it is only on 19 March 1999 that an application was made by the 'lessee' in terms of the policy of the Government already in place for many years. It is in this view of the matter that the permission was granted and necessary orders were passed on 08/15 July 1999. Thus, this Court finds no material to even *prima facie* entertain suspicion that the permission was processed with undue haste. Further, the petitioners have been unable to draw attention of this Court to any statutory provision or bye-law that imposes fetters upon the State; in capacity of a 'lessor' to subsequently widen the scope of use of a demised land. Rule 31 of Maharashtra Land Revenue (Disposal of Government Land Rules), 1971 cited by the petitioners mandates grants of government land for industrial or commercial purposes be made only in pursuance of a public auction or by inviting tenders, which was resorted to in the present case. It further prohibits the recipient from acting in any manner contrary to the purpose of such grant *unless approval of the State Government has been obtained*. It assumes significance that the said provision itself envisages necessary circumstantial flexibility that even after grant of government land, the State Government may in its wisdom choose to accord approvals for utilisation of land for purposes not contemplated at the time of grant. With efflux of time, policy considerations may undergo change and such evolution is often prompted by the conditions in society that could hitherto not be adequately visualised. It cannot be countenanced that there exists a *carte blanche* ban, as suggested by the petitioner, that the State Government is absolutely precluded from enlarging the scope of land use after having executed the lease. It is pellucid that in furtherance of its policy decision dating back to the year 1992, the revenue authorities granted permission to the 'lessee' to utilise the demised land for other commercial purposes not comprised in the original lease. As observed by us earlier, the permission was not in the nature of a concession in an individual stand alone case but in keeping with a general policy decision. We find no illegality or impropriety emerging on the face of record to hold that the permission accorded to the 'lessee', in furtherance of established policy directives, was improper. It assumes significance that no challenge has been made to the policy notification no. TPB. 4391/1103/CR-53/92/UD-11 (RDP) dated 10 March 1992 upon which the permission granted to the 'lessee' was essentially premised.

20. The second plank of the petitioners contention is that the 'lessee' was guilty of committing repeated breaches of the Terms and Conditions, mandatorily binding the parties. Emphasis was placed on Clause 15 which expressly mandates that the lessee would not directly or indirectly transfer, assign, encumber, mortgage, or part with his interest under or the benefit of the agreement of lease or any part thereof in any manner without the previous consent in writing of the Government. It was submitted that the shareholding of the 'lessee' corporation underwent wholesale change on numerous occasions *sans* approval from the Government and the said exercise amounted to indirectly transferring the interest under the lease. Reference was also made to Clause 2(c) of the Lease Deed wherein such a similar covenant is postulated. We find that this perceived breach of the terms of lease also engaged the attention of the revenue authorities at different junctures, as pleaded by the petitioners themselves and noted by us in the preceding paragraphs. Show Cause Notices dated 17 October 2002 and 20 January 2006 were issued by the Office of the Collector to the 'lessee 'in this regard. However, the Notices were subsequently withdrawn upon taking into consideration the response tendered the 'lessee' and after having duly

obtained Legal Opinion from Additional Solicitor General of India. As observed by us earlier, the detailed Order passed by the Collector took note of the settled jurisprudential principle that a Company is a distinct juristic entity and the authoritative pronouncements rendered by various Courts of the land that sale of shares of a company does not amount to transfer of interest in the assets of the company. Reference was made to the decisions of the Apex Court reported as (1999) 4 SCC 458 titled *Electronics Corporation of India Ltd. v. Secretary Revenue Department Government of Andhra Pradesh* and 1955 25 Co. Cases I titled *Mrs. Bacha F. Guzdar v. Commissioner of Income Tax, Bombay*. The Collector also noticed the decisions of the Apex Court wherein it had been observed that shares of a company were freely transferable and were only subject to the restrictions comprised in the Articles of Association.

21. We are pained to note that the petitioners before this Court selectively chose to annex the Show Cause Notice dated 17 October 2002, however found it convenient not to place for our consideration the detailed Order dated 26 September 2003 passed by the Collector discharging the said Show Cause Notice. The jurisdiction of Constitutional Courts of Judicature

cannot be invoked by suppressing material facts that are germane to the cause sought to be espoused in such Public Interest Litigations. The only legitimate expectation Courts have from those reach its pedestals is full and complete disclosure, lest the stream of justice be sullied. The Supreme Court of India in its decision reported as (2011) 7 SCC 639 titled *State of M.P v. Narmada Bachao Andolan and Anr.* deprecated the sharp practise of suppressing material facts as the same tantamounts to playing fraud upon Courts.

22. Upon delving deep into the terms comprised under the Lease, we find no covenant which requires the 'lessee' corporation to obtain the consent of any authority before effecting any change in its share-holding pattern after grant of lease. There is no gain saying that the revenue authorities are well aware that often body corporates participate in such tender process and the successful bidder may turn out to be a Company. If the intent were to interdict such change in shareholding in future, such a covenant could have been expressly postulated. The unequivocal intendment of the covenants of the unamended Lease appears that it is impermissible for the 'lessee' to part away/alienate, directly or indirectly, the interest under the agreement in favour of another

individual/entity; who would be an outsider to the agreement. However, significantly the covenants in question do not impose fetters upon prospective change of shareholding pattern/composition of the 'lessee' itself. In view of the fact that the revenue authorities have examined this issue threadbare and taken a considered view that the alteration in shareholding pattern of the 'lessee' does not offend the covenants comprised in the Lease, we do not find it necessary to review the merits of the said decision by exercising powers akin to an appellate authority.

23. Adverting to the residual issue of non-registration of the Lease Deeds, we find that the State of Maharashtra/ Respondent No. 1 has stated in its response Affidavit that the said issue is being examined by the Government. On behalf of 'lessee'/Respondent No. 4 reliance was sought to be placed upon the exemption engrafted under Section 90 of the Registration Act, 1908 to submit that such documents need not be registered.. We feel that since the the Government is in seisin of this matter, it would not be appropriate to adjudicate on this aspect at this stage in proceedings in the nature of a Public Interest Litigation. However, we hope and trust that the relevant authorities would earnestly examine this issue at the

highest level and embark upon steps, as required under the law.

24. With these observations the present Public Interest Petition is disposed. There shall be no orders as to cost.

N.M.JAMDAR, J. **CHIEF JUSTICE**

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