

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for orders on :30/11/2021

Order passed on :15/12/2021

W.P.(C.) No.2630 of 2021

1. Suresh Kothari S/o Shri Askaran Kothari, Aged About 60 Years, (Respondent No.1 in Case no.59/2020 SAIL vs. Unauthorised Occupants)
2. Anjay Surana S/o Late Shri Phulchand Surana, Aged About 62 Years (Respondent No.2 in Case no.59/2020 SAIL vs. Unauthorised Occupants)

Both are r/o Shop No. 100, New Civic Centre, Bhilai, District Durg Chhattisgarh Pin 490006

---- Petitioners

Versus

- Steel Authority Of India Limited Bhilai Steel Plant, Through General Manager (Shop/Enf/Lease) Address: Town Services Department, Indira Place, Sector-5, Bhilai, District Durg Chhattisgarh Pin 490006

---- Respondent

For Petitioners : Mr. Raghvendra Pradhan, Advocate.

For Respondent/S.A.I.L. : Dr. Saurabh Kumar Pande, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

15/12/2021

1. This petition has been filed against the proceeding initiated by the respondent before the Estate Court, Bhilai.

2. It is submitted that the respondent had executed a lease deed in favour of Shri Jugalkishore M. Rath i granting lease deed of plot No.100. The word lessee mentioned in the lease deed includes the heirs and successors of the lessee. Shri Jugal Kishore M. Rath i has expired on 08.06.2010. Before his death, Shri Jugalkishore M. Rath i had executed a registered will dated 29.04.2009 bequeathing his rights as lessee of shop No.100 to the petitioners. According to the terms of the lease, a cinema hall is being run on the plot granted on lease. Respondent has filed an eviction application under Section 5 of Public Premises Act before the Estate Court (SAIL) Maroda Sector, Near D.P.S. Bhilai, Bhilai, Durg, C.G. praying for the eviction of the petitioners.

It is submitted that the petitioners who are non-applicants in the case before Estate Court, made preliminary objection on the maintainability of the eviction application, which has been dismissed arbitrarily by order in Annexure-P/2. Another application was filed under Order VI Rule 15 of C.P.C., which has also been rejected by the order in Annexure-P/1.

3. It is submitted that the petitioners are successors in interest of the deceased Shri Jugalkishore M. Rath i and they are the successors of the deceased Shri Jugalkishore M. Rath i on the basis of the registered Will deed in their favour. Therefore, the petitioners are not the persons in authorized possession. Hence, the proceeding drawn against them is illegal and arbitrary, which is liable to be quashed.
4. Learned counsel for the respondent opposes the submissions and submits that the proceeding has been drawn under the provisions of

The Public Premises (Eviction of Unauthorised Occupants) Act, 1971. According to the terms of the agreement of lease deed, the title on the lease land can not be transferred to any person. The petitioners are not the legal heirs of the deceased Shri Jugalkishore M. Rathi. There is a clear term in the lease deed that the lease holder is not entitled to assign, transfer, mortgage, sublet or otherwise deal with or part with the possession of or the lessee's interest without the prior approval of the lessor. Deceased Shri Jugalkishore M. Rathi has without any authorization assigned the lease land to the petitioners, therefore, the petitioners are unauthorized occupants and the proceeding drawn against them is valid. Hence, it is prayed that petition may be dismissed.

5. In reply, it is submitted that the will deed is not a transfer deed, therefore, it is not governed by the Clause 13 of the lease agreement. On the strength of the will deed, the petitioners are in the shoes of the deceased, therefore, they have entitlement to the possession of the lease land and hence, they cannot be declared unauthorized occupants. It is also submitted that in the lease agreement itself, the 'lessee' has been mentioned as the expression, which shall unless excluded by or repugnant to the context be deemed to include its/his successors/heirs, executors, administrators, representatives and permitted assigns, therefore, the petitioners are not unauthorized occupants. Therefore, it is prayed that petitioners may be granted relief.
6. Heard learned counsel for both the parties and perused the documents present on record.

7. Considered on the submissions. A proceeding has been initiated against the petitioner under Section 5 of the Act, 1971. The provisions is quoted as follows:-

“5. Eviction of unauthorised occupants.—

(1) If, after considering the cause, if any, shown by any person in pursuance of a notice under section 4 and 1[any evidence produced by him in support of the same and after personal hearing, if any, given under clause (b) of sub-section (2) of section 4], the estate officer is satisfied that the public premises are in unauthorised occupation, the estate officer may make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated, on such date as may be specified in the order, by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises.

(2) If any person refuses or fails to comply with the order of eviction 1[on or before the date specified in the said order or within fifteen days of the date of its publication under sub-section (1), whichever is later,] the estate officer or any other officer duly authorised by the estate officer in this behalf 1[may, after the date so specified or after the expiry of the period aforesaid, whichever is later, evict that person] from, and take possession of, the public premises and may, for that purpose, use such force as may be necessary.”

8. According to the provision mentioned hereinabove, the Estate Officer shall afford the noticee an opportunity of hearing and also personal hearing for drawing satisfaction with regard to the person being an unauthorized occupant. Hence, I am of this view that the petitioner has still the opportunity available to make submissions before the Estate Court regarding their entitlement.
9. A Will can be executed by a Hindu under the provisions of Hindu Succession Act, 1956 (in short 'the Act, 1956'). Section 30 of the Act, 1956 provides that any Hindu may dispose of by a will or other testamentary disposition any property, which is capable of being so

disposed of by him or by her, in accordance with the provisions of the Indian Succession Act, 1925 (39 of 1925).

There is no question present as to whether deceased Shri Jugalkishore M. Rathi was capable to execute the registered will or not. The question present is only to this extent whether the leased property could have been bequeathed in will or not. There is no such description of the property present in Act, 1956 or in the Indian Succession Act, 1925. Section 5 of the Transfer of Property Act, 1882 (in short 'the Act, 1882') provides that, "transfer of property" means an act by which a living person conveys property, at present or in future. Section 6 of the Act, 1882 provides regarding transfer of property which can be transferred.

10. Clause 13 of the agreement restrains the leasee from transferring, mortgaging etc. of the land under lease, but the same clause also provides that "in case of devolution of the interest by the operation of law there is requirement to furnish the lessor with a certified true copy of the related document or other evidence in respect of such transaction or devolution as afore said within 60 days from the date thereof.
11. On the basis of this clause the petitioners have a case to present before the Estate Court and which also requires consideration. However, the petitioners have to seek approval of the respondent on the basis of the provision in clause 13 of the agreement. Hence, on the basis of the discussion made hereinabove, this petition is disposed off. The petitioners are granted liberty to make a representation to the respondent invoking clause 13 of the

agreement and they are also granted liberty to file a reply in the case initiated by the Estate Court Bhilai raising their claim that they have raised in this petition. It is directed that the representation before respondent be filed by the petitioners within a period of 15 days from the date of this order and the respondent is directed to consider on this representation and take decision within a period of 30 days from the date the representation is received.

12. The petitioners have liberty to contest the case before the Estate Court on the ground which has been raised in this petition in case the same is required to be contested. Further, until the representation is filed by the petitioner and the same is decided by the respondent the proceeding before the Estate Court Bhilai shall remain stayed for a period of 45 days. With these observations this petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge