IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-18283-2021 (O&M)
Date of Decision:22.09.2021

Inderjit Kaur ... Petitioner

Versus

The Chandigarh Administration & others ... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.
HON'BLE MR. JUSTICE VIVEK PURI.

Present:- Mr. Salil Sagar, Sr. Advocate with
Mr. Samarth Sagar, Advocate for the petitioner.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

Petitioner was leased out site No.220, Sector-37, C&D Chandigarh in an open auction for 99 years on 28.10.1979 vide allotment letter dated 11.12.1979 (Annexure P-1) at a premium of Rs.1,72,500/-. Petitioner having failed to deposit the installments, the Estate Officer exercising the powers vested under the Chandigarh Lease Hold of Sites and Building, Rules, 1973 (hereinafter to be referred to as 'the 1973. Rules') cancelled the lease vide order dated 07.04.1982 (Annexure P-2). Appeal having been preferred, the Chief Administrator, U.T. Chanidgarh vide order dated 03.08.1984, accepted the appeal and restored the lease of the site to the petitioner subject to the condition that the entire amount outstanding would be deposited within 30 days from the date of issue of the order. It was clearly stipulated that non-compliance with such condition would revive the order of the Estate Officer cancelling the lease of the site in question. Petitioner instead of availing of the concession granted by the Appellate

Authority, preferred a revision petition under Rule 22 (4) of the 1973 Rules. Revision was dismissed in terms of order dated 06.12.1989 (Annexure P-5). Thereafter, proceedings were initiated under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter to be referred to as 'the 1971 Act') and notice dated 18.08.1999 (Annexure P-6) was issued by the Estate Officer.

Instant writ petition has been filed seeking quashing of the afore noticed orders dated 07.04.1982 (Annexure P-2) cancelling the lease; dated 06.12.1989 (Annexure P-5) declining the revision petition preferred by the petitioner as also the notice dated 18.08.1999 (Annexure P-6) under Section 4 of the 1971 Act. Further challenge is to the order dated 12.05.2021 (Annexure P-20), rejecting a representation preferred by the petitioner for implementation of an arbitral award dated 25.10.2003 (Annexure P-14).

Learned senior counsel has argued that the orders assailed at Annexures P-2, P-5 and P-6 suffer from the infirmity of arbitrariness and procedural unfairness. It is submitted that the order dated 06.12.1989 (Annexure P-5), whereby revision petition had been dismissed was never communicated to the petitioner. Stand is taken that the petitioner become aware of such order only upon receipt of the impugned eviction notice dated 18.08.1999 (Annexure P-6). Petitioner, as such, is stated to have been deprived of her valuable right to challenge the same in accordance with law and before a forum of competent jurisdiction in a timely manner. The next contention advanced is that all the previous actions/orders of cancellation of lease as also eviction proceedings stand **“washed off”** by virtue of the conduct of the respondent/authorities in having participated in the arbitration proceedings initiated by the petitioner before the ADR Arbitral Tribunal. It is urged that such act on the part of the respondents constitutes acquiescence to the arbitration proceedings as also to the jurisdiction of the Arbitral Tribunal and such proceedings having culminated into an arbitral award dated 25.10.2003 (Annexure P-14), the same would now be binding and would be seen as a settlement of the dispute between the parties. Further contended that the award dated 25.10.2003 (Annexure P-14) tantamounts to an exercise of power under Rule 21 of the 1973 Rules inasmuch as the site in question would now stand restored back to the petitioner. Further contended that the validity of the arbitral award dated 25.10.2003 (Annexure P-14) would stand covered by the order of the Calcutta Civil Court dated 03.01.2008 (Annexure P-18).

Learned senior counsel has been heard at length and pleadings on record have been perused.

We are of the considered view that the instant petition is wholly misconceived.

The order dated 07.04.1982 (Annxure P-2 herein) vide which lease deed of the premise was cancelled, order dated 03.08.1984 vide which the appeal preferred by the petitioner was decided; order dated 06.12.1989 (Annexure P-5 herein) passed by the revisional authority as also the subsequent notices issued by the respondent/authorities under the 1971 Act were assailed by State Bank of India who was the main tenant of the petitioner in the premises by filing CWP-10305-2001. Petitioner herein was arrayed as party respondent No.6 in such writ petition and was duly represented. The writ petition was dismissed by a Division Bench of this

Court in the following terms:

> *"In view of the above discussion, the writ petition is dismissed. However, keeping in view the fact that the petitioner-bank is a statutory instrumentality of the State, we accept the oral request made by Shri H.C. Gupta and grant one year's time to the petitioner after passing the order of eviction for vacating the premises.*
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> *Before parting with the case, we deem it proper to make it clear that Chandigarh Administration should ordinarily not entertain or accept any application filed by respondent No.6 under Rule 21-A(2) of the Rules. If, at all, the power under the said rule is exercised for restoration of the site, then the petitioner-bank shall be free to move this Court for handing over the possession of the ground floor and basement of the building to it.*
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> *Sd/- G.S. Singhvi, Judge*
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> *July 26, 2002. Sd/- Kiran Anand Lall, Judge."*

Petitioner then filed Review Application No.256 of 2002 in Civil Writ Petition No.10305 of 2001 and which was dismissed in terms of order dated 18.10.2002 (Annexure P-8). Operative part of the order dated 18.10.2002 reads as follows:

> *"In our opinion, the plea put forward by the applicant is thoroughly misconceived and the application deserves to be dismissed. Admittedly, the applicant had not challenged the order of resumption passed by the Assistant Estate Officer, the appellate order passed by the Chief Administrator, Union Territory, Chandigarh and the revisional order passed by the Advisor to the Administrator. This shows that she had accepted the finality of the order of cancellation of lease and consequential resumption of the site. Notwithstanding this, she continued to derive the benefit from the resumed property by collecting rent from the State Bank of India. Even after*

initiation of proceedings under the 1971 Act, the applicant did not choose to challenge the proceedings of resumption. Therefore, she cannot be heard to make a grievance against the observation made by the Court keeping in view the fact that she did not surrender the site and continued to keep benefits from the building constructed over it even after the order of resumption acquired finality.

In the premise aforesaid, we do not find any justification to recall or modify the observations. Hence, the application is dismissed.

Sd/- G.S. Singhvi, Judge.

October 18, 2002. *Sd/- Kiran Anand Lall, Judge."*

It is the pleaded case of the petitioner herself that she then preferred an SLP against the judgment dated 26.07.2002 passed by this Court in CWP-10305-2001 as also against the order dated 18.10.2002 passed in RA-256-2002 before the Hon'ble Supreme Court of India but the same was withdrawn.

Apparently, the resumption proceedings having attained finality and proceedings under the 1971 Act having already been initiated, petitioner then embarked upon a novel misadventure. Petitioner then created a Trust in the name of "Dispute Vest Settlement Trust" in the account of Smt. Inderjit Kaur to settle her grievance through arbitration. The ADR Arbitral Tribunal stated to have been incorporated and carrying a license issued by the Government of India, Ministry of Law, Justice and Company Affairs was approached for arbitration and settlement of the "dispute" between the petitioner and the Chandigarh Administration. On 25.10.2003, the ADR Arbitral Tribunal is stated to have passed a final award and the same is annexed as Annexure P-14 along with the instant petition.

It would be relevant to take note of the order dated 31.03.2004 passed by the District Judge, Delhi (Annexure P-16), dismissing the execution petition filed by the Dispute Vest Settlement Trust in relation to the award dated 25.10.2003 stated to have been passed by the ADR Arbitral Tribunal. The learned District Judge, Delhi while dismissing the execution petition that had been preferred by the petitioner had observed that the award dated 25.10.2003 had been obtained by fraud and in total violation of the Indian Arbitration and Conciliation Act, 1996. It was observed that the act of the so called decree holder (petitioner herein) is a fraud on the public policies and laws of Government of India inasmuch as the ADR Arbitral Tribunal which conducted the arbitration proceedings under the banner of Government of India is a complete misrepresentation of claiming authority which was never granted to it by the Government of India i.e. Ministry of Law, Justice and Company Affairs. It was further observed that there was no arbitration agreement between the parties and as such, the award dated 25.10.2003 would be a nullity as under Section 7 of the Arbitration and Conciliation Act, there has to be an agreement between the parties so as to submit to arbitral proceedings. While dismissing the execution petition preferred by the petitioner/Trust, it was also held that the premises in question is a public premise and once an order of eviction under the 1971 Act, which is a special statute, has been passed by the Estate Officer, no proceedings could have been conducted by any Arbitrator.

During the course of hearing before us, we called upon Mr. Salil Sagar, learned senior counsel to advert to the agreement between the parties and on the strength of which the so called arbitral proceedings had been undertaken. He concedes that there was none. At this stage, learned senior counsel has been candid in submitting that even though he has nothing much to submit on merits, yet he is pressing the instant petition for the reason that the petitioner now has the financial means to deposit the entire outstanding amount that may be determined by the administration in respect of the site in question.

We are constrained to observe that the petitioner is an unscrupulous litigant. Inspite of resumption proceedings having attained finality, she has continued to be in possession of a public property. She continued to derive the benefit from the resumed property by collecting rent from the State Bank of India as also other tenants. After cancellation of the lease and consequential resumption of the site and thereafter even after initiation of proceedings under the 1971 Act, petitioner had chosen not to challenge the order of cancellation of lease as also proceedings of resumption. It is only the main tenant in the premise in question i.e. State Bank of India that had preferred CWP-10305-2001 and which was dismissed by a Division Bench of this Court on 26.07.2002. Petitioner was a party to such proceedings as she was impleaded as party respondent No.6. While dismissing the writ petition, this Court keeping in view the conduct of the petitioner had held that the Chandigarh Administration would not entertain or accept any application that may be filed by her for restoration of the site under Rule 21 of the 1973 Rules. Petitioner had even preferred Review Application No.256 of 2002 in CWP-10305-2001 seeking deletion of such observation. The review application was dismissed on 18.10.2002 (Annexure P-8). Petitioner then preferred SLP before the Apex Court and which was withdrawn.

The propensity of the petitioner to continue in unauthorized possession of public premise can be clearly seen on account of her creating a Trust in the name of "Dispute Vest Settlement Trust" and then approaching the ADR Arbitral institute. Arbitral proceedings were sought to be initiated by the petitioner in the absence of any agreement between the parties. The initiation of any such proceedings was without any sanctity in law. We find that the reliance placed upon the order dated 03.01.2008 of the Calcutta Civil Court (Annexure P-18) towards recognition of the ADR Arbitral Tribunal is absolutely misplaced inasmuch as, such order was passed pursuant to an application having been filed under Section 7 of the Charitable and Religious Trust Act, 1920.

In the totality of circumstances and for the reasons recorded above, we would have no hesitation in holding that the instant petition at the hands of the petitioner is a complete abuse of the process of law. The Hon'ble Supreme Court of India in **Dnyandeo Sabaji Naik and another Versus Mrs. Pradnya Prakash Khadekar and others, 2017 (5) SCC 496** held as follows:

> *"13. This Court must view with disfavour any attempt by a litigant to abuse the process. The sanctity of the judicial process will be seriously eroded if such attempts are not dealt with firmly. A litigant who takes liberties with the truth or with the procedures of the Court should be left in no doubt about the consequences to follow. Others should not venture along the same path in the hope or on a misplaced expectation of judicial leniency. Exemplary costs are inevitable, and even necessary, in order to ensure that in litigation, as in the law which is practised in our country, there is no premium on the truth."*

It was further observed that imposition of exemplary costs is a necessary instrument which has to be deployed to weed out, as well as to prevent the filing of frivolous cases. It was also observed that it is not merely a matter of discretion but a duty and obligation cast upon all Courts to ensure that the legal system is not exploited by those who use the forms of the law to defeat or delay justice.

For the reasons recorded above, writ petition is dismissed. In view of the observations made by the Apex Court in **Dnyandeo Sabaji Naik's case (supra)** and while dismissing the instant petition, we burden the petitioner with costs of Rs.1 lakh to be deposited with the Poor Patients Welfare Fund, PGI, Chandigarh within a period of four weeks from today.

To be listed on 08.11.2021 for compliance.

(TEJINDER SINGH DHINDSA)
JUDGE

(VIVEK PURI)
JUDGE

22.09.2021
harjeet

i) Whether speaking/reasoned? Yes/No

ii) Whether reportable? Yes/No