

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.11244 of 2016

Marwari Society

....

Petitioner

-versus-

State of Odisha and others

....

Opposite Parties

Advocates appeared in this case :

For Petitioner :

Mr. Gouri Mohan Rath, Advocate
Mr. K. C. Kar, Advocate
Mr. S. S. Padhy, Advocate
Mr. S. Satpathy, Advocate
Mr. S. Dwibedi, Advocate

For Opposite Parties :

Mr. Y.S.P. Babu, Advocate
(Additional Government Advocate)

CORAM:

JUSTICE ARINDAM SINHA

JUSTICE SANJAY KUMAR MISHRA

JUDGMENT

16.12.2022

ARINDAM SINHA, J.

1. Mr. Rath, learned advocate appears on behalf of petitioner. He submits, his client is a society, explained by its name. It was granted

long lease by deed dated 24th March, 2000 on premium of Rs.23,54,913/- for initial period of 90 years. The purpose was for his client to build a house or houses and use the same for its office building and charitable dispensary only. His client, in terms of purpose of the lease, constructed building and has been using the same for office and charitable dispensary only.

2. He draws attention to show-cause notice dated 28th March, 2016. Referred to paragraphs in the notice are extracted and reproduced below.

*“AND WHEREAS, on the field enquiry conducted by the Addl. Land Officer and R.I. of this Department on 14.03.2016, it was found that **social function like “Phoolon ki Holi” was being organised in the building raised over the demised land and the said building is being rented out to outsiders temporarily to perform receptions, meetings, birth/death anniversaries, etc.** The photographs of ‘Srikrishna Rasalila Pradarshan’ published in “The Samaj” dtd. 15.03.2016 corroborates the fact that the said premises are not being used exclusively for the purpose for which the lease was granted.*

xx xx xx xx xx

He is, therefore, on behalf of the lessee Society, called upon to show cause within 15 (fifteen) days from the date

hereof, i.e., by 12.04.2016, as to why the said lease should not be determined under clause-4(i) of the lease deed and why the land should not be resumed and possession taken over by the Government. If no reply is received from him, on or before the stipulated date, it shall be presumed that he has nothing to say in the matter and action will be taken to determine the lease and resume the possession of the land.”

(emphasis supplied)

His client replied to the show-cause by letter dated 31st March, 2016.

Relied upon paragraphs are extracted and reproduced below.

“Regarding celebration of Phoolon ki Holi in the premises we have to explain here “Holi” is a prime festival for Marwari people/Marwari society. With due excuse we want to inform you that in the current year our BSF Jawans and BSF Officials/Executives cerebrated Phoolon ki Holi at India-Pakistan border (Wagha Border) with Pakistani BSF Jawans, Commandos, Executives and this message was/is highly appreciated by everybody including Central Govt., Office of the Hon’ble Prime-Ministers, office of the Hon’ble Presidents and different state officials of India. Such a celebration is only to share a happiest moment among the mankind. I think you must consider our views about celebration of Phoolon ki Holi. Similarly celebration of Sri Krishnan Rasalila

Pradarshan, is also a temporary religious celebration of the Marwari community. By celebrating all those holy works we are providing good message to the society/public. Our intention is never intended for creation of funds by celebrating all those customary functions.

Regarding utilisation of the building by allowing outsider to perform reception meeting, birth/death anniversary etc. We have to clarify before you that all those allegations are false allegation.”

3. He submits, the lease was by a registered deed. Section 111 in Transfer of Property Act, 1882 provides for determination of lease by, inter alia, forfeiture. There is nothing to show from the show-cause or impugned determination notice dated 23rd April, 2016 that any express condition providing right of re-entry to the lessor, was broken by his client. His client has, therefore, moved Court for interference.

4. Mr. Babu, learned advocate, Additional Government Advocate appears on behalf of the State. He submits, purpose of the lease was for constructing and using the building as office and charitable dispensary only. On noticing that petitioner was otherwise using the premises, show-cause notice was duly issued. Causes shown

in the reply were found not at all satisfactory and, therefore, impugned determination notice, duly issued.

5. He draws attention to disclosures in the counter. They are two photographs, a clipping from newspaper 'Samaj' published on 15th March, 2016 depicting a photograph of function 'Phoolon ki Holi' being observed in the premises on 14th March, 2016 and invitation for a function for 'Sacred Thread Ceremony' to be held at venue 'Marwari Mancha Mandap', Unit-6, 7:30 P.M. onwards on 15th April, 2016. On query from Court Mr. Babu submits, field inquiry report dated 14th March, 2016 was not annexed to the counter. Mr. Rath submits, it was not shared with his client.

6. We have carefully gone through contents of the lease deed. We reproduce below relevant passages and covenants therefrom.

“ xx xx xx the LESSOR hereby demises to the LESSEE for the purpose of building a house or houses and using the same for its office building and Charitable Dispensary only. xx xx xx

xx xx xx

2(xiv) That, he shall not without the consent in writing of the LESSOR use or permit the use of the said land for any purpose other than that for which it is leased or transfer the same without such consent.

xx xx xx

4(i) That, whenever any part of the rent hereby reserved shall be in arrear for six months after the due date or there shall be a breach of any of the covenants by the LESSEE herein contained the LESSOR may re-enter on the demised premises and determine this lease which case the LESSOR may, by notice in writing require the ex-LESSEE to remove within a reasonable time any building which may have been commenced and not completed or the materials of which may have been collected on the lease land, if he fails to comply with such notice the LESSOR after giving further notice in writing specifying a time not less than three months from the date of the series of the notice within which such building or materials, shall be removed, any cause such removal to be affected and recover the cost from him."

(emphasis supplied)

7. Basis of the show-cause notice appears to be allegation that upon field inquiry conducted, by Additional Land Officer (ALO) and Revenue Inspector (RI) of the Department, on 14th March, 2016, it was found that social function like 'Phoolon ki Holi' was being organized in the building. Further allegation is, said building was rented out to outsiders temporarily to perform reception meeting, birth/death anniversaries etc. The newspaper item disclosed in the

counter is also part of the allegation. On basis thereof there was direction to show-cause within 15 days, as to why there should not be determination under clause 4(i). Petitioner, by its reply dated 31st March, 2016, admitted to having celebrated 'Phoolon ki Holi' but said that there was no otherwise utilization of the building by allowing outsiders to perform reception meeting, birth/death anniversaries etc.

8. Impugned determination notice is dated 23rd April, 2016. We reproduce below three paragraphs therefrom.

“And whereas, the lease was also given an opportunity of being heard on dtd. 19.04.2016 before the undersigned and on the said date Sri Keshab Chandra Kar, learned Advocate, appeared on their behalf before the undersigned in his office chamber and put forth their stand in the matter;

*And whereas, **the statements made and documents filed by the learned Counsel on behalf of the lessee in support of the stand of the lessee in the matter are also not found satisfactory.***

*And whereas, the lessee organizations represented through their **learned Counsel has admitted the fact of otherwise use of the lease land without any prior permission of the Govt.** thereby violated the stipulations at Clause-2(xiv) of the lease deed;”*

(emphasis supplied)

9. It appears, only basis for determination was unsatisfactory statements and documents filed by learned counsel on behalf of lessee, coupled with the learned counsel admitting otherwise use of leased land without any permission of the Government and thereby violating stipulation at clause 2(xiv) of the lease. Petitioner, being lessee, had urged by its reply to the show-cause and also before us that other than having the function 'Phoolon ki Holi', nothing else was done in the premises. In the circumstances, it cannot be accepted that petitioner would rely on documents to prove the negative. So far as admission made through learned counsel is concerned, it cannot be anything beyond petitioner admitting as a fact that 'Phoolon ki Holi' was celebrated in the premises. We take it that the celebration was on 14th March, 2016 as reported in newspaper 'Samaj', published on the next day and relied upon by State through disclosure in its counter. We do not have before us field inquiry report dated 14th March, 2016. Petitioner's submission has been it was not also shared with it.

10. There is, however, one more document in the counter. It appears to be an invitation for 'Sacred Thread Ceremony'. Venue mentioned in the invitation as 'Marwari Mancha Mandap', indicates the premises. The invitation was for the function to be held on 15th

April, 2016. The field inquiry went before that, on 14th March, 2016. This document was neither mentioned in the show-cause notice nor in impugned determination. We resist probing further as to how State got hold of the document or its genuineness, to use it against petitioner in its pleading dated 26th August, 2016.

11. There is nothing before us to show that the society, on having constructed the building, has not used it till the time of show-cause and, thereafter, as office and charitable dispensary. In addition they celebrated a festival that is dear to the members. State appears to have taken exception. No permission granted by petitioner to use said land for any other purpose was there, simply because petitioner says, it itself organized the function 'Phoolon ki Holi'. There is no evidence whatsoever that the building is or was being rented out to outsiders temporarily to perform receptions, meetings, birth/death anniversaries. There is no evidence to show that thereby, conclusion on reason and prudence can be violation of clause 2(xiv).

12. Covenant clause 2(xiv) in the lease deed was relied upon by State in determining the lease. The clause stands reproduced above. It has two parts to it. First part of the clause says, lessee shall not, without consent in writing of the lessor, use said land for any purpose

for which it is leased or transfer the same without such consent. Second part says, the lessee shall also not permit user for any purpose other than that for which it is leased. We have already seen that lessee was and is using the building, it had constructed, for stated purpose. As aforesaid, in addition they celebrated a festival that is dear to the members. Here, the obvious appears to have been lost sight of. The grant of lease was partly also with regard to ethnicity of the members. The deed is titled as, **'LEASE OF LAND TO RELIGIOUS, EDUCATIONAL AND OTHER INSTITUTIONS'**. In the circumstances, there is no way State can say that celebrating a religious function in the premises on a day can amount to use by the lessee of the said land for any other purpose. The situation relates to a fundamental principle pronounced by a learned Single Judge of the Calcutta High Court in **Maniruddin v. Chairman of Dacca**, reported in **40 Calcutta Weekly Notes (CWN) 17**. We fully agree with the view, extracted from the judgment and reproduced below.

“It is a fundamental principle of law that a natural person has the capacity to do all lawful things unless his capacity has been curtailed by some rule of law. It is equally a fundamental principle that in the case of a statutory corporation it is just the other way.”

13. The lease was granted to the society under aforesaid object of State, manifest from the heading of the deed. There is no embargo in law curtailing members of the society from observing religious function in leased premises, where it does have some interest in the land conveyed by the lease. We find action of the State in issuing impugned determination was arbitrary and illegal. We set aside and quash the same.

14. The writ petition is allowed and disposed of.

(Arindam Sinha)
Judge

(S. K. Mishra)
Judge

P.K. Sahoo