



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

Date of decision: 08th AUGUST, 2023

IN THE MATTER OF:

+ **W.P.(C) 10289/2022 & CM APPLs. 29659/2022, 33225/2023**

JAGMAL SINGH

..... Petitioner

Through: Ms. Sumita Kapil, Mr.Himanshu,
Advocates

versus

STATE BANK OF INDIA & ORS

..... Respondents

Through: Mr. Sanjeev Sagar, Advocate

+ **CONT.CAS(C) 997/2023**

MUKESH KUMAR

..... Petitioner

Through: Ms. Sumita Kapil, Mr.Himanshu,
Advocates

versus

SANTOSH KUMAR SINGH AND ANR

..... Respondents

Through: Mr. Sanjeev Sagar, Advocate

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

W.P.(C) 10289/2022 & CM APPLs. 29659/2022, 33225/2023

1. The Petitioner has approached this Court for the following reliefs:-

“

A) Issue a writ or pass any order, direction requiring the Respondent to consider the bid/offer of the Petitioner in response to the advertisement in a reasonable fair and just manner which was



rejected/counted out arbitrarily with malafide intention and extraneous consideration to favour the Respondent no. 4. As a result of which the Petitioner has been subjected to discrimination and his right to equality has been violated.

B) Pass appropriate writ or direction to the Respondent to consider the proposal of the Petitioner along with other bidders regarding alternative accommodation for Bank premises, published to be required by the Respondent in the same area.

C) Pass any other or further order as may be deem fit and proper in the fact and circumstances of the case.

D) Award cost on the writ petition.”

2. The Petitioner has approached this Court seeking for a direction to the Respondent/State Bank of India to consider the bid offer of the Petitioner which has been given in response to an advertisement dated 13.04.2018 issued by the Respondent/Bank regarding hiring of commercial premises on rent in Karawal Nagar, Delhi within the radius of one kilometre from the existing branch and also for premises at Gandhi Nagar, Delhi which should be within a radius of 500 metres from the existing branch of SBI.

3. The case set up by the Petitioner is that State Bank of India was running its branch from a premises belonging to the Petitioner for about 40 years. The initial lease deed was executed in the year 1981 and was being extended from time to time and the last extension was in the year 2018 for a period of 15 years with the condition that the first five years would be treated as a lock in period.

4. It is stated that the Petitioner spent about Rs.70 lakhs on the renovation/reconstruction of the premises in the year 2000 at the request of



the Bank to suit their needs and requirements. It is stated that during the period of renovation/construction, the Petitioner had arranged for an alternate premises for the Bank so that it could function smoothly and the rent for the same was being paid by the Petitioner.

5. After the Petitioner came to know that the Respondent/Bank has issued an advertisement on 13.04.2018 for taking on rent two premises near the existing branch, the Petitioner offered two of his properties in the Karawal Nagar which would be in close vicinity of the existing branch.

6. It is stated in the writ petition that the Respondent had given a notice to the Petitioner on 19.09.2020 for de-hiring of the existing premises stating that they will vacate the premises by 20.03.2021. It is stated by the Petitioner that the said notice is in contravention with the lease deed wherein there is a lock in period of five years.

7. Material on record indicates that the Petitioner approached this Court by filing W.P.(C) 11124/2021 challenging the action of the Respondent, claiming damages and rent from the Respondent. The Petitioner withdrew the said writ petition with liberty to institute appropriate civil liberties.

8. It is stated in the writ petition that in reply to an RTI application, the Petitioner came to know that there are 10 bidders in the bidding process and the bid of the Petitioner has not even been considered. The Petitioner states that the bidding was not transparent.

9. Reply has been filed by the Respondent/Bank contending that the challenge to the advertisement dated 13.04.2018 and the tendering process is belated. It is stated that the Respondent/Bank had already given a letter dated 19.09.2020 informing that the Respondent/Bank shall vacate the premises by 20.03.2021.



10. It is stated that the entire issue regarding vacation of the premises, the tendering process etc. were all part of a challenge raised in W.P.(C) 11124/2021 which has been withdrawn by the Petitioner on 08.10.2021 and the second writ petition on the very same ground is barred by laches. It is stated that the fact that the Petitioner did not raise a challenge to the tendering process in the earlier writ petition does not give him a right to maintain a challenge after five years.

11. After filing of the writ petitions, the original writ petitioner, Jagmal Singh, passed away and his legal heirs have been impleaded in the writ petition vide Order dated 19.01.2023 and the Respondent/Bank was also directed to pay the rental amount in the bank account of legal heir of the Petitioner.

12. Material on record also indicates that the Respondent/Bank vacated the said premises on 28.02.2023 and rent till February, 2023 has been deposited in the account of the Petitioner.

13. Material on record also indicates that the Respondent/Bank has vacated the premises and shifted to the new premises in Karawal Nagar, i.e. K-290, Main Road, Karawal Nagar, Mukhiya Marg-94, in terms of the lease deed effective from 01.03.2023 to 29.02.2032.

14. The Petitioner had raised the issue of correctness of the termination and the intention of the Respondent/Bank to vacate premises and take new premises on rent within the lease period which has been entered into between the parties in the year 2018 for a period of 15 years by filing W.P.(C) 11124/2021, which was dismissed as withdrawn on 08.10.2021. Now, the Petitioner cannot be permitted to raise a challenge to the vacation



by filing a challenge to the tender process by filing a second writ petition which is a complete abuse of the process of law.

15. The present writ petition is the second attempt to enforce a lease agreement by challenging an advertisement in which the Respondent/Bank had sought for offers to take premises on rent. It is completely up to the Bank to decide which property it intends to take on rent. It is not for the Petitioner to state that the Bank must take properties belonging to the Petitioner.

16. The Apex Court in State of Gujarat v. Meghji Pethraj Shah Charitable Trust & Ors., **1994 (3) SCC 552**, has held that the contracts cannot be enforced by invoking writ jurisdiction. The relevant portion of the said judgment reads as under:-

"22. We are unable to see any substance in the argument that the termination of arrangement without observing the principle of natural justice (audi alteram partem) is void. The termination is not a quasi-judicial act by any stretch of imagination; hence it was not necessary to observe the principles of natural justice. It is not also an executive or administrative act to attract the duty to act fairly. It was — as has been repeatedly urged by Shri Ramaswamy — a matter governed by a contract/agreement between the parties. If the matter is governed by a contract, the writ petition is not maintainable since it is a public law remedy and is not available in private law field, e.g., where the matter is governed by a non-statutory contract [In this connection, see Assistant Excise Commissioner v. Isaac Peter, (1994) 4 SCC 104 : 1994 (2) J.T. 140 on the relevance of doctrine of fairness in matters governed by contract, arrived at calling for tenders, auction or by negotiations.] . Be that as it may, in view of our opinion on the main question, it is not necessary to pursue this reasoning further."



17. The Petitioner cannot insist that the Bank has to continue with the lease. The remedy that is available to the Petitioner is to sue the Bank for the damages for prematurely terminating the lease and the consequential loss that has accrued to the Petitioner. It is apparent that this Court was not inclined to entertain W.P.(C) 11124/2021 which was withdrawn by the Petitioner on 18.10.2021 because of availability of an alternate remedy. Ordinarily, if a matter is governed by contract then the writ filed in such a matter should not be entertained by the High Court unless the action of the instrumentality of the State is so arbitrary and capricious that it shocks the conscience of the Court. It is for the Petitioner to plead and prove the damages sustained by him on account of premature termination of the lease.

18. Further, the Petitioner also cannot insist unfairness in the process of tender on the ground that his bid has not been considered. The Petitioner has not been able to demonstrate that the process adopted by the Bank was not fair and that the Petitioner has deliberately and wantonly been ignored. It is up to the Bank to consider which property it intends to take on rent.

19. The writ petition is dismissed, along with pending application(s), if any.

CONT.CAS(C) 997/2023

1. The Petitioner has filed the instant contempt petition for initiating contempt proceedings against the Respondents for violating an Order dated 19.01.2023 passed by this Court in W.P.(C) 10289/2023. The said order reads as under:-

"9. The documents in terms of the order dated 7th July, 2022 have not been filed. Accordingly, the said documents shall be placed on record within a period of



two weeks, subject to payment of Rs.10,000/- as costs, failing which an adverse inference would be liable to be drawn.

10. If the Respondent wishes to file a counter affidavit, the same may be filed within a period of two weeks. Rejoinder thereto, be filed within two weeks thereafter.

11. From now onwards, with effect from 1st February, 2022, the SBI shall pay the rental amount to the bank account of the legal heir. Details of the bank account as given in paragraph 5 of the impleadment application, is captured below for ready reference:

<i>Name of Account Holder</i>	Mukesh Kumar
<i>Account No.</i>	90100100001358
<i>Account type</i>	Savings Account
<i>Bank Name</i>	UCO Bank
<i>Branch</i>	Karkardooma Court, District Court Complex, Karkardooma, Delhi-110032
<i>IFSC CODE</i>	UCBA0002078

"

2. Paragraph 11, 12 and 14 of the instant contempt petition reads as under:-

"11. It is further submitted that as per Hon'ble Court's order dated 19/01/2023 Respondents were further directed to file a counter affidavit within two weeks, it is needless to mention that nothing was served or filed on behalf of Respondents within 2 weeks. The order dated 19.01.2023 of HMJ Pratibha Singh states this "10. If the Respondent wishes to file a counter affidavit, the same may be filed within a period of two weeks. Rejoinder thereto, be filed within two weeks thereafter. "

12.Furthenmore, Hon'ble Court vide order dated 19/01/2023, Respondent no.1 SBI was directed to pay



the rental amount in the bank account of the legal heir (Petitioner no. 1 (a) herein) with effect from 1st February 2023. However wilfully, intentionally, and deliberately Respondent No. 1 did not abide by the order of this Hon'ble Court and did not pay any rent from February 2023 till date. The order dated 19.01.2023 of HMJ Pratibha Singh states this "11. From now onwards, with effect from 1st February, 2022, the SBI shall pay the rental amount to the bank account of the legal heir. Details of the bank account as given in paragraph 5 of the impleadment application, is captured below for ready reference

*: Name of Account Holder: Mukesh Kumar
Account No. 9010010000358
Account type: Savings Account
Bank Name: UCO Bank
Branch: Karkardooma Court, District Court Complex,
Karkardooma, Delhi 110032
IFSC CODE: UCBA0002078"*

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14. It is further submitted that Respondent not only defaulted in the month of February 2023 but also paid no rentals for the month of March 2023 and onwards."

3. This Court has dismissed the writ petition being W.P.(C) 10289/2022, which had been filed by the Petitioner only for enforcing a lease deed and had challenged the process of tender which was initiated in the year 2018.
4. This Court has already held that the said writ petition is an abuse of the process of law inasmuch as the Petitioner had approached this Court earlier by filing W.P.(C) 11124/2021, which was dismissed as withdrawn by Order dated 08.10.2021 and the writ petition from which the instant contempt petition arises is a second attempt for getting the same relief.



5. This Court is of the opinion that in view of the fact that writ petition being W.P.(C) 10289/2022 has been dismissed, there is no wilful violation of the Order dated 19.01.2023 passed by this Court.

6. The contempt petition is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

AUGUST 08, 2023

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