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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 19th July, 2023

+ W.P.(C) 7988/2019 & CM APPL. 33186/2019

UNION OF INDIA

..... Petitioner

Through: Mr. Jitendra Kumar Singh and Ms. Anjali Kumari, Advocates.

versus

M/S BATRA BROTHERS

..... Respondent

Through: Mr. Mritunjay Kr. Singh and Mr. Saikat Khatua, Advocates.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

(Judgment released on 28.07.2023)

ANUP JAIRAM BHAMBHANI J.

By way of the present petition under Article 226 and 227 of the Constitution of India, the petitioner seeks setting-aside of order dated 18.12.2018 passed by the learned District & Sessions Judge, North West, Rohini Courts, Delhi, whereby the learned District Judge has dismissed the appeal filed by the petitioner under section 9 of the Public Premises Act, 1971 ('PP Act'), thereby upholding order dated 07.02.2012 passed by the Estate Officer Northern Railways, New Delhi.



2. Notice on this petition was issued on 24.07.2019; consequent whereupon counter-affidavit dated 21.01.2020 has been filed by the respondent. Subsequently, the respondent has also placed on record the relevant portions of the proceedings before the learned District Judge under cover of an index dated 15.11.2022.
3. This court has heard Mr. Jitendra Kumar Singh, learned counsel appearing for the petitioner and Mr. Mritunjay Kr. Singh, learned counsel appearing for the respondent in detail.
4. Mr. J.K. Singh submits that the genesis of the dispute pertains to a license that was granted by the petitioner to the respondent to operate a kerosene depot on land that belonged to the Northern Railways. Since, upon termination of the license, the respondent failed to pay the arrears of license fee and damages for unauthorised use and occupation of the property, the petitioner raised upon the respondent a demand in the sum of Rs. 7,89,00,637/- vide demand letter dated 20.01.1999 which was subsequently revised to Rs. 4,55,32,554/-.
5. Since the respondent failed to pay the amount as demanded, the matter came before the Estate Officer who disposed-of the proceedings under sections 4 and 7 of the PP Act by order dated 07.02.2012, observing as follows :

"I have gone through entire record available with me. Admittedly, like in M/s Petroleum & Petrochemical Purveyors, the possession of the premises has since been handed over by the respondent to the applicant. The remaining controversy is only with regard to the amount payable by way of rent damages by the respondent to the applicant. In the peculiar circumstances of this case also like the aforesaid case decided by the Hon'ble Supreme court of India and without expressing any opinion on any question of law, it will be



appropriate to direct, with a view to give the matter a complete quietus, the respondent should pay to the applicant a sum of Rs.91,45,167/- in full and final settlement of all the claims to the applicant arising out of claim for recovery of rent/damages of Rs.4,55,32,554/-. Since, the respondent had already paid to the applicant a sum of Rs.58,67,472/-, now therefore only sum of Rs.(91,45,167-58,67,472)=32,77,695/- shall be payable by the respondent to the applicant. Let the payment of the said amount be made in three equal instalments as requested by the respondent, payable every three months with the first instalment from 1st March, 2012. In the event of default of payment of any instalment, the balance amount of the default, shall bear interest@ 12% per annum & shall be recoverable by the applicant.

“This order has been passed keeping in view the similar facts and circumstance of the present case and that of M/s Petroleum & Petrochemical Purveyors case decided by the Hon'ble Supreme Court of India.”

(emphasis supplied)

6. Aggrieved by order dated 07.02.2012, the petitioner (Northern Railways) filed before the learned District Judge an appeal bearing PPA No. 5/16 under section 9 of the PP Act, which was dismissed by a detailed order, the operative portion of which reads as follows :

“16. The counsel for the respondent has submitted that the present case is totally covered within the four corners of the judgment passed by the Hon'ble Supreme Court in Civil Appeal No. 54/1999 titled as M/s Petroleum and Petro Chemical Purveyors Vs. Union of India and Ors. and the ratio of damages as imposed by the Hon'ble Supreme Court in that particular case has been followed by the Ld. Estate Officer.

“17. I have perused the judgment of the Hon'ble Supreme Court passed in Civil Appeal No. 54/1999 titled as M/s Petroleum and Petro Chemical Purveyors Vs. Union of India and Ors. wherein the



rent/damages claimed were to the tune of Rs.3,23,62,623/- and against this the Hon'ble Supreme Court directed the appellant to pay Rs.65,00,000/-.

*“18. In the present case also the only dispute is with regard to the amount payable by the respondent by way of rent/damages as the possession of the premises has already been handed over by the respondent to the appellant. The Ld. Estate Officer followed the calculation of damages as done in the case "supra"- by virtue of which the appellant of that appeal was directed to pay Rs.65,00,000/- in lieu of Rs.3,23,62,623/-. **Following the said formula**, the Ld. Estate Officer directed the respondent to pay a sum of Rs.91,45,167/- in full and final settlement towards the claim of Rs.4,55,32,554/- which the respondent has already paid to the appellant in 3 installments.*

“19. Therefore, in view of the discussions mentioned hereinabove, I find no Infirmary, in the impugned, order dated 07-02-2012, passed by the Ld. Estate officer, the same is, therefore, upheld. The appeal is accordingly dismissed, Record of the Estate Officer be sent back alongwith an attested copy of the judgment-.

“Appeal file be consigned to Record Room”.

(emphasis supplied)

7. Mr. Singh submits however, that *vide* order dated 08.01.1999 in Civil Appeal No. 54/1999, based on which both the District Judge as well as Estate Officer have reduced the demand raised by the petitioner upon the respondent from Rs. 4,55,32,554/- to Rs. 91,45,167/- was an order made by the Supreme Court in exercise of its plenary powers under Article 142 of the Constitution of India. It is submitted that the said verdict of the Supreme Court did not constitute a precedent, nor did it lay down any principle of law, nor any formula for calculating



/reducing the arrears of license fee and damages for use and occupation, as demanded by the petitioner from the respondent in the present case.

8. Counsel draws attention to the following observations of the Supreme Court in order dated 08.01.1999, which are relevant:

“53. Admittedly, the possession of the premises has since been handed over by the appellant to the respondents. The remaining controversy is only with regard to the amount payable by way of rent/damages by the appellant to the respondents. In the peculiar facts and circumstances of this case, and without expressing any opinion on any question of law, it appears appropriate to us to direct, with a view to give the matter a complete quietus, that the appellant should pay to the respondent a sum of Rs. sixty-five lacs (Rs. 65,00,000/-) in full and final settlement of all the claims of the respondents arising out of claim for recovery of rent damages. Since, the appellant has already paid to the respondent more than a sum of Rs. fifteen lacs (Rs.15,00,000/-), now therefore, only a sum of Rs. fifty lacs (Rs.65,00,000 minus Rs.15,00,000/-) shall be payable by the appellant to the respondents. Let the payment of the said amount be made in three equal instalments payable every three months with the first instalment starting from 1st March 1999. In the event of default of payment of any instalment the balance amount which may remain payable on account of the default shall bear interest at the rate of 12 per cent per annum and shall be recoverable by the respondent.”

(emphasis supplied)

9. It is accordingly argued, that in the aforesaid verdict, the Supreme Court has in unambiguous terms observed, that the court had *not* expressed any opinion on any question of law while deciding the matter of *M/s Petroleum and Petro Chemical Purveyors* (supra) and had disposed-of the matter as it deemed appropriate, considering the



peculiar facts and circumstances of that case, in order to give a complete quietus to the dispute in relation to the said party.

10. It is accordingly submitted on behalf of the petitioner that the Supreme Court in its wide, discretionary powers, had reduced the amount demanded by the petitioner from Rs. 3,23,62,623/- to Rs. 65,00,000/-, and that such reduction did not constitute either a precedent nor even a parameter by which the Estate Officer could have reduced the demand raised against the respondent from Rs. 4,55,32,554/- to Rs. 91,45,167/-. It is reiterated that clearly, neither the Estate Officer nor the District Judge had the powers vested in the Supreme Court under Article 142 of the Constitution.
11. Mr. J.K. Singh accordingly argues that the order of the learned District Judge as also of the Estate Officer are required to be set-aside, and the matter remanded to the Estate Officer, to be decided afresh in accordance with law.
12. On the other hand, opposing the relief claimed in the petition, Mr. Mritunjay Kr. Singh, learned counsel appearing for the respondents argues, that the respondent had filed before the Estate Officer an application dated 08.11.2005, praying that the respondent's case be decided on the same basis as applied by the Supreme Court in *M/s Petroleum and Petro Chemical Purveyors* (supra) since the two cases were similar in all material respects and could not be differentiated, either on facts or on law. It is submitted that despite being granted an opportunity for the purpose, the petitioner did not file any response to application dated 08.11.2005, and after hearing the parties and duly considering the matter, the Estate Officer has passed order dated



07.02.2012, which has subsequently been upheld by the learned District Judge, *vide* order dated 18.12.2018.

13. Besides, it is submitted that order dated 08.01.1999 made by the Supreme Court related to a dispute and to parties that were very similarly situate, inasmuch as the case of *M/s Petroleum and Petro Chemical Purveyors (supra)* was the same as the case of the present respondents, M/s Batra Brothers, since the license of both parties was terminated in similar circumstances by the Northern Railways, and a demand was raised as aforesaid. In the circumstances, it is argued, that the Estate Officer was well within his powers to apply the same parameters and principles as laid down by the Supreme Court in its order dated 08.01.1999.
14. Other things apart, it is submitted that the amount of Rs. 91,45,167/- as directed by the Estate Officer was duly paid by the respondent to the petitioner, and was accepted by the petitioner without any objection or demur, and without reserving any right to demand the alleged balance amount as is now sought to be claimed. In these circumstances, it is submitted, that the petitioner has also waived its right to make any further demands against the respondent.
15. For the foregoing reasons, it is argued on behalf of the respondent, that there is no infirmity in order dated 18.12.2018 passed by the learned District Judge, whereby the Estate Officer's order dated 07.02.2012 has been upheld.
16. Upon a careful consideration of the contents of order dated 18.12.2018 and 07.02.2012, and having heard learned counsel for the



parties at length, in the opinion of this court, the following inferences clearly arise :

- 16.1. The Estate Officer's order dated 07.02.2012 proceeds entirely on the basis of the decision of the Supreme Court in order dated 08.01.1999, following that decision as a 'precedent'. Order dated 18.12.2018 made by the learned District Judge approves the manner in which the Estate Officer has proceeded on the basis of the Supreme Court order. But was the decision of the Supreme Court comprised in order dated 08.01.1999 meant to be a 'precedent'?
- 16.2. On a bare perusal of the Supreme Court order dated 08.01.1999, it is evident that the said order was made by the Supreme Court in exercise of its plenary powers under Article 142 of the Constitution, whereupon, in exercise of its discretionary powers the Supreme Court has in so many words said :

*“In the **peculiar facts and circumstances of this case**, and **without expressing any opinion on any question of law**, it appears appropriate to us to direct, with a view to give the matter a complete quietus, that the appellant should pay to the respondent a sum of Rs. sixty five lacs (Rs. 65,00,000/- in full and final settlement of all the claims of the respondents arising out of claim for recovery of rent damages.”*

(emphasis supplied)

- 16.3. It hardly takes any cogitation to note that the powers available to the Supreme Court under Article 142 of the Constitution of India, are not available to the learned Estate Officer or to the learned District Judge.



- 16.4. A bare perusal of order dated 08.01.1999 also shows that in that order the Supreme Court has neither laid down any principle of law, nor any precept based on which the demand made by the petitioner upon the respondent could have been revised or reduced.
- 16.5. A brief reference to the scope of the plenary powers of Supreme Court under Article 142 of the Constitution, as explained by the Supreme Court in ***State of Punjab & Ors. vs. Rafiq Masih (Whitewasher)***¹, ***Indian Bank vs. ABS Marine Products (P) Ltd.***² and ***Ram Pravesh Singh & Ors. vs. State of Bihar & Ors.***³ would be beneficial at this point, where the Supreme Court has explained the ambit of those powers in the following words:

State of Punjab & Ors. vs. Rafiq Masih (Whitewasher)
(supra) :

“12. Article 142 of the Constitution of India is supplementary in nature and cannot supplant the substantive provisions, though they are not limited by the substantive provisions in the statute. It is a power that gives preference to equity over law. It is a justice-oriented approach as against the strict rigours of the law. The directions issued by the Court can normally be categorised into one, in the nature of moulding of relief and the other, as the declaration of law. “Declaration of law” as contemplated in Article 141 of the Constitution: is the speech express or necessarily implied by the highest court of the land. This Court in Indian Bank v. ABS Marine Products (P) Ltd. [(2006) 5 SCC 72] , Ram Pravesh Singh v. State of Bihar [(2006) 8 SCC 381 : 2006 SCC (L&S) 1986] and in State of U.P. v. Neeraj Awasthi [(2006) 1 SCC 667 : 2006 SCC (L&S) 190] has expounded the principle and extolled the power of Article

¹ (2014) 8 SCC 883

² (2006) 5 SCC 72

³ (2006) 8 SCC 381



142 of the Constitution of India to new heights by laying down that the directions issued under Article 142 do not constitute a binding precedent unlike Article 141 of the Constitution of India. They are direction issued to do proper justice and exercise of such power, cannot be considered as law laid down by the Supreme Court under Article 141 of the Constitution of India. The Court has compartmentalised and differentiated the relief in the operative portion of the judgment by exercise of powers under Article 142 of the Constitution as against the law declared. The directions of the Court under Article 142 of the Constitution, while moulding the relief, that relax the application of law or exempt the case in hand from the rigour of the law in view of the peculiar facts and circumstances do not comprise the ratio decidendi and therefore lose its basic premise of making it a binding precedent. This Court on the qui vive has expanded the horizons of Article 142 of the Constitution by keeping it outside the purview of Article 141 of the Constitution and by declaring it a direction of the Court that changes its complexion with the peculiarity in the facts and circumstances of the case.”

(emphasis supplied)

Indian Bank vs. ABS Marine Products (P) Ltd.
(supra) :

“26. One word before parting. Many a time, after declaring the law, this Court in the operative part of the judgment, gives some directions which may either relax the application of law or exempt the case on hand from the rigour of the law in view of the peculiar facts or in view of the uncertainty of law till then, to do complete justice. While doing so, normally it is not stated that such direction/order is in exercise of power under Article 142. It is not uncommon to find that courts have followed not the law declared, but the exemption/relaxation made while moulding the relief in exercise of power under Article 142. When the High Courts repeatedly follow a direction issued under Article 142, by treating it as the law declared by this Court, incongruously the exemption/relaxation granted under Article 142 becomes the law, though at variance with the law declared by this



Court. The courts should therefore be careful to ascertain and follow the ratio decidendi, and not the relief given on the special facts, exercising power under Article 142. One solution to avoid such a situation is for this Court to clarify that a particular direction or portion of the order is in exercise of power under Article 142. Be that as it may.”

(emphasis supplied)

Ram Pravesh Singh & Ors. vs. State of Bihar & Ors. (supra) :

“23. The appellant next submitted that this Court, in some cases, has directed absorption in similar circumstances. Reliance is placed on the decision in G. Govinda Rajulu v. A.P. State Construction Corpn. Ltd. [1986 Supp SCC 651 : 1987 SCC (L&S) 71] We extract below the entire judgment: (SCC p. 651, paras 1-2)

“1. We have carefully considered the matter and after hearing learned counsel for the parties, we direct that the employees of the Andhra Pradesh State Construction Corporation Limited whose services were sought to be terminated on account of the closure of the Corporation shall be continued in service on the same terms and conditions either in the government departments or in the government corporations.

2. The writ petition is disposed of accordingly. There is no order as to costs.”

The tenor of the said order, which is not preceded by any reasons or consideration of any principle, demonstrates that it was an order made under Article 142 of the Constitution on the peculiar facts of that case. Law declared by this Court is binding under Article 141. Any direction given on special facts, in exercise of jurisdiction under Article 142, is not a binding precedent. Therefore, the



decision in Govinda Rajulu [1986 Supp SCC 651 : 1987 SCC (L&S) 71] cannot be the basis for claiming relief similar to what was granted in that case. A similar contention was negated by the Constitution Bench in Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] : (SCC p. 39, para 46)

“The fact that in certain cases the court had directed regularisation of the employees involved in those cases cannot be made use of to found a claim based on legitimate expectation.””

(emphasis supplied)

17. In light of the above, by no stretch of reasoning or principle, was it available to the Estate Officer to pass order dated 07.02.2012 *following or applying* order dated 08.01.1999 made by the Supreme Court as a precedent. Nor could the learned District Judge have upheld the order so passed by the Estate Officer.
18. In the above view of the matter, this court is persuaded to set-aside order dated 18.12.2018 passed by the learned District & Sessions Judge, North West, Rohini Courts, Delhi in PPA 5/16 as well as order dated 07.02.2012 made by the learned Estate Officer in case No. L-135/Comml./EO/PPE Act/07.
19. However, since evidently the Estate Officer has not applied his mind to the facts and circumstances of the respondent's case, and has proceeded to decide the matter purely on an erroneous application of what he perceived to be the law laid down by the Supreme Court, the matter is remanded back to the Estate Officer, to be decided afresh in



accordance with law, after due application of mind to the merits of the matter.

20. The respondent is directed to approach the Estate Officer for the aforesaid purpose within 30 days of release of this judgment.
21. The Estate Officer is directed to dispose of the matter as expeditiously as possible and in any event within 06 months of the respondent approaching the Estate Officer, as aforesaid.
22. The petition is disposed of in the above terms.
23. Pending applications, if any, also stand disposed-of.
24. Let a copy of this judgment be communicated by the Registry to the concerned Estate Officer *forthwith*.

ANUP JAIRAM BHAMBHANI, J

JULY 19, 2023/ak