

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9267 OF 2024

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1. Crisana Synthetics Private Limited
A Private Limited Company, incorporated
under the provisions of The Companies
Act, 1956 under Corporate Identification
Number U99999MH1970PTC014740 10
And having its registered address at
Flat No.4, Bhavna Building, N.S. Road
No.1, 61, Vallabhnagar Co-operative Housing
Society Limited, Near Cooper Hospital, Vile Parle (West),
Mumbai – 400 056. 15
Mobile: +919867587644
Email: riyaz1971@rediffmail.com

2. Manjit Singh Basant Singh Sandhu
Aged: 53 years, 20
Occupation: Business
Director of
Crisana Synthetics Private Limited,
Having address at
Flat No. 4, Bhavna Building, N.S. Road 25
No.1, 61, Vallabhnagar Co-operative
Housing Society Limited, Near Cooper Hospital,
Vile Parle (West), Mumbai – 400 056.
Mobile: +919867587644
Email: riyaz1971@rediffmail.com. 30

3. Arpandee Manjitsingh Sandhu
Aged: 45 years
Occupation: Business
Director of 35
Crisana Synthetics Private Limited,
Having address at
Flat No. 4, Bhavna Building, N.S. Road
No.1, 61, Vallabhnagar Co-operative

ARUN
RAMCHANDRA
SANKPAL

Digitally signed by
ARUN RAMCHANDRA
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Date: 2024.07.16
09:54:37 +0530

Housing Society Limited, Near Cooper
Hospital, Vile Parle (West),
Mumbai – 400 056.

Mobile: +919867587644

Email: riyaz1971@rediffmail.com

..... Petitioners

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Versus

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1. Bharat Petroleum Corporation Limited,
A Public Limited Company, incorporated
under the provisions of the Companies
Act, 1956, and having its Corporate
Identification Number (CIN)

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L23220MH1952GOI008931 and its
Registration Number with the Registrar of
Companies (ROC) 8931 and having its
Registered address at Bharat Bhawan,
Currimbhoy Road, Ballard Estate,
Mumbai – 400 001.

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Email: dixitns@bharatpetroleum.in

2. The Estate Officer, Western Region,
Bharat Petroleum Corporation Ltd,
having his address at
Bharat Bhavan, 4 & 6 Currimbhoy Road,
Mumbai – 400 001.

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Email: dixitns@bharatpetroleum.in

..... Respondents

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Mr. Harish Dangre, i/b Mr. Shoaib I. Memon, Advocate for the
Petitioners.

Mr. Pankaj Sawant, Senior Advocate, with Roopadaksha Basu &
Heenal Wadhwa, i/b M/s. The Law Point, for Respondent No.1.

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CORAM : AVINASH G. GHAROTE, J.

JUDGMENT RESERVED ON : 8th JULY 2024
JUDGMENT PRONOUNCED ON : 15th JULY 2024

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JUDGMENT.:

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1. Heard. The petition questions the eviction order dated 06.07.2020 passed by the respondent No.2 Estate Officer, whereby the petitioners have been directed to be evicted from the premises in question in exercise of the powers under the Public Premises (Eviction of Unauthorised Occupants) Act 1971 ("PPE Act for short hereinafter") and so also the judgment dated 9.5.2024 passed by the learned Principal Judge, City Civil Court at Bombay, rejecting a challenge to the eviction order, dismissing the challenge. 15

2. The facts giving rise to the present petition as under : 20

(i) The premises in question belong to the Bombay Port Trust ("BPT"), who had given them on lease to the respondent No. 1 Bharat Petroleum Corporation Limited ("BPCL") who in turn, had

created a sublease of the aforesaid premises in favour of the petitioner No.1 by a Deed of Sub Lease 21.10.1980 (page 187) for the period commencing from 01.01.1971 and ending on 31.10.1990 (page 193) on payment of rent of Rs.6,637/- per month in advance on or before 5th day of each English calendar month and upon performance of the covenants as contained in the Deed.

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(ii) The sub lease was renewed thereafter by a Deed dated 04.01.2007, for the duration commencing from 01.11.1990 and expiring on 31.10.2010 (page 214) for the monthly rent of Rs.11,294.85. Both these deeds of sub-lease are stated to have the consent of BPT.

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(iii) It was a condition of the sub-lease that the sub-lessee/petitioner no.1, shall not change the ownership and controlling interest of the shareholders of the petitioner No. 1, which was

then held in its entirety by the original shareholders Mr. Kripa Khana and Mrs. Ranjini Khana and any change in the shareholding would not be carried out without obtaining the previous consent in writing of the respondent No.1.

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(iv) It is an admitted position on record that the aforesaid shareholders, transferred their shareholding in the petitioner No.1, to the petitioner Nos. 2 and 3, on 04.06.2007 and Mr Kripa Shankar Khana and Mrs. Ranjini Khana had also resigned from the directorship of the petitioner No.1 company, which is also reflected from the communication of respondent No.1 dated 30.10.2009 (page 244).

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(v) The respondent No.1, finding that the clause contained in the sub-lease in favour of respondent No.1 regarding change in the shareholding of the petitioner No.1 without the previous consent in

writing of the respondent No.1, was violated, by the notice dated 28.12.2009 (page 247) determined the sub-lease and instituted proceedings for eviction against the petitioners from the premises in question under Sections 4 to 7 of the PPE Act in April 2015 (page 160) which came to be allowed as indicated above by the Order dated 06.07.2020, Appeal against which came to be dismissed.

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3. Mr. Dangre, learned counsel for the petitioners submits, that the clause of obtaining prior consent of the respondent No.1 before transferring of the shareholding was not an essential condition and was required to be interpreted considering the surrounding circumstances. It is his submission that the purpose of the clause was to ensure that the new comer does not disown liability for making the payment of rent. He further contends that though consent was sought the same was not rejected.

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3.1. It is also contended that, the Estate Officer, would not

have jurisdiction in view of the fact that BPT had initiated eviction proceedings against the respondent No. 1, in which it had taken a plea that the provisions of the PPE Act were not applicable in light of which respondent No.1 could not have approached the Estate Officer by invoking the provisions of the PPE Act. He further contends that, since this issue is pending in the proceedings between BPT and the respondent No.1, till such time the said plea was not decided the question of the Estate Officer assuming jurisdiction would not arise. It is also submitted that an application filed by the petitioner for addition of BPT before the learned Principal Judge was rejected incorrectly on account of which Writ Petition No. 5104 of 2024 was still pending as a result of which the learned Principal Judge ought to have stayed his hands.

3.2. He further submits that the evidence in this regard warranting eviction has not been properly appreciated, the order of the Estate Officer as well as the judgment of the learned Principal Judge, indicate no consideration of the evidence led by the parties.

3.3. On the issue of compensation there is no discussion and the material brought on record by the petitioners has not been considered at all.

3.4. He therefore submits that the impugned orders and judgment needs to be quashed and set aside and the eviction proceedings filed by the respondent No. 1 against the petitioner needs to be dismissed. 5

4. In so far as the issue of jurisdiction of the Estate Officer is concerned, it is not disputed that the respondent no.1/BPCL, had approached the Estate Officer, by invoking his jurisdiction under Sections 4 to 7 of the PPE Act. Merely because respondent No.1/BPCL, in the proceedings for eviction initiated against them by BPT, by invoking the provisions of the PPE Act, had raised a plea, that the PPE Act was not applicable and the Rent Laws, were applicable, that would not mean that the Estate Officer did not have any jurisdiction, as it is not the case of the petitioners, that the premises in question are not 'public premises' within the meaning of the expression as defined in sec.2(e) of the PPE Act. Since the respondent 10 15

no.1/BPCL, have invoked the provisions of the PPE Act, for the eviction of the petitioner, the plea raised by them in the eviction proceedings initiated against them by BPT, would clearly be an untenable plea and would not preclude the Estate Officer in proceeding with and deciding the eviction 5 proceedings under the PPE Act. The contention is therefore rejected.

5. There is no dispute regarding the execution of the terms of the sublease dated 21.10.1980 (page 187) and the one 10 dated 04.01.2007 (page 214), executed between the petitioner no.1 and the respondent no.1. The relevant clauses in the sublease dated 04.01.2007 are as under :

“III (11) To not change the present ownership and controlling interest in the Sub-Lessee Company i.e. not 15 less than fifty one percent pf the paid up share capital shall remain with the original shareholder viz. Mr. Kripa Khanna and Mrs. Ranjini Khanna. Any change in the shareholder ship shall not be carried out without obtaining the previous consent in writing of the 20 company.

IX. If the rent hereby reserved or any part thereof shall be unpaid for 21 days after it becomes due (whether formally demanded or not) or if the Sub-Lessee shall omit to perform or observe any covenant or condition on the part of the Sub-Lessee herein contained or if the Sub-Lessee shall enter into liquidation whether compulsory or voluntary including amalgamation and reconstruction or if there shall occur to any significant extent any changes in the present ownership control and management of the Sub-Lessee Company except such changes in ownership and control whereby the shares of the Sub-Lessee Company are transferred inter se among the present shareholders and their relatives (as defined in the Companies Act, 1956) or whereby there is a transfer of not more than **49%** (forty nine per cent) of the total issued and subscribed capital in the aggregate to persons other than the present shareholders and their relatives but without changing the controlling interest in the Sub-Lessee Company or if the Sub-Lessee shall make any composition or arrangement with his creditors or permit any execution to be levied on the said demised premises then and in any such cases it shall be lawful for the Sub-Lessor at any time thereafter to enter upon the sub-demised premises or upon any part thereof in the name of the whole and these presents shall thereupon determine but without prejudice to any claim right of action or remedy which the Sub-Lessor

has in respect of any antecedent breach non-observance or non-performance of any of the Sub-Lessee's covenants herein contained.”

5.1. A perusal of the above terms would indicate that the requirement of the sub-lessee as named in clause III(11) to 5 hold at least 51 percent share in the petitioner no.1, company was agreed to and accepted by the respondent no.1, which was not to be changed without the prior consent in writing of the respondent no.1/BPCL. Vide Clause IX the petitioner no.1, had further agreed that in case there was any change in the 10 shareholding of the petitioner no.1/company and the controlling interest therein, contrary to what was agreed to above, the respondent no.1, would have the right to re-enter and the whole of the sub-lease would determine.

5.2. It is a settled position of law, that where matters are 15 governed by contract, the terms of the contract would be binding upon the parties and the relationship, between would be determined on the basis of the terms. If the terms provide for an event to determine the contract, in this case a contract of sub-lease, then on the occurring of that event, the condition 20

for determination would become enforceable.

5.3. It is not in dispute as already indicated above that Mr Kripa Shankar Khana and Mrs. Ranjini Khana, who were the only shareholders of the petitioner no.1/company, transferred their entire shareholding in the petitioner no.1, to the 5 petitioners no.2 & 3 on 4/6/2007. Not only this Mr Kripa Shankar Khana and Mrs. Ranjini Khana, also resigned from the directorship of the petitioner, thereby severing all relationship with the petitioner no.1. Thus the event as contemplated by Clause IX for determination of the sub-lease, is an admitted 10 one.

5.4. The contention that clause III (11) and IX were only for ensuring that the new comer does not disown liability for making the payment of rent, is clearly misconceived, for the reason, that the terms of the sub-lease, do not brook of any 15 such interpretation or meaning. That apart, it is also an admitted position that the sub-lease dt.4/1/2007, was with the consent of the original lessor / BPT, in view of which the above conditions appear to have been inserted, so that the

lease in favour of the respondent no.1/BPCL, would stand protected against a claim of having permitted a further sub-lease, by change in the pattern of holding, as that is the effect of the action of transferring of their entire holdings by Mr Kripa Shankar Khana and Mrs. Ranjini Khana in favour of the 5 petitioners 2 and 3 and resigning from the directorship of the petitioner no.1, which has resulted in the violation of the terms of the sub-lease in favour of the petitioner no.1, leading to its determination.

6. The further contention that evidence in this regard 10 warranting eviction has not been properly appreciated, is also misconceived, for the reason, that all that was required to be considered was whether the event for determination of the sub-lease, in terms thereof had occurred. As this was an admitted position as indicated above, nothing else was 15 required to be considered.

7. The further plea, that on the issue of compensation there is no discussion and the material brought on record by the petitioners has not been considered at all, is also without any

merits. This is so, for the reason that the order of the Estate Officer dated 06.07.2020, while answering issue no. 4, relating to a claim of damages to the tune of Rs.2,62,666 per month considers the valuation report filed by the respondent No.1 which takes into consideration i) Ready Reckoner, ii) 5 Rental sale instances, iii) peculiarities of the schedule premises and iv) mean of the registered sale instances, to arrive at a conclusion that the market rent of the property would be Rs.3,01,894/- per month as on September 2010. As against which the valuation report filed by the present petitioner, pegs 10 the fair rental value at Rs.5841.60 per month. What is material to note that, the premises in question is an area admeasuring 1075.70 sq mts situated at Wadi Bunder, Elphinstone Estate as described in IInd Schedule of the sub lease dated 04.01.2007 (page 233), and is in the heart of the 15 city, and by no stretch of imagination the market rent, which has to be taken as the basis for determining the damages can be said to be Rs.5841.60.

8. The judgment of the of the Principal Judge, City Civil

Court dated 09.05.2024 also considers this position in paragraph 14. The damages therefore, clearly appeared to have been properly assessed and the finding rendered in that regard do not need any interference.

9. In view of the above discussion, I do not see any ground 5
made out to interfere in the concurrent findings rendered by the learned Estate Officer and the learned Principal Judge, City Civil Court. The petition is therefore without any merits and is dismissed. In the circumstances, there shall be no order as to costs. 10

(AVINASH G. GHAROTE, J.)

10. Mr. Dangre, learned counsel for the petitioner at this stage makes a request for continuation of the interim order dated 03.02.2021 passed by the learned Principal Judge, City Civil and Sessions Court granting stay to the execution of the 15
order of the Estate Officer, which was on the condition of deposit of Rs.25,00,000/-. Statement is made that this amount has been deposited. Further statement is made that the amount of compensation as directed by the learned

Principal Judge, City Civil & Sessions Court in the impugned order dated 20.10.2022 (Page-708) is also been deposited. The interim order passed by the learned Principal Judge, City Civil and Sessions Court is continued for a period of four weeks from today on a condition that compensation as 5 awarded by the Estate Officer at the rate of Rs.2,62,666/- per month shall be deposited by the petitioner with the respondents, from today onwards.

(AVINASH G. GHAROTE, J.) 10