

2024.PHHC.137780



**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

225

CWP-5331-2022

Date of Decision: 21.10.2024

ASHWANI KUMAR SHARMA

... Petitioner

VERSUS

BHARAT SANCHAR NIGAM LIMITED AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

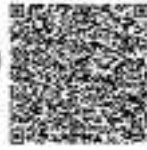
Present: Mr. Rajesh Kumar, Advocate
for the petitioner.

Ms. Anita Sharma, Advocate
for the respondents.

VINOD S. BHARDWAJ, J. (ORAL)

Prayer in the present petition is to direct the respondent-BSNL to vacate and clear the land of the petitioner.

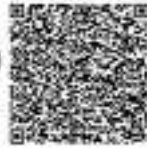
Learned counsel appearing on behalf of the petitioner contends that the respondent-BSNL had approached late Ram Avtar Sharma- father of the petitioner for taking his land on lease and the agreement in this regard was executed on 25.04.2005. Initially the said agreement was executed for a period of five years and was extendable for a further period of five years. The extension of lease deed/agreement was thereafter at the option of both the parties, with mutual consent. If no such mutual agreement could be arrived at between the parties, the respondent-BSNL could have the option of retaining the land for a further period of one year only, commencing from the date of expiry of lease agreement, so that it could make its alternative arrangements within such time.



Father of the petitioner passed away on 19.08.2013. The petitioner and his brother thereafter notified the respondent-BSNL, vide letter dated 24.03.2015, expressing their unwillingness to extend the lease deed and requested respondent-BSNL to vacate the land in question and to remove all installations from there. It is contended that since the respondent-BSNL did not vacate the premises even after expiry of the extended permissible period, a representation as well as legal notice was sent by the petitioner to the respondent-BSNL. Thereafter, Writ Petition (Civil) No.9371 of 2021 was filed by them before the Delhi High Court, which was dismissed by the Single Bench against which LPA No.342 of 2021 was also preferred. The order of the learned Single Judge of Delhi High Court was upheld by the Division Bench and the LPA was dismissed.

Counsel for the petitioner further contends that the abovementioned writ petition had been dismissed by the learned Single Judge of the Delhi High Court on the ground of territorial jurisdiction since the land in question was situated within the telecom circle of Mahendergarh. Hence, dismissal of the said writ petitioner would not operate as a bar against the present writ petition being entertained by this Court. He also places reliance on the judgment of Allahabad High Court (Lucknow Bench) in the matter of *Tasirul Nisha Versus BSNL and others* bearing No.**CWP-1042 of 2021** to contend that once the contract stands determined between the land-owner and BSNL, the owner would be entitled to approach the Writ Court for seeking possession of his land. He contends that even in contractual matters, where action of the State Agency is arbitrary, a writ petition can be entertained by the High Court.

Counsel for the respondent-BSNL, on the other hand, argues that the dismissal of the writ petition was not only on the ground of the territorial

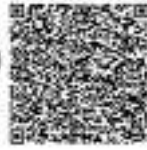


jurisdiction, but it was also held by the learned Single Judge of the Delhi High Court in her order dated 01.09.2021 that a writ petition for seeking possession of the land, which was leased out to the respondent-BSNL, was not maintainable and that the only remedy available to the petitioner was to file an eviction petition/suit for possession. The operative part of the findings recorded by the learned Single Judge of the Delhi High Court in her order dated 01.09.2021 is reproduced hereinafter below:

“5. In my view, once it is the petitioner’s own case that the respondent has come into possession of the subject land pursuant to a valid lease deed, the only remedy available to the petitioner is to file an eviction petition/suit for possession as the case may be, under the relevant statute. Even otherwise, not only is the subject land situated in Haryana, but the lease deed has also been executed in Haryana and, therefore, this Court does not have territorial jurisdiction to deal with the present petition.”

The Division Bench of the Delhi High Court, while dealing with LPA No.342 of 2021, dealt with the arguments on both the issues and again returned a finding to the effect that the remedy available to the petitioner was only to file an eviction petition or a suit for possession and the writ remedy could not be resorted to. The operative part of the order dated 23.09.2021 passed by the learned Division Bench of the Delhi High Court, reads thus:

“5. The learned Single Judge vide the impugned order, dismissed the writ petition on twofold grounds, viz., the remedy available to the Appellant is to file an eviction petition/suit for possession and the land being situated in Haryana and the Lease Deed also having been executed in the State of Haryana, this Court does not have the territorial jurisdiction to entertain the petition.



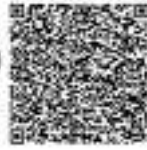
6. *Looking at the nature of relief sought, there cannot be any doubt that the Appellant is seeking possession of the subject land which was leased out by his late father to the Respondent. In our view, the remedy available to the Appellant is to file an eviction petition or a suit for possession, as the case may be and no infirmity can be found with this observation of the learned Single Judge. Writ remedy under Article 226 of the Constitution of India is an extraordinary remedy and cannot be resorted to by an owner/lessor of a property for seeking eviction or in the nature of suit for possession. In any case, the matter would involve disputed questions of fact and entail leading of evidence and a writ petition is thus not the appropriate remedy available to the Appellant.*

7. *We are also in agreement with the finding of the learned Single Judge that this Court has no territorial jurisdiction to entertain the present petition as the subject land is situated in Haryana and even the Lease Deed was executed in State of Haryana i.e., beyond the territorial boundaries of this Court. Merely because the Appellant resides in Delhi, as was sought to be argued by learned counsel for the Appellant, this Court could not have territorial jurisdiction to entertain the petition.”*

She thus contends that the plea of maintainability of writ petition to seek eviction of respondent-BSNL was examined by the Division Bench and the stand taken by the respondent-BSNL already stands affirmed. A writ petition before this Court would thus not be maintainable.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

Even though an arduous effort has been made by the counsel for the petitioner by placing reliance on the judgment of the Allahabad High Court in the



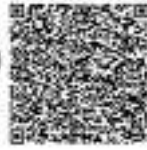
case of *Tasirul Nisha (supra)*, however, I am of the opinion that the said judgment would not be applicable to the facts and circumstances of the present case.

Undisputedly, the petitioner had filed a writ petition before the Delhi High Court, wherein, apart from dismissing the writ petition on the ground of territorial jurisdiction, the Delhi High Court also recorded a finding that a writ petition for seeking eviction of BSNL, to whom possession of land was delivered vide a lease deed/agreement executed between the parties, would not be maintainable and that the remedy available to the petitioner was only to file a suit for possession by way of eviction of the respondent-BSNL.

The said finding recorded by the learned Single Judge of the Delhi High Court, was also challenged by the petitioner before the Division Bench in LPA No.342 of 2015, wherein the said finding was reiterated in paragraph No.6 of the order passed by the Division Bench.

Under the given circumstances, the issue of maintainability of writ petitioner for seeking eviction of the respondent-BSNL by way of an extraordinary remedy under Article 226 of the Constitution already stands returned by the Hon'ble Delhi High Court against the petitioner. Notwithstanding that the Delhi High Court dismissed the petition on the ground of territorial jurisdiction also, however, the said finding nonetheless still holds the ground and has not been set aside. The said finding on the issue of maintainability thus operates as an *estoppel* against the petitioner to the said extent of maintainability of writ petition for seeking eviction of respondent-BSNL.

Under the given circumstances, the said plea cannot now be re-examined only because of change of Forum by the petitioner. It was within the rights and control of the petitioner to make a request before the Delhi High Court

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that the finding on maintainability of writ petition for seeking eviction be expunged or removed; but having chosen not to seek the said relief, this Court would not be justified in ignoring the said finding more so when the litigating parties as well as the subject matter of the property remains the same.

Consequently, the present writ petition is hereby dismissed with liberty to the petitioner to take recourse to his alternative remedies available to him in accordance with law for seeking redressal of his grievance(s).

21.10.2024.
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No