

(2018) 10 CAL CK 0035
In the Calcutta High Court
Case No : Civil Order No.2055 Of 2017

**Bihar State Power (Holding) Co. Ltd @APPELLANT@Hash Estate Sri Sri
Ramchandraj & Anr**

Date of Decision : 05-10-2018

Acts Referred:

Electricity Act, 2003 — Section 131, 133
Land Acquisition Act, 1894 — Section 5(1)
Bombay Rent Act, 1947 — Section 15A
Andhra Pradesh Buildings (Lease, Rent And Eviction) Control Act, 1960 — Section 10(ii)
(a)
Companies Act, 1956 — Section 391, 394
Code of Civil Procedure, 1908 — Order 1 Rule 10
Constitution of India, 1950 — Article 227

Citation : (2018) 10 CAL CK 0035

Hon'ble Judges : Shivakant Prasad, J

Bench : Single Bench

Advocate : Umesh Prasad Singh, S. K. Poddar, A.K. Roy

Final Decision : Allowed

Judgement

SHIVAKANT PRASAD, J.

This revisional application is directed against the order dated 17th May, 2017 passed by learned Judge, Bench-VI, City Civil Court, Calcutta in

Ejectment Suit No. 6 of 2015, the scheme of Article 227 of the Constitution of India. Petitioner's case in brief is that opposite party no. 1 as the

plaintiff filed a suit for recovery of khas possession and mesne profit against the opposite party no. 2, M/s. Bihar State Electricity Board in the Court

of Chief Judge, City Civil Court, Calcutta registered as Ejectment Suit No. 6 of 2015.

The contention of the petitioner is that pursuant to the notification dated 30th October, 2012 issued by Energy Department, Government of Bihar

published in Gazette notification, the Bihar State Electricity Board has been restructured/re-organized and transformed under the provisions into five

successor companies wholly owned and controlled by the Government of Bihar in terms of Section 131 and 133 of the Electricity Act, 2003 namely,

Bihar State Power (Holding) Co. Ltd. and four other subsidiary companies being Bihar State Power Generation Co. Ltd., Bihar State Power

Transmission Co. Ltd., South Bihar Power Distribution Co. Ltd. and North Bihar Power Distribution Co. Ltd. In consequence of such transformation

of Bihar State Electricity Board (hereinafter called as the Board) all assets and properties including the suit premises of the erstwhile the Board stood

vested across the country to Bihar State Power (Holding) Co. Ltd., the petitioner herein since November, 2012.

It is further contended that the petitioner tendered the rent for the month of November, 2012 but the plaintiff despite the knowledge of the petitioner

being the tenant in respect of suit premises as per the notification aforesaid, refused to accept the rent on the plea of a case of alleged sub-letting. So

the petitioner moved the Rent Controller and the petitioner was allowed to deposit rent month by month in favour of the plaintiff by order dated 16th

January, 2016 as a tenant.

Mr. Umesh Prasad Singh learned senior counsel appearing for the petitioner submitted that it is established principle of law that only a tenant can

deposit rent in the office of the Rent Controller to the credit of the Landlord. In spite of the knowledge of the order of the Rent Controller, the

plaintiff/opposite party no. 1 motivatedly instituted suit for eviction against the Board only to obtain a decree of ejectment ex parte.

Indubitably, the petitioner has deposited arrears of rent from August, 2013 to February, 2014 and has been depositing current rent month by month

since March, 2014 before Rent Controller, Kolkata. On 22nd September, 2015 the Resident Engineer of the petitioner company received summon in

the said suit in the name of the Board as the defendant. The petitioner having entered appearance filed an application under Order 1, Rule 10 of the

Code of Civil Procedure and upon contested hearing the learned Judge was pleased to reject the application by the impugned order dated 17.5.2017.

On being aggrieved by the said order the petitioner has assailed the order as bad in law and in fact in this revisional application, inter alia, on the

grounds that learned Judge has wrongly concluded that there is no relationship between the landlord and tenant between plaintiff and petitioner herein.

Mr. Singh fortified his submission that the petitioner is a necessary party to the suit and without its presence, the decree if passed cannot be binding

on the petitioner by placing reliance on a decision in case of Hindustan Petroleum Corporation Ltd.

and another vs. Shyam Co-operative Housing Society and others reported in (1988) 4 SCC 747 in which case the Flat was given on leave and licence

basis by an allottee member of a co-partnership type co-operative housing society to Esso Company for accommodating its employee, Esso later taken

over under Esso (Acquisition of Undertakings in India) Act, 1974 and became a government company under the changed name of Hindustan

Petroleum Corporation Ltd. In that set of fact, it was held that the government corporation acquired the status of deemed tenant by virtue of Section

5(1) of the Acquisition Act and as such entitled to protection under Section 15-A of the Bombay Rent Act.

Reference is also made to a decision in case of Madras Bangalore Transport Co. vs. Inder Singh and others reported in (1986) 3 SCC 62 and relied

on the observation in paragraph 8, only to argue that there is no subletting, assignment or parting with possession of the premises by the Board to the

petitioner company. The observation made in paragraph 8 of the cited decision is reproduced hereunder for profitable understanding?

8. As mentioned by us earlier, the Madras-Bangalore Transport Company (West) continued to be in occupation of the premises even after the

Caravan Goods Carrier Private Limited came in. They never effaced themselves. The firm allowed Caravan Goods Carrier Private Limited Company,

to function from the same premises but Caravan Goods Carrier Private Limited though a separate legal entity, was in fact a creature of the partners

of Madras-Bangalore Transport Company (West) and was the very image of the firm. The limited company and the partnership firm were two only in

name but one for practical purposes. There was substantial identity between the limited company and the partnership firm. We do not think that there

was any sub-letting, assignment or parting with possession of the premises by Madras-Bangalore Transport Company (West) to Caravan Goods

Carrier Private Limited so as to attract Section 14(1)(b) of the Delhi Rent Control Act. In the result the appeal is allowed with costs.

In rebuttal Mr. A.K. Roy learned counsel for the opposite party no. 1 referred to a decision in case of M/s. General Radio and Appliances Co. Ltd.

and Others vs. M.A. Khader (dead) By Lts. reported in (1986) 2 SCC 656 to argue that amalgamation of the Board amounts to transfer of tenancy

right of the Board in favour of the petitioner company inducting the latter as subtenant. In the cited case a lease of the premises in question was

created between appellant tenant and respondent landlord by execution of a rent agreement with the stipulation that the tenant shall not sublet the

premises without written consent of the landlord. The appellant company under the scheme of amalgamation with another company, appellant no. 2

merged with all its property, rights, powers of every description including all leases and tenancy rights. The question which arose for consideration was

whether the amalgamation amounted to transfer of the tenant company's right under the lease by way of subletting and as such it violated Section

10(ii)(a) of A.P. Buildings (Lease, Rent and Eviction) Control Act as also the terms of the rent agreement. Answering in the affirmative and

dismissing the tenant company's appeal, the Hon'ble Supreme Court held thus:

"The A.P. Act prohibits in specific terms both subletting as well as the transfer or assignment of the interest of the tenant. Section 2(ix) of that Act

makes it clear that any person placed in occupation of a building by the tenant cannot be deemed or considered to be a tenant in respect of the

premises in which the said person is to be in possession within the meaning of the said Act. In this case by the order of amalgamation, the interest,

rights of the transferor company in all its properties including leasehold interest, tenancy rights and possession were transferred and vested in the

transferee company voluntarily and the transferor company was dissolved and it ceased to exist for all practical purposes in the eye of law.

That amounted to contravention of Section 10(ii)(a) of the T.N. Act as well as of the terms and conditions of the said rent agreement thereby making

the transferee company liable to be evicted from the tenanted premises. Even in case of an involuntary transfer or transfer of the tenancy right by

virtue of a scheme of amalgamation sanctioned by the court by its order under Sections 391 and 394 of the Companies Act, the transfer will come

within the purview of Section 10(ii)(3)."

I have considered the submissions advanced by learned counsels for the parties. Having respectfully considered the decision of the Honâ??ble

Supreme Court I am of the view that ratio of decision in M/s. General Radio and Appliances Co. Ltd. (supra) is not well nigh within the facts and

circumstances of the instant case inasmuch as I find that 100% equity shares in all subsidiary companies aforesaid is with the petitioner company and

there is no transfer of the tenancy right by virtue of scheme of amalgamation by order of any Court under Sections 391 and 394 of the Companies Act

whereas in the present case it appears that pursuant to the notification of Energy Department, Government of Bihar vide Notification no. 17 dated

30.10.2012, the petitioner company owns all building, lands and the land rights and other rights which had been under the erstwhile Bihar State

Electricity Board. Interest of all the assets has now devolved upon the petitioner by operation of law under Sections 131 and 133 of the Electricity Act,

2003 and the plaintiff was duly informed about the fact of re-organization of the Board like other Board all over the country including the suit

premises.

Therefore, taking cue from the above cited decisions in Hindustan Petroleum Corporation Ltd. and another (supra) and Madras Bangalore Transport

Co. (supra) being the latest in point time, the petitioner cannot be held to be a sublette rather is a deemed tenant, ergo, order impugned is devoid of any

merit by which the learned Court below refused to implead the petitioner as the defendant in the cause title of the suit holding it to be a sublette

without knowledge.

Let it be recorded that in the mids of argument, Mr. Roy submitted that the order impugned may be cancelled and the direction be given to the learned

Court for hearing of the application afresh for impleadment of the petitioner company. In the context of the above discussion, the order impugned

dated 17.5.2017 passed by Judge, Bench-VI, City Civil Court, Calcutta is hereby set aside with direction to the learned trial Court to implead the

petitioner company as a party defendant in the cause title of the plaint of the Ejectment Suit No. 6 of 2015 and to proceed with the suit as

expeditiously as possible. In the result, the revisional application being C.O. 2055 of 2017 is allowed, however, without any order as to costs. Certified

website copies of this judgment, if applied for, be urgently made available to the

parties, subject to compliance with all requisite formalities.