
(2014) 03 SC CK 0059

In the Supreme Court Of India

Case No : Contempt Petition No. 147 of 2014 in Special Leave Petition (C) No. 24874 of 2013

Central Bank of India

APPELLANT

Vs

N.R.C. Limited

RESPONDENT

Date of Decision : 05-03-2014

Acts Referred:

Constitution of India, 1950 — Article 254(1), 254(2)
Maharashtra Rent Control Act, 1999 — Section 3(1)

Citation : (2015) 1 AD (SC) 156 : (2014) 3 ALLMR 401 : (2014) 104 ALR 503 : (2014) 3 AWC 2524 : (2015) 1 RCR(Rent) 503 : (2014) 3 SCALE 480 : (2014) 6 SCJ 110 : (2014) 4 WLN 105

Hon'ble Judges : Kurian Joseph, J;H.L. Gokhale, J

Bench : Division Bench

Advocate : Raju Ramachandran, O.P. Gaggar and Alok Kumar Jain, for the Appellant; T.R. Andhyarujina U.A. Rana, Levi A. Rubins and Mrinal Elker for Gagrut and Co., for the Respondent

Final Decision : Dismissed

Judgement

H.L. Gokhale, J.—This contempt petition makes a grievance that the Respondent-N.R.C. Ltd. has not complied with the order dated 19th August, 2013 passed by this Court while dismissing their SLP (C) No. 24874 of 2013, and an action be taken against them for committing contempt of the above order passed by this Court. The said order dismissed the SLP filed by the Respondent, challenging their eviction from the premises occupied by them. However, considering the number of employees who were engaged in their registered office situated at that place, they were granted time till the end of December, 2014 to vacate the premises, subject to filing the usual undertaking in the Registry of this Court within four weeks from that date, stating that the Petitioner will not create any third party rights, all the mesne profits will be paid in the meanwhile, and will peacefully vacate the premises concerned at the end of December, 2014.

2. That SLP was filed to challenge the judgment dated 10th May, 2013 of the

High Court of Bombay in Writ Petition No. 2898/2011 and L.P.A. No. 174 of 2012 under which the order passed by the Estate Officer of the Appellant, and confirmed by the City Civil Court was left undisturbed. The order dated 19th August, 2013 required the Respondent to file the necessary undertaking, but it was not filed, and the mesne profits as required have also not been paid. It is also pointed out that subsequently one more I.A., being I.A. No. 2 of 2014, was taken out by the Respondent-N.R.C. Ltd. to be relieved of this undertaking, and that I.A. was not pressed, and the same came to be dismissed by this Court by its order dated 7th October, 2013.

3. Mr. Raju Ramachandran, learned senior Counsel, appearing for the Petitioner Central Bank of India points out that the financial difficulties of the Respondent were placed on record in that I.A. and subsequently the same has been withdrawn. That being so, there was no reason for the Respondent not to file the undertaking and not to pay the mesne profits as required. He has drawn our attention to two judgments of this Court in almost similar circumstances. One was the case of Smt. Ram Pyari and others Vs. Jagdish Lal, , and the other was that of Santanu Chaudhuri Vs. Subir Ghosh, In both these matters undertakings to vacate were given but they were not complied with, and therefore the contempt petition was filed. This Court in both these matters noted that since undertaking was not given, there could not be any contempt as such, but the order passed by this Court had to be complied with, and therefore permitted the Petitioners to take the help of police to take back the possession of the concerned premises.

4. Mr. T.R. Andhiyarujina, learned senior Counsel, appeared for the Respondent-N.R.C. Ltd. He relied upon the judgment of this Court in Sushil Kumar Mehta Vs. Gobind Ram Bohra (Dead) through his Lrs., to submit that the Estate Officer was coram non judice, since according to him he did not have jurisdiction to pass the order of eviction. He referred to the judgment of this Court in the case of Dr. Jagmittar Sain Bhagat Vs. Dir. Health Services, Haryana and Others, to submit that the question of jurisdiction can be raised at any stage. He has drawn our attention to the judgment rendered by this Court in C.A. No. 1970 of 2014 on 11th February, 2014 in the case of Dr. Suhas H. Pophale v. Oriental Insurance Co. Ltd. and Its Estate Officer to which one of us (H.L. Gokhale, J.) was a party. Mr. Andhiyarujina has submitted that this judgment clearly lays down that the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 will not apply prior to the Act coming into force, that is prior to 16th September, 1958. He has drawn our attention to various paragraphs of this judgment and submitted that though this judgment has been rendered subsequent to the dismissal of the present special leave petition, inasmuch as the law is now clarified, the Respondent-N.R.C. Ltd. cannot be said to be an unauthorized occupant, nor can the action under the Public Premises Act be said to be valid. He pointed out that the N.R.C. Ltd. has been a tenant of this property since about 1946. Subsequently, the building wherein its premises are situated, was taken over by the Life Insurance Corporation, and thereafter by the Central Bank of India. In view of this

judgment, the relationship between the Central Bank of India and the N.R.C. Ltd. as landlord and tenant will continue to be governed under the Bombay Rent Act and now under The Maharashtra Rent Control Act, 1999.

5. Inasmuch as this submission has been raised by Mr. Andhiyarujina, learned senior Counsel, we would like to point out that this judgment in Dr. Pophale's case clarifies the legal position as laid down by this Court earlier in the case of Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others, . That judgment has held that the Public Premises Act and the State Rent Control Acts were both referable to the concurrent list, and would be valid in their spheres, but Public Premises Act will prevail to the extent of any repugnancy. Therefore, this Court held earlier in the case of Banatwala and Company Vs. L.I.C of India and Another, that to the extent the Public Premises Act covers the relationship between the landlord and the tenant, namely, for eviction of unauthorized occupants and for recovery of arrears of rent, the Public Premises Act will apply and not in other aspects of their relationship. This is why in Banatwala's case (supra) it was held that the application for the maintenance of the premises would lie to the Court of Small Causes in Mumbai, and it will not be hit by the provisions of the Public Premises Act. The issue in Dr. Suhas H. Pophale's case was as to when the Public Premises Act will apply, and it was laid down that the Act will not apply prior to the Act coming into force, and until the premises concerned belonged to the concerned public corporation, whichever is the later date. This was on the footing that if there are any welfare provisions in the statutes, the legislature cannot be intended to have taken them away if there is no repugnancy.

6. In Dr. Suhas H. Pophale's case the judgment of this Court in the case of Rashtriya Mill Mazdoor Sangh, Nagpur Vs. Model Mills, Nagpur and Another, was specifically referred in paragraph No. 29 to point out that if there is any welfare provision in a statute it cannot be taken away. This was in the context of the Payment of Bonus Act. It was also held that the judgment in Jain Ink Manufacturing Company Vs. Life Insurance Corporation of India and Another, did not consider the issue of protection in a welfare legislation to the tenant, prior to the premises becoming public premises, and the issue of retrospectivity. So also these issues were not in consideration in the case of Ashoka Marketing Ltd. (supra). In paragraph 49 of Dr. Pophale's case, this Court discussed the inter relation between Article 254(1) and 254(2) of the Constitution, and specifically pointed out that the Government and the statutory corporations were taken out of the protective umbrella when the Maharashtra Rent Control Act was passed, and so they would be covered under the Public Premises Act, but of course from the date when the Act comes into force or from the date when the premises belong to the concerned Government corporation. What applies to the landlord, equally applies to the tenants.

7. As far as the present action initiated by the Central Bank of India is concerned, the notice to evict was issued on 26th June, 2007, much after the

Maharashtra Rent Control Act came into force on 31.3.2000. This Act clearly lays down that it shall not apply to Public Ltd. Companies having a paid up share capital of Rs. One Crore or more. Section 3(1)(b) of the Act reads as follows:

3. Exemption

(1) This act shall not apply

(a).....

(b) To any premises let or sub-let to banks, or any Public Sector Undertakings or any Corporation established by or under any Central or State Act, or foreign missions, international agencies multinational companies, and private limited companies and public limited companies having a paid up share capital of rupees one crore or more.

There is no dispute that the Respondent N.R.C. Ltd. is a company having a paid up share capital of more than rupees one crore. That being so, the protective umbrella of the State Rent Control Act which was available to the N.R.C. Ltd. would not be available to it beyond 31.3.2000. That being so, the provisions of Public Premises Act would clearly apply to these premise on or after 31.3.2000 for the purposes of eviction of unauthorised occupants and therefore, the action initiated by the Central Bank of India could not be faulted with.

8. Mr. Andhiyarujina, learned senior Counsel, appearing for the N.R.C. Ltd. has drawn our attention to the fact that the company's affairs are before the BIFR, and it also had correspondence with the trade union representing the employees, but the employees union was not ready to help in any manner. Those are different aspects, and as pointed out by Mr. Raju Ramachandran, learned senior Counsel, the financial difficulties of N.R.C. Ltd. were brought to the notice of this Court by filing the I.A. No. 2 of 2014 which was not pressed, and that being so, the issue cannot be allowed to be re-agitated. A tenant or an occupant cannot be permitted to be on the premises of the landlord without paying the rent, or the occupation charges, which is what N.R.C. Ltd. is attempting to do.

9. This being the position, in our view, the Central Bank will be entitled to take back the possession of the concerned premises with respect to which the order of eviction has been passed, and we permit it to resume the same by taking the help of police if required.

The contempt petition is allowed in the above terms.