

(2008) 03 BOM CK 0057

In the Bombay High Court

Case No : Writ Petition No. 2703 of 2007

Central Warehousing Corporations Government undertakings APPELLANT

Vs

The Board of Trustees of the Port of Mumbai A Statutory Corporation and Others RESPONDENT

Date of Decision : 27-03-2008

Acts Referred:

Constitution of India, 1950 — Article 141, 142, 226
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 3

Citation : (2008) 3 ALLMR 612 : (2008) 110 BOMLR 912 : (2008) 4 MhLj 190

Hon'ble Judges : Swatanter Kumar, C.J.;J.P. Devadhar, J

Bench : Division Bench

Advocate : S.I. Shah, instructed by, S.I. Shah and Co, for the Appellant; U.J. Makhija and A.A. Siddiqui, instructed by y, M.V. Kini and Co., for the Respondent

Final Decision : Allowed

Judgement

Swatanter Kumar, C.J.—Mumbai Port Trust has filed an application u/s 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, (hereinafter referred to as the 'Act') before the Estate Officer (Case No. EO/TM/(128)(128A) of 2007) for eviction of the respondents including the Warehousing Corporation from the premises in question and also for payment of Rs. 81,96,06,206.10 ps. towards arrears of rent alongwith interest and damages to the extent of Rs.11,01,74,624.59. The grounds taken for eviction by the Mumbai Port Trust were that the respondents have sublet the portions of the premises given to them without their consent and on account of default in payment of rent. According to the Port Trust, unauthorised activities have also been carried in the said premises.

2. The said application was contested by the Central Warehousing Corporation. Besides taking up the plea that the notices of termination dated 24.12.2005 and 21.12.2006 were not proper, the correctness of the amounts claimed either by way of rent, penalty and/or interest were denied and it was stated that the said

amounts are exorbitant and without any basis. It was also the stand of the Warehousing Corporation that it is a statutory corporation and they have allowed certain parties and had allotted some spaces on reservation basis for storage and other purposes which was one of their functions. Besides this, a preliminary objection was also taken wherein it is stated that both, the Central Warehousing Corporation and the Port Trust were government corporations and as such, keeping in view the judgment of the Supreme Court in the case of Oil and Natural Gas Commission and Another Vs. Collector of Central Excise, , the matter ought to be referred to the High Power Committee constituted in furtherance of the order of the Supreme Court and hence, the application is not maintainable.

3. By order dated 16th August, 2007, the Estate Officer rejected the preliminary objection and proceeded to hear the application. After passing of the above order, the Estate Officer passed a detailed order on 28th August, 2007 giving reasons for rejection of the said application. Aggrieved by the order dated 16th August, 2007 and 28th August, 2007, the Warehousing Corporation has filed the present writ petition under Article 226 of the Constitution of India praying that the order dated 16th August, 2007 and the order dated 28th August, 2007 directing further proceedings in the case be set aside and quashed and the matter be directed to be referred to the High Power Committee in view of the various judgments of the Supreme Court afore-referred.

4. On behalf of the petitioner-Warehousing Corporation, it is contended that the proceedings in the present case are not only restricted to the relief of eviction but even other reliefs including recovery of arrears amount and interest etc. There are serious controversies between the parties on different issues which can conveniently and appropriately be adjudicated by the High Power Committee in the interest of all concern and such an approach would also be in consonance with the law settled by the Supreme Court in its different judgments. It is also contended on behalf of the petitioner that it was a prerequisite for the Mumbai Port Trust to invoke jurisdiction of the High Power Committee before filing the application as, ultimately, the claim of money and other matters could be resolved appropriately by the Committee in larger interest. It could also avoid unnecessary litigation between public sector undertakings before the court. Reliance is placed on the judgment in Mahanagar Telephone Nigam Ltd. Vs. Chairman, Central Board, Direct Taxes and Another, .

5. It is contended on behalf of the respondents-The Board of Trustees of the Port of Mumbai that the matter is squarely covered by the judgment in Steel Authority of India Ltd. (Successor to Hindustan Steel Ltd.) Vs. Life Insurance Corporation of India and Others, and the order of the Estate Officer does not call for any interference. It is further contended that remedy invoked by the respondents is under a special Act and as such, the judgments of the Supreme Court in Mahanagar Telephone Nigam Limited as well as Oil and Natural Gas Commission had no application. It is not only a matter relating to fiscal issue but is a matter relating to eviction and other claims and, in fact, the conduct of the

Central Warehousing Corporation is such that possibility of the matter being settled before the Committee is very remote.

6. We may, at the very outset, notice that the judgment of the Supreme Court in *Steel Authority of India Ltd. supra*, was an order on its own facts. No principle of law was either discussed or decided in that case. Two Judge Bench of the Supreme Court felt that that case itself was not worthy of a reference to the high officers. We may also notice here that the first judgment in *Oil and Natural Gas Commission* in the year 1995 was a three Judge Bench order and in that case, the court while enunciating the principle while referring to the report of the Cabinet Secretary, had issued directions which read as under:

4. There are some doubts and problems that have arisen in the working out of these arrangements which require to be clarified and some creases ironed out. Some doubts persist as to the precise import and implications of the words and recourse to litigation should be avoided. It is clear that the order of this Court is not to the effect that nor can that be done-so far as the Union of India and its statutory corporations are concerned, their statutory remedies are effaced. Indeed, the purpose of the constitution of the High-Powered Committee was not to take away those remedies. The relevant portion of the order reads: (SCC pp.541-42, para 3)

3. We direct that the Government of India shall set up a committee consisting of representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law, to monitor disputes between Ministry and Ministry of the Government of India, Ministry and public sector undertakings of the Government of India and public sector undertakings in between themselves, to ensure that no litigation comes to court or to a tribunal without the matter having been first examined by the Committee and its clearance for litigation. The Government may include a representative of the Ministry concerned in a specific case and one from the Ministry of Finance in the Committee. Senior officers only should be nominated so that the Committee would function with status, control and discipline.

It is abundantly clear that the machinery contemplated is only to ensure that no litigation comes to court without the parties having had an opportunity of conciliation before an in-house committee.

5. It is also clarified that even the pending matters before any court or tribunal should also be the subject-matter of the deliberations of the High- Powered Committee. All the matters pending as of today either instituted by the Union of India or any of the public sector undertakings shall within one month from today be referred by the appellant or the petitioner, as the case may be, to the High-Powered Committee. The High-Powered Committee will deal with these matters most expeditiously and endeavour to resolve the matters.

6. Accordingly, there should be no bar to the lodgement of an appeal or petition either by the Union of India or the public sector undertakings before any court or

tribunal so as to save limitation. But, before such filing every endeavour should be made to have the clearance of the High-Powered Committee.

7. However, as to what the court or tribunal should do if such judicial remedies are sought before such a court or tribunal, the order of 11.10.1991 clarifies: (SCC p. 542, para 4)

4. It shall be the obligation of every court and every tribunal where such a dispute is raised hereafter to demand a clearance from the Committee in case it has not been so pleaded and in the absence of the clearance, the proceedings would not be proceeded with.

8. Wherever appeals, petitions, etc. are filed without the clearance of the High-Powered Committee so as to save limitation, the appellant or the petitioner, as the case may be, shall within a month from such filing, refer the matter to the High-Powered Committee, with prior notice to the designated authority in the Cabinet Secretariat of the Government of India authorised to receive notices in that behalf. Shri K.T.S. Tulsi, learned Additional Solicitor General stated that in order to coordinate these references of the High-Powered Committee the Government proposes to nominate the Under Secretary (Coordination) in the Cabinet Secretariat as the nodal authority to coordinate these references. The reference shall be deemed to have been made and become effective only after a notice of the reference is lodged with the said nodal authority. The reference shall be deemed to be valid if made in the case of the Union of India by its Secretary, Ministry of Finance, Department of Revenue, and in the case of public sector undertakings by its Chairman, Managing Director or Chief Executive, as the case may be. It is only after such reference to the High-Powered Committee resolves the dispute or gives clearance to the litigation. If the High-Powered Committee is unable to resolve the matter for reasons to be recorded by it, it shall grant clearance for the litigation.

9. The High-Powered Committee shall submit a half-yearly report-instead of quarterly report as earlier indicated-to this Court as to the number of matters referred to it and the manner in which they were dealt with and disposed of. The report for the half-year ended 31.12.1993 shall be lodged before 31.1.1994 and for every half-year thereafter within one month of the expiry of the half-year.

7. The above directions are binding upon all concerned and there is no dispute that the committee in furtherance to the said judgment has already been constituted. In terms of these directions, public sector undertakings are required to refer the matter to the committee and seek exemption for litigating in courts. This direction was, in no way, diluted or varied by the Supreme Court in the case of Steel Authority of India. On the contrary, these directions were enforced with greater emphasis and clarity by the Supreme Court again by a three Judge Bench of the Supreme Court in the case of Oil and Natural Gas Commission Vs. Collector of Central Excise, . The court in that case not only reiterated the principle stated in the first judgment but also directed that the matters pending

before the courts and tribunals should also be referred to the High Power Committee for its deliberations.

8. In the case of Mahanagar Telephone Nigam Ltd. (supra) again the earlier directives of the Supreme Court were reiterated with approval and it was said that the disputes should go first before the High Power Committee as the purpose of such a Committee was not only to conciliate between the Government and Government departments but also between the public sector undertakings. The basic consideration for issuance of such directions was to prevent wastage of public money and time and of course to encourage inter department conciliation and settlement by intervention of High Power Committee. Reference can also be made at this stage to the judgment of the Delhi High Court in Airport Authority of India v. Union of India and Anr., decided on February 3, 2005 (Writ Petition (C) No. 13953 of 2004) which read as under:

...The preliminary objection raised by the learned Counsel for the respective respondents relates to the very maintainability of the writ petition and on this question the counsel for the parties were heard at length. The cumulative effect of the three judgements of the Supreme Court afore-referred indicates that it may be necessary for a party, i.e., Government or a public corporate sector including all its departments to approach the high power committee constituted to examine the matter from all aspects and to grant its permission to the parties to approach the court of law or litigate for their grievances before the court of competent jurisdiction. The authority vested in this committee by virtue of the judgment of the Supreme Court which in terms of Article 141 & 142 of the Constitution of India would be the law of the land. The committee is under an obligation to examine the grounds of grievance, the validity of the reasons and its ramifications on the social and financial structure of the country with particular reference to the department which approaches the committee for this purpose. In the case of Mahanagar Telephone Nigam Ltd. (supra) the Supreme Court has laid emphasis on a definite need for approaching this committee to avoid frivolous litigation and also to ensure that no public time and money is wasted on matters which could amicably and reasonably be settled or reconciled by the committee by exercising its power in terms of the above law. Learned Counsel appearing for the respondents contended that the committee has to discharge only one function, that is, to grant or decline its clearance for the parties to approach the court of law. I do not think that it will be appropriate to unnecessarily restrict the scope of authority of this high powered committee in terms of the judgements of the Supreme Court and the intends of the said judgments. The committee essentially is required to act in stages of conciliation persuasion and then finally recommending to either of the State or public departments to correct their action in default of which they may have liberty to approach the court of law. The committee is not constituted for the purpose of acting as a post office for granting or refusing its clearance to a party to approach the court of law in its restricted sense such a microcosm attitude or interpretation is bound to frustrate the very purpose of the judgement of the

Supreme Court which operate as a law and binds all concerned. It is expected that all concerned would respect the recommendations of the committee including the fact that it requires a party to modify its remarks. Of course matters may be some what different where it relates to exercise of legislative power. In the present case notification has been issued u/s 10 of the Act and is not simply a matter relating to commercial activity or a revenue demand. The matter is likely to have serious repercussions of wider magnitude on all the airports in the country as well as a policy of the concerned ministry keeping in mind the recommendations of the Board. The dictum of the Supreme Court in the above cases may not operate as an absolute bar in the law but would have to be decided on the facts of each case. The normal rule as enunciated by the Supreme Court is State government, its departments or a public sector should approach the high power committee before it approaches the court of law. There could be matters which would fall within the inbuilt exceptions in the judgement of the court. Matters relating to enforcement of a legislative power in its definite terms may not squarely fall within the dictum of the court in its absolute term.

6. Learned Counsel appearing for the Union of India had earlier taken up a stand that Union of India would not be able to consider the recommendation of the committee in relation to withdrawal or otherwise of the notification in question because the Board had already given its recommendations. Such stand of the Union of India would apparently be in conflict with the preliminary objection taken by the learned Counsel appearing for the parties. If the parties concerned would close their mind to any suggestion of the committee then the very purpose of sending the parties to the Committee for its consideration and clearance would be exercised in futility. On a subsequent date the learned Counsel appearing for the Union of India upon instructions from the officer present in Court had stated that they would consider the recommendation of the committee in the correct perspective and would not have any rigid views or notions in this regard. Learned Counsel appearing for the private respondent No. 3 also stated that they would have no objection if they are called upon by the committee to assist it. But their rights would not have strictly controlled and decided by the committee as they are a private party. It will be appropriate at this stage to notice that members of respondent No. 3 claim to be employee of the Petitioner and pray for regularisation in the reference pending before the appropriate forum. In policy decision taken affecting their interest, should be taken after hearing them and in accordance with law. No doubt private party would not be bound as such, by the direction or recommendation issued by the committee in absolute terms, but would still be a proper party before the committee who should be heard.

9. From the above narrated principles, it is clear that dispute of the very kind between the Government and/or its various public sector undertakings were referred to the High Power Committee and even matters pending before the courts were directed to be referred for conciliation before the Committee.

10. The judgments of the Supreme Court have to be understood in their correct

perspective and the principles stated therein should be applied to the cases. It is hardly necessary for the court to carve out exceptions to the stated principles. The intention behind these judgments is obviously, to prevent unnecessary litigation between the Government departments or its public sector undertakings or its instrumentalities coming before the court. It would not only be desirable but necessary for the concerned departments to make an attempt to reconcile their disputes. A sincere and serious attempt on the part of the Government departments to reconcile their disputes by consensus before the High Power Committee would not only be a compliance of the order of the Supreme Court but also be economical and beneficial in terms of manpower and time. This concept of reference to the High Power Committee in relation to various disputes inter se between the departments of the Government, Government itself and even its public sector undertakings is a pre-litigative stage introduced by judicial dictum to ensure early settlement of disputes as well as to ensure that public money is least spent on litigation by the State and its instrumentalities. Pre-litigative resolution of disputes is a matter which would help to further the cause of better administration and expeditious settlement of disputes. Such an approach would attain higher acceptance where the matters relate to policy of the Government. It will also be equally true where various public sectors are unable to settle their disputes at their own level, intervention by the High Power Committee would help where the parties have headed for a deadlock and are not amenable to reasoning of each other.

11. Merely because some other parties claiming through one of the public sector undertakings may also be affected would be no reason to deny reference to the 'High Power Committee'. Firstly, such parties have no independent status in the premises in question and they can claim only through the Warehousing Corporation and, thus, they must go or stay with the Corporation subject to such conditions as may be imposed by the High Power Committee upon either of the public sector undertakings. The respondent-Corporation in the writ petition has claimed huge amount from the petitioner- corporation on account of rent, damages, penalty and interest. All these matters are, obviously, based on some computations with reference to one criteria or the other. They can better be resolved by High Power Committee as either way it is the concerned State administration which would be reasonable to ensure implementation of such decision. It is not disputed before us that both these corporations under their bye-laws/regulations/articles are bound by the directives issued by the respective wings of the Government. This, in fact, itself is a sufficient indication that both these corporations being under the control of the government, the reference to the High Power Committee would be more appropriate. It is not necessary for us to hold that without reference to the committee and/or opinion of the committee, the present petition before the Estate Officer would be barred by law. Suffice it to note that even on the facts and circumstances of the case, the reference to the High Power Committee would be more appropriate in the interest of the parties as well as in larger public interest. All the parties to the

writ petition are always expected to follow the dictum of the Supreme Court without undue objections which even otherwise could hardly be held to be sustainable.

12. For all the above reasons, we allow this writ petition. Rule is made absolute. The petition is allowed to the limited extent that the disputes raised before the Estate Officer shall be referred to the High Power Committee and the High Power Committee shall deal with the matter and decide the same in accordance with law. No order as to costs.