

(1993) 10 DEL CK 0003

In the Delhi High Court

Case No : Civil Writ Petition No. 2476 of 1988, First Appeal No. 217 of 1990 and Civil Miscellaneous Appeal No's. 5695 and 6482 of 1993

D.C.M. Limited and Another

APPELLANT

Vs

Lt. Governor, Delhi and Others
 D.C.M. Limited Vs
Goshala Marg Residents Association and Another

RESPONDENT

Date of Decision : 01-10-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8
Constitution of India, 1950 — Article 226
Delhi High Court Act, 1966 — Section 10
Delhi Rent Control Act, 1958 — Section 14

Citation : (1993) 4 AD 174 : (1993) 27 DRJ 453 : (1994) 1 ILR Delhi 387 :
(1994) LabIC 1667

Hon'ble Judges : V.K. Jain, J;G.C. Mittal, J;D.P Wadhwa, J

Bench : Full Bench

Advocate : Rajeev Sawhney, Swantantar Kumar, Sanjeev Anand, Chandan Ramamurthi, Mukul Rohatagi and Atul Batra, for the Appellant;

Judgement

D.P. Wadhwa, J.

(1) "IN civil jurisprudence it too often happens that there is so much law that there is no room for justice; and that the claimant expires of wrong in the midst of right, as mariners die of thirst in the midst of water"

(2) Company must be wondering if this could be ever true. But this Court clothed with power to issue high prerogative writs, directions and orders and also exercising superintendence over all courts and tribunals will not allow things to come to such a pass where people lose faith in the judicial process.

(3) C.M. 5695/93 has been filed by 12 workers" unions against the two respondents, namely, the D.C.M. Limited, the company, and the General Manager, D.C.M. Limited, seeking the following prayers:-

(A)Direction to the petitioner company to release cheques of additional

compensation to the workmen who are not in occupation of the quarters and who have not received the same till date.

(B) To restrain the company from recovering from the workmen the additional compensation already paid to them in terms of the settlement dated 1.2.1989 and subsequent awards made in this behalf.

(C) To grant further time to the workmen in occupation of the quarters to vacate the same and direct the petitioner company to pay compensation to them on their vacating the same in terms of the settlement dated 1 February 1989.

It was the letter dated 20 July 1993 of the Company to the Sangarsh Samiti which it will appear is the compendious name of the 12 applicants, which led to Filing of this application. This letter reads as under:- "Sangarsh Samiti comprising of Unions signatory to the Settlement dated 1st Feb. 1989 Gaushala Marg, Kishanganj, Delhi-110006 Sir, As you are aware approximately 4300 workmen have received the cheques and encased the same totalling approximately Rs.75 crores. We are however pained to note that approximately 400 workmen are still in occupation of the quarters despite the clear understanding to this effect in the settlement dt. 1st February, 1989 and the subsequent directions, orders and award of the Ld. Arbitrators. As you are aware, the payment of additional compensation was linked with the redevelopment of the company's land by it and in view of the non-vacation of the quarters by the workmen concerned the company is being put in a serious difficulty, the company having fulfilled all its obligations under the settlement dated 1st Feb. 1989. You will appreciate the company has kept its promise and offered the additional compensation to all the workman covered under the Settlement and it is only the Union and the workman who are in default putting into jeopardy the plans of the company. In view of these circumstances that had developed, the company has decided not to make any further payments of the additional compensation to any workmen who has not received the same so far. Please note that now the company is absolved of its liability to pay any additional compensation and is also entitled to seek refund of the additional compensation, already paid, the interest and other payments made to the workmen pursuant to the settlement and for all this it will be the Union's and the workmen concerned will have to take complete responsibility. We, Therefore, request you to instruct your members not to approach the company's office for receiving any payment and further instruct all those workmen who has received the payment from the company to refund the same at the earliest. Yours faithfully, sd/- General MANAGER. "

(4) On notice being issued, respondents filed their reply. They say that the application is not maintainable as it runs counter to the settlement dated 1 February 1989 entered into between the company and its workmen through the applicant representing them which settlement, it is stated, was taken on record and accepted by this Court. Respondents rather blamed the applicant for having violated the terms of the settlement and the understanding arrived at between

the parties. They say they had yet paid a sum of Rs.74,82,81,000.00 to the workmen under the settlement towards statutory compensation u/s 250 of the Industrial Disputes Act (1.D. Act" for short), interest, additional compensation, ex gratia payment under directions of the arbitrators. The above amount also includes a sum of Rs. 1,09,33,000.00 paid as compensation to 759 workmen who had since vacated the quarters at the rate of Rs.14,400.00 as per terms of the settlement. Respondents then say that in spite of their fully complying with the terms of the settlement, some of the workmen have been interfering in the implementation of the settlement with mala fide intention to extract further additional compensation from the company. Respondents say that the some of the workmen are not vacating the quarters and, thus, hindering the redevelopment plan of the company. Out of these, 369 workmen are covered under the settlement. There are 185 ex-employees of the company who are illegally continuing to occupy the company"s quarters. Further the respondents say that the workmen are also interfering in the work of the company in the demolition of structures lying vacant with the sole object, as noted above, to extract more money from the company. Then reference is drawn to clause 23 of the settlement dated 1 February 1989 arrived at between the company and the trade unions of the workmen as well as the workmen under which two advocates, one representing the company and the other workmen, were authorised to resolve the disputes and differences that might arise under the settlement and it was agreed that the decision so given by the two advocates would be final and binding on all the parties. Mr. M.K. Ramamurthi, Senior Advocate, was to represent the workmen and Mr. Rajive Sawhney, Senior Advocate, the company. It is stated that these two advocates had given various awards. We may also note at this stage that Mr. Ramamurthi expired and before his death Mr. Ramamurthi nominated Mr. Rajindar Sachar, Senior Advocate, in his place, again with the consent of all the parties. It is the admitted case that these two advocates had been giving various directions and awards like fixing the period of vacation of the quarters by the workmen, time to time payments, committing the-company to undertake demolition and directing the workmen not to interfere in the same. It is stated that one such award dated 16 May 1992 had also been made rule of the court and a decree in terms thereof passed by this Court. The respondents claim that many of the workmen had, however, failed to comply with these directions and awards and failed to vacate the quarters and were interfering in the demolition activities of the company. Respondents say that it would be most unfair and unjust to encourage such workmen to frustrate the terms of the settlement under which the company had paid huge amounts to the workmen. In these circumstances, respondents not only seek direction that all the workmen in the occupation of the quarters of the company to vacate the same, but further seek a restrain on them not to interfere or obstruct the demolition activities and other development work undertaken by the company, and further that in the event of the workmen committing default, the company shall be entitled to recover back all the payments made by it under the settlement. The respondents, Therefore, seek dismissal of the application.

(5) During the pendency of these proceedings an application for being impleaded as a party in the writ petition as well as in the present application was filed by Joint Welfare Association of the D.C.M. Residents and Shopkeepers (Regd), a society claimed to have been registered on 13 July 1992 under the Societies Registration Act, 1860 (hereinafter called the "society"). This is C.M. 6482/93 and was filed on or about 26 August 1993. The registered office of the society is in Pandav Nagar, a colony in the trans Yamuna area. Notice of this application was issued and replies have been filed both by the applicants in C.M. 5695/93 as well as by the respondents, both of them opposing the same. Not only that the society seeks to be impleaded as a party, it seeks a declaration that the settlement did not affect the rights of the members of the society and in case it is held that the settlement was binding on them, then the company be ordered and directed to pay the entire compensation to the members of the society first, provide them accommodation as assured in the agreement and to give all other benefits which were the offshoot of the settlement. Further prayer is that the land subject-matter of the writ petition be first partitioned between the D.D.A., a body constituted under the Delhi Development Act, 1957, the Delhi Administration and the company, and further that the company be restrained from forcibly evicting any of the persons in the occupation of the quarters in the land belonging to the D.D.A., Delhi Administration or even the company.

(6) To understand the rival contentions a little background of the case may be relevant. The company was running a textile mill at Bara Hindu Rao, Delhi, for the last many years and had the mill and residential complex located over an area of approximately 63 acres at Bara Hindu Rao, Kishan Ganj, Delhi. When under the provisions of the Delhi Development Act the master plan came into operation in 1962 the mill was required to be shifted from its present location being in the non-conforming area. It was stipulated in the master plan as well that the land on which the mill was located would be used for flat factories and group housing residential schemes. In this view of the matter, the company applied to Delhi Administration for permission to close its mill. It was under the provisions of section 250 of the I.D. Act. This section provides for procedure for closing down an undertaking. The permission was refused which led to filing of a writ petition in this court by the company, it being C.W.P. No. 1281/85. A Full Bench of this Court allowed the writ petition by judgment dated 22 July 1988 and directed the Lt. Governor, Delhi, to determine afresh the application of the company for permission to close down its undertaking u/s 250 of the I.D. Act AIR 1989 Del 193.- It appears during the pendency of this writ petition certain directions were issued by the Full Bench on 22 May. 1987 against which the Union of India as well as the D.D.A. filed two Special Leave Petitions in the Supreme Court which were admitted, these being now Civil Appeal Nos. 1402 of 1990 and 1401 of 1990. Then during the pendency of this writ petition and in view of the circumstances of the case, a settlement was arrived at between the company and its workmen. Over 98% of the workmen gave authorisation to Mr. M.K. Ramamurthi, Senior Advocate, to enter into a formal settlement with the

company on the basis of consultation with the joint action committees of the workmen and submit the same before the High Court in the writ petition. This settlement was noted in the aforesaid judgment of this Court. Even thereafter the Lt. Governor rejected the company's application u/s 25O of the I.D. Act. This led to filing of another writ petition in this Court by the company, it now being C.W.P. 2476/88. Another Full Bench of this Court by judgment dated 1 March 1989 (1989) 1 D.L.225 again allowed the petition quashing the order of the Lt. Governor refusing permission to the company and directed him to grant permission within seven days of the date of the order to close the mill. The court further directed that the company shall be bound by the undertakings given to the court in the scheme of settlement for payment of compensation to the workmen on the terms and conditions as set out in the written agreements filed in the court. The court further directed that it will be open to the parties to approach the court for directions. The court, it would appear, put its stamp of approval on the settlement between the company and the workmen. This settlement is dated 1 February 1989. Against the first judgment of this Court AIR 1989 Del 193, the Union of India and the Delhi Administration both filed two separate special leave petitions in the Supreme Court. The company also filed a SLP in the Supreme Court against the order of the Full Bench of the High Court passed on 3 March 1989 extending time for grant of permission by the Lt. Governor. All these special leave petitions were dismissed and this fact finds mention in the judgment dated 13 March 1990 of the Supreme Court by which order other appeals No. 1402 of 1990 and 1401 of 1990, as mentioned above, were also dismissed. Union of India (UOI) Vs. D.C.M. Limited and Others, The Supreme Court noticed that when all these matters were called for hearing it transpired that the D.C.M. and its employees ranging about 6000 in number had fortunately reached an agreement in the matter of closure of the mill. The Supreme Court also noticed that the mill had been ordered to be closed and the employer and the employees had entered into a settlement. On account of all these developments the Supreme Court further noticed that challenge to the judgment and order of the High Court lost vigour and did not call for interference. The Supreme Court, however, gave some further directions and finally also approved the settlement arrived at between the company and the workmen. It is not necessary for us in this judgment to give details of the settlement or the further directions issued by the Supreme Court for implementation of the scheme so formulated between the employer and the employees. Against the second judgment of this Court (1989) 1 D.L. 225, Lt. Governor again moved the Supreme Court. This was also dismissed [S.L.P.(Civil) 3630/ 89, decided on 27 March 1989]. In the appeals decided by judgment dated 13 March 1990 Union of India (UOI) Vs. D.C.M. Limited and Others, some applications were filed seeking certain directions. These were disposed of by order dated 1 May 1991. One of the objections raised by the D.D.A. was that when the Supreme Court granted its approval to the scheme for redevelopment of the area it was for 63 acres of land. The court noticed that the matter before the Delhi High Court as well as before it had proceeded on the assumption that

the entire 63 acres of land involved in the redevelopment for flatted factories and residential complex was owned by the Company which assumption was wrong and that the company owned about 52 acres of land and the balance 11 acres was owned by the D.D.A. which land was though with the company but on varied term leases or even in trespass with the company. This objection by the D.D.A., as noted by the Supreme Court, appeared to be quite valid. The court also noticed different leases, which were ten, granted in favor of the company and as to how some of these were to expire by efflux of time, etc. The court was, thus, faced with a situation where whole scheme had to be redefined. The court then observed as under:-

"YET all is not lost for the Delhi Cloth Mills. It can still steer through its project in its owned 52 acres, even though in a truncated form and submit an amended plan. On the other hand its relationship with the D.D.A. being that of a lessee and Lesser permits a meaningful dialogue seeking extensions of lease periods, and change of permissive user in respect of 11 acres of land. It can make attractive suggestions to the D.D.A. for settling up cultural, educational, recreational and other facilities, etc. at the expense of the Delhi Cloth Mills, if the project is to remain of the 63 acre size. It is the case of Delhi Cloth Mills that if it is allowed to involve the said 11 acres of land, the project would be better and it is prepared to pay any charges as are known to law to keep it as part of the project of the original size. Be that as it may we are no experts to opine whether a 52 acre project would be more viable or better or a 63 acre one. But since the project has in terms of our order dated March 13, 1990 to go on, the D.D.A. may if asked examine the suggestions. That is their field and not ours to decide. "

(7) The Company in its reply to the application C.M. 6482/93 by the society [Joint Welfare Association of the D.C.M. Residents and Shop-keepers (Regd.)] questioned the bona fides of the society in filing the application at this stage. Company says the members of the society were themselves parties to the settlement and had taken advantage under the same. They are even otherwise bound by the terms of settlement. Out of 190 members mentioned in the list attached with the application, the company says as many as 177 of them had in addition to the statutory compensation u/s 250 of the I.D. Act received further payments as well under the terms of the settlement. 176 of such members had also given an undertaking to this Court accepting the settlement and being bound by the same unconditionally and given undertaking to vacate the quarters in their possession. These members, the company says, are flouting the undertaking with the mala fide intention of getting more money from the company which the company says is nothing but an attempt to blackmail it. The company further points out that the society had earlier filed a petition under Article 32 of the Constitution before the Hon'ble Supreme Court which was dismissed on 29 March 1993. Again the society in pursuance to clause 23 of the settlement filed a scheme by its letter dated 21 December 1993 before two advocates Mr. M.K. Ramamurthi and Mr. Rajive Sawhney. During this period Mr. M.K. Ramamurthi died and the society agreed to the appointment of Justice

Rajindar Sachar in his place. This was adjudicated upon by the two advocates. Yet the society has filed this application which the company says is not maintainable. The unions representing the workmen who are respondents in the writ petition have also filed their reply to the application of the society. They say that members of the society had not only authorised their unions and their representatives to instruct their counsel and negotiate on their behalf, but had also filed individual written authorisations. Having done so these workmen not only accepted the terms of the settlement but also received statutory compensation and interest thereon amounting to about Rs.50 lakhs. The unions say it is too late for these workmen to say that the settlement regarding vacation of quarters was in a way not valid. These unions have deplored the conduct of the members of the society and say that such an application only injures the interests of other workmen who had nothing to do with the quarters and who are deprived of their employment as well. These unions condemn the action of the society and its members and say by their now forming an association in the year 1992 they are estopped and debarred from raising any objection in regard to settlement and their making any allegations against the unions and the Sangharsh Samiti which consisted of all the representatives of the 12 unions. They say the settlement cannot be challenged at this stage and is binding on all the workmen numbering about 5000. These unions also say that the settlement is for the benefit of the workmen and that under this a colony was proposed to be developed at Kundli and workmen in authorised occupation of the quarters of the company were required to opt for such tenements under clause 16.6.1 of the settlement, but no workman gave any such option. The unions say that even at the later stage also such an offer had been given by the company which was not availed of by the workmen.

(9) As if that was not enough, there was yet another society formed called the Gaushala Marg Residents Association (Regd.) claiming membership of not only employees of the company, but of some non-employees as well who are stated to be residents as tenants of the company. This association filed a suit on the original side of this Court on 24 May 1989 praying that a decree be passed in their favor declaring that the members of the association and the second plaintiff were the tenants with regard to their residential accommodation allotted to them in the residential complex of the company and then restraining the company from dispossessing them unless otherwise by due process of law. This suit has been filed through Ashok Sharma, Secretary of the association, and second plaintiff claimed to be an employee of the company since 1947 and in possession of a residential quarter since 1958. Along with this suit the plaintiffs filed an application under Order I Rule 8 of the CPC ("Code") slating that there were 185 members of the association who were all tenants in the premises allotted to them and that all of them had the same interest in the subject-matter of the suit and being workmen with limited income and presently out of employment they would be subject to high costs and inconvenience if they were to pursue separate suits. It was also stated that facts pertaining to all the workmen were identical in

nature. plaintiffs, Therefore, sought permission to sue for the benefit of all of 185 members of the association whose names were furnished in the list filed in the court. The company denied the averments made in the plaint and also said that the application under Order I Rule 8 of the Code was not maintainable as those provisions were not applicable. It was alleged that facts and causes of actions, if any, with regard to each of the members of the association were distinct and separate and these members were admittedly asserting separate and independent rights to continue in their respective premises. The company also referred to the settlement arrived at between various labour unions of the workmen of D.C.M. and since the settlement was concluded between the company and the unions comprising all the workmen those unions were necessary parties to the suit. Right of the association to file the suit was also disputed. It was also objected to that in the plaint no facts pertaining to each of the members of the association had been given. Then company said that members of the association through their unions had agreed to vacate the residential quarters under their occupation as per terms of the settlement dated 1 February 1989 and that these members had executed affidavits in that regard which were part of the writ petition No. 2476/88 filed by the company which we have mentioned above. The company said that the undertaking given by the workmen to vacate the quarters was one of the primary considerations which weighed with the company in agreeing to pay additional compensation under the settlement as the redevelopment was dependent on the same. The members of the association, Therefore, could not be allowed to commit breach of their promise and undertaking, so the company alleged. The company also denied that any tenancy was ever created either in favor of the second plaintiff or in favor of any of the employees of the company or any alleged members of the plaintiff association. "The company filed a copy of the license deed executed between the company and the second plaintiff. This is dated 9 January 1976, and between the company and the second plaintiff working in the company as a clerk in the department "time and pay office". This license deed was admittedly executed with other workmen of the company though on different dates and regarding different quarters, and give the status of the workmen. It may be useful to refer to these license deed in fuller detail.

(10) The salient terms of the license deed are as follows :-

(1)The license was granted while the licensee was in the employment of the company and for the sole purpose of the licensee being more conveniently situated in such employment was permitted by the company to occupy and use as a licensee the quarter together with the furniture, fittings, fixtures and effects as per the schedule to the license deed. The legal possession would always remain with the company.

(2)In the event of the company deciding to levy the license fee, the company reserves its right to do so without any notice, and could vary the license fee from time to time at its sole discretion. The license fee could be deducted from the

emoluments due to the licensee. In the case of Jyoti Pershad, the second plaintiff, the did state "at the present the company has decided to charge a nominal sum of Rs.38.00 per month as license fee for the privilege of using the said premises."

(3)The occupation of the premises was a condition precedent of the licensee in the employment of the company. This license would stand revoked on the workmen leaving the employment of the company or on his transfer.

(4)It was specifically stipulated that the license deed would never create or deemed to create any relationship of landlord and tenant between the company and the licensee. The license is at the option of the company and it can forthwith determine the license without assigning any reason or giving any notice or providing any alternative accommodation, even though no default is committed by the licensee and even though he may continue to be in the service of the company.

(5)The license is neither heritable nor transferrable.

(6)Various restrictions are put on the licensee in the use of the quarter. Licensee is barred from keeping any domestic animal, such as cow, buffalo, goat. Licensee is also barred from allowing any person other than his own family members legally dependent upon him to reside in the quarter with him even though such other persons may be his relatives. Without the written approval of the company the licensee could not allow his friends and relatives to reside in the quarter for a period exceeding the fortnight. The licensee is prohibited from permitting any demonstration or carrying on any trade union or political activities in the quarter, nor could he invite any person for this purpose. The company could prohibit entry of any undesirable persons in the quarter licensed to the workman or even in the colony in which the quarter is situated. Licensee was not only to abide the terms and conditions of the license deed but was also required to abide by all such rules and regulations as may be framed by the company from time to time relating to the license or relating to the company's colony in which the quarter is situated. The licensee is also barred from making any alterations, whether of temporary or permanent nature, in the quarter.

(7)The license would cease automatically when the licensee is in receipt of a salary which will include basic and dearness allowance more than Rsr. 1,000.00 , and the moment his salary exceeds Rs. 10"000.00 he was to vacate the quarter with in 15days of his first receipt of such salary.

(11) The learned Single Judge allowed the application of the association filed under Order I Rule 8 of the Code by his order dated 30 August 1990. Then under sub-rule (2) of rule 8, the court was required to give notice of institution of the suit to all persons so interested either by personal service or otherwise as mentioned in sub-rule. On this the court gave the following directions:-

"UNDER Order I Rule 8(2), the Court, at the plaintiffs' expense, has to issue

notice of the institution of the suit to all the persons interested. It may not be desirable in the circumstances of the case to give public advertisement to serve all the persons so interested. A notice by regd. post at the expense of the plaintiffs" seems necessary because the Court is of the view that the expenses incurred by the plaintiffs by public advertisement may be approximately the same as would be incurred by the plaintiffs on service through registered post. Therefore, it is directed that notice of the institution of this suit be given to all such persons, excluding the 7 persons named above and plaintiff No.2, by regd. post returnable on 27th .September, 1990 before the Deputy Registrar. The application accordingly stands disposed of. "

(12) SUB-RULES (I) and (2) of rule 8 of Order I are as under:-

"(1)Where there are numerous persons having the same interest in one suit, - (a) one or more of such persons may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested; (b) the Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested. (2) The Court shall, in every case where a permission or direction is given sub-rule (1), at the plaintiff's expense, give notice of the institution of the suit to all persons so interested, either by personal service, or, where, by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the Court in each case may direct. "

(13) At this stage we might as well note Order I Rules I and 2 which are as under :-

"WHO may be joined as plaintiffs. 1. All persons may be joined in one suit as plaintiffs where - (a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and (b) if such persons brought separate units, any common question of law or fact would arise. Power of Court to order separate trials. 2. Where it appears to the Court that any joinder of plaintiffs may embarrass or delay the trial of the suit, the Court may put the plaintiffs to their election or order separate trials or make Such other order as may be expedient. "

(14) While allowing the application under Order I Rule 8 the court relied upon the decision of the Supreme Court in The Chairman, Tamil Nadu Housing Board, Madras Vs. T.N. Ganapathy, , and the following para in the judgment:-

"The provisions of Order I, Rule 8 have been included in the Code in the public interest so as to avoid multiplicity of litigation. The condition necessary for application of the provisions is that the persons on whose behalf the suit is being brought must have the same interest. In other words either the interest must be common or they must have a common grievance which they seek to get redressed...."

(15) The learned Single Judge noticed that the suit for declaration and injunction was filed by two plaintiffs claiming that the members of the first plaintiff and the second plaintiffs were tenants of the company and sought injunction restraining the company from dispossessing them from their tenanted premises otherwise than by due process of law. The association, i.e. the first plaintiff, had 185 members and were all employees of the company and the plaintiffs had alleged that the facts pertaining to all of them were identical in nature and they had the same interest in the subject-matter of the suit, that being workmen with limited income and presently out of employment could not be subjected to high costs and inconvenience if they were to pursue separate suits. On these averments permission was sought to allow the plaintiffs to sue on behalf of the members of the association. Relying on the averments of the second plaintiff that he was tenant of the two rooms, two kitchens, etc., at initial monthly rent of Rs.17.00 and increased periodically to Rs.45.00 per month, the learned Single Judge prima facie came to the conclusion that tenancy rights in respect of 185 members of the association were claimed in respect of different premises in their occupation, and, Therefore, there seems to be a common grievance against the company with regard to denial of their tenancy rights in view of settlement between the company and the workmen allegedly negotiated on behalf of the plaintiffs by their unions in Writ Petition No. 2476/88. Further noticing the case of the plaintiffs that on account of section 14 of the Delhi Rent Control Act a tenant could not be evicted except on an eviction order made by the Rent Controller and that the agreement entered into by the unions surrendering the tenancy rights of the plaintiffs was void and inoperative, the learned Single Judge was of the view that prima facie it appeared to him that the same could have a common grievance along with all 185 persons on whose behalf permission was being sought to sue in a representative capacity under Order 1 Rule 8. Then the learned Single Judge noticed that during the pendency of the proceedings before him as many as six members of the association and heirs of a deceased member had come before the court disassociating themselves with the suit filed by the association and other plaintiffs. Then the learned Single Judge said that still majority of the persons, i.e., 177, prima facie seemed to be associated with the plaintiffs in their common grievance regarding tenancy rights which were denied by the company. He also said that it yet remained to be seen "whether majority of these persons would like to associate themselves to the alleged common grievance along with the plaintiffs." Therefore, the learned Single Judge granted permission to the plaintiffs "only tentatively under Order 1 Rule 8 of the Code."

(16) In the plaint the plaintiffs had alleged that some of the members were the employees of the company and some were its non-employees. The plaintiffs, of course, alleged that the second plaintiff and members of the association were tenants in their respective residential quarters, and some of the features which they alleged were common to their nature of possession they gave as under:-

"A For the past 30-40 years, the plaintiff No.2 and other persons have been in sole and uninterrupted possession of the premises to the complete exclusion of

any interference by the defendant. B. The rent of the said flat is deducted from the salary of the employees every month and the salary receipt indicates the deduction for the past 30 years to be on account of "rent". In many cases, a separate and exclusive receipt of rent was issued to the allottees. C. The plaintiff No.2, as also several other employees of the defendant- company and others in occupation of flats, have for the past several years on various occasions, constructed various puce structures in the premises under their tenancy. These puce structures are in the nature of construction of kitchen, toilet and even additional rooms. The plaintiff No.2 has himself constructed two rooms in place of the verandahs allotted to him. D. In the case of the plaintiff No.2, as also several other employees, the electricity and water meters stand in the name of the employees themselves. In case the meters stand in the name of the defendant-Company, the employees pay directly to the Desu and the water supply authorities. In many cases, the telephone connections have been installed in favor of the employees. E. That out of 1594 residential apartments, 1294 are in occupation of employees as tenants and 300 are in occupation of those who are not even employees of the defendant-company. The predecessor-in interest of most of these 300 occupants were employees of the defendant-company and upon their death and/or retirement, even though the occupants or legal heirs of the deceased employees were not employees of the defendant Company, tenancies of the premises devolved upon them and the legal heirs continued to be tenants and were so recognised by the defendant-Company. Some of them have been in possession of the premises over 20 years and have been regularly issued in their own rights rent receipts. Retired employees are also staying in the premises and are depositing their rents in the court due to litigations against them. In some cases/possession has passed through three generations. F. Several litigations against occupants of apartments of the defendant company have taken place in various courts in Delhi and the courts have held that the relationship between the parties is one of landlord and tenant and that the tenancies of employees are all protected under the Delhi Rent Control Act. "

(17) The plaintiffs then set out some terms of the settlement and also proceedings in Writ Petitions 1281/85 and 2476/88. The plaintiffs said that their union was not authorised to negotiate their tenancy rights and this was otherwise illegal in view of section 14 of the Delhi Rent Control Act. They said the settlement was, Therefore, not binding on them, and they, thus, sought declaration and restraint on the company as aforesaid.

(18) A tenancy is created by an agreement between the parties. Section 14 of the Delhi Rent Control Act, 1958, protects a tenant and it says that notwithstanding anything to the contrary contained in any other law or contract, no order or decree for recovery of possession of any premises shall be made by any court or controller in favor of the landlord and against a tenant. Then certain grounds are specified under which a controller may, on an application made to him, make an order for recovery of possession of the premises on one of more of those grounds. This Act does not bar a tenant surrendering voluntarily his

tenancy to the landlord. There is also no bar even to the change of nature of tenancy. Thus, a normal agreement of tenancy could be converted into one where the landlord could take a plea that the premises let out to the tenant for use as a residence by reason of his being in the service or employment of the landlord and that the tenant had ceased to be in his service or employment. Parties can even agree to convert a lease into license. In the present case we find that the terms of the license, which we have reproduced above, clearly show that this document does not create a relationship of landlord and tenant between the company and its workman. It, Therefore, could not be said that the settlement dated 1 February 1989 is in any way violative of the provisions of Delhi Rent Control Act, 1958, where under the workmen agreed to surrender their quarters, and, thus, have their respective licenses revoked.

(19) We do not think that the learned Single Judge has taken a correct view of the matter. While disposing of the writ petition [CWP 2476/88 - (1989) 1 D.L. 225] the Full Bench of this Court after having approved the settlement between the company and the workmen said that the company shall be bound by the undertaking given to this Court in the scheme of settlement for payment of compensation to the workmen on the terms and conditions set out in the written agreement filed in the court. The court also said that it would be open to the parties to approach this court for directions. The plaintiffs did not do so and rather chose to file the suit. In the writ petition even after decision this court has been giving directions on applications filed from time to time by the parties. The learned Single Judge, it would appear, did not appreciate the enormity of the situation that the settlement which was sought to be challenged in this suit had the approval of not only of this court but of the Supreme Court as well. Mr. Rohtagi, appearing for the plaintiff, raised a preliminary objection that the appeal against an order made on an application under Order I Rule 8 of the CPC would not be maintainable u/s 10 of the Delhi High Court Act, 1966. He said the impugned order was not a judgment. In support of his submission he relied upon a decision of the Supreme Court in *Shah Babulal Khimji Vs. Jayaben D. Kania and Another*, . In this the Supreme Court said that whenever a Trial Judge decides a controversy which affects valuable rights of one of the parties, it must be treated to be a judgment within the meaning of Letters Patent (para 106). On facts also Mr. Rohtagi said the application was maintainable and impugned order was correct. He relied on the decision of the Supreme Court in *The Chairman, Tamil Nadu Housing Board, Madras Vs. T.N. Ganapathy*, . It is not clear to us how could the learned Single Judge in the impugned order grant a permission only tentatively. Further, in view of the Full Bench decision of this Court mentioned above, the impugned order affects the valuable right of the plaintiffs to have the matter decided by the Full Bench. Such an order is fraught with serious consequences for the company as it puts the whole of the scheme in jeopardy. The company and for that matter any one has a right of a fair and speedy trial. The impugned order bars that right. We are unable to appreciate as to how the first plaintiff which claims to be a society registered under the Societies

Registration Act can file an application under Order I Rule 8 of the Code. Confronted with this Mr. Rohtagi said that the application could be taken to have been filed on behalf of the second plaintiff only. Reliance on the decision of the Supreme Court in *The Chairman, Tamil Nadu Housing Board's* case is of no avail to the plaintiffs. In this case under a certain scheme of the Tamil Nadu Housing Board residential plots were allotted to different persons including those under the low income group. Each allottee executed a separate document containing the same terms and conditions of lease. Then came the supplementary demand from the housing board. This was challenged by the plaintiff who sought permission to sue under Order I Rule 8 of the Code. Objection was raised that these provisions were not applicable and a suit in the representative capacity was not maintainable. The Supreme Court observed that all the allotments in the colony were made under the same scheme and all the relevant facts were common, and that the basis of the impugned supplementary demand was equally applicable to all the allottees and the plea of the plaintiff was available to all of the parties. The court said that the trial court was, Therefore, right in permitting the plaintiff to proceed under Order I Rule 8 of the Code and in such a situation nobody could complain any inconvenience or injustice, and rather the housing board was saved from being involved in unnecessary repeated litigation. That, we are afraid, is not the case here. About 6000 workers of the company are involved who would be interested in the outcome of the suit if we go by the allegations in the plaint. The impugned order is erroneous when it does not take into consideration all these interested persons for the purpose of issuing notice to them under sub-rule (2) of rule 8. Moreover, facts would be different in respect of each of the members of the association, the first plaintiff. They have no common interest and no common grievance. Some are employees and some are ex-employees of the company. Some are even the legal heirs of the deceased employees. Different employees have their different constructions in the quarters allegedly given on rent to them. Some have their own electric meters, others have not. In the case of some employees litigations are pending in the courts and in others it is not so. This would be apart from the fact that all employees did not come to occupy the quarters on the same day, or are paying the same rent. All these factors and others should have put the learned Single Judge on guard that a trial of such a suit with diverse allegations could be an impossibility. As a matter of fact what we find, the provisions of Order I Rule I would, perhaps, be applicable in this case, and certainly not those of Order I Rule 8 of the Code. When an application under Order 1 Rule 8 is filed the court must also see the suitability and bona fides of the plaintiff as well which is lacking here. The impugned order dated 30 August 1990 of the learned Single Judge, Therefore, has to be set aside. Whether the members of the plaintiff association, who got a great deal of retrenchment compensation, were in a position to pay court fee or not has not been gone into by the learned Single Judge. In a suit like this, court fee should be only Rs. 13.00 or Rs.19.50.

(20) We find the settlement is for the benefit of all the workmen and they are all

bound by it. Even if some of the workmen were not party to the settlement in not having signed the same they will also be bound by the settlement. This would be so as per judgments of this Court in C.W. Ps. 1281/85 and 2476/88 and that of the Supreme Court in appeals there from. Reference may also be made to the decisions of the Supreme Court cited at the bar and these being *Amalgamated Coffee Estates Ltd and others v. Their Workmen and others*, 1965 II L.L.J. 110; *The Bata Shoe Co. (P) Ltd. Vs. D.N. Ganguly and Others*, ; and *Herbertsons Limited Vs. The Workmen of Herbertsons Limited and Others*, . In the last mentioned case the appeal was by the employer against an award given by the industrial tribunal in a reference brought about by the second respondent union on behalf of all the workmen. While the appeal was pending most of the workers left the second respondent union and joined the third respondent union. The employer recognised the new union. The employer then entered into a memorandum of settlement u/s 18(1) of the I.D. Act with the third respondent union in substitution of the award under appeal. The third respondent was added as a party in the appeal before the Supreme Court. On objection of the second respondent union that the settlement was not valid and not binding on its members and that it was not fair and just, the Supreme Court referred this matter to the industrial tribunal for its examination. There were 200 and odd workmen and out of these 55 owed allegiance to the second respondent union. The industrial tribunal did not wholly approve the settlement. The appeal was then heard by the Supreme Court and the second respondent union contended that the appeal be heard on merit disregarding the settlement altogether. The court, however, upheld the settlement as fair and just and ordered that the award of the tribunal be substituted by the settlement. The court referred to its earlier decision in *Amalgamated Coffee Estates* (supra). The court said that a voluntary settlement, if fair and just, could be allowed to be binding on all the workers even if a very small number of workers were not members of the majority union. The court also said that when a recognised union negotiates with an employer the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognised union, which is expected to protect the legitimate interests of labour, enters into a settlement in the best interests of labour. This would be the normal rule where there are no allegations of mala fides, fraud or even corruption or other inducements. The settlement itself notes that one of the trade unions which was also a respondent in both the writ petitions (C.W.P. 1281/85 and C.W.P. 2476/88) did not sign the settlement and did not appear in the proceedings and as such was not opposing the settlement.

(21) We find no merit in the application (C.M. 6482/93) of the society, i.e, D.C.M. Residents and Shopkeepers (Regd). As to how the land which belongs to the D.D.A. is to form part of the development scheme, the Supreme Court has already given directions in its order dated I May 1991. We do not find any fault on the part of the company in implementing the settlement. Rather we find that spokes have been put in in the smooth working of the settlement dated I

February 1989 by filing diverse litigations by various parties. This society was formed only in July 1992. Members of the society were already members of the trade unions which were signatory to the settlement. We find this application to be wholly mala fide and the company appears to be right in its contention that the sole purpose in filing this application was to extract more money from it. We think in a case like this we should impose costs on the office bearers of the society. Their names as given to us at the time of hearing were Mr. K.D. Singh (President), Mr. Prem Prakash Gupta (Vice President), Mr. R.D. Sharma (Secretary), Mr. J.P. Sharma (Treasurer) and M/s. Ram Prakash, Sewa Nand Sharma (both executive members). The settlement is dated 1 February 1989 and the present application had been filed only on 26 August 1993. There was no occasion for the applicant to be impleaded as a party to the writ petition which has long since been decided. Parties can, however, approach this Court only for directions in view of the judgment of this Court in (1989) 1 D.L. 225.

(22) In the end we may note that the settlement arrived at with solemn undertaking of both the parties and having the approval of this Court and the Supreme Court cannot be just thrown to winds because some workmen have mala fide intentions. The company needs justice as well. Having said all this we are of the opinion that steps are to be taken for implementation of the settlement dated 1 February 1989. We, Therefore, give the following directions :-

(1) Those who have abided by the settlement shall be given further payment as per settlement forthwith.

(2) Without prejudice to the award given by the two advocates, the time for vacation of the quarters is extended till 31 October 1993. (Earlier the workmen were to vacate their respective quarters in October 1992 which time was extended to 15 May 1993 and then to 21 June 1993.)

(3) In the case of those workmen who have not vacated the quarters and have been given time till 31 October 1993, the amounts due to them as per settlement shall be deposited by the company in this Court and Registrar shall take out short-term deposits. These amounts shall be paid to the workmen if they voluntarily surrender the possession of the quarters under their occupation to the company.

(4) A Receiver is appointed to take possession of all the quarters still remaining in the possession of the workmen after 31 October 1993. The possession of these quarters shall be taken by the Receiver with the police aid, if necessary. In this respect a direction is issued to the Deputy Commissioner of Police of the area concerned to provide all necessary assistance to the Receiver for the purpose. The Receiver shall prepare an inventory of the articles found lying in these quarters and shall preserve the same in a place to be provided by the company and subject to further directions of the court. The possession of the quarters, Therefore, shall be handed over to the company by the Receiver. No obstruction shall be caused to the Receiver in the discharge of his duties by anyone.

Necessary secretarial assistance shall be provided to the Receiver by the company.

(5) Mr. S.P. Gupta, Advocate, 143, Lawyers" Chambers, Delhi High Court, New Delhi, is appointed as Receiver. He shall be paid tentatively a sum of Rs. 10,000.00 as his fee every month which shall be exclusive of all the expenses. He shall start functioning from 1 November 1993. The fee and expenses shall be payable by the company in the first instance and these again shall be subject to further orders of the Court. Workmen who do not vacate their quarters by 31 October 1993 shall share the expenses incurred on the Receiver in such proportion as may be determined by this Court. After deducting this amount the balance amount deposited in this Court shall be paid to them.

(23) CM. No. 5695/93 is disposed of in these terms. F.A.O.(OS) 217/90 is allowed with costs. Counsel fee Rs.2,500.00 . C.M. No. 6482 of 1993 is dismissed with costs which we quantify at Rs.3,000.00 which shall be paid equally and personally by each of the six office bearers of the applicant society whose names have been given above.