

(1997) 10 DEL CK 0001

In the Delhi High Court

Case No : Civil Miscellaneous Appeal No. 121 of 1995 and Civil Writ Appeal No. 2476 of 1988

Delhi Cloth Mills Limited

APPELLANT

Vs

Lt. Governor

RESPONDENT

Date of Decision : 23-10-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 6 AD 565 : (1998) 71 DLT 70 : (1997) 43 DRJ 525

Hon'ble Judges : R.C. Lahoti, J;J.K. Mehra, J

Bench : Division Bench

Advocate : Ravinder Sethi, Sanjeev Anand, Kajal Chandra, H.K. Pathak, S.K. Saneja, R.K. Sharma, A.J. Madan, P.K. Chakravorty, R.H. Pancholi, P.S. Khandelwal and Radhey Shyam, for the Appellant;

Judgement

J.K. Mehra, J.

(1) This is an application filed by the petitioner for directions to the Receiver to proceed against all ex-employees of the petitioner company who are in occupation of the quarters which they have not so far vacated pursuant to this Court's judgment dated 1.10.1993 which has since been upheld by the Hon'ble Supreme Court.

(2) Ms. Asha Jain Madan, counsel for M/s D.K. Sudan and Dr. B. D. Kaushal submitted that the cases of these persons who happen to be senior executives in companies of the group covered by scheme of arrangement sanctioned by this Court under Sections 391 and 392 of the Companies Act, are quite distinct and different. As such it was decided to hear these persons separately. The facts giving rise to the controversy are as under :-

(3) A textile mill under the name and style of Delhi Cloth Mills was set up in the year 1889 on a land area of about 63 acres of which the mill complex was occupying 24 acres and a little over 42 acres was used to put up a residential

colony for the company's, complex. The mill continued to work until the Master Plan of Delhi came into force in September, 1962 wherein Delhi Cloth Mill and its residential colony were shown to be in non-confirming use and in the said Master Plan, the area was shown for being used for flatted factories and residential group housing. On 1.6.1981, the petitioner company was asked to shift its Delhi Cloth Mill from its location. Keeping in view the said provision of Master Plan and on being required to shift, the petitioner company applied to Delhi Administration on or about 27.3.1985 for permission to close its Delhi Cloth Mill. The said permission was promptly refused in the middle of April, 1985. This was followed by the petitioner company moving a Writ Petition being No. 1281/85 wherein the decision of Delhi Administration declining permission to close was challenged. That petition was referred to Full Bench. However, while the said writ petition was still pending, counsel for Union of India, Delhi Administration and Delhi Development Authority confirmed that the location of Delhi Cloth Mills and its staff quarters was in non confirming use under the Master Plan and that there was no proposal to permit the continuance of the said mill. In the light of this situation, the Management and the workmen representing the unions arrived at a settlement on 27.7.1987 which was filed in the aforesaid Writ Petition No. 1281/85 wherein the petitioner company in addition to the retrenchment compensation, agreed to pay six years' wages by way of additional compensation from the date of closure to its employees making it clear that the company can pay that additional compensation only if it is allowed to redevelop the area for flatted factories and group housing complex. The said settlement was filed in the aforesaid writ petition where after the writ petition was allowed and a direction was given to Delhi Administration to consider the company's application for closure within a period of 60 days in the light of the order made by the Full Bench of this Court.

(4) However, the Lieutenant Governor on behalf of Delhi Administration rejected the petitioner's application and again declined permission to closure. Such order of the Lieutenant Governor was challenged by the company by means of a writ petition, being Cwp No. 2476/88. This writ was referred to a Full Bench for hearing. Again in this writ petition as well, a settlement dated 1.2.1989 was arrived at between the company and the unions representing the workmen. All the unions combined had authorised Late Mr. M.K. Ramamoorthi, Senior Advocate to represent them. The said settlement was filed in the Court, 36 dismissed employees and those who were to retire thereafter and also the persons, who had already retired after 18.6.1987 agreed to accept the settlement on being paid the retrenchment compensation payable u/s 25-F of the Industrial Disputes Act vide addendum to the said settlement dated 8.2.1989. The case was heard by the Full Bench at a considerable length and thereafter the aforesaid settlement and the addendum thereto were taken on record. Full Bench heard all the parties and thereafter accepted the writ petition and issued a direction to the Lieutenant Governor, Delhi to grant permission prayed for forthwith, but not later than 7 days from the date of the order. While disposing of

the matter, Full Bench granted liberty to the parties to approach the Court for directions. Decision of the Full Bench was challenged before the Hon''ble Supreme Court by way of SLP filed on behalf of Lieutenant Governor. The Hon''ble Supreme Court upheld the judgment of Full Bench of this Court and approved the closure of Delhi Cloth Mills and the settlement and addendum while disposing of the SLP of the Lieutenant Governor vide its order dated 27.3.1989. The Hon''ble Supreme Court, after hearing the parties, also upheld the company's right to redevelop its freehold land vide its order dated 13.3.1990.

(5) In the meantime, the Gaushala Marg Residents Association which represented 185 employees, filed a suit for declaration on 24.5.1989 praying that their members be declared as tenants in respect of the quarters allotted to the said employees by the company.

(6) Vide its orders dated 1.10.1993, Full Bench of this Court issued directions regarding vacation of the quarters on payment of compensation and a Receiver was appointed to take possession of the quarters remaining in possession of all the workmen on 31.10.1993 with the help of police aid, if necessary. The Full Bench had also interpreted the document of allotment/license deeds executed between the company and its ex-employees and came to the conclusion that the relationship created was that of licensor and licensee and not that of landlord and tenant. This was also challenged by the said Association before the Hon''ble Supreme Court and this time also, their challenge failed and the Supreme Court upheld the above order dated 1.10.1993 while dismissing the SLP filed by Gaushala Marg Residents Association and Joint Welfare Association, which is a compendious name for all the employees' unions vide its order dated 28.10.1993. In spite of this position a good number of employees/ex-employees have continued to remain in possession of the said staff quarters although majority of them have since vacated. The learned counsel for certain ex-employees and alleged employees raised all the pleas before us which had already been raised and rejected by the Full Bench of this Court and Hon''ble Supreme Court.

(7) Lengthy arguments were advanced on behalf of some of the ex-employees, one of whom, namely Radhey Shyam, at the end of the arguments agreed to vacate on agreed amount being paid to him in terms of the settlement dated 1.2.89, by the Petitioner Management. He had also moved an application, being Cm 4378/96. Pursuant to his agreeing to vacate, he had filed an undertaking to vacate in terms of settlement which has since been accepted by this Court. In the light of this, he has not pressed his objections to the settlement. He has also not pressed his application - C.M. 4378/96 - which stands disposed of as not pressed.

(8) Arguments were advanced by Mr. H. K. Pathak, Advocate on behalf of Mr. Babu Ram Mishra and Chander Dutt. Out of the other ex-employees Mr. P. Chakravorty, Advocate addressed arguments on behalf of a substantial number of ex-employees, who are all members of the Gaushala Marg Residents

Association. Although Mr. Chakravorty had been representing the said Association with a view to protect the interest of its members but at the time of hearing before us, he made it clear that he was arguing on behalf of only the some of employees shown at Serial Nos. 124, 127 to 131, 132 and 153 to 160 out of the list of 159 ex-employees and that he did not have instructions from others. It was not disputed that out of that list, a large number of workers have already vacated the premises in terms of the said settlement and the addendum thereto. Of the persons Mr. P. Chakravorty is seeking to represent, Mr. Girver is stated to have already died and a few others who are listed at Serial Nos. 124, 127 to 131, 132 and 153 to 160, are covered by the addendum dated 8.2.1989 to the settlement dated 1.2.1989. The addendum dated 8.2.1989 comprises of 36 dismissed workmen and those who had retired after 18.6.1987 and on whom notices dated 27.3.1985 had been served. The said settlement and the addendum were followed by an award between the said representatives of the workmen/employees and the Company, who gave further clarifications of the settlement and the addendum and the said award of S/Shri M.K. Ramamurthi and Rajiv Sawhney are stated to have been made rule of the Court.

(9) Mr. Chakravorty laid a lot of stress on his objections to the applicability of the terms of settlement. Mr. H.K. Pathak argued on behalf of Babu Ram Mishra who was one of the members of Gaushala Marg Residents Association and was covered by the settlement, which has since become final after the Hon''ble Supreme Court confirmed the decision of this Court of taking the settlement on record and passing appropriate orders. The workers namely Chander Dutt and Duli Chand who claim to have retired on 26.6.1987 and 5.11.1988 respectively, allege that their litigations before the lower Court are pending wherein their rights are under adjudication. We fail to understand the merit of such argument and also as to why the cases are still pending, particularly in view of the fact that the nature of their occupancy rights has since been placed beyond the scope of any controversy by the decision of Hon''ble Supreme Court upholding the views of the Full Bench of this Court in declaring that all these employees were licencees and not tenants. No Court after such decision, can take a view different from what has already been taken by a Full Bench of this Court, and approved by the Hon''ble Supreme Court. Mr. Chakravorty conceded that all ex-employees were licencees only. He, however, raised various technical objections with regard to the scheme of arrangement under the Companies Act duly sanctioned by this Court under Sections 391 and 392 of the Companies Act whereunder the petitioner company had undergone complete reorganisation by formation of other companies, each one taking over its own assets under the said scheme and employees as well. The said scheme has not only become final but has already been acted upon. He further tried to draw distinction between freehold portion in it and the leasehold land and raised an argument of the lease having been cancelled in respect of 15.03 acres and company having ceased to be the lessee of the head lesser, i.e., Dda and alleged that now it was only that public body, which could seek eviction of those employees under the provisions of Public

Premises (Eviction of Unauthorised Occupants) Act. He also stated that ex-employees were not covered by the settlement. He also urged that Mcd has not yet approved the plans as they have given their conditional approval subject to 27 Objections. The question of sanction of the plans would be a matter between the company and the Mcd and the fact that any objection that subsisted on the basis of the term of settlement, effectively stood clarified by addendum to the said settlement wherein specific dates or vacating the premises were provided which were in no way connected with the date of sanction of plans. He however, conceded that all those pleas which he was raising before us had already been raised by him both before the Full Bench as well as Hon"ble Supreme Court and all were rejected though no specific finding on each plea was returned in the order that was passed. We are afraid that the said pleas after having been raised before Full Bench of this Court and Hon"ble Supreme Court and having not found favor with them, the same cannot be allowed to be re-agitated belatedly at this stage in the present proceedings.

(10) In the case of Babu Ram Mishra, who happens to be one of the terminated employees and in whose case the company had filed an application for approval of such termination u/s 33(2)(b) of the Industrial Disputes Act, the said application was withdrawn by the company during the pendency of the reference. It is clarified by counsel for the company that it was withdrawn after the memorandum of settlement and the addendum thereto referred to hereinabove had been executed as Babu Ram Mishra was also covered there under and Mr. Babu Ram Mishra had also joined in prayer for such withdrawal. On an inquiry from Court, the Management agreed to tender all the compensation in terms of the settlement and addendum even now to such employees who had not collected it including Babu Ram Mishra. An amount of Rs. 39,600.00 was sought to be tendered in the Court, but the workman refused to take it. It is not disputed before us that this workman was actually terminated on 28.5.1986, but in terms of the settlement was deemed to have been reinstated and retired on 7.11.1987 on attaining superannuation and was paid wages up to that date in terms of the said settlement and addendum thereto. It is also admitted that he has also collected all other retirement compensation except for the amount of compensation for vacating the quarter, referred to hereinabove. As this person was also covered under the said addendum and in the light of what is observed above, we consider that no challenge to the rights of the parties can be entertained by way of a reply to a miscellaneous application and hence the pleas raised by Mr. Pathak cannot be sustained and are hereby rejected. Pendency of any appeal does not make available to this person any right against eviction.

(11) Mr. S.K. Sanaja appeared for S/Shri Chander Dutt and Duli Chand. It is accepted that both these persons are members of Gaushala Marg Residents Association which had already challenged the findings of this Court with regard to the rights of the employees by way of SLP which was dismissed on 1.10.1993 by the Hon"ble Supreme Court, who upheld the orders of the Full Bench of this Court. It was also conceded that both these persons were covered under Clause

6 of addendum dated 8.2.1989. All the employees were members of one or the other union, who all had joined together and were known by the compendious name of Joint Welfare Association which was also a party to the aforesaid SLP. In such a situation, I am afraid, same pleas which had already been rejected by the Supreme Court, cannot be allowed to be re-agitated in the present proceedings. Even the pendency of proceedings u/s 630 of the Companies Act or any appeal by company against rejection of its plaint/suit on any preliminary objection cannot ensure to the benefit, of these persons. Hence their objections are also rejected. Same is the position in the case of Mr. Bhagwati Prasad.

(12) The result of the above discussion is that the objections of the employees fail. In the circumstances, the Receiver is directed to take appropriate steps and in doing so he would be free to seek police help in evicting all employees provided the Management of the petitioner company makes payment through the Receiver as per its obligations under the aforesaid settlement dated 1.2.1989 and addendum thereto dated 8.2.1989. Further in all cases where any employee or employees refuse to accept the payment when tendered, the company should deposit that amount in this Court which will be held to the credit of that employee and after the amount is deposited in this Court, the Receiver will be free to evict such employee.

(13) This application is disposed of in the above terms except in the case of two officers namely M/s D.K. Sudan and Dr. B.D. Kaushal as arguments on their behalf are yet to be heard.