

(2020) 06 CAL CK 0117

In the Calcutta High Court

Case No : Criminal Revision (CRR) No. 2590 Of 2019

GE Power India Limited

APPELLANT

Vs

Tapas Kumar Bandopadhyay

RESPONDENT

Date of Decision : 17-06-2020

Acts Referred:

Companies Act, 2013 — Section 452, 452(2)
Companies Act, 1956 — Section 630, 630(1), 630(2)

Citation : (2020) 06 CAL CK 0117

Hon'ble Judges : Tirthankar Ghosh, J

Bench : Single Bench

Advocate : Bikash Ranjan Bhattacharya, Sandipan Ganguly, Soumya Majumder, Ayan Bhattacharya, Bhaskar Mukherjee, Benjani Sahu, Debraj Sahu, Sabir Ahmed, Suddhader Adak, Ali Hassan Alamgir

Final Decision : Allowed

Judgement

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Tirthankar Ghosh, J

The present revisional application has been preferred against the order dated 17-4-2019 passed by the ACJM, Durgapur in connection with Complaint

Case No. C-100455 of 2018 under Section 452 of the Companies Act, 2013, wherein the Ld. Magistrate was pleased to reject the prayer of the

petitioner for delivery of possession of the premises/flat in issue, so preferred under Sub-Section (2) of the Section 452 of the

said Act.

The allegations made in the petition of complaint which was preferred under Section 452 of the Companies Act, 2013 are as follows:-

A) The accused/opposite party was appointed as a Welder by the complainant

company vide an appointment letter dated 11-12-1979 and the said letter contained various terms and conditions of employment, one of which being eligibility for housing accommodation on the terms during the tenure of employment of the accused/opposite party. As per the aforesaid terms the accused/opposite party was allowed housing accommodation of the company in respect of Quarter No. LR-153, ABL Township, Durgapur- 713206.

B) The company allowed the accused/opposite party to occupy the residential premises as licensee which was to be vacated immediately upon the accused/opposite party quitting the service of the company or upon the termination thereof by the company. The terms also included that in the event, the accused fails to vacate the quarter within 24 hours of his quitting service of the company, he shall be treated as trespasser.

C) The accused/opposite party retired from the service of the company on 31-3-2015 and thereafter on several occasions the accused was called upon to vacate the said quarter which he was occupying, since he was no longer entitled to occupy the same by reasons of his superannuation from the employment, however, the accused on one pretext or the other continued to occupy the said quarter.

D) The company thereafter issued a letter dated 12-4-2018 through their advocate calling upon the accused to vacate and handover peaceful possession of the said quarter to the company, but, the accused did not respond to the same and as such according to the complainant the accused was wrongfully and illegally withholding the company's quarter since 31-3-2015, thus the company was compelled to file a complaint against the accused for the offence committed by him under Section 452 of the Companies Act, 2013 for wrongfully withholding company's property.

The present petitioner being the complainant preferred an application under Sub-Section (2) of Section 452 of the Companies Act, in the proceedings thereby praying for a direction from the Ld. Court for the accused to handover possession of the said quarter being LR-153, ABL Township, Durgapur-713206 within such time as Ld. Court deems fit and proper and also prayed for an order of injunction restraining the accused person or its agents and/or servant and/or each one of them from alienating or transferring or creating a third party interest in respect of the aforesaid premises/quarter.

The Ld. ACJM, Durgapur by an order dated 17-4-2019 was pleased to dismiss the application under Sub-Section (2) of Section 452 of the Companies

Act so preferred at the instance of the complainant/petitioner on the ground that the issues so raised cannot be decided at the threshold of the case,

but are to be decided at the conclusion of trial. By the same order the Ld. Court was pleased to dismiss the said application under Section 452 (2) of

the Companies Act.

Mr. Bikash Ranjan Bhattacharya, Ld. Senior Advocate appearing for the petitioner submitted that the accused joined the service of the company in

the year 1979 and during the period of his employment, he was provided with quarter No. LR-153 in ABL Township, Durgapur vide a Leave &

License Agreement. The Opposite party superannuated from his service on 31-3-2015 and thereafter on several occasions the company requested

and also sent letters for vacating the quarter, however, the opposite party requested the company to extend the permission to stay, yet, the opposite

party illegally continued to retain the quarter.

Having no other option the company was compelled to file a Complaint Case under the provisions of Section 452 of the Companies Act and a further

application under Section 452(2) of the Companies Act to vacate the said quarter during the pendency of the said proceedings. The Ld. Advocate also

submitted that the contentions raised by the opposite party particularly with regard to the order dated 21-3-2017 passed in WP 7198(W) of 2017 is in

respect of a scheme which was valid till 30-12-2008 and the opposite party having superannuated on 31-3-2015, which is much after the expiry of the

scheme was in force, is not entitled to get the benefit of any orders passed in the writ petition. Further according to the Ld. Advocate for the petitioner

the said scheme related to those employees who opted for voluntary retirement scheme and the scheme for utilization of company's houses in the

Township. The opposite party having not opted for VRS or the scheme for utilization of company quarter is not entitled to any protection under the

order so passed in WP 7198(W) of 2017. The counter argument so placed by the Ld. Advocate for the petitioner in respect of the contention

advanced by the opposite party that the final settlement amount has not been utilized by the opposite party and as such the possession of the quarter

cannot be said to be unauthorized is without any substance as the law relating to

the issue has been settled by the Honâ??ble Apex Court as well as the High Court at Calcutta. The Ld. Advocate for the petitioner also relied uponT ata Tea vs. Fazlur Rahman reported in 2000 SCC OnLine Cal 563, Metal Box India vs. State of W.B. & Anr. reported in (1997) 2 CHN 423 andG opika Chandrabhusan Saran & Anr. vs. Xlo India Ltd. & Anr. reported in (2009) 3 SCC 342.

The Ld. Advocate for the opposite party submitted that by a Leave & License Agreement the quarter was allotted to the petitioner. As the opposite party was lawfully holding the quarter which was allotted to him, he cannot be said to have wrongfully obtained the possession of the said quarter and as such Section 452 of the Companies Act is not applicable to him. He further submits that prior to his retirement, the previous company, Alstom

Projects India Ltd. introduced a scheme namely scheme for utilization of the companyâ??s houses in ABL Township, 2008 which is as follows:-

â??Scheme shall cover long-term lease for the right to use the companyâ??s own housesâ??flats excluding the land in ABL Township for

residential purposes only by its ex-employees/spouses of deceased ex-employees meeting the eligibility criteria defined herein after at a value fixed by

the Alstom Projects India Limited, Durgapur (hereinafter referred as the Company) â??as is where is basisâ??.

The eligibility of such scheme was also fixed as follows:-

Employees superannuated/separated/early retired from the service of the Company after 31st December 2007 or the spouses of deceased employees

after 31st December, 2007 shall be eligible to apply for a quarter subject to the terms and conditions specified under Clause 4.4. of the scheme.

That, Clause 4.4. of the Scheme is reproduced hereinbelow:

4.4 schedule of the value of the houses and corresponding service charges â?

Type of houses Value of the houses Monthly service charges

LV 82,500 325

RRI 60,500 270

RRII/III 44,000 225

LRI 60,500 270

LRII 57,750 260

LRWW 55,000 260

LVM 60,500 270

TR 1,37,500 550

According to the Ld. Advocate the provisions of the Companies Act so invoked against the accused/opposite party is not applicable as the

quarter/premises is a part of service condition and the scheme so introduced is still continuing and is applicable to superannuated employees, further

the present complainant has extended the scheme to many other employees who have opted for superannuation or early retirement. Additionally the

scheme has not been recalled and thus can be presumed to be still subsisting, therefore, the opposite party is entitled to be covered by the order dated

21-3-2017 passed in WP 7198(W) of 2017. Finally he argues that the provisions of Section 452 of the Companies Act are not applicable in the factual

background of the present case, as the company has not settled the dues of the present accused/opposite party. The Ld. Advocate has relied upon

2002 (3) LLN 1119, a judgment of the Allahabad High Court with the aid of which he tried to substantiate under what circumstances the provisions of

Section 452 are not applicable.

In order to appreciate the rival contention of the parties the order dated 17-4-2019 so passed by the Ld. ACJM, Durgapur is required to be reassessed

in view of the fact that the Ld. Magistrate firstly framed an issue as to whether the accused person was liable to be evicted from the

company's quarter at the threshold of the proceeding pursuant to the terms of such scheme for Leave & License. While dealing with the issue

the Ld. Court accepted that the quarter/premises being occupied by the accused/opposite party belong to the complainant, however, the Ld. Court

disputed regarding no schedule being available along with the complaint. Additionally, the Ld. Magistrate presumed the existence of the Agreement for

Leave & License which was entered between the parties and opined the same to be valid and binding upon both the parties. Nevertheless, the Ld.

Magistrate opined that the complainant did not allege in the complaint that the accused misappropriated the immovable property belonged (read

belonging) to the complainant or the accused person wrongfully obtained the possession of the company's quarter. The Complainant has only

alleged that the accused person has wrongfully withheld the possession of the

company's quarter. The Ld. Magistrate thereafter relied upon the judgment of the Allahabad High Court and concluded by holding the contentions in the application under Section 452(2) of the Companies Act cannot be decided at the inception of the case and dismissed the said application.

The petitioner being aggrieved by the aforesaid order dated 17-4-2019 passed by the Ld. ACJM, Durgapur approached this Court, from an assessment of the materials so placed before this Court, certain facts are admitted which included the accused/opposite party was occupying the said quarter being LR-153, ABL Township, Durgapur- 713206, the said quarter was allotted pursuant to the appointment of the opposite party and was a part of his entitlement because of his employment in the complainant-company, the title of the complainant is of a better standard than that of the accused/opposite party. The accused/opposite party in course of his argument before this Court as also in the affidavit dated 27-1-2020 filed before this Court did not dispute the date of his appointment or his superannuation which are respectively 11-12-1979 and 31-3-2015. The accused/opposite party attempted to take aid of a scheme which specifically states its validity up to 31-12-2008, the accused/opposite party was in service during such period and as such cannot be entitled to a scheme which ended on 31-12-2008. The other schemes so referred to by the opposite party are also stating the period up to which the validity of schemes are applicable. The accused/opposite party could not produce any document before this Court that at the date of superannuation, i.e. March, 2015 there existed any scheme under which he was entitled to get the benefit for retaining the quarter No. LR-153, ABL Township, Durgapur-713206, which was allotted as per the terms of his service.

It would be now apposite to rely upon the different judgments which have been cited at the Bar. In Metal Box (supra) relied upon by the Ld.

Advocate for the petitioner, the ratio was arrived at after taking into account the provisions of Section 630(2) of the Companies Act, 1956 which were given effect to during the pendency of the criminal trial and the employee was directed to vacate the flat.

In Tata Tea Ltd. (supra) it was held by this Court that it is in consonance with the view of the Hon'ble Apex Court to pass an order under Section 630(2) of the Companies Act, 1956 to direct an employee or past employee to

vacate the flat or to restore the company's property to the company even before the Magistrate trying the case under Section 630(1) of the Companies Act, 1956 formally disposes of the criminal case against such employee. Thereafter the High Court proceeded to direct the employee to vacate the bungalow which was occupied by him, within a period of one month.

In *Gopika Chandrabhushan Saran* (supra) the Hon'ble Apex Court after taking into account the various precedents was of the opinion that the provisions of Section 630 of the Companies Act, 1956 have been incorporated for the purpose of wrongfully withholding the companies' property and irrespective of any civil suit pending between the parties, a finding can be arrived at by a criminal Court. In the factual backgrounds of the case the Hon'ble Apex Court was pleased to affirm orders/findings passed by the Courts below thereby directing the employee to vacate the premises.

I have also taken into account the judgment so relied upon by the Ld. Advocate for the opposite party being *Smt. Bir Bala Gupta* (supra), wherein the Allahabad High Court was of the opinion that it was only when the petitioner (employee) moved the authority concerned for non-payment of gratuity, the company deposited the amount and requested the authority to pay the same after she vacated the quarter, and to that effect there was a standing order and the company failed to discharge its obligation in as much as it did not pay the gratuity, thus the Hon'ble Allahabad High Court concluded that the petitioner (employee) was not liable to be punished under provisions of Section 630 of the Companies Act, 1956.

I have taken into account the facts alleged in the complaint and the contentions advanced by the complainant in the application under Section 452(2) of the Companies Act which applied in respect of pending proceedings, having considered the period of service, the scheme referred to, the quarter/premises being part of the entitlement in terms of service and the settled principles of law which have spelt out the proposition regarding the provisions of Sub-Section (2) of Section 452 of the Companies Act (earlier Sub-Section (2) of Section 630 of the Companies Act, 1956), I am of the opinion that the accused/opposite party is unnecessarily dragging the issue relating to vacating the quarter/premises belonging to the company on different pretext. In view of the conduct of the accused/opposite party and the

provisions of law along with the settled principles as has been decided by the Honâ??ble Apex Court as also this Court, I hold that the order dated 17-4-2019 passed by the Ld. ACJM, Durgapur is not in consonance with the principles of law and is liable to be set aside.

As such, the order dated 17-4-2019 passed by the Ld. ACJM, Durgapur is hereby set aside and CRR 2590 of 2019 is allowed.

In view of the aforesaid findings this Court ordinarily would have directed the accused/opposite party to vacate the quarter being No. LR-153, ABL

Township, Durgapur- 713206 immediately, however, having regard to the present socio economic conditions because of the pandemic which has

spread world wide, this Court feels that the accused/opposite party must be granted a breathing time of one year, accordingly the accused/opposite

party would be entitled to retain the aforesaid quarter till 30th June, 2021. In case the accused/opposite party on or before 30th June, 2021 do not

vacate the aforesaid quarter/premises, on 1st July, 2021 the Ld. ACJM, Durgapur would invoke the provisions of law for giving effect to this order by

directing the police authorities to take appropriate steps.

Department is directed to communicate this order to the Ld. ACJM, Durgapur.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.