

(2007) 07 DEL CK 0073

In the Delhi High Court

Case No : Writ Petition (C) No's. 2015 of 2001 and 18974 of 2006 and CM (M) No. 553 of 2007

India Trade Promotion Organisation

APPELLANT

Vs

International Amusement Limited
 Delhi Metro Rail Corporation Vs Union of India (UOI) and Others
 International Amusement Limited Vs India Trade Promotion Organisation

RESPONDENT

Date of Decision : 16-07-2007

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 11(6), 16, 17, 2
Civil Procedure Code, 1908 (CPC) — Order 22 Rule 10, 9
Constitution of India, 1950 — Article 136, 226, 227
Delhi Rent Control Act, 1958 — Section 14
Easements Act, 1882 — Section 60
Partnership Act, 1932 — Section 69
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 15, 3, 5, 7, 9
Special Courts Act, 1979 — Section 9A
Transfer of Property Act, 1882 — Section 108

Citation : (2007) 142 DLT 342 : (2007) 3 ILR Delhi 69

Hon'ble Judges : Dr. M.K. Sharma, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Valmiki Mehta and Ravi Sikri, in WPC 2015/2001, V.K. Shali, in WPC No. 18974/2006, Arun Jaitley, Rajiv Nayar and Parag Tripathi, Maninder Singh, Parthibha M. Singh, Kirtiman Singh, Biswajit Dubey and T. Singhdev, in CM M 553/2007 and R.K. Anand and Rakesh Khanna and P.H. Pareskh, -President of SCBA and Pareena Swarup, Secretary, SCBA in WPC No. 1771/200, for the Appellant; Arun Jaitley, Rajiv Nayar and Parag Tripathi and Maninder Singh, Parthibha M. Singh, Kirtiman Singh, Biswajit Dubey and T. Singhdev, in WP(C) 2015/2001, S.K. Mishra and Suresh Kait, in WP(C) No. 18974/2006, Ravi Sikri, in WP(C) No. 18974/2006, J.R. Midha, Standing Counsel and Niraj Singh, S. Sirish Kumar and Amandeep Joshi for Respondent No. 3 in WP(C) No. 18974/2006 and Arun Jaitley, Rajiv Nayar and Parag Tripathi and Maninder Singh, Parthibha M. Singh, Kirtiman Singh, Biswajit Dubey and T. Singhdev for Respondent No. 4 in WP(C) No. 18974/2006, Valmiki Mehta and Ravi Sikri in CM(M) 553/2007 and S.K. Mishra and Suresh Kait, for Respondent Nos. 1 and 2 in WP(C) No. 1771/2007, Ravi Sikri, in WP(C) No. 1771/2007, Arun Jaitley, Rajiv Nayar and

Judgement

Mukundakam Sharma, C.J.—As the factual and legal issues arising for our consideration in all these matters are similar, we propose to dispose of the petitions by this common judgment and order.

2. Before we discuss the issues that arise for our decision in these proceedings, it would be necessary to set out brief facts necessary for adjudication of the issues that arise for consideration.

Background

3. Negotiations began for allotment of land for establishment of an amusement park in Delhi on a portion of land given on lease by the Land and Development Officer for which Trade Fair Authority of India (rechristened as "India Trade Promotion Organisation, hereinafter referred to as ITPO) considered the request of International Amusement Limited (for short "IAL"). The said park was to be established at Pragati Maidan.

4. On 28th January, 1984, Trade Fair Authority of India (for short "TFAI") took a final decision to allot land to IAL on license basis, as TFAI was a lessee under the Government of India in respect of the aforesaid land on which it was decided to establish an amusement park. On 6th December, 1984 a letter was written by the TFAI to IAL intimating them that initially the area would be licensed to IAL on the similar lines as licensed to State Governments and Central Ministries who had/are setting up permanent pavilions at Pragati Maidan. It was also stated therein that the premises would be handed over to IAL on permanent lease basis subsequent to the renewal of lease deed of TFAI.

5. On 30th March, 1987, a letter was written by the Ministry of Urban Development, Government of India to TFAI on the subject of allotment of land to TFAI in Pragati Maidan complex. In the said letter it was intimated that the President of India was pleased to sanction allotment of a plot of land in the Pragati Maidan complex New Delhi to TFAI. One of the conditions was that the allotment would be subject to the terms and conditions as given in the perpetual lease deed in favor of TFAI. Clause 2.ii of the said letter indicated that the land with permanent buildings measuring about 40 acres may be allotted to the TFAI on a 99 years lease on payment of premium at the rate of Rs. 6 lacs per acre and annual ground rent at the rate of 2.5% of the said premium. It was further stipulated in Clause 2.iv of the said letter that the TFAI had licensed out an area of about 16 acres in Pragati Maidan Complex to M/s. International Amusement Limited, for setting up an amusement park. It was also stated that for this land

the TFAI would be charged an annual license fee at the rate of Rs. 400 per acre commencing from the date on which the license was granted by them to the company. Another condition therein was that the rate of license fee would be subject to revision from the year 1989-90. Thus the lease or its terms on which land was allotted to TFAI, stipulated that IAL was a licensee, who was permitted to operate from the portion allotted subject to conditions.

6. A license deed came to be executed in form of an agreement on 10th November, 1987 between the TFAI and IAL. In Clause 2 of the said agreement it was stipulated thus:

The license shall be for a period of 3 years commencing from 14th November, 1984. Further extension of license shall be at the sole discretion of the licensor. The period from 7th August to 13th November, 1984 shall be deemed as preparatory arrangement period.

7. Another relevant clause which may have bearing on the facts of the present case was the stipulation in Clause 19 that the TFAI had reserved right to withdraw any area licensed to the licensee at any time without assigning any reason subject to the license fee being reduced proportionately. Clauses 24, 25, 27 and 28 are also relevant and Therefore contents thereof are extracted hereinbelow:

24. Any renewal or extension of license is the discretion of the authority.

25. That after the expiry or termination/cancellation of license the licensor shall have the right to remove all the rides and hand over the premises to licensor, in original condition or as mutually agreed after all accounts due to the licensor are paid by the licensee immediately failing which the licensor will be entitled to 18% interest on the amount due.

26. In case of violation of any of the conditions of the license the licensor can terminate/cancel the license by giving one month notice to the licensee and the Estate Officer Pragati Maidan Trade Fair Authority of India can initiate action as per Clause 29.

27. If any dispute or difference or question of interpretation shall arise between parties hereto in any matter in any way arising out of this agreement or this license deed or as to their rights, duties and liabilities in this contract or then and in every such case the matter under dispute shall be decided through arbitration by an arbitrator appointed by the Chairman, Trade Fair Authority of India (the venue of arbitration being New Delhi), whose decision shall be final, conclusive and binding upon the parties and to the provision of Indian Arbitration Act, 1940 shall apply. Reference to arbitration as above shall be made within 6 months of the arising of the rides to refer to arbitration. The licensee shall continue to perform their duties with due diligence notwithstanding the fact that a dispute has been referred to arbitration or any difference or dispute had arisen.

28. The license will be subject to the jurisdiction/Estate Officer of TFAI who will

have the powers to exercise under the Public Premises (Eviction of Unauthorised Occupants) Act.

8. Thereafter, the license was renewed from time to time. In the meantime, TFAI came to be substituted by ITPO, who became the licensor in respect of the aforesaid land allotted to IAL. It is to be mentioned here that ITPO itself was a lessee under the Government of India as was the erstwhile TFAI. On each renewal, the license fee payable was also revised upwards from time to time which was being paid by the IAL to ITPO.

9. The last such license agreement with the IAL for running and operating the amusement park known as "Appu Ghar" is dated 6th November, 1995. It is stipulated in the said license agreement that IAL was granted the license by the Licensor for running and operating the amusement park known as "Appu Ghar" from 14th November, 1984 to 13th November, 1987 under the license agreement dated 10th November, 1987 and continued with some modifications from 14th November, 1987 to 13th November, 1992. There was some amendments/modifications in the terms and conditions. The aforesaid license agreement was granted for a period of seven years commencing from 14th November, 1992 to 13th November, 1999. One of the modifications in the terms of license agreement was in respect of a provision of Clause 26 which provides that after the expiry or termination or cancellation of the license, the licensee is required to remove all the rides and fittings and vacate the premises and hand it over to the licensor forthwith in the original condition or as mutually agreed to latest by 13th November, 1999. Clauses 27 and 28 of the said agreement are also relevant for our purpose and Therefore, contents of the same are also extracted herein below:

27. The licensed premises are public premises as defined in the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and fall within the jurisdiction of the Estate Officer, Pragati Maidan.

28. In case of any dispute arising out of or in connection with this agreement the disputes shall be referred to the sole arbitration of the Chairman, India Trade Promotion Organisation or his nominee whose decision/award shall be final, conclusive and binding on the parties. Application for reference to arbitration shall be made by either party within two months of arising of the dispute.

Thus clause relating to applicability of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 was interchanged with the arbitration clause. This modification is of some relevance as it is a settled principle of interpretation of documents that in case of irreconcilable conflict between two clauses, the clause which is earlier should be given preference over the clause which follows).

10. A schedule of the licensed premises is also annexed to the license agreement, which reads as follows:

Land measuring approx. 14.94 acres and marked in red on the layout plan at annexure-I and bounded on the North by boundary wall dormitories East by

Traffic Police Pavilion Sought by Hall of Technology (New Exhibition complex) and Meena Bazar West by Mathura Road and containing buildings, green spaces, structures, etc as shown on the plan.

11. On 2nd September, 1999 a letter was issued by the ITPO to IAL intimating them that the license agreement was coming to an end on 13th November, 1999 and, Therefore, IAL was called upon to vacate the premises on expiry of the license period. On receipt of the aforesaid letter, the IAL wrote a letter to the ITPO requesting that they had invested huge sums of money as they are permanent allottees. Consequently, they invoked the provisions of Clause 28 of the aforesaid agreement and called upon Chairman of ITPO to enter upon arbitration and to give his award following the procedure laid down in the Arbitration and Conciliation Act, 1996. The aforesaid request of IAL was considered by the ITPO and the prayer for appointment of an arbitrator was rejected on the ground that it was an admitted case that the premises in Pragati Maidan for running Appu Ghar was given to IAL on license basis and that on expiry of the license period IAL was required to vacate the premises. Consequently, it was held that IAL cannot take up the plea that it was a permanent allottee of the aforesaid premises. It was Therefore stated that there was no dispute at all between the parties which could be agitated and raised by IAL and the question of grant of the said request did not arise.

Proceedings and orders

12. Since IAL failed to vacate the premises on expiry of the license period, ITPO invoked the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short PP Act) and notice was issued to IAL. The said notice is dated 18th November, 1999. Notice was served upon IAL whereupon they filed an application u/s 8 of the Arbitration and Conciliation Act, 1996 before the Estate Officer for referring the matter for arbitration.

13. A petition u/s 9 for interim measures was also filed before this Court on 27th March, 2000.

14. The Estate Officer, before whom the application u/s 8 of the Arbitration and Conciliation Act was filed by the IAL, considered the said application and by order dated 28th March, 2000 rejected the same on the ground that the Estate Officer exercises jurisdiction as provided for under the provisions of the P.P. Act.

15. The aforesaid order passed by the Estate Officer was challenged by the IAL by filing a writ petition which was registered as WP(C) 1425/2000. The learned Single Judge took up the aforesaid writ petition and by order dated 1st May, 2000 dismissed the same. The learned Single Judge considered and interpreted the provisions of Clauses 26, 27, 28 and 29 of the license agreement and on a reading of the said provisions, it was construed that the parties had specifically provided that PP Act shall be applicable. It was held that the license agreement itself was made subject to the jurisdiction of the Estate Officer under the PP Act. The learned Single Judge also considered Clause 26 of the license agreement

that provides for removal of rides and fittings and vacation of the premises and handing over of possession to the licensor in the original condition. In that view of the matter the learned Single Judge held that the intention of the parties and the scheme of the license deed appears to be that disputes/claims for damages that arise during the term or period of the license were referable to arbitration, but upon cancellation/termination or expiry of the license period, non-vacation or failure to hand over possession of the premises would be matters actionable only under the PP Act.

16. The aforesaid order passed by the learned Single Judge became subject matter of review, when the learned Single Judge passed an order dated 11th December, 2000 wherein the learned Single Judge observed that the petition under Sections 9 and 11 of the Arbitration and Conciliation Act pending on the Original Side of this Court would be heard independently and without in any manner influenced by the observations made by the learned Single in his judgment dated 1st May, 2000 dismissing the writ petition.

17. IAL had filed an application, being A.A. No. 111/2000 u/s 11(6) and a petition, being OMP No. 63/2000 u/s 9 of the Arbitration and Conciliation Act. The aforesaid application and petition came up for consideration before the learned Single Judge and both were disposed of by judgment and order dated 23rd January, 2001. The learned Single Judge on consideration of the arbitration agreement held that the license agreement between the parties had expired by efflux of time but still the arbitration clause was of widest amplitude and survives despite the expiry of the license agreement and, Therefore, could be invoked by IAL. It was also held that the said agreement would be applicable as the request for appointment of an arbitrator was made by IAL on 11th November, 1999. i.e. during the currency of the agreement. The learned Single Judge noted the submissions of the counsel for IAL that it was imperative for the Chief Justice or his nominee to bear in mind the legislative intent that the arbitral process should be set in motion without any delay whatsoever and all contentious issues have to be left to be raised before the arbitral tribunal itself. Arbitral tribunal was competent to decide all questions relating to and regarding scope and jurisdiction of the arbitrator and the ambit of the arbitration clause. The aforesaid contention was advanced relying upon the judgment of the Supreme Court in Konkan Railway Corpn. Ltd. and Others Vs. M/s. Mehul Construction Co., . The learned Single Judge by judgment and order dated 23rd January, 2001 allowed the application by appointing an arbitrator for deciding the disputes between the parties through the process of arbitration but at the same time observed that the proceedings under the PP Act which are pending against IAL would continue and on conclusion of the said proceedings it would be open to IAL to file an appeal, if required. It was also held by the learned Single Judge that if any interim protection is required to be obtained by IAL, such request could be made before the Arbitrator as provided for u/s 17 of the Arbitration and Conciliation Act. While passing the aforesaid order the following observations were made by the learned Single Judge:

I must, however, record that the learned Additional Solicitor General who appeared on behalf of the respondent had contended that the petitioner had no right to stay on in the premises nor could the petitioner be thrust upon the respondent. It was contended that the petitioner can always be compensated in terms of money if it is eventually found that the petitioner is entitled to continue in the premises. It was also contended that the arrangement between the parties was nothing more than a simple commercial contract which could be determined. In the present case, the contract has not been determined but has come to an end by efflux of time and the issue whether the petitioner can continue to remain in the suit premises cannot be decided by the Arbitrator.

18. The aforesaid decision of the learned Single Judge came to be challenged by ITPO before this Court by filing a writ petition, being WP(C) No. 2015/2001, on which also we have heard the learned Counsel appearing for the parties. During the course of arguments our attention was drawn to the order dated 12th April, 2001 passed in WP(C) No. 20152/2001 by the Division Bench wherein, in para-2, it was recorded as under:

Counsel for the appellant prays that the proceedings before the Estate Officer appointed under the Public Premises (Eviction of Unauthorised Occupants) Act be allowed to continue and the same be finally disposed of. He agrees that if the order of the Estate Officer is in favor of the appellant, the appellant will not execute the same without seeking permission of this Court. In view of this statement made by the counsel for the appellant, let the proceedings before the Estate Officer be continued and finally disposed of. The appellant will not execute the order if it is in its favor without leave of this Court.

Further Developments

19. During the pendency of the aforesaid proceeding in this Court, there have been further developments which are also required to be noted at this stage. Vide letter dated 6th January, 2005, L and DO informed ITPO that a portion (13373 sq.mtr.) of the land, which has been given to ITPO on lease and where Pragati Maidan and Appu Ghar are situated, has been resumed for construction of Metro Station by the Delhi Metro Rail Corporation. ITPO conveyed the said decision to IAL vide its letter dated 11th January, 2005 and directed IAL to vacate the said land and to hand over the same to the representative of the L and DO. Part of the said land has been handed over to DMRC.

20. Department of Commerce, Ministry of Commerce and Industry, Government of India, constituted a five member Committee to resolve the disputes between ITPO and IAL. The Committee submitted a report recommending that the ITPO may explore possibility of a negotiated settlement with IAL. However, subsequent to the said recommendation, Ministry of Urban Development allotted 6202 sq.meters of land at Pragati Maidan to Delhi Metro Rail Corporation for construction of Pragati Maidan Station. Consequently, Delhi Metro Rail Corporation moved an impleadment application, being CM No. 9528/2006, in

WP(C) 2015/2001, which is also taken up for consideration along with these proceedings. Besides the said allotment to DMRC, Ministry of Urban Development, vide its letter dated 4th August, 2006, allotted 12.19 acres of land at Pragati Maidan to Supreme Court of India for construction of office complex, auditorium etc. The said letter incorporates the following clauses, which are relevant for our purpose:

iv. The allotment is on as is where is basis subject to change of land use from "District Park and Recreation" To "office". The allottee shall utilise the land in accordance with the Master Plan norms and other relevant statutory provisions.

v. The allotment would be subject to the final decision of the Court in the pending litigation between ITPO and Appu Ghar regarding renewal of Lease Deed and settlement of past arrear of dues owed by Appu Ghar to ITPO.

21. Consequent to the allotment of land to Supreme Court, the Supreme Court Bar Association filed an application for impleadment in this Court in WP(C) 2015/2001, on which also we have heard the learned Counsel appearing for the parties. A separate writ petition has also been filed by them.

22. All the aforesaid proceedings were argued at length and indepth by the counsel appearing for various parties. We have perused the relevant records placed before us and by this common judgment and order, we record our reasons and the decision, in the light of the submissions of the counsel for the parties.

Contentions

23. First of all, we may record the submissions and contentions raised by Mr. Arun Jaitley, learned senior counsel appearing for IAL. It was submitted that the writ petition filed challenging the order of the learned Single Judge referring the disputes between the parties to the Arbitrator is not maintainable inasmuch as the decision rendered by the learned Single Judge is a judicial order and not an administrative order as the decision in Konkan Railway Corporation (supra) stands over-ruled by the Supreme Court in the case of SBP and Co v. Patel Engineering Limited and Anr. reported in (2005) 128 Company Cases 465. The next submission made by Mr. Arun Jaitely was that the provisions of the Arbitration and Conciliation Act would over-ride the provisions of the PP Act and, Therefore, as long as the arbitration proceedings are not decided and adjudicated upon finally, no order could be passed by the Estate Officer under the provisions of the PP Act. He also submitted that the provisions of Order XXII Rule 10 of the Code of Civil Procedure, 1908 do not apply to the present case, merely because the lease between the Government of India and ITPO stands terminated. It was submitted that the proceedings pending at the instance of ITPO come to an end automatically with the cancellation of the lease in respect of the land allotted to ITPO. The aforesaid submissions were refuted by the leaned Counsel appearing for ITPO, DMRC, Land DO and Supreme Court Bar Association.

Discussion and Decision

24. So far as the first submission regarding non-maintainability of the writ petition is concerned, we are unable to accept the said submission on the ground that when the aforesaid writ petition was filed in this Court, the judgment of the Supreme Court in Konkan Railway Corporation was holding the field and as on that date the aforesaid writ petition was maintainable. Subsequently, the aforesaid decision was over-ruled and in SBP and Co. (supra) it was held that an order u/s 11 is judicial order and not an administrative order. We do not think that in SBP and Company case (supra) the Supreme Court has held that appointment of Arbitrator or Tribunal already made will be treated as valid and cannot be challenged and questioned, even if the appointment made stands challenged in a writ petition, which is sub-judice and pending. The Supreme Court conscious of its earlier judgments and the affect the decision in SBP and Co., applied doctrine of prospective overruling.

25. In Harsh Dhingra Vs. State of Haryana and Others, , it was observed:

19. Prospective declaration of law is a device innovated by this Court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a device adopted to avoid uncertainty and avoidable litigation. By the very object of prospective declaration of law it is deemed that all actions taken contrary to the declaration of law, prior to the date of the declaration are validated. This is done in larger public interest. Therefore, the subordinate forums which are bound to apply law declared by this Court are also duty-bound to apply such dictum to cases which would arise in future. Since it is indisputable that a court can overrule a decision there is no valid reason why it should not be restricted to the future and not to the past. Prospective overruling is not only a part of constitutional policy but also an extended facet of stare decisis and not judicial legislation.

26. Our attention was drawn to paragraphs -(vii) and (x) of the conclusions drawn by the majority judgment. The said paragraphs read as under:

(vii) Since an order passed by the Chief Justice of the High Court or by the designated judge of that Court is a judicial order, an appeal will lie against that order only under Article 136 of the Constitution of India to the Supreme Court.

(viii) x x x

(ix) x x x

(x) Since all were guided by the decision of this Court in M/s. Konkan Railway Corpn. Ltd. and Another Vs. M/s. Rani Construction Pvt. Ltd., and orders u/s 11(6) of the Act have been made based on the position adopted in that decision, we clarify that appointments of arbitrators or arbitral tribunals thus far made, are to be treated as valid, all objections being left to be decided u/s 16 of the Act. As and from this date, the position as adopted in this judgment will govern even pending applications u/s 11(6) of the Act.

27. We do not think that said paragraphs support the stand of IAL. They have to

read in the context of object and purpose behind the said paragraphs. The decision in the case of Konkan Railway Corporation v. Rani Construction Co. (supra) held the field for several years and was followed in a number of matters by High Courts and subordinate courts. Some of the orders made u/s 11(6) of the Arbitration and Conciliation Act had achieved finality, while in other cases writ petitions have been filed challenging the "administrative order" passed by the Chief Justice appointing arbitrators. The object and purpose behind paragraph-(x) is to protect judgments which had attained finality and to prevent review or special leave petitions under Article 136 of the Constitution of India, when the party had option to challenge the order passed u/s 11(6) of the Arbitration and Conciliation Act by filing a writ petition, but by choice had accepted the order. Old decisions that have been accepted, acted upon and not challenged in terms of the then declared law get revived and resurrected do not by the decision in SBP and Co. Distinction was made by the Supreme Court between the "dead" and "live" matters. The dead cases do not get revived and give any party that has accepted the decision, as per the earlier declared law, to fight another round of litigation.

28. The object and purpose of paragraph-(x) was also to protect pending writ petitions in which orders passed u/s 11(6) of the Arbitration and Conciliation Act had been challenged. The said litigation is live and pending. Writ petition is in continuation of the original proceedings u/s 11 of the Arbitration and Conciliation Act. The order passed u/s 11 of the aforesaid Act has not become final. The past is not completely erased by the new judicial declaration. Multiplicity of proceedings has to be avoided. However, the writ petition has to be decided as per interpretation of law on the date of the decision and not on the basis of the interpretation of law that has been declared to be unsound and over-ruled. The rejected declaration of law cannot now be applied to pending cases on the ground that on the date when the writ petition was filed or the first court had decided the matter the invalid law was accepted as valid. The purpose behind paragraph-(x) was not to oust and debar the writ court from deciding a writ petition challenging order u/s 11(6) of the Arbitration and Conciliation Act. Thus when the Supreme Court in Clause (x) held that the appointments of arbitrators or arbitral tribunal thus far made are to be treated as valid, it did not imply that the decision in SBP and Company has not to be followed and applied even where writ petition had been filed challenging order u/s 11(6) of the Act or the writ petition should be dismissed on the ground that the order passed u/s 11(6) of the Arbitration and Conciliation Act is not a judicial order which is not appealable and can be only subject matter of SLP under Article 136 of the Constitution of India. The object was to equally protect the pending proceedings in form of a writ petition, subject however, to the writ petition being decided as per ratio decidendi of the decision of the Supreme Court in SBP and Company's case. Any other interpretation will lead to a situation that writ petitions will stand dismissed, with the parties questioning and challenging order passed u/s 11(6) of the Arbitration and Conciliation Act before the Supreme Court under Article

136 of the Constitution of India along with an application for condensation of delay. This will result in multiplicity of proceedings. We feel that this was not the intention of the Supreme Court. What has been intended by para-(x) is to give protection to orders which had attained finality as well as writ petitions filed by parties challenging the order u/s 11(6) of the Arbitration and Conciliation Act subject to the condition that any decision in the writ petition will be decided in terms and as per the dictum in SBP and Company's case (supra).

29. Earlier the Supreme Court in the case of Konkan Railway Corporation (supra) and in Konkan Railway Corporation Ltd. and Another Vs. Rani Construction Pvt. Ltd., had held that appointment of Arbitrator u/s 11 of the Arbitration and Conciliation Act is purely an administrative act and the Chief Justice or his nominee performing the said function u/s 11(6) cannot decide any contentious issue between the parties. It was further held that appointment u/s 11 being an administrative act cannot be made subject-matter of appeal under the provisions of Arbitration and Conciliation Act, but any party aggrieved can file a writ petition under Articles 226 and 227 of the Constitution of India wherein the administrative decision can be looked into and examined within the limited parameters of power of judicial review. It was held that while exercising power u/s 11(6), the Court is not required to examine and consider the question of existence and validity of the arbitration clause and its scope and ambit. In light of the said legal position, learned Single Judge was not determining and deciding whether the disputes raised are arbitrable or covered by an arbitration clause and left it to the Arbitrator to decide such questions. It is in this context and in view of the then interpretation as propounded by the Supreme Court that the learned Single Judge by the impugned order dated 23rd January, 2001 had appointed an Arbitrator, leaving it to the parties, without deciding and going into the question as to which of the disputes are arbitrable and whether the Arbitrator under the arbitration clause can also adjudicate and decide disputes already raised and referred by the ITPO to the Estate Officer under the PP Act. Thus proceedings were allowed to continue before the Estate Officer but some directions were made to avoid conflict of decisions on the same subject matter.

30. It may be relevant to state here that there are a large number of matters where writ petitions have been filed by parties challenging orders u/s 11, prior to the decision of the Supreme Court in SBP and Company (supra). The option after the said decision is to either hear the writ petition by treating them original petitions u/s 11(6) of the Arbitration and Conciliation Act or to relegate the matter back to the Single Judge to decide the application u/s 11 afresh in the light of the decision of the Supreme Court in SBP and Company (supra). The third option is to ask the said parties to file appeals under Article 136 of the Constitution of India. We do not agree with the learned Counsel for IAL that though the order passed by the learned Single Judge is contrary to the dictum laid down in SBP and Company (supra), the ratio of the said decision cannot be applied and the decision in SBP and Company protects all orders passed u/s 11(6), even if they were challenged and made subject-matter of a writ petition.

If the said reasoning has to be accepted, then the decision in SBP and Company case itself would not be applicable to the parties before the Supreme Court in the said case. It may also be noted that the judgment in the case of SBP and Company has been followed and applied in matters and cases where orders u/s 11(6) of the Arbitration and Conciliation Act were passed prior to 20th October, 2005. PP Act and Arbitration Act.

31. The second submission of Mr. Arun Jaitley that the provisions of Arbitration and Conciliation Act would over-ride the provisions of PP Act also cannot be accepted. The aforesaid position is apparent when we make a reference to the provisions of Clauses 27 and 28 of the license agreement. In Clause 27 of the license agreement it is clearly stipulated that the license given to the IAL would be subject to the jurisdiction of the Estate Officer of ITPO who would have the power to exercise jurisdiction under the PP Act. Clause 28 of the agreement is an arbitration clause. It is a settled principle of interpretation of documents that harmonious construction should be adopted so as to reconcile all clauses and to give effect to them. It is also settled principle of interpretation of documents that in case of irreconcilable conflict between two clauses, the clause which is earlier should be given preference over a clause which is subsequent.

32. If we apply the above principles in the present case, then we have to harmoniously read Clauses 27 and 28 of the license deed to give effect to both of them. Harmonious reading of the two clauses is possible if we hold that provisions of PP Act will apply to all matters referred to and specified by the special enactments and provisions of Arbitration Act including arbitration clause will apply to matters and disputes that cannot be subject matter of proceedings under the PP Act. Thus the arbitrator is entitled to adjudicate and decide claims other than those pending before the Estate Officer or raised under the PP Act. Disputes under the PP Act can be decided and adjudicated upon by the Estate Officer in terms of Clause 27. If we hold that the two clauses are irreconcilable, then in terms of the second principle mentioned above, Clause 27 will apply.

33. It cannot be said that proceedings under the PP Act and arbitration Act for the same dispute can be resorted to and permitted under the license deed. No such argument was in fact raised. It is also not permissible to raise any such argument and there cannot be an arbitration clause which gives option to a parties to have resort to arbitration and also have right and option to resort to proceedings under the PP Act. The two clauses have to harmoniously interpreted. The intention of the parties as disclosed from the aforesaid clauses in the license agreement is that wherever and whenever the provisions of PP Act are applicable the same would apply. Matters that can be made subject matter under the PP Act and decided therein can be made subject matter of Arbitration. Consequently, we hold that the jurisdiction to be exercised by the Estate Officer cannot be said to be subject to the order to be passed by the Arbitrator in the arbitration proceedings.

34. Learned Counsel for the IAL had drawn out attention to Sections 5, 8 and 40

of the Arbitration and Conciliation Act. Referring to the said provisions it was submitted that the arbitration clause will over-ride the provisions of the PP Act and Arbitrator can also decide the petition filed by ITPO before the Estate Officer.

35. Section 5 of the Arbitration and Conciliation Act prohibits and restrains any judicial authority from interfering with arbitration proceedings except in accordance with the provisions as contained in Part-I of the Arbitration and Conciliation Act. Section 5 incorporates a limited non obstinate clause which restrains all judicial authorities from examining and going into the questions, except as provided for and stipulated in Part-I. To this extent, exclusive jurisdiction is vested with a court as defined in Section 2(e) or judicial authority to decide all matters as stipulated in Part-I. The said provision does not specifically state that Arbitration and Conciliation Act shall prevail over all other existing enactments.

36. The said Section has to be read and understood in the light of Section 2 Sub-section 3 of the Arbitration and Conciliation Act, which reads as under:

2. (3) This Part shall not affect any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration.

Section 2, Sub-section (3) Therefore protects the existing law, both common law as well as statutory law, under which some disputes cannot be made subject matter of arbitration. Therefore, we have to examine the existing law on the date when the Arbitration and Conciliation Act was enforced, to decide whether matters mentioned in PP Act can be made subject matter of arbitration.

37. Section 15 read with Sections 5 and 7 of the PP Act confers exclusive jurisdiction on the Estate Officer appointed u/s 3 of the aforesaid Act to deal with the applications under Sections 5 and 7. Section 15 of the PP Act bars and prohibits any Court from entertaining any suit or proceeding for eviction etc. as provided under Clauses (a) to (e) therein. The general power of the Court u/s 9 of the Code of Civil Procedure, 1908 to entertain suit or proceedings is Therefore ousted if a dispute raised falls in Clauses (a) to (e) of the aforesaid Section. Sections 5 and 7 of the PP Act empowers an Estate Officer appointed u/s 3 to deal with applications for eviction of unauthorised occupants and applications for payment of rent and damages in respect of public premises. The Act also prescribes a procedure for filing an appeal by a person aggrieved by an order passed by the Estate Officer u/s 9 of the PP Act. The aforesaid Act is, Therefore, a special Act which also prescribes complete procedure for adjudication of proceeding under the PP Act. The said Act is a complete code in itself. We do not think that proceedings under Sections 5 and 7 of the PP Act can be made subject matter of arbitration. The said enactment is a special legislation, whereby specific powers have been conferred on an Estate Officer to adjudicate and decide applications u/s 5 and 7 of the PP Act. Courts have been prohibited and restrained from exercising jurisdiction over matters mentioned in Section 5 and 7 of PP Act in view of Section 15 of the PP Act. Reading of Section 5 and 7 makes it

clear that it is the Estate Officer alone who has the sole and exclusive jurisdiction to decide applications under Sections 5 and 7 of the Said Act. The said jurisdiction conferred by the statute cannot by a contract be conferred upon an arbitrator or made subject matter of reference before an arbitrator. PP Act has given exclusive jurisdiction to an Estate Officer, who alone has authority to determine the specified disputes and matters and, Therefore, these are not matters that can be referred to an Arbitrator. There cannot be waiver of statutory provisions. Contract must be within the legal framework. Parties cannot contract out of the statute. The matters on which an Estate officer has exclusive jurisdiction are not arbitrable and parties by a contract cannot agree to refer matters on which jurisdiction has been conferred and given to Estate Officer. Arbitrability of the claims covered by Sections 5 and 7 of PP Act is Therefore excluded. We are fortified in our conclusion by the judgment of the Supreme Court in the case of Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others, . In the said case the question arose whether the Rent Control Act which also a special Act will over-ride the provisions of PP Act. It was held that the PP Act is a special statute relating to eviction of unauthorised occupants from public premises and will prevail over Delhi Rent Control legislation which is intended to deal with the general relationship of landlords and tenants in respect of premises other than government premises. Rent Control legislation, it was held is also a special statute but was enacted earlier in point of time. However, both enactments are special statutes in relation to the matters dealt with therein and in such circumstances, it is the objective and purpose behind the two enactments, that determines which enactment will apply and given preference.

The purpose and objective underlying the two Acts and intentment are conveyed by the language of the relevant provisions. See: Shri Ram Narain Vs. The Simla Banking and Industrial Co. Limited, . Applying the said principles in Ashoka Marketing (supra) it has been held that PP Act was enacted to control the rampant unauthorised occupation of public premises by providing machinery for eviction of persons in unauthorised occupation. The said enactment has a public purpose and interest. Special powers in this regard have been conferred under the enactment on the Estate Officer to deal with the problem of unauthorised occupation in premises belonging to government, public companies and corporations controlled and owned by the Central Government. Same reasoning will equally apply to PP Act and Arbitration and Conciliation Act.

38. Relying upon this judgment, a learned Single Judge of this Court in C.J. International Hotels Ltd. v. New Delhi Municipal Committee and Ors. reported in (1991) 1 Del 321 has held that proceedings under Sections 5 and 7 of the PP Act cannot be made subject matter of arbitration. Learned Single Judge relied upon Section 15 of the PP Act and held that though the said Section only refers "Court" but in Ashoka Marketing (supra) it was held applicable to tribunals and accordingly it will apply also to Arbitrators.

39. Learned Counsel for the IAL tried to distinguish the judgment in Ashoka

Marketing (supra) by making a reference to the language of Section 14 of the Delhi Rent Control Act, 1958 and by also making reference to Section 69 of the Partnership Act, 1932. We do not find any merit in the said contention. The phrases and words of Section 14 of the Delhi Rent Control Act, 1958 are much broader, wider and more comprehensive than Sections 5 and 8 of the Arbitration and Conciliation Act. We also feel that failure to mention the word "contract" or the word "arbitrator" in Section 15 of the PP Act is not significant and do not indicate legislative intent that an arbitrator can decide and adjudicate claims u/s 15, Clauses (a) to (e) of the aforesaid Act. The legislative intent behind Section 15 read with Sections 5 and 7 of the PP Act is apparent. It seeks to confer sole and exclusive jurisdiction on these aspects on the Estate Officer. Earlier, public authorities had option to go before civil courts and before the Estate Officer under the Public Premises Act, 1958. The 1971 enactment did away with the said option and conferred exclusive jurisdiction on the Estate Officer and the power and jurisdiction of a civil court to adjudicate matters referred to in Section 15 was withdrawn.

40. While examining the issue whether jurisdiction of Courts, tribunals or civil authorities has been barred we have to look to the language of the statute, both expressly and impliedly. We have to examine the purpose and object behind the statute which confers and gives specific jurisdiction on Court, tribunal or an authority. If the statute gives finality and uno flat to a decision by an authority, then what is the subject matter before the said authority, cannot by a contract made subject matter of proceedings before an arbitrator. We may refer here to the decision of the Supreme Court in Haryana Telecom Ltd. Vs. Sterlite Industries (India) Ltd., . The Supreme Court referred to the provisions of the Companies Act and held that power to wind up a company is conferred on the Company Court. The said power cannot be subject matter of arbitration. By agreement parties cannot confer jurisdiction on an arbitrator when the statute confers and gives jurisdiction to a specific authority under an enactment and the said authority alone has jurisdiction to decide the subject matter to the exclusion of other authorities. Legislative intent behind Section 15 read with Sections 5 and 7 of the PP Act is clear. The said enactment has conferred sole and exclusive jurisdiction on the Estate Officer to decide the disputes enumerated in Section 15. These disputes cannot be decided by civil courts or by arbitration.

41. The term "court" can be given different meanings in a statute depending, upon the context in which the term is used. It cannot be said that in all circumstances the term "court" is used, it only refers to civil court and not to tribunals or arbitration. In Canara Bank Vs. Nuclear Power Corporation of India Ltd. and Others, , Company Law Board has been held to be Court and it was observed:

26. In our view, the word court must be read in the context in which it is used in a statute. It is permissible, given the context, to read it as comprehending the courts of civil judicature and courts or some tribunals exercising curial, or judicial

powers. In the context in which the word court is used in Section 9-A of the Special Court Act, it is intended to encompass all curial or judicial bodies which have the jurisdiction to decide matters or claims, inter alia, arising out of transactions in securities entered into between the stated dates in which a person notified is involved.

Other Grounds

41. The last contention raised by the IAL is that the L and DO has cancelled the lease deed of ITPO in respect of the land occupied by IAL and accordingly the proceedings initiated by ITPO before the Estate Officer under the PP Act are not maintainable. The argument as raised, if accepted goes against the pleas made out by IAL against ITPO on the basis of the arbitration clause between the two, to which Land DO is not a party. Once the superior Lesser has terminated the lease of the Lesser, the sub-tenant/licensee cannot object to and/or claim any right to use and occupy the property. Rights of IAL flow from the right of ITPO and are not superior to the right of ITPO. Counsel for the ITPO on the other hand had referred to provisions of Order XXII, Rule 10 of the Code of Civil Procedure, 1908. Relying upon the judgment of the Supreme Court in the case of Dhurandhar Prasad Singh Vs. Jai Prakash University and Others, , it was pointed out that devolution of interest during the pendency of a suit or proceeding does not bring the proceeding to an end. The original party can continue with the proceeding and the successor in interest will be bound by the decision and claim benefit or face adverse consequences as a result of the final decision. The successor in interest can also become a party. The said decision is based upon the principle that normally assignment of an estate or title pendente lite, does not affect the cause. Jurisdiction of Court or Tribunal is to be determined on the basis of facts as existing on the date of filing of the suit/petition. We find merit in the said submission but we do not wish to express any final opinion on these aspects including the effect of cancellation/termination of the lease by L and DO in favor of ITPO as these are arguments on merits which will have to be decided by the Estate Officer. Similarly, we do not want to examine the contention with regard to Section 60 of the Easements Act, 1882. Reliance on the said Section was placed by IAL to claim that the license granted was perpetual and permanent in nature. This is a matter for the Estate Officer to examine and decide on merits and not for this Court to decide in a writ jurisdiction. However, to be fair to the counsel for ITPO and L and DO we may mention that they had drawn our attention to various clauses in the license deed including the schedule and submitted that Section 60 of the Easements Act, 1882 does not apply to the present case as IAL has an obligation to vacate the premises after removing all its belongings including any construction. It was also pointed out that the schedule to the license agreement mentions that buildings have already been constructed.

Lastly, it was submitted that Section 60 of the Easements Act has no application in case relationship between ITPO and IAL was that of a Lesser and lessee.

Reliance was placed on Section 108 of the Transfer of Property Act.

42. Another contention raised by the learned Counsel for IAL was that DDA and L and DO should be directed by this Court to allot alternative land. It was submitted that amusement park requires considerable capital expenditure and land owning agencies have agreed in principle to make allotment of land for amusement parks for at least 30 to 40 years. It was submitted that short period license for setting up amusement parks will not be viable and will result in charging of exorbitant fees from users/customers. These are not aspects for the Court to examine. We also do not think that Courts can issue direction to DDA and L and DO to allot land or area to IAL in preference to and overriding right of others who may also be interested in setting up of amusement parks. This will amount to discrimination and violation of rights of equal opportunity.

43. In view of the findings given above we allow WP(C) No. 2015/2001 filed by ITPO and hold that matters referred to in Section 15 of the PP Act cannot be referred to arbitration. CM (M) No. 553/2007 filed by IAL is dismissed. Pending applications in the said petitions are also disposed of in terms of the directions and observations made above. The writ petitions filed by DMRC and Supreme Court Bar Association are rendered infructuous and are accordingly disposed off. In the facts and circumstances of the case there will no order as to costs.