
(2007) 10 DEL CK 0050

In the Delhi High Court

Case No : Writ Petition (C) : 1004 of 2007

Iyer and Son Pvt. Ltd.

APPELLANT

Vs

L.I.C. and Another

RESPONDENT

Date of Decision : 03-10-2007

Acts Referred:

Constitution of India, 1950 — Article 12

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 4

Citation : (2008) 1 ILR Delhi 499

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Girish Aggarwal, for the Appellant; Mahinder Singh with Ms. Diksha Khanna, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—Rule. Mr. Mahinder Singh accepts notice. With the consent of the counsel for the parties the matter was heard for disposal. The short question arises for consideration in this writ proceeding is the legality of the view which found favour with the Additional District Judge (hereafter called the "Appellate Authority") i.e. that the corporate veil of the Petitioner ought to have been lifted and whether eviction on the ground of sub-letting of the premises, is legal and justified.

2. The facts which are largely undisputed are that M/s Iyer & Son (P) Ltd. were given a commercial license in 1949 in the United India Life Building in the Connaught Place, New Delhi. The place is about 1118 sq.ft.; the original rent was Rs. 160/- per month. On 6.3.1985 existing management of the Petitioner Company entered into an agreement with Mr. Vijay Kumar Gupta and Shri Anil Kumar Gupta. The object of the agreement was to handover management of the Company as a running concern. The agreement is part of the record. Its relevant stipulations are as follows:-

AND WHEREAS the outgoing Directors have offered to resign and handover the

running business as such to the Incoming Directors for a total consideration of Rs. 4,00,000/- on the following terms and conditions hereinafter recorded below:-

1. That the Outgoing Directors shall handover the business in the running condition as on 6th March, 1985.

2. That Shri R.S. Sethi, Managing Director of the Company will transfer his shares and procure the shares standing in the name of his wife, the shares standing in the names of his three daughters and of Shri K.S. Bhody to the Incoming Directors or their nominees.

3. It is clearly understood that Shri R.S. Sethi will settle the previous liabilities as recorded in the books of account of the Company till 6th March, 1985 to the advantage of the Company with the consultation of the Incoming Directors and the Incoming Directors will pay the required liabilities.

4. Hence forth all the Outgoing Directors except Shri R.S. Sethi will continue to be the Directors of the Company. Shri R.S. Sethi will continue to be the Director till such time as to facilitate complete transfer of company to the Incoming Directors. He will exercise such power only to facilitate the working of the Company. The Incoming Directors will be taken on the Board as the Additional Directors.

5. That in consideration of transfer from the Outgoing Director to the Incoming Directors, a total consideration of Rs.400,00 (including the value of shares) has been agreed to. The share to the Outgoing Directors have been agreed to be transferred @ Rs. 4,000 per share.

6. That Shri R.S. Sethi will get the approval of the I.A.T.A for the new Management.

7. It has been assured by Shri R.S. Sethi

(i) That the tenancy rights of the premises where the business is being carried on at United India Life Building "F" Block, Con. Place, New Delhi are in the name of Iyer & Son (Pvt.) Ltd. and no other person has any right or title in these tenancy rights.

(i) No other business is being carried in the said premises occupied by the Company.

8. The total consideration will be paid as under:-

Rs. 2,50,000/- within a week from the writing of this agreement,

Rs. 1,50,000/- will be paid at the time when all the formalities for complete take over have taken place.

Shri R.S. Sethi will assist in smooth take over of the Company by the Incoming Directors and he will be paid working allowance @ Rs. 5,000/- per month for a maximum period of six month or till such date the complete take over is

completed, is earliest.

Life Insurance Corporation of India, i.e the owner of the premises (hereafter referred to as "LIC") that the transfer amounted to a sub letting. By a notice issued on 29.4.1986 it alleged that since no prior permission or intimation was given to it before the change of Management, the occupation of the Company would be defeated as unauthorized and that suitable proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereafter referred to as the "Act") would be initiated.

3. After a brief lull some time in 1988 proceedings u/s 4 of the Act were initiated. The Petitioner contested the proceedings and after about 11 years the eviction order was made by the Estate Officer, on 30.10.1999. It is not disputed that the Petitioner was given sufficient opportunity and did lead the evidence before the Estate Officer both documentary as well as oral. The Estate Officer directed eviction of the Petitioner holding it to be unauthorized occupants in terms of provisions of the Act. Aggrieved by it the Petitioner preferred an appeal to the Appellate Authority.

4. At this stage it would be useful to extract the findings of the Appellate Authority. By its impugned order dated 20.10.2006 it rejected the appeal and upheld that the facts of this case required lifting of the Corporate veil. The relevant findings are as follows:-

But in the present case the entire board of directors have changed. Therefore it is clearly inferable that the entire company has been sold out. It is not the case that one or two directors are retiring and other one or two are coming in. It is immaterial that name of company is maintained the same but the person interested are out. Therefore, Id. Estate Officer has rightly applied the principle of lifting the corporate veil. There is no denial that notice of termination was not received and the grounds taken in the notice are sufficient and valid for termination of tenancy. Therefore, I agree with the argument of Id. Counsel for the respondent that there is no merit in this appeal and the arguments advanced on behalf of appellant have no substance. I have considered the judgments cited reported as The Commissioner of Income Tax (Central), Calcutta Vs. Standard Vacuum Oil Company, , AIR 1958 SC 74, 1995 RCL 480 (DB), 1994 RLR SC 189, 100 (2002) DLT 497 (DB) but in the peculiar circumstances of this case the appellant cannot take benefit of the same.

8. In view of the above position of facts and circumstances of the case and position of law, the appeal is found devoid of merit. Same is hereby dismissed. File be consigned to RR. EO record be returned with copy of the order.

Announced in the open Court on

this 20th day of October, 2006.

Sd/-

ADDL. DISTRICT JUDGE,
DELHI"

5. Mr. Sandeep Aggarwal, learned counsel urged that the findings of the Estate Officer to the Appellate Authority are unsustainable. It is urged that in terms of the Companies Act an incorporated company has an independent juristic entity. Reliance was placed upon the judgment of this Court in *Scindia Potteries and Services Ltd. and Others Vs. Deputy Land and Development Officer, Government of India and Others*, . Counsel submitted that in that case the Court negated the contention on behalf of the Govt. of India that parting of possession/transfer of land by the lessee, could be construed as a transfer in violation of provisions of the Delhi Land (Registration of Transfer) Act, 1972. The Court had held that the valid sale of shares may result in passing over the control over the lands, to one whom the shares are sold. However, shares are being movable property, as contemplated by the Sale of Goods Act, in terms of the Supreme Court in *The Commissioner of Income Tax (Central), Calcutta Vs. Standard Vacuum Oil Company*, a share is only an interest measured by sum of money cannot be taken as land. The Court ruled that nothing further transpired and the Company maintained its distinct entity. Counsel also relied upon the judgment in *The Commissioner of Income Tax (Central), Calcutta Vs. Standard Vacuum Oil Company*, and submitted that all that happened in this case is that the shares of this Company were transferred. For a consideration, the new management took charge of the assets as they were entitled to in terms of transfer and carried out the same business. Counsel further submitted that the Company continued to function as before; its activities continued to be the same and even the LIC and its officials used to get their ticketing done from the Petitioner's Company. In these circumstances the recourse to the doctrine of lifting of the Corporate veil was not justified; it was arbitrary. Counsel therefore submitted that the impugned orders required to be set aside.

6. Lastly, reliance was placed upon guidelines of 1992 which prohibited eviction except in case of subletting. Counsel contended that since the original tenant was the Petitioner, which continues to occupy the premises, there could be no question of subletting.

7. Learned counsel for the respondent sought to justify its findings of the Estate Officer as well as the Appellate Authority and submitted that as a prudent owner of public premises, LIC was entitled to draw an inference whether the transfer of management also amounted to transfer of tenancy. He placed particular reliance on Clause 7 of the Agreement dated 6.3.1985 between the previous management of the Petitioner and submitted that the present Directors to continue to be in charge of affairs of the Company. It was submitted that Clause 7 & 8 showed that there was a composite transfer of the business which included the tenancy.

8. Learned counsel relied upon the judgment reported as *Jiwan Dass Vs. Life*

Insurance Corporation of India and Another, . In that case the Court had upheld the contention of the LIC being a public authority it was entitled to act as any other owner of property and deal with it so as to obtain the best rent and profits.

9. The above discussion would show that the dispute to be decided by this Court within a narrow compass. The Petitioner was granted the tenancy of the premises in 1949. The Management of the Petitioner admittedly changed hands. It was urged by counsel for the Petitioner that even before the present Management took over Management of the Petitioner Company had changed hands on two earlier occasions. Nevertheless the question is as to whether at any given point of time the owner/landlord and a public authority at that time can determine that change of ownership is not bona fide and, therefore, lift the corporate veil. The judgment cited by the Petitioner was in the context of challenge to a re-entry order made by the Land & Development Officer, upon the view that change in Management of M/s Sciendia Potteries was unauthorized and therefore the lease itself could be determined.

10. The doctrine of lifting of corporate veil has been recognized in several judgments. A discussion on this may be usefully found in *New Horizons Limited and Another Vs. Union of India (UOI) and Others*, ; the Court relied upon judgments of the US Supreme Court, House of Lords as well as Court of Appeal that if a corporate personality is set up or used to defeat public interest, by someone or an association of persons, the Court can "lift" the corporate veil to determine the reality. Thus, the Supreme Court in the said judgment, noticing the judgments reported as *DHN Food Distributors Ltd. v. London Borough of Tower Hamlets*, (1976) 3 All ER 462 *State of U.P. and Others Vs. Renusagar Power Co. and Others*, and the judgment in *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, , remarked that it is important for the Courts to discern what are economic realities behind the legal facade of a corporate entity. The Court thereafter proceeded to hold as follows:-

35. There are cases where the court has looked behind the facade of the company and its place of registration in order to determine its residence and for this purpose the test laid down is the place of the central management and control (See: *De Beers Consolidated Mines Ltd., v. Howe*. Similarly the Court has looked at the corporators in order to determine the character of the corporation as an enemy alien or as a British resident (See : *Daimler Co. Ltd., v. Continental Tyre and Rubber Co. Ltd.*, According to Professor Gower this does not involve breach of the principles of Modern Company Law, 4th Edn. P. 136)

36. After making a special study of this branch of the law, a learned scholar has discerned four different attitudes towards the company in judicial pronouncements. According to him these categories, in progressive order, are (i) peeping behind the veil; (ii) penetrating the veil; (iii) extending the veil; and (iv) ignoring the veil. The decisions relating to determination of residence or enemy status of a company have been placed by him in the category of "peeping behind

the veil" where the court peeps behind the veil and concludes from the shareholders or from the people in control of the company, something about the nature of the company, (see S. Ottolenghi : from Peeping Behind the Corporate Veil to ignoring it completely).

37. This Court has adopted a similar approach and in some cases it has seen through the corporate veil. In Central Inland Water Transport Corpn. Ltd., v. Brojo Nath Ganguly the Court was considering the question whether the appellant company was an agency or instrumentality of the State for the purpose of Article 12 of the Constitution. It was said (SCR p. 349 : SCC P. 202 para 67)

For the purpose of Article 12 one must necessarily see through the corporate veil to ascertain whether behind that veil is the face of an instrumentality or agency of the State.

So also in State of UP v. Renusagar power Co. it has been observed (SCR p. 668: SCC p. 95, para 68)

The veil on corporate personality even though not lifted sometimes is becoming more and more transparent in modern company jurisprudence.

38. Seeing through the veil covering the face of NHL it will be found that as a result of re-organisation in 1992 the Company is functioning as a joint venture wherein the Indian group (TPI, LMI and WML) and Mr. Aroon. Purei hold 60% share and the Singapore based company (IIPL) holds 40% shares. Both the groups have contributed towards the resources of the joint venture in the form of machines, equipment and expertise in the field. The company is in the nature of a partnership between the Indian group of companies and the Singapore based company who have jointly undertaken this commercial enterprises wherein they will contribute to the assets and share the risks. In respect of such a joint venture company the experience of the company can only mean the experience of the constituents of the joint venture, i.e. the Indian group of companies (TPL, LMI and WML) and the Singapore based company (IIPL)

11. It would be evident from the above that there can be no thumb rule as to the lifting of corporate veil; much would depend on the circumstances of each given case. In the case of New Horizons itself the Court lifted the Corporate veil for a beneficial construction as to the meaning of an eligibility condition and extended it to a group company. Likewise, in a given case it would be necessary for the Court to see what is the object sought to be achieved by the proceedings or the benefit sought. In this case the tenancy was created in 1949. Undoubtedly, the Petitioner Company was the original tenant. However, what cannot be lost sight of is that over a period of time even though the tenancy continued and the Petitioner Corporation entity has existed in the same form, its management has changed its hands. The tenancy was created by a Public Corporation. It is now well-settled that in the exercise of its choice as a shareholder or owner of lands or resources, the State or its agencies have the same rights as others. If such is the case the duty or the obligation cast upon the State agency is to ensure that it

uses the premises, properties and recourses within its control to sub serve the best objectives which include an obligation to ensure that it optimizes the best returns. Seen from this perspective I find nothing wrong if LIC wanted better returns. It was, keeping this objective in mind, open to lift the corporate veil, and discern that a dominant motive of transfer of management was to transfer the tenancy.

12. So far as the 1992 circular is concerned, the rationale for the eviction of the Petitioner was that transfer of management and change of hands, on an application of the doctrine of lifting the corporate veil, amounted to unauthorized subletting. In the facts of this case, I am of the opinion on the basis of the findings referred above that no exception can be taken to the order of the Appellate Authority lifting the corporate veil and the opinion of LIC that the premises were sublet.

For the above reasons, I find no merit in the Petition. It is accordingly dismissed.