
(1984) 11 BOM CK 0029
In the Bombay High Court

Krishan Avatar Bahadur

APPELLANT

Vs

Col. Irwin Extross and others

RESPONDENT

Date of Decision : 06-11-1984

Acts Referred:

Companies Act, 1956 — Section 563, 630, 630(1)
Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1985) 1 BomCR 443 : (1984) 86 BOMLR 596 : (1986) 59 CompCas 417

Hon'ble Judges : A.D. Tated, J

Bench : Single Bench

Judgement

1. The petitioner in this petition, who is the accused in Criminal Case No.63/8 of 1981 pending in the Court of the Metropolitan Magistrate, 14th Court, Girgaum, Bombay, was prosecuted for an offence u/s 630 of the companies Act, 1956, filed this petition u/s 482, Cr PC, for quashing the criminal proceedings and in the alternative for staying the criminal proceeding pending the decision in Suit No.276 of 1972 filed by the petitioner on the original side of this court and also in the alternative for staying further proceeding of the criminal court pending the hearing and final disposal of Suit No,3315 of 1981 filed by the petitioner in the Court of Small Causes at Bombay for a declaration that he is a tenant of the premises occupied by him.

2. The petitioner-accused was in the employment of respondent No.1 company (hereinafter referred to as "the company") from June, 1962, to June 30, 1981, when his services were terminated. While the petitioner was in the employment of the company, the company entrusted and allotted to him Flat No.43 in a building known as "Sherman" situate at Narayan Dabholkar Road, Malbar Hill, Bombay 400 006, which the company had taken on lease from one J.R.Dalal at a monthly rent of Rs.750 which was subsequently raised to Rs. 1,125. The said flat was acquired by the company for the purpose of accommodating its officers and for their residential accommodation during the period of their employment. The

company had allotted the said flat to the petitioner for his occupation during the period of his employment. The company by its letter called upon the petitioner to vacate and hand over vacant possession of the flat, and warned him that in case he did not vacate possession of the flat, and warned him that in case he did not vacate the flat, appropriate proceeding would be taken against him. The petitioner instead of vacating the flat a suit in the Court of Small Causes at Bombay, being R.A.Declaratory Suit No.3315 of 1981, against the company and the owner, J.R.Dalal. In that suit, he contend that he was a monthly tenant of the company and that his service were wrongful and illegally terminated. He also contended that in March-April, 1977, J.R.Dalal had agreed to sell the said flat to him. As he petitioner did not vacate the flat and, according to the company, he was wrongfully withholding the company's property, respondent No.1 complainant - the administrative officer of the company - filed a complaint against the petitioner for the offence u/s 630 of the companies Act, 1956. the present petition is for quashing the criminal proceeding on the ground that section 630 of the Companies Act is ultra vires the legislative competence of Parliament and in the alternative for stay of the proceedings pending the declaration suit filed by the petitioner in the court of Small Causes at Bombay.

3. The main point for consideration in this case is whether section 630 of the Companies Act, 1956, is ultra vires the legislative competence of Parliament inasmuch as it is made applicable to the immovable property of a company.

4. The learned counsel for the petitioner-accused contends that it is not within the legislative competence of Parliament to legislate in respect of immovable property of a company situate within a State. Accordingly to him, the relevant entry for legislation regarding the houses, building and immovable property of a company is entry 18 appearing in List II - State List of the Seventh Schedule to the Constitution. He submits that the land mentioned in entry 18 includes buildings owned by a company. According to him, enteries 43 and 44 appearing in List I- Union List of Seventh Schedule to the Constitutions do not empower a Parliament to legislate in respect of the immovable property owned by a company. In support of his contention, he place reliance on the decision of this court in Elliot Wand and Hill P.Ltd. v. Life Insurance Corporation (1981) Bom CR 590. In that case, a single judge of this court held that the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, was outside the legislative competence of Parliament. He held that the word "land" appearing in entry 18 in List II - State List of the Seventh Schedule to the Constitution - included houses and buildings and that it was the State Legislature alone which was competent to legislate in that respect , and, therefore, it was the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, which was applicable to the premises occupied by the petitioner in that case and not the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The learned counsel specifically referred to paragraphs 73 to 75 appearing at pages 621 and 622 of the said decision. The said paragraphs reads as follows:

"Mr. Seervai further argued that the "transfer" of property" must, therefore, mean transfer of every kind of property, movable and immovable, corporeal and incorporeal, tangible and intangible. It is a general entry covering transfer of every kind of property. The entry "land" which includes the relation of landlord and tenant and the collection of rent falls in the entry "land", but this does not deprive the entry "transfer" of property" of its content. The element of transfer involved in the relation of landlord and tenant and the collection of rent falls in the entry "land", but this does not deprive the entry "transfer of property" of its content. The element of transfer involved in the relation of landlord and tenant and the collection of rent is a small part of the law of transfer. Every kind of property other than land and/or land and buildings will fall within the entry "transfer of property. Land and lands and building cover a special area of property, whereas transfer of property generally covers every kind of property. The special entry "land" must prevail over the general entry "transfer of property."

Mr. Seervi submitted that, in the circumstances, the State Rent Act fell under the entry "land" in List II; and he submitted further that he impugned Act in so far as it applies to companies and corporation in the State is outside the legislative competence of Parliament, whether under entry 32, List I, Schedule 7, or under any entry in List III. I accept Mr. Seervai's contention.

The sum total of this discussions is that the State Rent Act (for areas other than cantonments) falls under the entry "land", (List II). The impugned Act in so far as it applies to companies and corporation in the State is outside the legislative competence of Parliament, whether under entry 32, List I, Schedule 7, or under any entry in List III. That in view of the fact that it is an accepted position that "Parliament has power to enact the impugned Act in Union territories and also for the property so the Union and revenue therefrom subject as regards property situate in State subject to legislation by the State same in so far as Parliament by law otherwise provides" (and the impugned Act otherwise provides), there is no mandate to roam at will and strike down the Act in its entirety. It would only be necessary to inject the companies and corporation in the State from implementing or acting upon the provisions of this Act and more particularly in respect of the premises in question."

5. The learned counsel contends that in view of the above decision of this court, Parliament was not competent to legislate in respect of the immovable property owned by the corporation and the companies situated in the States. On the same reasoning, he contends that the word "property" appearing in section 563 of the Companies Act, 1956, cannot be applied to immovable property, that is, building and house owned by the companies. The learned counsel for respondent No.1 - complainant - on the other hand contends that parliament is competent to legislate in respect of the companies and their affairs under entries 43 and 44 appearing in List I- union List of the Seventh Schedule to the Constitution. According to him, the pith and substance of the legislation has to be taken into consideration and the provision of the Companies Act cannot be struck down for

want of legislative competence in case they slightly transgress the area. he submits that section 630 of the Companies Act is in respect of affairs of a company. it provides penalty for wrongful withholding of property by the employees of a company and, taking into consideration of property by the employees of a company and , taking into consideration the pith and substance of the legislation, it cannot be said to be beyond the legislative competence of Parliament.

6. Section 630 of the Companies Act, 1956, reads as follows:

"Penalty for wrongful withholding of property.- (1) If any officer or employee of a company -

(a) wrongfully obtains possession of any property of a company; or

(b) having any such property in his possession, wrongfully withholds it or knowingly applies it to purposes other than those expressed or directed in the articles and authorised by this Act;

he shall, on the complaint of the company or any creditor or contributory thereof, be punishable with fine which may extend to one thousand rupees.

(2) the court trying the offence may also order such officer or employee to deliver up or refund, within a time to be fixed by the court, any such property wrongfully obtained or wrongfully withheld or knowingly misapplied, or in default , to suffer imprisonment for a term which may extend to two years."

7. A reading the impugned provisions of section 630 of the Companies Act clearly indicates that it is in respect of the affairs of a company and it regulates the conduct of the officers and employees of the company inasmuch as it provides penalty for the officers and employees of the company who wrongfully obtained possession of any property of the company or who, having any such property in his possession, wrongfully withholds it or knowingly applies it to purposes other than those expressed or directed in the articles and authorised by the said Act. The provisions are obviously for safeguarding the property of a company, whether movable or immovable, by wrongful use thereof by the officers or employees of the company.

8. Their Lordship of the Supreme Court in *Harakchand Ratanchand Banthia and Others Vs. Union of India (UOI) and Others*, , considered the provisions of articles 246 of the Constitution and laid down the general principles regarding interpretation of legislative Lists. At pages 1459 and 1460 of the report, their Lordship state the law as follows:

"It is well settled the entries in the three Lists are only legislative heads or fields of legislation and they demarcate the area over which the appropriate Legislature can operate. The legislative entries must be given large and liberally interpretation, the reasons being that the allocation of subject to the Lists is not by way of scientific or logical definition but is a mere enumeration of board and

comprehensive categories."

9. The Gujarat High Court in the case of *Shri Prithvi Cotton Mills Ltd. Vs. Broach Borough Municipality and Others*, , considered the scope of article 246 of the Constitutions and also laid down how the entireties in the three Lists should be reconciled in case there is any conflict or overlapping. At page 139 of the report, it is observed:

"Article 246, in our judgment, has nothing to do with the question of interpreting the Union or the State entireties. That articles fixes the fields within which Parliament and the State Legislatures are to operate. the clause "Notwithstanding anything in clauses (2) and (3)" used in clause (1) and "notwithstanding anything in clause (3)" used in clause (2) and "subject to clauses (1) and (2)" used in clause (3) have been introduced with a view to emphasis that in case there is nay conflict in regard to the subject-matters of legislation, that is, if there are matters which fall in both the parliamentary and the State filed, then (Subject to the doctrine of Prithvi and substance, enunciated by court of law), the State legislative authority must be yield place to the parliamentary legislative authority. Ours is a federal Constitution and it is now well-recognised that both Parliament and the State Legislatures have full, independent and plenary powers in their own fields. It is equally well-recognised that that both Parliament and the state Legislatures have full, independent and plenary powers in their own fields. It is equally well-recognised that the first duty of court interpreting any entry in the respective List, is to interpret that entry in tits plain, natural and grammatical meaning and to read it is in its fullest and widest amplitude. This is the first task which is to be performed. If, on interpreting the entireties in the aforesaid manner, any conflict is found between the two sets of entries respectively falling in the two different Lists, then an attempt must be made to reconcile the two entries, so as to make one consistent with the other. In attempting to do so, sometimes the amplitude of the legislative power of Parliament, and sometimes that of the State Legislatures, may have to be curtailed. in considering the question as to whether there is any such conflict in a given case, in impugned piece of legislation must be considered on the principle of Prithvi and substance. If, after making an effort in the said direction, the court finds that still a conflict persists in the legislative powers of Parliament and the State Legislatures, then article 246 comes into operation and the power of the State Legislature must yield legislative power of Parliament. We cannot do better than quote a passage from the judgement of the Supreme Court in *Calcutta Gas Co.(Proprietary) Ltd. v. State of West Bengal*, AIR 1969 SC 1044 on this subject which, in our judgment , constitutes a lodestar in interpreting rival entries and testing the validity, of any impugned legislation:

"The power to legislation is given to the appropriate legislatures by article 246 of the Constitution. The entries in the three Lists are only legislative heads or fields of legislation; they demarcate the area over which the appropriate Legislature can operate. it is also well- settled that widest amplitude should be given to the

language of the entries. But some of the entries in the different Lists or in the same Lists may overlap and sometimes may also appears to be in direct conflict with each other. It is then the duty of this court to reconcile the entries and bring about harmony between them."

We are bound to follow the above principle in interpreting the two rival entries."

10. It is necessary to consider the competence of Parliament to enact the provisions of section 630 of the Companies Act, 1956, bearing in mind the provisions of article 246 of the Constitution and the well- settled principles of interpretation of entries in the three Lists appearing in the Seventh Schedule to the Constitution. I am told that the decision of the single judge of this court in *Elliot Wand and Hill P. Ltd. v. LIC* [1981] Bom CR 590, relied on by the learned counsel for the petitioner-accused, has been challenged by preferring an appeal, and the appeal is pending. Apart from this, the decision in that case and the passages relied on by the learned counsel and reproduced above are of no help for deciding the point for consideration in this case. In that case, the vires of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, were challenged. In the present case, the challenge is to the provisions of section 630 of the Companies Act, 1956, as far as they apply to immovable property. It was not disputed that Parliament is competent to legislate in the matter of companies under entries 43 and 44 appearing in List I - Union List of the Seventh Schedule to the Constitution. As per entry 95 of the said List, Parliament can legislate in respect of the offences against laws with respect to any of the matters in that List. Section 630 of the Companies Act reproduced above provides penalty for the wrongful withholding of property by any officer or employee of a company. The powers of Parliament to legislate in respect of the affairs of a company relating to immovable property are in no way curtailed by entry 18 appearing in List II - State List of the Seventh Schedule to the Constitution. Consequently, I reject the contention of the learned counsel for the petitioner-accused that the provisions of section 630 of the Companies Act, so far as they relate to immovable property, are ultra vires the legislative competence of Parliament.

11. The learned counsel for the petitioner-accused next contended that as the petitioner filed a declaratory suit in the Court of the Small Causes at Bombay, seeking a declaration that he is a tenant of the premises , it is necessary to stay the proceedings before the learned Metropolitan Magistrate till the decision of the suit. It was also argued by the learned counsel that in view of the provisions of section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, it was within the exclusive jurisdiction of the Court of Small Causes at Bombay to decide the dispute between landlord and tenant regarding the tenancy claimed by the petitioner and, as such, the criminal court has no jurisdiction to entertain the criminal proceedings against the petitioner. The learned counsel for respondent No.1 (complaint) referred to the decision of a single judge of this court in *Suresh Venkatrao Nerlekar (Dr.) Vs. Sharanghadar Pandurang Nadkarni and Others*, IN that case also, there was prosecution of an

ex-employee of the company, the Modern Mills Ltd., for the offence u/s 630(1)(b) of the Companies Act, 1956, as the accused therein did not vacate the premises belonging to the company which he had occupied during his employment. In that case also, the accused has filed a declaratory suit in the Court of Small Causes at Bombay and the criminal proceedings were sought to be stayed on the ground that the issue of tenancy was identical and common to the civil court and criminal court. That contention was not accepted and the learned judge referred to the Division Bench decision in *Kishindas Tekchand Vs. The State*, . In that case, it was held (headnote):

"The court is not justified in directing criminal proceedings to be stayed on the bare theoretical ground that question of tenancy can be more appropriately dealt with by the civil court, specially when it is clear from the applicant's conduct that he is not serious about prosecuting his suit and is obviously playing for time."

12. It is not necessary to dwell much on this point. The matter has been fully considered in the case of *Suresh Venkatrao Nerlekar (Dr.) Vs. Sharanghadar Pandurang Nadkarni and Others*, . Following the said decision of this court, I find it neither expedient nor necessary to stay the criminal proceedings pending the decision of the declaratory suit filed by the petitioner.

13. The contention of the learned counsel for the petitioner-accused that as there is a dispute between the parties as to whether the petitioner is a tenant and entitled to the protection of the provisions of the Bombay Rents, Hotel and Loading House Rates Control Act, 1947, and the Court of Small Causes at Bombay has the exclusive jurisdiction to decide the point, the criminal court had no jurisdiction to entertain and continue the proceedings u/s 630 of the companies Act, 1956, cannot be accepted. The plea of tenancy is not at all open on the facts of this case. The flat in question belonging to the company was occupied by the petitioner during the term of his employment with the company and he was entitled to occupy it only during his employment with the company. After the termination of his services with the company, he could not claim to continue to occupy the premises on the ground that he was a tenant thereof. While considering whether the plea of tenancy is a bona fide plea, it is always necessary to examine and consider the transaction on the basis of which the plea of tenancy is based, and if on those facts no plea of tenancy can be raised, such a plea cannot be entertained. Consequently, I reject the contention of the learned counsel for the petitioner-accused that the criminal court has no jurisdiction to entertain the complaint u/s 630 of the companies Act, as the petitioner claims to be a tenant thereof.

14. The learned counsel for respondent No. 1 (complainant) submitted that the petitioner-accused has earlier has earlier filed a similar application u/s 482, Cr PC, for quashing the criminal proceedings, being Case No. 63/3 of 1981, pending in the court of the Metropolitan Magistrate, 14th Court, Girgaum , Bombay, and he withdrew the said petition when it came up for hearing and, thereafter, filed the present petition in respect of the same subject-matter. He pointed out that in

paragraph 4 of the petition, the petitioner stated that no other application had been filed on behalf of the petitioner either in this court or in any other court with respect to the subject-matter of this petition. According to the learned counsel, it was an incorrect statement and the petitioner suppressed true facts by not mentioning that he has earlier filed a petition with respect to the same subject-matter and he had withdrawn it. The learned counsel contends that the petitioner who either makes false statements or suppresses true facts is not entitled to any relief in the extraordinary jurisdiction of this court u/s 482, Cr PC. The learned counsel for the petitioner-accused on the other hand contends that the petitioner has not made incorrect statements and also did not suppress anything which disentitled him to claim the reliefs which he has sought in the present petition. He submits that the earlier petition u/s 482, Cr PC, was on other grounds similar to the grounds in the case of Govind T. Jagtiani v. Sirajuddin S. Kazi, Senior Administrative Officer, Indian Oil Corporation, Bombay, (Criminal Application No. 1197 of 1982), which was decided by this court on March 24, 1983 - [1984] 56 Com Case 329 (Bom). He submitted that as the similar petition of Govind Jagtiani was dismissed by this court on March 24, 1983, he withdrew the earlier petition u/s 482 CR, PC, and filed the present petition on a new ground challenging the legislative competence of Parliament to legislate section 630 of the Companies Act, 1956, in respect of immovable property of a company. He submitted that at present petition was based on new grounds, it was not necessary for the petitioner to make mention of the petition filed by him earlier u/s 482, Cr PC, and withdrawn by him. I am unable to agree with the learned counsel for the petitioner-accused, The petitioner had earlier filed a petition u/s 482, Cr PC, for quashing the criminal case pending against him in the court of the learned Metropolitan Magistrate, and he withdrew that petition and filed the present petition under the same provision, that is, section 482, Cr PC, for quashing the proceeding of the same criminal case. Therefore, the subject-matter of this petition and the earlier petition filed is the same, though in the present petition, the petitioner has raised a ground which he had not raised in the earlier petition. I fully agree with the learned counsel for respondent No.1 - complainant that the petitioner should have mentioned in the petition the fact of filing of the earlier petition and the withdrawal thereof. In this connection, a reference may be made to the decision of the Nagpur High Court in Zikar v. Government of Madhya Pradesh, AIR 1951 Nag 16. In that decision, their Lordships of the Nagpur High Court referred to the ruling laid down in King v. General Commissioners for the Purposes of the the Income Tax Acts for the District of Kensington : Ex parte Princess Edmond De Polignac, [1917] 1 KB 486, where Viscount Reading C.J., with whom Rindley and Low JJ. agreed, stated the ruling thus (pp 17 & 18):

"Where an ex parte application has been made to this court for a rule is or other process, if the court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the court as to the true facts, the court ought, for its

own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the court, but one which should be used only in cases which bring conviction to the mind of the court that it had been deceived. Before coming to this conclusion, a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that the court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit."

15. It was contended in that case that the ruling reproduced above could have no application to proceedings under article 246 of the Constitution. Rejecting that contention, their Lordships of the Nagpur High Court, at page 21 of the report, observed as follows:

"Under that article (that is , article 246 of the Constitution of the India) the court had been empowered to issue directions, orders or writs, to any person or authority including in appropriate cases to any Government. The court, therefore, exercises vast powers of correction, prohibition and direction. What the Constitution provides is a special speedy remedy for the enforcement of the fundamental rights and for any other purpose. But a person is not entitled to such a remedy as a matter of course. The very nature of the remedy requires that those who seek it must approach the court in perfect good faith and place all the material facts before the court. Otherwise the court might be misled to pass orders the consequences of which may be far reaching and even irreparable. What acts are material in a particular case would necessarily depend on the nature of the order, direction or writ sought. Where, as here, the court has reason to be satisfied that there has been a deliberate concealment of facts so as to deceive it, the court will decline to consider the merits and reject the application. The rule stated by Viscount Reading C.J. is very statutory. Having regard to all the circumstances in which the affidavit was made, we deem it necessary to adopt that rule and give effect to it. It may be as well to add that the reason for the adoption of the rule is not to arm an applicant's opponent with a weapon of technicality against the former but to provide an essential safeguard against abuse of the process of the court."

16. The petitioner who approaches this court invoking the extraordinary jurisdiction u/s 482, Cr PC , and article 227 of the Constitution must be very careful about the correctness of the facts mentioned in the petition and the affidavit, if any, and he should not suppress any important fact having a bearing on the question involved in the petition. If the petitioner had already filed a petition on the same subject-matter for the same reliefs and for one reason or the other withdrew it, he must faithfully mention those facts in the petition. Those facts are necessary for the court to decide whether the subsequent

petition on the same subject for the same reliefs should or should not be entertained. Though I find that the petitioner should have mentioned the fact of his having filed a similar petitions earlier and withdrawal thereof in this petition, I do not think that the said default on the part of the petitioner should be visited with the dismissal of the petition on that ground. I have earlier found that the petition is not maintainable on merits.

17. In the result, the petition is dismissed and the rule is discharged. The petitioner accused shall pay the costs of respondent No. 1,