
(2008) 05 DEL CK 0007

In the Delhi High Court

Case No : Writ Petition (C) 16211 of 2004

L.D. Nayar and Sons

APPELLANT

Vs

Punjab National Bank and Others

RESPONDENT

Date of Decision : 19-05-2008

Acts Referred:

Companies Act, 1956 — Section 11, 14, 15, 3

Constitution of India, 1950 — Article 14, 226

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 2, 3, 4, 7

Citation : AIR 2008 Delhi 179 : (2008) 151 DLT 27 : (2008) 11 ILR Delhi 124

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : S.K. Chaudhary, for the Appellant; Dhruv Mehta, for the Respondent

Judgement

S. Ravindra Bhat, J.—The petitioner, under Article 226 of the Constitution of India, seeks a direction to quash proceedings and orders made under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971- hereafter called "the Act"- in respect of premises owned by the respondent (hereafter called "the bank") being two shops; the Estate Officer had directed eviction by order dated 24-8-1991; the Additional District Judge, acting as appellate authority, had rejected the appeal, by his order dated 24-8-2001.

2. The petitioner had been inducted as tenant in respect of two shops, on 25-3-1963, and 20-4-1963, respectively in the Punjab National Bank building (also known as the PNB shopping complex). The tenancy continued even after management of the first respondent bank was nationalized, in 1970. The petitioner alleges having been regular in payment of rent and other charges.

3. On 11-8-1986, the landlord bank issued notices, terminating the tenancy on the ground that it required the premises for its use. It also threatened initiation of eviction proceedings under the Act. On 15-4-1987, the bank's regional manager, acting as Estate Officer, issued notices u/s 4(i) of the Act for eviction from both premises. The second respondent was appointed as Estate Officer, in

September, 1987. Claiming to be aggrieved, the petitioner moved a writ petition before this Court challenging appointment of the second respondent being WP 1487/ 1988; the court directed stay of dispossession, on 24-10-1988. It is also alleged that the petitioner sought details of the bank's requirement of the premises, which was declined. He Therefore applied to the Estate Officer, for information in that regard. It is claimed that the latter even declined to receive the application and later, on 24-8-1991, issued eviction orders. The petitioner appealed against the said orders, on 3-9-1991.

4. The petitioner adverts to guidelines issued by the Respondent No. 3, on 30-3-1992 and a clarification dated 14-7-1993 about the proper approach in proceedings under the Act. It is also alleged that the Reserve Bank of India directed the bank to lay down a suitable policy to ensure strict compliance with guidelines, in regard to eviction under the Act. The petitioner claims to be unaware of these, due to concealment by the respondent bank, as a result of which the appeals filed by it were dismissed on 7-2-2001. The petitioner claims that one of its partners, Chela Ram died on 20-4-2001. Since he was in touch with the counsel, the petitioner claims ignorance of the order of the appellate authority. The petitioner also alludes to a Resolution dated 30.5.2002 (hereafter called "guidelines") by the Central Government, Ministry of Urban Development & Poverty alleviation which indicated guidance to prevent arbitrary use of power to evict tenants from the public premises and to limit the use of powers of the Estate Officer. These guidelines were notified in the Gazette on 8-6-2002.

5. The petitioner's writ petition, challenging appointment of the Estate Officer was dismissed on 27-3-2003. The petitioner claims to be unaware of this development due to death of its partner and since its counsel did not inform it. It is claimed that the petitioner's partner became aware about dismissal of the writ petition on 22-7-2004; consequently an application to restore it was filed; it was later allowed. The petitioner also filed an application for amendment; the court however declined that request, and later disposed the writ petition on 15-9-2004, granting liberty to file fresh writ petition, in respect of the impugned orders.

6. It is alleged that recourse to provisions of the Act are without jurisdiction, and beyond the scope of the powers of the respondent bank, in view of the guidelines, and similar circulars issued in 1992 and 1993. The termination of the petitioner's tenancy by notice dated 11-8-1987 and the continuation of proceedings thereafter are challenged, as beyond the scope of powers of the respondent bank and the Estate Officer appointed by it. It is contended that once banks sought clarifications regarding applicability of the guidelines, specifically in relation to their powers under the Act, they could not later, in blatant disregard to the guidelines, seek recourse to the provisions. The petitioner also relies upon the letter of 14th July, 1993, issued by the Ministry of Finance, Central Government. It is also alleged that directions of the RBI had to be complied with and a policy in this regard had to be followed by the petitioner.

7. The bank, in going ahead with proceedings under the Act is alleged to have acted arbitrarily and unreasonably, It is also contended that use of the Act violates principles of natural justice, as it threatens the valuable rights of the petitioner to continue in the premises. No bona fide need for the premises was disclosed. The petitioner's continuous and legal use of the premises for over 42 years was sought to be brought to an end, without any rationale. This amounted to unreasonable use of harsh powers, without any justification, which was sought to be avoided by the guidelines.

8. The bank, in its counter affidavit adverts to the orders of the Estate Officer, Respondent No. 2. It avers needing the premises. The premises are commercial and are used for commercial purposes by the petitioner. It adverts to meetings held in relation to review of the cases and proceedings pending before the Estate Officer on 22-5-1992, and 15-1-1997. The review of cases were by high level officials' committee, chaired by the Dy. Zonal Manager and the Dy. General Manager of the bank. In both the meetings, the bank decided to go ahead with proceedings under the Act, with a view to secure vacant premises.

9. The respondent bank avers that the guidelines issued by the Ministry, are inapplicable since the bank needs the premises. It is alleged that the letter issued by Government of India, Ministry of Finance Department of Economic Affairs (Banking Division) on 14th July, 1993, where the Ministry of Urban Development clarified that the guidelines issued by them, were intended for genuine non-affluent tenants. The bank denies that the guidelines of 30th May, 2002, apply to the petitioner. It is alleged that such guidelines cannot curtail the power to seek recourse to provisions of the Act and that it requires the premises bona fide. The bank further states that all defences taken by the petitioner were duly considered and dealt with by the Estate Officer and the Appellate authority, and this Court should not interfere with their orders as they do not disclose unreasonableness or any illegality.

10. Mr. A.S. Chandhiok, learned senior counsel, besides urging the grounds in support of the writ petition, also submitted that with advent of guidelines framed for proper use of the Act, all state agencies, including the bank, have to conform to it and cannot use the provisions of the Act to arbitrarily evict tenants in valid occupation of premises for long periods. In this case, the petitioner occupied the premises in 1963 and has been in lawful possession as a tenant. The notice issued in 1986, purporting to terminate the tenancy, and the invocation of provisions of the Act, were Therefore without any legal basis.

11. Mr. Chandhiok argued that with the issuance of the circulars in 1992 and 1993, and the guidelines in 2002 (the latter being published in the official Gazette) the bank had to conform to them; it was denuded of power to arbitrarily invoke provisions of the Act. The petitioner fell within the description of a bona fide tenant, and could Therefore, not be evicted in the manner sought to be done under the Act.

12. Learned Counsel submitted that the state, its every agency or arm has to adhere to standards of conduct, evolved for its behavior. The guidelines and circulars of the Ministry of Urban Development require the respondent bank not to take action by invoking the Act. The bank is Therefore, estopped from doing so. Besides, the bank cannot travel beyond the restrictions placed on the guidelines. In doing so, it violates the mandate of Article 14.

13. Mr. Dhruv Mehta, learned Counsel, denied the arguments made on behalf of the petitioner. He submitted that the provisions of the Act do not anywhere restrict the scope of its application. It was submitted that the present case is a flagrant abuse of process of law; it had attacked appointment of the Estate Officer. That petition was dismissed; its appeal had been dismissed in 2001. It cannot now, in this belated writ petition, seek to re-agitate the same issues.

14. Learned Counsel urged that the guidelines relied upon cannot be made applicable in cases where the corporation or PSU owning the premises needs them for its genuine activities. He submitted that after the Constitution Bench decision in Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others, , there cannot be any doubt that powers under the Act are of widest amplitude and should not be artificially curtailed. Mr. Mehta urged that in Hari Singh and Others Vs. The Military Estate Officer and Another, as also in Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others, , it was held that the scope of the provisions of the said Act cannot be cut down on the basis of the apprehension that statutory corporations like nationalized Banks or Corporations would misuse the provisions by acquiring properties in possession of tenants at a low price and then evicting them, after terminating tenancy and selling the property at a much higher value because the value of property in possession of tenants is much less as compared to vacant property. Counsel also relied on the Division Bench judgment of this Court, in Uttam Parkash Bansal and Others Vs. Life Insurance Corporation of India and Others, and submitted that the guidelines relied on cannot curtail the powers to evict the petitioner, under the Act.

15. For a better understanding of the disputes in this case, it is essential to notice the relevant guidelines of 1992 and clarifications issued, leading up to the 2002 guidelines. The relevant provisions of the 1992 guidelines read as follows:

i) The provisions of the P.P.Act should be used primarily to evict totally illegal occupants of the premises of public authorities or unauthorized sub-letters, or employees who have ceased to be in their service and thus ineligible for occupation of the premises. The proceedings should be initiated in accordance with the provisions of the Act only in cases where the occupation becomes unauthorized on genuine grounds of law.

ii) The provisions of the Act should not be resorted to either with a commercial motive or to secure vacant possession of the premises in order to accommodate their own employees, where the premises were in occupation of the original

tenants to whom the premises were let either by the public authorities or the persons from whom the premises were acquired.

iii) A person in lawful occupation of any premises should not be treated or declared to be an authorized occupant merely on service of notice of termination of tenancy, nor should any contractual agreement be wound up by taking advantage of the provisions of the Act. At the same time, it will be open to the public authority to secure periodic revision of rent in terms of the provisions of the Rent Control Act in each state, or to move under genuine ground under the Rent Control Act for resuming possession. In other words, the public authorities would have...similar to private landlords under the Rent Control Act in dealing with genuine legal tenants.

The above guidelines were clarified, in the following terms:

Resorting to PP Act to vacate authorized tenants merely to secure possession of the premises to accommodate the PSU(s) employees, or for commercial redevelopment or to open a branch cannot be/totally against the spirit of the guidelines for protecting interests of genuine authorized tenants. The Model Rent control Legislation permit revision of present rents to the level of market rents over a period of and annual indexation of rents. After the State Govt. enact the amendments, on the lines of the Model Rent Control Legislation, the PSU's can secure rent revision according to the new formula. As such, there is no jurisdiction for seeking eviction of original tenants merely to secure higher rents.

16. Close upon heels of the above clarification, another clarification, this time even more pointed, was issued, on 14th July, 1993 in the following terms:

F. No. 27/74/BO-II/91

"Jeevan Deep" Building

Sandsad Marg,

New Delhi - 110 001.

Dated 14th July, 1993

Government of India

Ministry of Finance

Department of Economic Affairs

(Banking Division)

1. The Chairman, State Bank of India, Bombay

2. CMDs of 20 nationalised banks.

3. MDs of SBI subsidiaries.

4. Chief Executives of IDBI/IFCI/IRBI/EXIM Bank/NABARD/ DICGC/NHB/ICICI

5. The Chief Officer (DBOD), RBI, Bombay.

Subject : Public Premises (Eviction of Unauthorized occupants) Act, 1971 -
Guidelines for taking recourse to the provisions of -

...

Sir,

Please refer to our letter of even number dated 1st December, 1992 forwarding therewith detailed guidelines and clarifications issued by the Ministry of Urban Development for taking recourse to provisions of Public Premises (Eviction of unauthorized occupants) Act, 1971 with the objective of preventing arbitrary use of the provisions of the Act. The Ministry of Urban Development have now further clarified that the guidelines issued by them are intended for the benefit of genuine, non-affluent tenants. It has come to the notice of the Ministry of Urban Development that the benefit of these guidelines are being unduly enjoyed by large business houses and other organizations who have the means to make alternative arrangements by paying market rents. According to Ministry of Urban Development, such tenants should not have the moral right to continue occupying the premises of the Public Sector Undertakings by paying only nominal rents fixed long back thus preventing the PSUs from using their premises for developmental activities. Accordingly, the Ministry of Urban Development have now informed that the guidelines issued by them are meant for the benefit of genuine, non-affluent tenants and are not applicable to large business houses and commercial enterprises.

All the public sector banks and financial institutional are advised to take into account the above clarification while implementing the guidelines circulated earlier.

Kindly acknowledge receipt of this letter.

Yours faithfully,

(M.S.SEETHARAMAN)

Under Secretary to the Govt. of India

17. None of the above guidelines were in force, and Therefore, were not taken into consideration when the bank decided to take action under the Act, in 1986. When proceedings before the Estate Officer were pending, and later after eviction order was made in 1991, the guidelines were not in existence. Similarly, the order of the appellate authority was made before the latest guidelines were issued, in 2002. The relevant portions of those guidelines read as follows:

2. To prevent arbitrary use of powers to evict genuine tenants from public premises and to limit the use⁴ of powers by the Estate Officers appointed u/s 3 of the PP(E) Act, 1971, it has been decided by Government to lay down the following guidelines:

(i) The provisions of the public Premises (Eviction of Unauthorised Occupants) Act, 1971 [PP (E) Act, 1971] should be used primarily to evict totally unauthorized occupants of public authorities or subject5s, or employees who have ceased to be in their service and thus ineligible for occupation of the premises.

(ii) The provisions of the PP(E) Act, 1971 should not be resorted to either with a commercial motive or to secure vacant possession of the premises with a commercial motive or to secure vacant possession of the premises in order to accommodate their own employees, where the premises were in order to accommodate their own employees, where the premises were in occupation of the original tenants to whom the premises were let either by the public authorities or the person from who the premises were acquired.

(iii) A person in occupation of any premises should not be treated or declared to be an unauthorized occupant merely on service of notice of termination of tenancy, but the fact of unauthorized occupation shall be decided by following the due procedure of law. Further, the contractual agreement shall not be wound up by taking advantage of the provisions of the PP(E) Act, 1971. At the same time, it will be open to the public authority to secure periodic revision of rent in terms of the provisions of the Rent Control Act in each State or to move under genuine grounds under the Rent Control Act for resuming possession. In other words, the public authorities would have rights similar to private landlords under the Rent Control Act in dealing with genuine legal tenants.

(iv) It is necessary to give no room for allegations that evictions were selectively resorted to for the purpose of securing an unwarranted increase in rent, or that a change in tenancy was permitted in order to benefit particular individuals or institutions. In order to avoid such imputations or abuse of discretionary powers, the release of premises or change of tenancy should be decided at the level of Board of Directors of Public Sector Undertakings.

(v) All the Public Undertakings should immediately review all pending cases before the Estate Officer or Courts with reference to these guidelines, and withdraw eviction proceedings against genuine tenants on grounds otherwise than as provided under these guidelines. The provisions under the P.P. (E) Act, 1971 should be used henceforth only in accordance with these guidelines.

3. These orders take immediate effect.

18. The definition of "public premises" in Section 2(e) of the Act is wide; it includes premises belonging to or taken on lease by or on behalf of a company, as defined in Section 3 of the Companies Act, 1956, in which not less than fifty one percent of the paid-up capital is held by the Central Government as well as premises belonging to or taken on lease by or on behalf of any corporation (not being a company, as defined in Section 3 of the Companies Act in 1956, or a local authority) established by or under a Central Act and owned and controlled by the Central Government. It contains certain additional provisions, providing

for offences and penalties (Section 11), recovery of rent etc. as arrears of land revenue (Section 14) and bar of jurisdiction of courts (Section 15).

19. The question Therefore, is, if the statute clothes the authority with wide powers, as in this case, to take action under the Act, upon fulfillment of the prescribed conditions, requisite for exercise of its functions, the court can, exercising judicial review, prevent it from doing so, on application of guidelines issued by the Government. All executive power has to be exercised to further goals for which they are conferred, in a non-arbitrary and non-discriminatory manner. It is well established that judicial review is available as a corrective remedy for all state action, even in the contractual field. The question is whether the guidelines relied upon by the petitioner can restrict application of the Act and whether further proceedings before the Estate Officer are barred in law or arbitrary.

20 The validity of the Act was challenged, after its amendment. The Supreme Court upheld it, in the judgment reported as *Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others*, . The court, while negating a contention about inapplicability of the Act to commercial premises, held as follows:

No distinction can, Therefore, be made between premises used for residential purposes and premises used for commercial purposes in the matter of eviction of unauthorized occupants of public premises and considerations which necessitate providing a speedy machinery for eviction of persons in unauthorized occupation of public premises equally apply to both the types of public premises.

The court had also held that the Punjab National Bank, a public sector bank, was "corporation" and as a result, its premises were covered by provisions of the Act. It was further held that the expression "public premises" are of the widest amplitude and that the power is available to evict, through a speedy procedure, occupants defined as "unauthorized". The primacy given to the Act has been reiterated in subsequent decisions, reported as *Kaiser-I-Hind Pvt. Ltd. and Others Vs. National Textile Corporation (Maharashtra North) Ltd. and Others*, (again rendered by five judges of the Supreme Court) and *Crawford Bayley and Co. and Others Vs. Union of India (UOI) and Others*, .

21. In *Jamshed Hormusji Wadia Vs. Board of Trustees, Port of Mumbai and Another*, , the issue of recourse to provisions of the Act, by a public sector corporation was again revisited, and the court held as follows:

18. In our opinion, in the field of contracts the State and its instrumentalities ought to so design their activities as would ensure fair competition and non-discrimination. They can augment their resources but the object should be to serve the public cause and to do public good by resorting to fair and reasonable methods. The State and its instrumentalities, as the landlords, have the liberty of revising the rates of rent so as to compensate themselves against loss caused by inflationary tendencies. They can -and rather must - also save themselves from negative balances caused by the cost of maintenance, and payment of taxes and

costs of administration. The State, as landlord, need not necessarily be a benevolent and good charitable Samaritan. The felt need for expanding or stimulating its own activities or other activities in the public interest having once arisen the State need not hold its hands from seeking eviction of its lessees. However, the State cannot be seen to be indulging in rack- renting, profiteering and indulging in whimsical or unreasonable evictions or bargains.

22. Another important principle, in the exercise of statutory power is that its amplitude and breadth is controlled by the express terms of the parent statute or by necessary intendment and that circulars or guidelines can only guide the exercise of such power, but not fetter it. (See Commissioner Of Customs, Calcutta v. Indian Oil Corporation Ltd. AIR 2004 SC 2799 and Sirpur Paper Mills Ltd. Vs. The Commissioner of Wealth Tax, Hyderabad,).

23. In this case, the nature and character of the premises as public premises has not been questioned in these proceedings; facially such a contention cannot be taken, since the respondent bank is a public sector bank, and covered by the holding in Ashoka Marketing. It issued the notice terminating the tenancy, on 11-8-1986 and issued notices under Sections 4 and 7 for recovering the premises, and damages, as far back as in 1987. The bank has also placed materials on record to say that it reviewed the question of need for the premises. Neither Article 14 nor guidelines of the government, in the opinion of the court can be so read as to defeat the legitimate powers of the bank to seek recourse to provisions of the Act in the manner it has now done. It is well settled that administrative guidelines cannot supplant, the power to invoke a speedy remedy to evict tenants whose arrangements ended almost two decades ago. To hold otherwise would not only be fettering statutory power on patently insubstantial grounds, but placing unwarranted disabilities- on a plain misreading of the guidelines,- upon the bank's powers and prohibiting it from attempting to secure its premises within the legitimate bounds of law. This view also accords with the decision of the Division Bench of this Court in Uttam Parkash Bansal and Others Vs. Life Insurance Corporation of India and Others, . There the court had held that a tenancy terminated earlier to issuance of the guidelines could not be tested on the basis of its terms and that in any case those guidelines could not supplant statutory power under the Act.

24. For these reasons, the writ petition cannot succeed. The petition and pending applications are Therefore, dismissed with costs quantified at Rs. 20,000/-. They shall be paid to the respondent bank within four weeks.