
(1997) 04 SHI CK 0047

In the High Court Of Himachal Pradesh

Case No : Civil Revision Petition No. 74 of 1997

Mohan Lal and Others

APPELLANT

Vs

Cantonment Board

RESPONDENT

Date of Decision : 11-04-1997

Acts Referred:

Cantonments Act, 1924 — Section 198(3), 199, 200, 287, 287(1)
Cantonments Property Rules, 1925 — Rule 8
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 115, 151
Easements Act, 1882 — Section 52
Transfer of Property Act, 1882 — Section 105, 107, 107, 116, 123

Citation : (1998) 1 ShimLC 36

Hon'ble Judges : Kamlesh Sharma, J

Bench : Single Bench

Advocate : Kuldeep Singh, for the Appellant; L.C. Sood, for the Respondent

Final Decision : Dismissed

Judgement

Kamlesh Sharma, J.—Petitioners are Plaintiffs, who have filed civil suit in the Court of Sub-Judge 1st Class, Solan for permanent prohibitory injunction restraining Respondent-Defendant Cantonment Board, Kasauli, Tehsil Kasauli, District Solan from dispossessing them from their respective shops or from interfering with their respective business and putting the said shops to auction on 24-2-1997, as mentioned in auction notice No. CBK/Bldg/3-1434 dated 3-2-1997 either by it self or through its agents, servants and officials. In the Civil Suit an application under Order 39 Rules 1 and 2 read with Section 151 CPC has also been filed for interim injunction order, which was dismissed by the Sub Judge on 10-3-1997. The appeal against the order of the Sub Judge has also been dismissed by the District Judge, Solan by the impugned judgment dated 20-3-1997. Hence, the present revision petition u/s 115 Code of Civil Procedure.

2. It is not in dispute that the Petitioners are transacting business in the shops in question, which are of the Respondent Board. Admittedly, earlier the shops used to be allotted in public auction but lately these were given under private treaty

entered between the Petitioners and the Respondent Board whereby rent of the shops was fixed from year to year basis. Last private treaty was for the financial year commencing from 1st April, 1993 to 31st March, 1994. But even thereafter the Respondent Board has been accepting the rent till it took decision on 2-1-1997 to auction the shops for a period of three years, for which public notice dated 3-2-1997 was given to hold auction on 24-2-1997. This gave cause of action to the Petitioners to file the civil suit alleging that since the shops were not auctioned after 31-3-1994 and the Petitioners were permitted to continue in possession on the same terms and conditions they are holding over the shops and the Respondent Board has no authority to auction them before 31-3-1997. It is also alleged that without terminating the lease of the Petitioners they cannot be asked to hand over the vacant possession of the shops.

3. The Respondent Board has resisted the suit and has pointed out that it is within its right to transfer the occupancy right of the shops by the mode provided u/s 200 of the Cantonment Act, 1924 (hereinafter called the Act). It is also alleged that earlier no auction was held as the matter was pending before this Court in CWP No. 748 of 1994, which has been dismissed by judgment dated 7-11-1996 holding that transfer of occupancy rights in the shops can be made by no other mode except the mode provided u/s 200 of the Act. Accordingly, decision dated 2-1-1997 was taken by the Respondent Board to transfer the occupancy rights in the shops by public auction which was to be held on 24-2-1997 in which the Petitioners might also participate if they so desired.

4. From the record of CWP No. 748 of 1994, it is clear that the Petitioners had approached this Court when the Respondent Board had decided to give the shops to existing lessees on an enhanced rate of 15% of the existing rent for the year 1994-95 u/s 200 of the Act and directed them to submit a non-judicial stamp paper so that further action might be taken for execution of the agreement, failing which the shops would be got vacated. The Petitioners had challenged the said notices in the writ petition and prayed for direction to the Respondent Board, inter alia, to enter into leases with them for the occupation of the shops as per Rule 8 of the Cantonment Property Rules, 1925 for a period exceeding 30 years at a reasonable rent declaring Section 200 of the Act ultra vires. Rejecting the claim of the Petitioners this Court has held that transfer of occupancy rights in the shops can be by no other mode except by the mode provided u/s 200 of the Act, which provides for transfer by way of public auction for a maximum period of three years and by way of private treaty under which the rent is fixed on year to year basis. Therefore, the decisions dated 2-1-1997 to transfer the occupancy rights of the shops for a period of three years by public auction, for which public notice dated 3-2-1997 was given, is in accordance with the law laid down by this Court in C.W.P. No. 748 of 1994.

5. Now the question arises whether the Petitioners have any legal right to resist the transfer of occupancy rights in the shops presently with them and to pray for decree of permanent prohibitory injunction. Only by showing invasion of any

legal right in their favour they can prima facie make out a triable case, which is the first requirement for granting temporary injunction in their favour besides irreparable loss and balance of convenience. Mr. Kuldeep Singh, learned Counsel appearing for the Petitioners, has vehemently urged that the legal right of the Petitioners is of lessees holding over as on the expiry of the period of private treaty on 3.3.1994, the Respondent Board continued accepting rent from them and thereby giving its assent to their continuing in possession on the same terms and conditions which were given in the agreement executed between the Petitioners and the Respondent Board. proforma of agreement was also filed along with the plaint. According to Mr. Kuldeep Singh in view of the rights of the Petitioners as lessees holding over they can be evicted only in accordance with law by giving them notice u/s 106 of the transfer of property Act. He has referred to Section 116 of the Transfer of property Act, which provides for the effect of holding over and cited judgments in *Lallu Yeswant Singh (dead) by his legal representatives v. Rao Jagdish Singh and Ors.* AIR 1968 S.C.620, *Nair Service Society Ltd. Vs. Rev. Father K.C. Alexander and Others*, *Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others*, and *Mogilipuvvu Annapurnaiah Vs. Malampati Narasimha Rao and Another*, in support of his submissions.

6. On the other hand, Mr. L.C. Sood, learned Counsel for the Respondent Board, has urged that the Petitioners are only trespassers after 31.3.1994, when the period of private treaty entered between them and the Respondent Board had expired, as they had failed to execute further agreement as per decision dated 11.4.1994 of the Respondent Board, against which they had preferred C.W.P. No. 748 of 1994. It is pointed out by Mr. Sood that the Respondent Board was restrained from transferring the occupancy rights in the shops by way of public auction by interim order dated 13.9.1994 passed in CMP No. 1670 of 1994 in the writ petition, which was further clarified by order dated 13.11.1995 that the Petitioners shall pay the occupancy charges as per the existing rates prevalent for the year 1994-95 regularly. It was in these circumstances that the Respondent Board has been accepting occupancy charges from the Petitioners after 31.3.1994, which cannot be held as its assent to their continuing in possession on the same terms and conditions under which they were earlier occupying the shops under the private treaty. Mr. Sood has also argued that the transfer of property Act, more specifically Sections 106 and 116 thereof, do not apply to the property of cantonment Boards he has referred to Section 287 of the Act, which provides that paragraphs 2 and 3 of Section 54 and Sections 59, 107 and 123 of the transfer of property Act will apply to every Cantonment with respect to transfer of property by registered instrument. He has referred to second proviso to Section 200 of the Act to urge that the possession of the Petitioners after the expiry of the period of last private treaty on 31.3.1994 does not give them any right as lessee and the Respondent Board is within its right to ask the Petitioners to hand over the vacant possession of the shops for handing them over to the highest bidders thereof in the public auction. He has further submitted that the case law cited on behalf of the Petitioners is not applicable to

the present case and has referred to a judgment of Delhi High Court in Chandu Lal Vs. Municipal Corporation of Delhi, In support of his submissions.

7. After giving its best consideration, this Court is of the view that there is no merit in the contentions raised by Mr. Kuldeep Singh, learned Counsel appearing for the Petitioners. In view of the admitted facts as discussed herein above and the law laid down by this Court in C.W.P. No. 748 of 1994, the occupancy rights in the shops can only be transferred in public auction for a period not exceeding three years and if the Respondent Board is of the opinion that such transfer is not desirable or expedient, it may with the previous sanction of the General Officer Commanding-in-Chief of the Command or the Director enter into private treaty for levying such stallages, rents or fees as it thinks fit for a period not exceeding one year at a time. Further, reference to second proviso to Section 200 of the Act makes it clear that enjoyment of occupancy rights by any person for any length of time shall not be deemed to create or confer any tenancy right in the shop, occupancy rights of which are transferred to him either in public auction or by private treaty.

8. It is not in dispute that the shops occupied by the Petitioners consist of public market which is fully controlled, supervised and administered by the Respondent Board, as provided under Chapter III of the Act. The perusal of Sub-section (3) of Section 198 of the Act makes it clear that the Respondent Board may at any time by public notice close the public market or any part thereof. The perusal of Section 199 of the Act leaves no doubt that in selling or exposing the articles in the shops occupied by the Petitioners they require general or special permission of the Respondent Board and on contravention of provisions of Section 199 of the Act, they may be summarily removed from the market by or under the order of the Executive Officer or any Officer or servant of the Respondent Board authorised by it in this behalf. From these provisions it is very clear that the occupancy rights of the Petitioners in the shops in question are that of licensees and not lessees, as urged on their behalf. As provided u/s 105 of the Transfer of Property Act, the lease envisages and transfers an interest in the demised property creating a right in favour of the lessee in rem, whereas, as per the definition of licence, given in Section 52 of the easement Act, interest in the property is not transferred in favour of the licensee but he is given a right to do in or upon the immovable property of the guarantor something which would in the absence of such right be unlawful.

9. In view of these definitions of "lease" and "licenceas" well as the provisions of Sections 198 - 200 of the Act and the facts and circumstances of this case, this Court has no hesitation to hold that the Petitioners were not lessees but only licensees, that too upto 31.3.1994 Their occupation of the shops in question after 31.3.1994 was under the orders of the Courts upto 17.10.1996, when their Writ Petition No. 748 of 1994 was dismissed, as a result of which interim orders dated 13.9.1994 and 13.11.1995 were vacated. Thereafter, they have been permitted by the Respondent Board to continue in possession but after transfer of

occupancy rights of these shops to the highest bidders in the public auction, they will have no right whatsoever to continue occupying these premises and they are liable to hand over their vacant possession. The Petitioners have themselves stated in para 2 of their plaint that the Respondent Board "has no right, authority or jurisdiction to auction the shops before 31st March, 1997" which shows that the Respondent Board may auction the shops after 31st March, 1997. Since 31st March, 1997 is over, the suit of the permanent injunction restraining the Respondent Board from putting the shops to auction before 31st March, 1997 in pursuance of notice dated 3.2.1997 or any other notice in this regard, has become infructuous. In view of decision dated 2.1.1997 of the Respondent Board to transfer the occupancy rights in the shops by public auction and absence of any existing right of Petitioners to continue occupying the shops the Respondent Board is within its rights to direct them to vacate the shops.

10. In view of the findings that the Petitioners were only licensees and not lessees and their licence stands revoked as they have been asked to hand over the vacant possession of the shops, no notice is required to be given u/s 106 of the transfer of property Act, as urged by the learned Counsel appearing for them. In fact the transfer of property Act does not apply to the property of cantonment Board as provided u/s 287 of the Act. Under Sub-section (1) of Section 287 of the act paragraphs 2nd 3 of Section 54, and Sections 59, 107 and 123 of the transfer of property Act have been extended to the every cantonment Board with respect to transfer of property by registered instrument only. Therefore this Court holds that the rights of the Petitioners in respect of the shops are not governed by the provisions of the Transfer of property Act but the provisions given under Chapter XII of the Act, which are complete in all respects for the purpose of control, supervision and administration of the shops.

11. In view of these findings, the judgments in *Lallu Yeswant Singh (dead) by his legal representatives v. Rao Jagdish Singh and Ors.*, *Nair Service Society Ltd. v. K.C. Alexander and Ors.*, *Nagindas Ramdas v. Dalpatram Ichharam alias Brijram and Ors.* and *Moqillipuvvu Annapurnaiah v. Malampati Narasimha Rao and Anr.* (supra) are not relevant, as these pertain to the rights of lessees, which are governed by the transfer of property Act or Tenancy Laws. The judgment in *Chandu Lal v. Municipal Corporation of Delhi* (supra) is nearer to the facts of this case, in which it is held that on the revocation of a licence, the licensee is only a trespasser having no right to continue occupying the demised premises, hence there exists no prima facie case in his favour to grant stay of dispossession, which would perpetuate his unlawful possession. Applying these principles to the facts and circumstances of the present case it is held that the Petitioners have no prima facie case in their favour and they are not entitled to the injunction prayed for. In the absence of prima facie case, it cannot be held that the balance of convenience is in favour of the Petitioners and they will suffer irreparable loss if the injunction prayed for is not granted.

12. The result of this discussion is that there is no merit in this revision petition

and it is rejected. No order as to costs.