
(2010) 05 PAT CK 0068
In the Patna High Court
Case No : CWJC No. 3491 of 2009

Mr. Anwar Hasan

APPELLANT

Vs

Central Bank of India and Others

RESPONDENT

Date of Decision : 21-05-2010

Acts Referred:

Citation : (2010) 05 PAT CK 0068

Judgement

Navaniti Prasad Singh, J.—An ordinary citizen, being harassed by the arbitrary and oppressive attitude of a Public Sector Bank, has come to this Court for redressal of his long standing grievances. Counter affidavit having been filed, facts not in dispute, the case is taken up for final disposal at this stage itself with consent of parties.

2. At Naya Tola, in the town of Patna, the petitioner and his three brothers, respondents No. 5, 6 and 7, who do not oppose rather support the writ petition, have a premises, the ground floor of which, admeasuring about 2,500 square feet, was let out to the Central Bank of India for its Naya Tola Branch. It is not in dispute that Central Bank of India, the contesting respondent is a Nationalised Public Sector Bank and would be State within the meaning of Article 12 of the Constitution of India.

3. As per registered lease deed executed as between the parties in the year, 1992 for a tenancy for four years being calendar years 1992 to 1995, it was agreed that for the first two calendar years that is 1992 and 1993, the rent payable would be Rs. 5,050/- per month and for the next two years that is 1994 and 1995, it would be at the enhanced rate of Rs. 6,050/- per month. The Bank, on expiry of the said lease, did not get the lease renewed by executing any fresh lease deed. It, being in possession of the leased premises and apparently taking advantage of the fact that it could not be evicted easily, entered into long drawn negotiation in regard to enhancement of rent payable for fresh lease deed.

4. Ultimately negotiations taking place, the petitioner was asked to give a consent letter in relation to the agreed terms of fresh tenancy. The petitioner

responded by his letter dated 16.08.2004 enclosing the consent letter. It was pointed out that the Bank had agreed as per discussion with the Zonal Manager that Bank would pay arrears of rent from 01.01.1996 (after the lease expired) to 31.12.2000 at the rate of Rs. 3.50 per square feet per month equivalent to Rs. 8,750/- per month. As per the consent letter obtained by the Bank, with effect from 01.01.2001, the Bank would pay rent at the rate of Rs. 8/- per square feet equivalent to Rs. 20,000/- per month. The lease would be for a total period of 11 years with effect from 01.01.2001 with the rent aforesaid for first 5 years and the Bank would have two options of renewal for periods of three years each at enhanced rent of 25% during the first option period of three years and a further enhanced rent of 15% during the second period of enhancement.

5. Effectively, the rent for the period 01.01.1996 to 31.12.2000 was Rs. 8,750/-. For the period 01.01.2001 to 31.12.2005, it would be Rs. 20,000/- per month. From 01.01.2006 to 31.12.2009, it would be Rs. 25,000/- per month and for 01.01.2010 to 31.12.2012, it would be Rs. 28,750/- per month. Even though the consent letter was filed, for some reason at Bank's end, there were some misgiving and further negotiations were called for and a fresh consent letter was asked for as per Bank's letter dated 05.03.2005. As per discussions again, which were mainly with regard to rent for the year, 2001 onwards, as there was no dispute with regard to the period 1996 to 2000 which was agreed to be paid at Rs. 8,750/-, the petitioner filed a fresh consent letter on 04.05.2005. As per this consent obtained by the Bank, the lease period had to be of 15 years being five years with two renewal options and five years each starting from 01.01.2001. For the first five years, the rent agreed was at the rate of Rs. 6.50 per square feet amounting to Rs. 16,250/- per month and upon each renewal, option being exercised, it would get enhanced by 25%.

6. Having given this consent letter to the Senior Manager at the Branch Office at Naya Tola on the same day that is 04.05.2005, the Senior Manager of the respondent-Bank informed the Regional Office at Patna (Annexure-5) that it was agreed that arrears of rent for the years 1996 to 2000 would be paid at the rate of Rs. 8,750/-. It was then pointed out that there was negotiations for further period and it was finally agreed that from the year 2001, rent would stand enhanced to Rs. 6.50 per square feet (Rs. 16,250/- per month) for five years and then 25% increase for the two subsequent five years option. It was pointed out that consent letter was obtained from the petitioner on the aforesaid terms.

7. Again, apparently as Bank was in dominant position having the possession, delayed the matter of execution of fresh lease deed and suddenly on 01.09.2005 sent a letter to the petitioner completely giving a go-bye to the earlier agreement and unilaterally refusing the same with exception of the first period of arrears that is with regard to the year, 1996 to 2000 where Bank again agreed to pay rent at Rs. 8,750/- per month. As per the new offer for the year 2001 to the year 2005, Bank reduced the agreed rent from Rs. 6.50 per square feet to Rs. 4.03 per square feet, effectively reducing the agreed rent as per their own

communication dated 04.05.2005 (Annexure-5) bringing the rent down from Rs. 16,250/- per month to Rs. 10,075/- and similarly for the year 2006 to 2010, it was brought down to Rs. 4.64 per square feet amounting to only Rs. 11,600/- from about Rs. 20,312/- per month. Bank also clearly stipulated that there would be no further negotiation and the lease should be renewed on the said terms. Bank took a dictating posture backtracking from agreement. Petitioner, vide his letter dated 14.07.2006, expressed shock and requested that their consent letter, given earlier, be accepted, as agreed earlier.

8. Another important aspect to be noted here is even though all along there was no difference with regard to payment of arrears of rent for the year, 1996 to 2000 at enhanced rent of Rs. 8,750/- monthly, Bank, using its dominant position, continued to pay rent and is even now paying rent at the old lease rent of Rs. 6,050/- only. It may also be mentioned here that the reason for this vacillating attitude of the Bank remains totally unexplained even in their counter affidavit. It is for some inexplicable reason that Bank would one day agree and the very next day rejects the agreement, presumably because it was in dominating position and it continued to deprive the petitioner of his rightful dues and continue to act in most arbitrary and oppressive manner. Demand of petitioner for execution of lease and payment of rent, as per consent letter, did not yield result.

9. Petitioner was then served with a letter dated 24.06.2008 from the Bank giving a total go-bye to all earlier agreements and correspondences. By this letter, it stipulated that the renewal lease would be with effect from 01.01.2008 at a rent of Rs. 8/- per square feet amounting to Rs. 20,000/- per month. The lease period would be 11 years in total. With effect from 01.01.2008 for five years, the monthly rent would be Rs. 20,000/- and two renewal options of three years each with 20% enhancement on each renewal. It clearly stipulates that for the year, 1996 to the year 2007, past 11 years, there would be no enhancement and rent paid earlier at the rate of Rs. 6,050/- per month would only be payable. Undisputedly, all earlier agreements where there was no dispute for the first five years period in regard to enhanced arrears and further for the rest of the periods have been totally forgotten for some inexplicable reason. All these decisions, to the detriment of the petitioner, were taken unilaterally by the Bank with no plausible explanation except their conduct clearly showing their dominant position to bully the petitioner into a so-called agreement for lease. Petitioner, being fed up of this highly arbitrary and oppressive attitude of the Bank, requested the Bank to vacate the premises and on Bank neither executing the lease deed on the agreed rent as per the consent letter last obtained nor paying any enhanced rent, had no option but to come to this Court for seeking the Bank to vacate the premises as the fixed term lease had long expired and Bank was not ready for any negotiated settlement.

10. In the counter affidavit, Bank has not explained why it was taking such a vacillating stand. One day it would agree and obtain consent letter and immediately thereafter, for some inexplicable reason, backtrack. The reason for

this is evident now from the counter affidavit. The reason is that the Bank takes a stand that it has the protection of the Local Tenancy Law and cannot be evicted except by forcing the petitioner into litigation and forcing the petitioner to fight a long drawn legal battle seeking a decree of eviction. Till such period, notwithstanding expiry of fixed term tenancy and notwithstanding Bank's own admission that substantial enhancement of rent was due, Bank would enjoy the premises at the expense of the petitioner at a paltry rent fixed almost two decades back.

11. Such is the attitude of a public sector undertaking which is State within the meaning of Article 12 of the Constitution. It wants to generate unnecessary litigation using its dominant and advantageous position and exploit the situation to its advantage and to the detriment of the petitioner. Bank takes a stand that if the terms, as offered by the Bank, however unreasonable and arbitrary they may be are not acceptable to the petitioner, petitioner must litigate and can evict it only by a decree obtained from Civil Court. Bank would not pay any enhanced rent and was ready to face consequences of eviction through Civil Court which, to every one's knowledge, could take several years if not decades. That unjust enrichment by Bank at the cost of petitioner is the true reason for Bank not coming to a negotiated settlement and, hence, against this grossly arbitrary and oppressive attitude of the State instrumentality, the writ petition.

12. The first question that arises is with regard to the very maintainability of the writ petition which questions the arbitrary and oppressive attitude of a State instrumentality while acting as a tenant. On behalf of the Bank, it is submitted that however arbitrary or capricious or oppressive its actions may be, as a tenant, the same being within the field of contract, writ remedy against it, is not available. Petitioner, the citizen, must go to a Civil Court of competent jurisdiction and get a decree for enhancement of rent and/or eviction but the Bank, even though State, cannot be mandated in these writ proceedings to conform to Article 14 of the Constitution.

13. In order to answer this issue, the first thing that has to be noted is that both parties agree that the respondent-Bank being a nationalised Public Sector Bank is State within the meaning of Article 12 of the Constitution. It was formed by nationalising private Bank for public good and for public purpose.

14. To begin with, I quote what was said by Justice Krishna Iyer over almost four decades back in AIR 1972 Kerala 103 which dictum has been affirmed by the Apex Court in the case of Dilbagh Rai Jarry Vs. Union of India (UOI) and Others, and has also been followed even recently and is quoted hereunder:

The State, under our Constitution, undertakes economic activities in a vast and widening public sector and inevitably gets involved in disputes with private individuals. But it must be remembered that the State is no ordinary party trying to win a case against one of its own citizens by hook or by crook; for, the State's interest is to meet honest claims, vindicate a substantial defence and never to

score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an opportunity. The State is a virtuous litigant and looks with unconcern on immoral forensic successes so that if on the merits the case is weak, government shows a willingness to settle the dispute regardless of prestige and other lesser motivations which move private parties to fight in court. The layout on litigation costs and executive time by the State and its agencies is so staggering these days because of the large number of litigation in which it is involved that a positive and wholesome policy of cutting back on the volume of law suits by the twin methods of not being tempted into forensic show-downs where a reasonable adjustment is feasible and ever offering to extinguish a pending proceeding on just terms, giving the legal mentors of government some initiative and authority in this behalf. I am not indulging in any judicial homily but only echoing the dynamic national policy on State litigation evolved at a Conference of Law Ministers of India way back in 1957. This second appeal strikes me as an instance of disregard of that policy.

15. Then I must refer to a judgment of the Apex Court in the case of Hindustan Sugar Mills Vs. State of Rajasthan and Others, Inthat case, a dispute had arisen with regard to liability of sales tax on the freight component in respect of transaction of sale of cement. The Apex Court held that sales tax was payable by the manufacturers on the freight component received by the manufacturer-Company from the Government. The question then arose that this was an unanticipated liability created on the manufacturer-Company which was not provided for in any agreement. In that context, the Apex Court held that even though there were no liabilities on the Central Government to reimburse the tax to the Company but we must remember that we are living in a democratic society governed by rule of law and every Government, which claims to be inspired by moral, must do what is fair and just to the citizens regardless to the technicalities. The Court held that it hoped and trusted that the Central Government would not defeat the legitimate claims of the assessee by adopting legalistic attitude. Upon the Court being shown in the review matter, that there was indeed a provision which provided for payment of tax, the Apex Court then held that the Central Government would honour its legal obligation and not compel the appellant to file a suit for recovery of the amount of such sales tax. It reiterated its view that the Government would not shirk its legal obligation by resorting to any legal technicalities for it maintained that in a democratic society governed by rule of law, it is the duty of the State to do what is fair and just to the citizens and the State should not seek to defeat the legitimate claim of the citizen by adopting a legalistic attitude and force the party to a suit.

16. We then come to the case of Jamshed Hormusji Wadia Vs. Board of Trustees, Port of Mumbai and Another, That was a case where the Bombay Port of Trust was enhancing the rent of its tenants which was challenged. One of the pleas that were taken to oppose the action was that the matter related to tenant-landlord relationship and, as such, in the field of contract, constitutional

limitations, as enshrined in Article 14 of the Constitution is not applicable and the Port of Trust should be permitted to act like an ordinary landlord. This was answered by the Apex Court in paragraph-16 of the reports as under:

16. The position of law is settled that the State and its authorities including instrumentalities of States have to be just, fair and reasonable in all their activities including those in the field of contracts. Even while playing the role of a landlord or a tenant, the State and its authorities remain so and cannot be heard or seen causing displeasure or discomfort to Article 14 of the Constitution of India.

17. Then the Apex Court in the said judgment referred to the case of *Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay*, and *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, to hold that State and State instrumentalities, even in matters of contractual relationship and obligations, are bound by Article 14 of the Constitution to the extent that in paragraph-17 of the reports, they have held that our Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of activity contrary to the professed ideals in the Preamble. Exclusion of Article 14 in contractual matters is not permissible in our constitutional scheme. It further held that in field of contracts, the State and its instrumentalities ought to so design their activities and would insure fair competition and non-discrimination. They referred to various judgments starting from *Rampratap Jaidayal Vs. Dominion of India*, wherein a challenge was made to the legislative exemption granted to State and its properties from the provision of the rent control and eviction legislations as being discriminatory. The challenge was repelled on the ground that State being State cannot be imagined to act arbitrarily and no protection to the citizens are required to be given as against the State because State in all its functions is presumed that it would act reasonably, fairly and not exploit situations.

18. This decision establishes that even in contractual field, State is bound by Article 14. In this connection, I may refer to two recent decisions of the Apex Court being the cases of *ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others*, and *Food Corporation of India and Another Vs. SEIL Ltd. and Others*, where the Apex Court interfered in contractual disputes in writ proceedings.

19. I may also note that the decision of the Apex Court in the case of *Jamshed Hormusji* (supra) has been followed in the case of *Everest Industries Limited and Anr. v. Board of Trustees for Port of Calcutta and Ors.* since reported in AIR 2007 SC 1865.

20. From the above judgments, it would be clear that it is too late in the day to urge that while State and its instrumentalities are required to conform to the principles of reasonable, non-discriminatory action and fairness but this ceases to be the requirement when it comes into realm of contractual obligation. State

cannot escape the rigours of Article 14 of the Constitution in any of its spheres of activity though of course once a matter is reduced to a contract as between parties, the parties would first be bound by contractual obligation and interference in terms of Article 14 of the Constitution could be called upon if actions taken thereunder offend the principles enshrined under Article 14 of the Constitution. By way of illustration of this facet, one cannot but refer to the often cited case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, which matter essentially arose out of the contract and the Apex Court held that conformity with principles of equality, justice and fairness are integral part of Article 14 of the Constitution and State, in its contractual obligations or contractual duty, could not escape this liability. Another illustrative case would be the case of M/s. Hyderabad Commercials Vs. India Bank and others, In that case, the actions of Indian Bank were challenged. One of the account holders M/s Hyderabad Commercials had complained in a writ petition that certain amounts had been unauthorisedly transferred from its account by the Bank and it was entitled to restitution thereof. The writ petition was dismissed by the High Court on the ground that it involved disputed questions of fact and the parties should move Civil Court in a suit but when the matter reached the Apex Court, even though it was outright a matter of commercial relationship between the Bank and its account holder, the Apex Court interfered. It held that the facts not being in dispute and the Bank being a nationalised Bank and an instrumentality of State, it must function honestly to serve its customers. It, on the facts found, directed the Bank to recredit the disputed amount to the appellant's account alongwith interest and held that there was no justification for the High Court to dismiss the writ petition directing the appellant to file a suit.

21. What has persuaded this Court to interfere in the matter is the stand and the attitude of the Bank taken in the facts as noted above. They are deliberately and purposefully trying to generate litigation for their own benefit at the cost of the landlord. This attitude of a State instrumentality, a nationalised Bank to generate litigation, must be strongly condemned. Their stand is of a shrewd litigant trying to defeat the legitimate claim of the opponent which goes ill with the concept of Article 14 of the Constitution and cannot be permitted. They cannot say that yes I may unfair, unreasonable, oppressive but you the citizen must be law abiding and must litigate in a Civil Court for decades but I cannot be mandated by a Writ Court to correct my anti-Article 14 attitude. This would be clearly anti-thesis of rule of law and contrary to good governance as expected of a State instrumentality.

22. The facts above would show that right from the beginning, petitioners kept agreeing for negotiations, they filed consent letters as required by the Bank, agreeing to the terms put forward by the Bank. Bank also noted that an agreement was there but soon thereafter it would retract and unilaterally give a go-bye to all that was agreed. In the counter affidavit, as noted above, there is no explanation much less a bona fide explanation for such change of stand from time to time on part of the Bank. This Court would have expected that if there

was some explanation and more so if it was bona fide, it should have been mentioned in the counter affidavit but the very reason that absolutely no explanation is given justifying their vacillating stand and unilateral decision to dictate terms, the Court cannot hold but assume that there was no bona fide reason or that the reasons were clearly other than bona fide, that is to exploit the situation for the benefit of the Bank to the detriment of the landlord. Its attitude seems to be to make money while the litigation prolongs at the cost of the landlord. Surely Court cannot be expected to shut its eyes to such a capricious and grossly arbitrary behaviour of a nationalised Bank.

23. In fairness to the learned Counsel for the Bank, I must refer to two decisions as referred to on their behalf. The first is the case of Shanti Devi Vs. State of Sikkim and Another, What is relied on is the observation of the Apex Court with regard to line of demarcation between reliefs which could be granted by the Civil Court and the constitutional Courts. The case is clearly distinguishable. In that case, in a contempt proceeding arising out of a writ petition, the High Court passed an order of eviction of a tenant summarily who was the writ petitioner himself. The Apex Court held that it could not be done as that right was reserved for the Civil Court. I may notice here that no such direction was issued by the Writ Court in the writ proceedings to the tenant and it was the tenant in the contempt proceedings who was visited with the summary eviction order by the Court. Then reliance is placed on the judgment of the Apex Court in the case of Jai Prakash Gupta (D) thr. LRs. Vs. Riyaz Ahamad and Another, for the proposition that the Writ Court could not interfere in rent control matters as between landlord and tenant dispute and it should not decide these issues without proper evidence on record. When we refer to the reports, it would be seen that the proposition as referred to is to be found in Head Note C of the reports with reference to paragraph-31 of the report but when we refer to the judgment in paragraph-31, we find that the Head Note is the view of the editor of the journal not fully supported by the judgment. In fact, in paragraph-31, the Apex Court held that the High Court was not justified in sending the case back to the appellate Court for fresh decision. They observed so considering the long litigation but also observed that the High Court was justified in setting aside the order of the Appellate Court on the ground that the subsequent developments and subsequent events could not be taken note of by the Writ Court without proper evidence of the appellate Court. The appellate Court order was rightly set aside in view of fresh evidence but, as noted above, considering the period of litigation, their Lordships held in paragraph-32 of the report that the High Court should have kept the writ petition pending while sending the matter to the appellate Court for settling issues of subsequent developments on the evidence to be recorded by the appellate Court and then decided the writ petition.

24. In my view, the judgment is opposite to the proposition as sought to be canvassed as it does not say that the High Court cannot go into such issues at all in a writ proceeding. In fact, it did authorise the High Court to go into the matter in a writ proceeding.

25. Thus seen, I find that in the facts of the present case, we have a highly and grossly arbitrary and autocratic attitude of a nationalised Public Sector Bank without bona fide reason or rational. Interference is, thus, called for.

26. Now coming to the nature of relief to be granted, it is not in dispute that the fixed term tenancy had come to an end way back in the year, 1995 itself. Bank was expected to come to a negotiated settlement for a fresh tenancy. Using its dominant position and taking advantage of its possession, Bank kept the matter hanging changing its stand from time to time and enjoying the premises at a rent fixed two decades back without permitting a negotiated settlement and a lease. It only purposefully generated litigation for its unjust enrichment.

27. In such circumstances, I direct the respondent-Bank to come to a negotiated settlement with the petitioner within a period of three months from today for a fresh tenancy under lease as also with regard to enhancement of rent for the period 1996 onwards upto date as during this period though they were tenants in the statutory sense but otherwise they were civil trespassers or enjoyed tenancy by sufferance, having overstayed to the detriment of the landlord. In case a negotiated settlement they are unable to arrive at then, within next six months after the three months" period aforesaid, they must make arrangements for vacating the premises and find new premises for themselves and their business but surely they cannot be permitted to exploit the situation in this grossly arbitrary manner to the detriment of the landlord. They must do what is just, fair and reasonable.

28. With these observations and directions, the writ petition stands disposed of.