

(1982) 02 DEL CK 0029

In the Delhi High Court

Case No : I.A. No. 3881 of 1981 in Suit No. 1296 of 1981

M/s. Atma Ram Properties (P.) Ltd.

APPELLANT

Vs

Union of India and another

RESPONDENT

Date of Decision : 23-02-1982

Acts Referred:

Citation : AIR 1982 Delhi 580

Hon'ble Judges : D.R. Khanna, J

Bench : Single Bench

Advocate : M.L. Lonial, for the Appellant; D.P. Wadhwa, for the Respondent

Judgement

D.R. Khanna, J.—Present is an application moved under Order 39, Rules 1 and 2 and Section 151, C.P.C. for an ad interim injunction restraining the defendants, namely the Union of India and the Land and Development Officer from recovering in any manner damages/misuse charges amounting to Rs. 42,24,065.25 p., or imposing any such damages/misuse charges in future or adopting any coercive measure such as re-entry, cancellation of lease, dispossession or recovery as arrears of land revenue.

2. The suit in which this application has been moved, has been brought by Atma Ram Properties (P.) Ltd. for seeking similar reliefs by way of declaration and perpetual injunction. Briefly stated, the plaintiff's case has been that the land underneath the property was held on perpetual lease from the Governor General in Council by Sir Sobha Singh from 1939, and he constructed the building known as Scindia House on it. Subsequently in the year 1947, he assigned this entire property to his sons Khushwant Singh and Brig. Gurbux Singh. By two agreements dated 14-10-1978 and 31-1-1979, both Khushwant Singh and Brig. Gurbux Singh agreed to sell the property to the plaintiff, and in order to ensure smooth and speedy transfer of ownership, appointed the plaintiffs director Shri C. M. Chaddha as their general attorney. This Shri Chaddha was informed in the correspondence exchanged with the defendants that the property had been re-entered by the lessor on 14-11-1973 because of certain breaches committed of

the lease and the misuse of the property. Ultimately the defendants wrote a letter dated 4-12-1979, agreeing to regularise the breaches temporarily up to 14-1-1980, provided damages amounting to Rs. 32,77,907.47 p. were paid in full in advance. This letter covered 17 pages, and in great details enumerated the misuses and breaches which had been committed from 1963 onward, from time to time and the manner of computation of the damages. Khushwant Singh and Brig. Gurbux Singh then by their letter dated 11-12-1979 through their constituted attorney Shri Chaddha furnished the undertakings, and also informed the acceptance in toto of the terms and conditions of the letter dated 4-12-1979. A request was, however, made that the amount should be permitted to be deposited by instalments considering its huge nature. A demand draft of Rs. 2,00,000/- was also enclosed as one instalment of that amount. It was, however, added that in case any discrepancy was found in the damages so imposed, they would represent their case and necessary relief might be allowed.

3. The defendants then by a letter dated 14-3-1980 acceded to the request of Khushwant Singh and Brig. Gurbux Singh, and permitted them to pay their dues by 24 instalments, provided a further payment of Rupees 1,16,270.45 p. was forthwith made. At the same time, additional charges and damages for regularising the misuses and unauthorised structure from 15-1-1980 to 14-7-1980 were levied.

4. In this manner, the total damages came to Rs. 42,23,065.25 p. Out of them so far Rs. 10,04,236.27 p. have in all been paid by Khushwant Singh and Brig. Gurbux Singh.

5. A supplementary lease deed was executed by Khushwant Singh and Brig. Gurbux Singh on 9-4-1980 with regard to the land underneath the property. There was a narration in it of the forfeiture of the lease earlier, and its waiver on the lessee's agreeing to pay to the lessor the sum of Rupees 42,24,065.25 p. This was termed as reasonable compensation for the period 1-7-1963 to 14-7-1980.

6. After the withdrawal of this forfeiture, a formal sale-deed was executed by Khushwant Singh and Brig. Gurbux Singh in favour of the plaintiff of the entire Scindia House on 31-5-1980.

7. The plaintiff thereafter approached the defendants by a letter dated 14-8-1980 that the payment of the further instalments be suspended. This the defendants refuted on the ground that the terms and conditions of the letter dated 4-12-1979 had been accepted in toto, and the facility of instalments was then given, and as such the plaintiff could not avoid the commitment made. There was thereafter some correspondence in which it was contended by the plaintiff that the damages levied were unwarranted, illegal and in any case highly exorbitant, and further that no such damages had been levied on other buildings in the area. Since the defendants were not agreeable to waive the damages and desist from levying further damages and were threatening to make reentry, the

plaintiff brought the present suit.

8. In para 24 of the plaint, the grounds on which the levy of damages is assailed are enumerated. They are contended to be violative of the fundamental rights of the plaintiff granted under Articles 14 and 30-A of the Constitution of India, and levied at arbitrary, harsh, exorbitant and confiscatory rates on recurring basis. Besides, they are stated to be discriminatory as no such damages are levied on other buildings in the adjoining localities, and further that the action is expropriator infringing upon the legal right to hold the property. The agreement to pay the damages was also stated to be against law and rules and regulations inasmuch as the misuses were condonable breaches. Reference has specifically been made to a decision of the Delhi High Court in the case *Narula Trading Agency v. Commr., Sales Tax, (Bewn Holiday House v. D.D.A.)* 1981 R LR (SN) 99, to the effect that user of flats for running guest houses does not amount to breach of the terms of lease. An opinion obtained from Attorney General in the year 1971, has also been referred to for the view that the words "flats above" could not be limited to residential purpose only, and that such flats could be used for shops, theatres, motor workshops, cinemas etc.

9. The defendants on their part in the written statement, have pleaded that the plaintiff has not come to the Court with clean hands, and is, therefore, not entitled to the discretionary relief of declaration or injunction. It is contended to be guilty of gross breach of the agreement solemnly entered into. The present conduct of instituting the suit, it is pointed out, brings out the mala fide intentions of the plaintiff in committing earlier to abide by the agreement and obtaining the waiver of the forfeiture of the lease. Now that waiver has been obtained on the specific undertaking given, the plaintiff is pleaded to be estopped from assailing the agreement. The same has been, in fact, incorporated in the supplementary lease of the land which Khushwant Singh and Brig. Gurbux Singh had executed, and is the lease deed now operative. The plaintiff, thus it is urged, cannot turn round and take advantage of its own fraudulent conduct in first getting the re-entry order withdrawn, and then not abiding by the commitment made. Reference has also been made to the building plan which had been sanctioned for the Scindia House which had described the user of second floor and barsati for residence. The lease deed also stipulated "office buildings with residence above, show-rooms, motor workshops and garages". The action against the property, it is stated, was taken in accordance with the provisions of the lease deed, and the case was not covered by condonable items, as the plans for specific floor for specific performance were sanctioned.

10. It has also been urged that the computation of the penalties has been done in accordance with the rules and regulations made uniformly applicable to the buildings in the area, and that similar damages have also been levied in other cases.

11. It is the interim injunction application moved under Order 39, Rules 1 and 2 and Section 151, C.P.C., which has now come up for adjudication.

12. The main case of the plaintiff is that the agreement to pay damages and its incorporation in the supplementary lease deed dated 9-4-1980, was not voluntary, but was brought under coercion and intimidation of the forfeiture of the lease. Since the property was of high value, the plaintiff and the previous owners were keen to preserve the ownership and get the forfeiture waived, and, therefore, had little choice but to agree to whatever was dictated. Without their doing so, the permission to sell the property would not have been granted, and the title over the property would have remained under cloud. There was also no basis factually and in law, for the defendants to levy the highly exorbitant damages as several of the so-called misuses were not as such and most of the others were condonable in terms of the policy of the defendants. Any payment made under mistake, whether factual or legal it is urged, can be recovered back u/s 72 of the Contract Act. In support reliance has been placed on the cases, Sales Tax Officer, Banaras and Others Vs. Kanhaiya Lal Mukundlal Saraf, ; AIR 1949 297 (Privy Council); N.V. Joseph Vs. Union of India (UOI), ; T.G.M. Asadi and Sons v. Coffee Board, AIR 1969 Mys 230; Caltex (India) Ltd., Indore Vs. Assistant Commissioner of Sales Tax, Indore Region, Indore and Another, ; Petlad Bulakhidas Mills Co. Ltd. and Another Vs. Union of India and Another, and United Bank of India Ltd. Vs. A.T. Ali Hussain and Co., a firm and Others, .

13. R. Ramanujam Vs. Ajit Singh Thukral and Others, has also been referred to in support of the contention that a tenant using the residential premises for running a boarding and lodging house, is not guilty of converting the same for non-residential purpose under the Delhi Rent Control Act, 1958.

14. The plaintiff, it is urged, has a prima facie case worth giving consideration, investigation and determination, and there is a bona fide dispute between the parties. In the circumstances, interim stay should be issued vide 1973 RLR 542.

15. The defendants, on the other hand, have contended that the indulgence of the Court is not called for as the plaintiff is seeking to commit breach of the solemn undertakings given while obtaining waiver of the forfeiture of the lease. Its conduct throughout appears to have been to somehow obtain waiver, and then disown the commitments. The heavy nature of damages, it is pointed out, has to be understood in the context of the fairly big building involved, and the breaches committed during a period of about 18 years. Moreover, the damages/penalties have not been arbitrarily levied, but they have been imposed in accordance with the rates modulated by the defendants in a printed booklet published as information for the guidance of lease holders by the Ministry of Works, Housing and Supply, Government of India. The plaintiff besides, it is stated, has not been singled out as similar penalties/damages have been levied with regard to some other buildings as well. In so far as recourse to Article 14 and other provisions in the Constitution of India, it is urged that they do not arise inasmuch as the rights of the parties are based upon contract, which they have arrived at with open eyes involving reciprocal benefits and obligations. Reliance in this regard has been placed upon the Supreme Court decision in Premji Bhai

16. As regards the reliance placed by the plaintiff on the opinion expressed by the Attorney General with regard to "flats above", it is pointed out by the defendants that in the present case the lease deed does not make mention of such flats and rather speaks of residence above office buildings.

17. So far as the reservations made by the previous owners Khushwant Singh and Brig. Gurbux Singh in the letter dated 11-12-1979 with regard to any discrepancy found in the damages so imposed, it is pointed out that the same has at worst reference to the computation part thereof. The propriety or competency of their levy, it is urged, is not open to purview.

18. Before proceeding further, it may here be taken note of that a writ petition was earlier filed by the plaintiff seeking restraint against the proposed re-entry of the property by the defendants. The same was, however, later withdrawn. This according to the plaintiff, was because the Court felt that the matters involved factual appraisal and leading of evidence. It is stated that the withdrawal was effected even before notice was issued to the defendants.

19. Section 72 of the Contract Act obliges a person to whom money has been paid, or anything delivered, by mistake or under coercion, to pay back or return the same. When such is the provision of law which creates obligation of repayment back of the money mistakenly realised earlier, there should not be any impediment against the grant of interim stay of the initial payment of the amount itself when it has still to be paid, and the mistaken part of the agreement is attempted to be implemented. In the normal circumstances, therefore, the interim injunction sought for by the plaintiff against the realisation of damages which though agreed upon, might not be sustainable in fact and law, should not be withheld. Whether there are other circumstances which should disentitle the plaintiff this relief at this stage, will be discussed hereafter. Suffice it to say that several of the damages which are attributable to the operation of guest houses, may not be sustainable in view of the decision of the Delhi High Court in the case of Narula Trading Agency (Bawa Holiday House case?) (1981 RLR (SN) 99) (supra). Furthermore, the lease deeds in the present case, though do not make mention of flats, and there could not be any limitation imposed for their user both for residential and commercial purposes, speak of office buildings with residence above. It is not specified at which floor those residences had to be essentially confined. Perhaps it could be as well said that the residences were to be confined to the uppermost floor, the building being of many storeys. Quite a large number of items of damages in the present case pertain to misuse of flats. Perhaps by them it was meant that the premises were for residences. As regards the sanctioned building plan, it can be said that its violation may give rise to action by the municipal bodies or other authorities which sanction the plan. That aspect of the action may not be referable to the rights and obligations arising under the lease deeds. The defendants are, in the circumstances, restrained from taking action in the nature of forfeiture of lease so far as these irregularities are

concerned which have taken place after the execution of the supplementary lease on 9-4-1980.

20. I now advert to the question whether the defendants should be restrained from making the demand of the remaining amount of Rs. 42,24,065.25 p., which has been specifically agreed upon and incorporated in the supplementary lease, and whether they should be restrained from exercising their rights under the lease on the failure of the lessee to abide by its payment. So far as the allegations of discrimination and the violation of Article 14, they may not be much sustainable when the rights of the parties arise out of contractual obligations. The Courts should as well be extremely slow to exercise discretion in favour of a party in the grant of interim stay when it seeks to back out from a solemn obligation undertaken in mutually agreed upon contract. This is all the more so when the plaintiff has obtained transfer of the property from the previous lessee with eyes open that the latter had already committed themselves to the payment of the heavy amount to the defendants. It has purchased this building subject to that obligation, and there is every reason to suppose that this aspect of the matter must have been taken into account in the settlement of the price which they paid to the previous lessees. Even otherwise the rule of estoppel may as well come into play as the defendants withdrew the forfeiture of the lease on the specific undertaking by the previous lessees, and through them by the plaintiff that they in entirety accepted the levy of damages and agreed to pay them. But for their doing so, the lease had stood forfeited in the year 1973, and it would appear that in 1978-79, the limitation for the lessees to assail that forfeiture by legal action had already expired. The defendants, therefore, when they agreed upon restoring the lease and withdrawing the forfeiture, can as well be treated to have taken all these factors into account, and the lessees too when they accepted in toto the terms of the withdrawal of the forfeiture fully weighed and assessed these factors. The amount of over rupees 42 lacs which though appears to be quite large, was still not a bad bargain in getting the entire property which is worth several crores, restored. See Nagubai Ammal and Others Vs. B. Shama Rao and Others, .

21. It is the supplementary lease deed of 9-4-1980, which is now the subsisting lease and provides the foundation of the rights and obligations of the parties, They flow from it. This document unequivocally postulated the payment of over rupees 42 lacs by the lessees to the lessor.

22. It may as well be mentioned that even the first ball for payment of damages/ penalties by the lessees was set into motion by them by their letter dated 16-8-1979. They then mentioned that some of the tenants had stopped payment of the rent as per instructions of the Land and Development Officer, and the rent was payable to that department. Computation of damages/penalties was, therefore, sought in order to enable the lessees to settle the matter.

23. As regards the reservations by the lessees in their letter dated 11-12-1979, in which they accepted the entire terms and conditions in toto of the letter dated

4-12-1979 of the defendants elaborating the extent of damages/penalties, the same had reference to the discrepancy in the computation of damages only and not to their propriety or competency.

24. In view of these circumstances, I am unable to grant any stay as an interim measure to the plaintiff against the discharge of its obligation to pay the remaining left over amount of Rs. 42,23,065.25 p. The plaintiff has still to establish its case with regard to this, and the Court should not start with any presumption in its favour that the solemn undertaking agreed upon by its predecessors/need not be abided by. Moreover, the plaintiff being only a transferee from the previous lessees, and having purchased the property with open eyes from them of this substantial liability, may have still to establish its locus standi to challenge it when the previous lessees did not do so.

25. Before concluding, I may observe that nothing in this order shall be treated as an expression of opinion on the merits of the case which the parties may ultimately establish.