

(2016) 03 RAJ CK 0014
In the Rajasthan High Court
Case No : Civil Writ Petition No. 972/2016

National Textiles Corporation Ltd.

APPELLANT

Vs

Pankaj Singhal and Others

RESPONDENT

Date of Decision : 29-03-2016

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 18, Section 2(e), Section 2(e)(2)(i)
Rajasthan Public Premises (Eviction of Unauthorised Occupations) Act, 1964 — Section 2, Section 2(b)
Transfer of Property Act

Citation : (2016) 167 AIC 522 : (2016) 2 RCRRent 3 : (2016) 2 RLW 1355 : (2016) 3 WLC 42 : (2016) 3 WLN 33

Hon'ble Judges : Arun Bhansali, J.

Bench : Single Bench

Advocate : Muktesh Maheshwari, for the Appellant; R.K. Thanvi, Senior Advocate assisted by Narendra Thanvi, for the Respondent

Final Decision : Dismissed

Judgement

Arun Bhansali, J.—1. This writ petition has been filed by the petitioner aggrieved against the judgment dated 4.3.2014 passed by the Rent Tribunal, Jodhpur and judgment dated 28.10.2015 passed by the Appellate Rent Tribunal, Jodhpur, whereby the petition for eviction filed by the respondent No. 1 - landlord has been accepted and the appeal filed by the petitioner has been rejected respectively.

2. The respondent-landlord filed a petition for eviction against the petitioner inter-alia indicating that the provisions of Chapter-II & III of the Rent Control Act, 2001 ("the Act") are not applicable to the premises as the tenant is a Public Sector undertaking and is covered under Section 3(x) of the Act; the lease in favour of the tenant was last executed for a period of three years and the same has come to an end on 9.10.2012 by efflux of time under Section 111(a) of the Transfer of Property Act, 1882 ("T.P. Act").; a notice was issued to the tenant

indicating the fact of lease having come to an end and for handing over of vacant possession of the premises which was not done and therefore, the petition was being filed seeking eviction/possession.

3. The petitioner filed reply to the petition for eviction and resisted the same. The landlord filed replication and reiterated the submissions.

4. Alongwith the petition for eviction, affidavits were filed. The petitioner filed application seeking cross-examination of the deponents, who had filed affidavits in support of petition for eviction. The Rent Tribunal by its order dated 25.10.2013 rejected the application and after hearing the parties, by its judgment dated 4.3.2014, ordered for eviction.

5. Feeling aggrieved, the petitioner filed appeal before the Appellate Rent Tribunal. The Appellate Rent Tribunal by its judgment dated 28.10.2015 upheld the judgment passed by the Rent Tribunal.

6. It is submitted by learned counsel for the petitioner that both the Tribunals committed error in accepting the application/rejecting the appeal filed by the respondent/petitioner. It was submitted that as the premises in question are governed by the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 ("Central PP Act"), the petition was not maintainable before the Rent Tribunal in terms of provisions of second proviso to Section 18 of the Act; the notice under Section 106 of the T.P. Act was not legal, inasmuch as the same was issued even before the lease period had come to an end and that the Rent Tribunal was not justified in refusing the permission seeking cross-examination and therefore, the judgments impugned deserve to be quashed and set-aside.

7. Learned counsel for the petitioner submitted that the premises in question are public premises in terms of definition as indicated in Section 2(e)(2)(i) of the Central PP Act and even if, the period of lease had come to an end, the premises continued to be public premises. Second proviso to Section 18 of the Act excludes the dispute between the landlord and tenant to which provisions of the Central PP Act applies and therefore, the Tribunal had no jurisdiction to deal with the petition for eviction.

8. It was submitted that the lease in question was to expire on 9.10.2012, however, the notice under Section 106 of the T.P. Act was issued on 15.9.2012 and therefore, the same was not valid. It was further emphasised that the Tribunal was not justified in rejecting the application seeking cross-examination of the deponents of affidavits in support of petition for eviction, which has led to gross injustice of the petitioner and therefore, the petition deserves to be allowed.

9. Reliance was placed on S.R.B. Gaikwad v. The Union of India & Ors.: , AIR 1977 Bombay 220.

10. Vehemently opposing the submissions, learned counsel for the respondent-

landlord submitted that there is no substance in the writ petition filed by the petitioner and the same deserves to be dismissed. It was inter-alia submitted that provisions of the Central PP Act cannot be applied to the case-in-hand, inasmuch as, the Central PP Act has essentially been enacted for the purpose of eviction of unauthorised occupants in the properties belonging to the Government/Public Sector Undertaking/Government Corporation and the same cannot be applied to seeking eviction of the Government/Public Sector Undertaking/Government Corporation from the premises; the lease in question had come to an end by efflux of time under Section 111 (a) of the T.P. Act and the petitioner cannot claim any right to remain in possession of the premises.

11. The mere fact that notice was issued indicating the fact that the lease is to come to an end on a future date cannot invalidate the notice.

12. It was further submitted that in the application seeking cross-examination, the petitioner did not indicate any reason why the cross-examination was required, the acceptance of notice was not denied as the reply was given to the notice and as there was no factual dispute, the Tribunal was justified in rejecting the application as it is not necessary in every case that cross-examination must be permitted and therefore, the petition having no substance deserves to be dismissed.

13. Reliance was placed on *Deendayal Khatri v. Rajendra Bhandari & Anr.*: , 2011(1) CDR 183 (Raj.); *Ved Prakash Sharma v. Rent Tribunal, Jaipur & Anr.*: 2010(1) DNJ (Raj.) 398 and *Payal Vision Limited v. Radhika Choudhary*: , (2012) 11 SCC 405.

14. I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

15. So far as the maintainability of the proceedings before the Rent Tribunal on the ground that as the premises are "public premises", governed by the provisions of the Central PP Act, the jurisdiction of the Rent Tribunal having been excluded under second proviso to Section 18 of the Act is concerned, provisions of Section 18 of the Act, in so far as relevant read as under:--

"Sec. 18. Jurisdiction of Rent Tribunal.- (1) Notwithstanding anything contained in any other law for the time being in force, in the areas to which this Act extends only the Rent Tribunal and no civil courts shall have jurisdiction to hear and decide the petitions relating to disputes between landlord and tenant and matters connected therewith and ancillary thereto, filed under the provisions of this Act.

Provided that Rent Tribunal Shall, in deciding such petitions to which provisions contained in Chapter II and III of this Act do not apply, have due regard to the provisions of Transfer of properties Act, 1882 (Act No. 4 of 1882) the Indian Contract Act, 1872 (Act No. 9 of 1872), or any other substantive law applicable to such matter in the same manner in which such law would have been applied

had the dispute been brought before a civil court by way of suit:

Provided further that nothing contained in this Act shall be deemed to empower the Rent Tribunal to entertain a petition involving such dispute between landlord and tenant to which provisions of the Rajasthan Public Premises (Eviction of Unauthorised Occupants) Act, 1964 (Act No. 2 of 1965) and the Rajasthan Premises (Requisition and Eviction) Ordinance, 1949 apply."

(Emphasis Supplied)

16. A perusal of the second proviso reveals that premises, to which, provisions of the Rajasthan Public Premises (Eviction of Unauthorised Occupants) Act, 1964 ("Rajasthan PP Act") apply are not governed by the provisions of the Act and the Rent Tribunal cannot entertain the petition involving a dispute between landlord and tenant of such public premises.

17. Section 2(b) of the Rajasthan PP Act defines public premises as under:--

"2(b). "public premises" means any premises belonging to, or taken on lease, or requisitioned by, or on behalf of the State Government and includes any premises belonging to-

(i) a Municipal Board or Municipal Council, established or deemed to have been established under the Rajasthan Municipalities Act, 1959 (Rajasthan Act 38 of 1959); or

(ii) an Improvement Trust, established under the Rajasthan Urban Improvement Act, 1959 (Rajasthan Act 35 of 1959); or

(iii) the Rajasthan State Industrial and Mineral Development Corporation Limited or the Rajasthan State Industrial Development and Investment Corporation Limited and constructed in an Industrial area developed by any of them; or

(iv) a Panchayat established under the Rajasthan Panchayat Act, 1953 (Rajasthan Act 21 of 1953); or

(v) a Panchayat Samiti or a Zila Parishad established under the Rajasthan Panchayat Samitis and Zila Parishads Act, 1959 (Rajasthan Act 37 of 1959); or

(vi) a Government Company as defined in Section 617 of the Companies Act, 1956 (Central Act 1 of 1956); or

(vii) Devasthan Department of the Government of Rajasthan or Premises managed or controlled by it; or

(viii) a Wakf as defined in the Wakfs Act, 1954 (Central Act 29 of 1954) and entered in the register of Wakfs maintained under Section 26 of that Act;

(ix) a market committee established under the Rajasthan Agricultural Produce Market Act, 1961 (Rajasthan Act 38 of 1961);

(x) a body corporate established or constituted by a Central Act or a Rajasthan

Act and owned or controlled by the State Government.

(xi) the Durgah Khwaja Saheb, Ajmer administered in accordance with the provisions of the Durgah Khwaja Saheb Act, 1955 (Cent. Act No. 36 of 1955); or

(xii) The Deity of Shri Shrinathji Temple, Nathdwara administered in accordance with the provisions of Nathdwara Temple Act, 1959 (Rajasthan Act No. 13 of 1959); or

(xiii) the Deity of Shri Sanwaliaji, Mandphia (District Chittorgarh) administered in accordance with provisions of Shri Sanwaliaji Temple Act, 1992 (Rajasthan Act No. 8 of 1992)].

Explanation.- For the removal of doubts, it is hereby clarified that the provisions of this act shall not apply to any immovable property of a Wakf entered as such in the register of Wakf maintained under Section 26 and transferred without the previous sanction of the Board of Wakfs in contravention of the provisions of Section 36A of the Wakfs Act, 1954 (Central Act 29 of 1954) and the provisions of Section 26B of that Act shall continue to apply for the recover of the possession of such property;"

18. A perusal of the above definition reveals that for any premises to fall within the definition of public premises, it is necessary that the premises must belong to, or taken on lease or requisitioned by, or on behalf of the State Government and includes any premises belonging to the Authorities/Corporations etc. as indicated in Sub-clause (i) to (xiii) supra.

19. Any premises, which are not taken on lease by or on behalf of the State Government, for the said premises to fall within the definition of public premises, it is necessary that it must "belong" to the Authority/Corporation etc. as indicated in Sub-clause (i) to (xiii) of Clause (b) of Section 2 of the Rajasthan PP Act. The said definition is quite different from definition of public premises as given in Section 2(e) of the Central PP Act relied on by counsel for the petitioner, wherein any premises belonging to, or taken on lease by, or on behalf of the Company, Corporation, University etc. would fall within the definition of public premises, however, as the second proviso to Section 18 of the Act specifically refers to the Rajasthan PP Act, the definition of public premises as given in the Central PP Act would have no application at all.

20. From the material available on record, it is admitted position that the premises in question does not belong to the petitioner, which is claimed to be a Government of India undertaking, the claim made by the petitioner seeking exclusion under second proviso to Section 18 of the Act has no basis and, consequently, the submissions made in this regard are rejected.

21. So far as issuance of notice and its validity is concerned, the situation is governed by the provisions of Section 106(3) of the T.P. Act, which reads as under:--

"106. Duration of certain leases in absence of written contract or local usage.-
(1) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months" notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days" notice.

(2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in sub-section (1) shall commence from the date of receipt of notice.

(3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.

(4) Every notice under this sub-section (1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property."

22. A bare perusal of the above provision reveals that a notice shall not be deemed to be invalid merely because the period mentioned therein fall short of the period specified under sub-section (1), where a suit or proceeding is filed after the expiry of the period mentioned in sub-section (1). Admittedly, the application was filed on 29.10.2012 i.e. after expiry of 15 days from the date the lease come to an end i.e. on 9.10.2012.

23. In view thereof, the fact that the notice was issued during the currency of the lease deed indicating the fact that the lease would stood determined by efflux of time, would not make any difference and the submission cannot be sustained that the proceedings were not validly instituted on account of alleged invalidity of notice.

24. So far as the submission regarding grant of opportunity to cross-examination is concerned, a perusal of the application filed by the petitioner seeking cross-examination of the deponents of affidavits filed alongwith petition for eviction reveals that the same was general in nature and the petitioner had failed to indicate any basis for seeking such cross-examination. In a proceeding initiated for eviction from the premises, which are not governed by the Act, the contention in defense could be pertaining to invalidity of the notice based on its receipt etc. and that aspect may require leading of the evidence. However, in the present case, the receipt of notice is not in dispute and there is nothing in the application of the petitioner and the reply to the petition for eviction, which would indicate any aspect requiring a cross-examination of deponents of the affidavits filed alongwith the petition for eviction. It has been repeatedly held by

this Court that though generally the cross-examination should be permitted by the Rent Tribunal but the parties cannot claim the same as a matter of right and merely because the cross-examination is refused on valid grounds, the proceedings shall not stand vitiated on account of justified refusal to cross-examine the deponents of affidavits.

25. In view of the above, the third ground raised by the petitioner also has not substance.

26. Consequently, in view of the above discussion, there is no substance in the writ petition, the same is, therefore, dismissed.