(2000) 09 DEL CK 0067

In the Delhi High Court

Case No : Regular First Appeal No. 636 of 1998

Nisha APPELLANT

Vs

Punjab National Bank RESPONDENT

Date of Decision : 13-09-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 15

Citation : AIR 2000 Delhi 439

Hon'ble Judges : Arun Kumar, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Mr. Pramod Ahuja, for the Appellant; Mr. Y.P. Chandna, for the Respondent

Judgement

A.K. Sikri, J.—Appellant is the owner/landlady of the suit property bearing No. XVI 10203, Karol Bagh, Padam Singh Road, New Delhi. The building in which the suit premises is situate is known as "Jamuna House". Suit premises comprises of entire basement i.e. one hall and toilet measuring 3659 sq. feet and containing carpet area of 3570 sq.feet. The premises was let out by the appellant/plaintiff to the New Bank of India Ltd. vide lease agreement dated 18th August, 1991. Initial period of lease was five years and the rate of rent was Rs.6 per sq.feet for total carpet area of 3570 sq.feet which comes to Rs. 21,420/- per month. In case of renewal of lease, lease agreement provided for enhancement of rent by 15 per cent over the agreed rate of rent. Defendant was allowed to construct a strong room in the lease premises. After the expiry of five years, the lease was renewed for another period of five years i.e. w.e.f. 18th August, 1986 to 17th August, 1991. This was done vide plaintiff''s letter dated 9th June, 1987. This letter for renewal was accepted by defendant and rent was enhanced to Rs.24,633/-. Few months before the expiry of extended period of lease, plaintiff wrote letter dated 3rd June, 1991 to the defendant informing that tenancy was coming to an end by midnight of 17th August, 1991 and further that plaintiff would be proceeding to adjust the first three months from the advance rent which plaintiff had retained as per terms and conditions of lease dated 18th August, 1991. After the expiry of lease period, defendant sent two cheques for Rs. 24,633/- each. However, plaintiff returned those cheques. plaintiff also refused to accede to the request of the defendant for renewal of lease deed by letter dated 13th June, 1991. She also asked the defendant to vacate the premises by letter dated 17th August, 1991 when lease period was coming to an end. As the defendant did not vacate the premises, plaintiff served a legal notice dated 3rd January, 1992. Defend- ant sent reply dated 17th January, 1992. As the plaintiff found some technical defect in the earlier notice, fresh notice dated 12th February, 1992 was again served upon the defendants. Defendant replied to this notice as well. plaintiff thereafter filed suit for possession against the said defendant, New Bank of India Ltd.

2. New Bank of India Ltd. contested the suit by filing written statement. During the pendency of the aforesaid suit, the New Bank of India Ltd. was merged with the Punjab National Bank by means of notification issued by Central Government and all the assets and liabilities were taken over by the Punjab National Bank. In these circumstances, plaintiff moved application under Order 1, Rule 10 read with Section 151 CPC for impleading Punjab National Bank as defendant in place of New Bank of India Ltd. This application was allowed by orders dated 7th January, 1994 by directing that name of New Bank of India Ltd. be substituted with Punjab National Bank. Amended memo of parties filed by the plaintiff was taken on record and the suit proceeded against Punjab National Bank which is respondent herein.

3. On 6th September, 1995 following issues were framed:

1. Whether plaintiff is entitled to a decree of possession as prayed for?

2. Whether this Court has no jurisdiction to try this suit?

3. Whether there was a renewal of the lease after every 5 years and defendant had exercised the said option?

4. Whether tenancy of defendant had been validly terminated?

5. Relief.

No other issue arises or is pressed. Parties to file additional document if any. List of witnesses be filed in 15 days. For plaintiff evidence on 5/12/95.

However, before the evidence could start compromise talks started between the parties and the case was adjourned from time to time to report settlement, if any. On 9th September, 1997, statement was made by counsel plaintiff that there was no chance of compromise and compromise talks had failed .

4. The case was accordingly adjourned to 7th November, 1997 for plaintiff''s evidence. On 7th November, 1997 at joint request of the parties, case was adjourned to 1st December, 1997 for plaintiff''s evidence. On that day also evidence could not start as lawyers were abstaining from appearing in court and the Presiding Officer was also on leave. The case was fixed for 3rd December,

1997 for appropriate orders and on 3rd December, 1997, the court fixed 17th February, 1998 for plaintiff''s evidence. On 17th February, 1998 Sh. Surinder Shah husband of the plaintiff was present as a witness. However, instead of recording his evidence, learned Judge of his own framed the following additional issue:

"Whether suit is maintainable in view of section 15 of Public Premises (Eviction of Unauthorised Occupants) Act 1971".OPP

5. It was also ordered that since this additional issue was purely legal and did not require any evidence, the same be treated as preliminary issue and case was fixed for arguments on the issue on 2nd March, 1998. As order dated 17th February, 1998 reveals this additional issue was framed not with standing the objections of the counsel for the plaintiff to the effect that no such contention was raised by the defendant in the written statement. This objection was over-ruled by the Court stating the issue being purely legal issue did not require any pleading and it was a duty of the Court to see whether it had jurisdiction or not. The arguments were thereafter heard on this preliminary issue and it resulted in passing the impugned order dated 29th July, 1998 deciding the said preliminary issue against the plaintiff holding that premises in question are public premises and are covered by The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as "PP Act"). The suit was held to be barred by section 15 of the PP Act and the plaint rejected u/o 7 rule 11 of Code of Civil Procedure.

6. While taking the aforesaid view, the learned Trial Court has referred to the definition of public premises as per section 2(e) of the PP Act which reads as under:

"Section 2(e):

(1) Any premises belonging to, or taken on lease or on requisitioned by, or taken on lease or on requisitioned by, or on behalf, of the Central Government, and includes any such premises which have been placed by that Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1980 under the control of the secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that secretariat;

(2) Any premises belonging to, or taken on lease by, or on behalf of

(i) Any company as defined in Section 3 of the Companies Act, 1956, in which no less than fifty one percent, of the paid up share capital is held by the Central Government or any company which is a subsidiary (within the meaning of that Act) of the first mentioned company.

(ii) Any corporation (not being a company as company as defined in section 3 of the Companies Act 1956 or a local authority) established by or under a Central Act and owned or controlled by the Central Government.

(iii) Any University established or incorporated by any Central Act.

(iv)................"

7. The Court further observed that clause (ii) of sub-section 2 of Section 2(e) of the PP Act was relevant in this case inasmuch as defendant bank namely Punjab National Bank was a corporation established under the Central Act namely the Banking Companies (Acquisition & Transfer of Undertakings) Act 1970 and owned/ controlled by the Central Government. Accordingly, premises leased to the bank were public premises. The learned Trial Court also referred to the judgment of the Supreme Court in the case of Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others, in support of his ruling. The learned Trial Court further observed that if the premises belonging to the corporation are covered by public premises there can be no scope of excluding the premises taken on lease by such corporation. The contentions raised by counsel for the plaintiff in trying to persuade the Court to take contrary view were not accepted by the learned Trial Court though admitting that defendant bank was in unauthorised occupation of the premises in question. The concluding portion of the judgment reads as under:

"From the above discussion, I have no hesitation in holding that the premises are public premises, that the defendant is in unauthorised occupation and the jurisdiction lies with the Estate Officer as contained u/s 4 and 5 of the Act and consequently the jurisdiction of Civil Courts is barred by section 15(a) of the Act. Section 15(a) of the Act envisages that no court shall have jurisdiction to entertain a suit or proceedings in respect of the eviction of any person who is an unauthorised occupation of any public premises. Hence preliminary issue is decided in favor of the defendant and against the plaintiffs.

In the light of aforesaid discussion, as I have already observed that the premises in question are public premises and covered by the Public Premises (Eviction of Unauthorised Occupants) Act 1971. The suit being barred by section 15 of the Act, the plaint is rejected u/o 7 rule 11 of Code of Civil Procedure. Parties are directed to bear their own costs. Decree sheet be prepared accordingly. File be consigned to record room."

8. Assailing the aforesaid order, it was submitted before us by learned counsel for the appellant that the intention of the legislature was not to treat such premises, taken by such statutory corporations from private landlord/owners on lease to treat them as public premises and make the provisions of PP Act applicable to such premises. It was also submitted that view taken by the learned Trial Court was leading to absurdity inasmuch as part premises in the same building where there were certain other tenants, Transfer of Property Act would apply and in respect of the premises in question PP Act would apply. The learned counsel also pressed into service same arguments advanced before the learned Trial Court which are noted in the judgment. On the other hand, respondent relied upon the reason given in the impugned judgment and submitted that the definition of public premises was wide and clear enough to include such premises under the

cover of PP Act.

9. We have considered the arguments advanced by both the parties and have also gone through the records. We are of the opinion that view taken by the learned Trial Court is not a correct view in law and calls for interference. In fact the whole approach of the learned Trial Court is misdirected. The PP Act treads altogether different field as is clear from the preamble of the said Act. The Act was enacted to provide for eviction of unauthorised occupants from public premises and for certain incidental matters. The purpose was to enact law, as would be clear from the statement of objects and reasons, to take speedy action to evict authorisernment/statutory ed occupants of public premises and the Government did not want to rely upon the ordinary process of law which often involves considerable delay. The intention was to provide speedy machinery for the eviction of persons who are in unauthorised occupation of public premises keeping in view at the same time the necessity of complying with the provisions of the Constitution. The whole genesis of this Act presupposes that the premises in question are public premises belonging to the Government/statutory authority. They are in occupation of a person who is or has become unauthorised occupant of these premises and Government/statutory authority wants him to be evicted. Thus the premises are to be in occupation of a person who is not the Government/statutory authority itself but other than the Government/statutory authority to whom in fact the premises were given/allotted by the Government/ statutory authority who trespassed into the premises belonging to the Government. The Statute has conferred a right of speedy recovery of possession on the Government or statutory bodies from persons occupying their premises. It is in this context that the definition of public premises as contained in section 2(e) of the PP Act is to be understood. Here the premises would either belong to or taken on lease by the Government/statutory authority. The occupant of such premises, who has now become unauthorised occupant, would be a person other than the Government/ statutory authority. And, now Government/ statutory authority wants such person to be evicted from the public premises. Therefore, while interpreting definition of unauthorised occupant as contained in Section 2(g) of the PP Act would be a person other than Government/statutory authority. The very essence of legislating PP Act is to enable Government/statutory authority to evict ''unauthorised occupants'' from ''public premises'' and by no stretch of imagination one can conceive of a situation where Government/ statutory authority itself is in ''unauthorised occupation'' of the "public premises". Therefore, PP Act would not at all govern the proceedings filed by a private landlord/owner against the Government/statutory authority as tenant. These proceedings would be governed by the provisions of Transfer of Property Act or Delhi Rent Control Act as the case may be. The machinery which is provided under the PP Act is to enable Government/statutory authority to evict a person in unauthorised occupation of the premises and such ''person'' has necessarily to be a person other than Government/statutory authority. It was never intended that in a lease between private landlord/owner and the Government/statutory

authority (as tenant), landlord will be entitled to invoke the machinery provided under the provisions of PP Act to evict Government or statutory authority treating it to be a "person" in " unauthorised occupation" of the public premises. Therefore, the whole approach adopted by the learned Trial Court is erroneous whereby it has relegated the plaintiff/appellant to the remedy provided under the provisions of PP Act by directing it to approach an Estate Officer for the eviction of the respondent. It is not realised that this course would eventually do more harm to the Government/statutory authority.

10. In fact learned counsel for the plaintiff had urged before the Trial Court that object of the PP Act was to provide summary remedy to the Government/ Company/Bank/Corporation so as to avoid them from lengthy procedure of regular civil Courts as was clear from the objects and preamble. However, this contention was rejected by the learned Trial Court observing that when the language of a particular enactment was plain and clear, resort to object and preamble for interpreting same was absolutely uncalled for. The reasoning given by the learned Trial Court in rejecting this argument is clearly fallacious. As observed above, the object of the statute namely PP Act is to enable Government/statutory authority to evict another person, to whom the premises were given by the Government/statutory authority and has become unauthorised occupant now or who is a trespasser, and Therefore, unauthorised occupation by the public premises, to evict such a person. It was never intended to use this Act by third person against Government/statutory authority treating Government/ statutory authority as unauthorised occupation of the premises. The Act is to be interpreted keeping in view this intention of the legislature. In fact the legislature has specifically enacted Transfer of Property Act and Rent Control Act, which amongst other govern the relationship between Lesser or lessee where Lesser is a private person and lessee may be a private person or Government/statutory authority. The interpretation given by the Trial Court would lead to absurd results and give even the private landlords right to evict Government/statutory authority, by adopting speedy machinery provided under said Act and it would result in clearly crossing the boundaries earmarked for the PP Act.

11. It was observed by Supreme Court in the case of The Vishnu Pratap Sugar Works (P) Ltd. Vs. The Chief Inspector of Stamps, U.P., that a statute is an edict of the legislature and the conventional way of interpreting or construing a statute is to seek the ''intention'' of its maker. Therefore, it is to be construed according to the intent of those who make it. Salmond in his book ''Jurisprudence'' (11th Edn. P-152) has observed that ''the duty of judicature is to act upon the true intention of the legislature - the means or sententia legis''. In Municipal Corporation of Delhi and Others Vs. Mohd. Yasin, the Supreme Court observed that ''words and phrases take colour and character from the context and the times and speak differently in different contexts and times''.

12. Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily

directed to the problems before the legislation based on information derived from past and present experience. This intention is to be kept in mind while interpreting a particular statute. It was not the intention of the legislature, while enacting PP Act, to cover the cases of the type at hand i.e. allowing the private person to use machinery provided under the PP Act against Government or statutory authority. The intention of legislature assimilates two aspects: in one aspect it carries the concept of ''meaning'' i.e. what the words mean and in another aspect, it conveys the concept of ''purpose and object'' or the ''reason or spirit'' pervading through the statute. While interpreting the statute both literal and purposive approaches are combined i.e. true of legal meaning of enactment is to be derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or the object which comprehends the mischief and its remedy to which the enactment is directed. In State of Himachal Pradesh and another Vs. Kailash Chand Mahajan and others, the Supreme Court propounded the aforesaid principle in the following words:

"Mr.Kapil Sibal, learned counsel for the first respondent would submit that legislative intention has not been brought out clearly. In this connection we will do well to refer to Francis Bennion''s Statutory Interpretation (1984 edn.) at page 237. The distinction between the legislative intention and the purpose or object of the legislation has been succinctly summarised as under :-

"The distinction between the purpose or object of an agreement and the legislative intention governing it is that the former relates to the mischief to which the enactment is directed and its remedy, while the latter relates to the legal meaning of the enactment."

13. Thus there is a great distinction between the two. While the object of legislation is to provide a remedy for the malady. On the contrary, the legislative intention relates to the meaning from the exposition of the remedy as enacted. For determining the purpose of object of legislation, indeed, it is permissible to look into the circumstances which were prevalent at the time when the law was enacted and which necessitated the passing of that enactment. For the limited purpose of appreciating the background and the antecedents factual matrix leading to the legislation it is open to the Court to look into the statement of ''Objects and Reasons'' of the Bill which accentuated the statement to provide a remedy for the then existing malady."

14. In Kanta Goel Vs. B.P. Pathak and Others, , Supreme Court speaking through Justice Krishna Iyer spelt that the interpretative effort ''must be illumined by the goal though guided by the word''. Similarly in Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others, the Supreme Court, speaking through Chinappa Reddy, J echoed the principle in the following words:

"Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted."

15. It is not necessary to multiply the judgments expressing same sentiments. However, we cannot resist but refer to the following observations made by Supreme Court in O.P. Singla and Another Vs. Union of India (UOI) and Others,

"One must have regard to the scheme of the fasciculus of the relevant rules or sections in order to determine the true meaning of any one or more of them. An related consideration or a provision leads to the risk of some other interrelated provision becoming otiose or devoid of meaning."

16. We have two separate enactments viz. Transfer of Property Act and PP Act. Both have their own respective fields. The players who have to play in the respective fields are different. The players of this litigation have necessarily to play on the field carved out by Transfer of Property Act. There has to be a harmonious construction of the two Statues. Having regard to the subject and object of the statute namely PP Act we are of the view that the machinery provided under the PP Act for eviction of unauthorised occupants was not intended to cover the case in hand. It was the intention of legislature to equip the Government/statutory authority with such machinery for speedy eviction of unauthorised occupants and not to deal with the situations where Government/ statutory authority is at receiving end and the machinery under the PP Act and the machinery under the PP Act is utilised against them. PP Act is meant to come to the aid of the Government/statutory authority and it was never conceived that the forum which has to come to the rescue of the Government/statutory authority would be utilised against the Government/statutory authority.

17. Accordingly, we set aside the judgment of the learned Trial Court and remand the case back with directions to the Trial Court to decide the same on merits. The appeal is accordingly allowed.

However, we make no order as to cost.

