
(2002) 05 RAJ CK 0013

In the Rajasthan High Court

Case No : Civil Revision Petition No. 265 of 2001

Smt. Shakuntala

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 06-05-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 115
Specific Relief Act, 1963 — Section 14(1)

Citation : (2003) 3 RCR(Civil) 754 : (2003) 2 RCR(Rent) 262 : (2003) 2 RLW 1401 : (2002) 4 WLC 41 : (2002) 5 WLN 539

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Advocate : L.M. Lodha, for the Appellant; J.P. Joshi and Vikram Purohit, for the Respondent

Final Decision : Dismissed

Judgement

Chauhan, J.—The instant revision has been filed against the order dated 17.2.2001, by which the learned trial Court has vacated the temporary injunction passed in favour of the petitioner-plaintiff earlier.

2. The facts and circumstances giving rise to this case are that vide letters dated 14.8.97 and 29.12.98, a contract for parking of the vehicles in front of Railway Station, Abu Road, was granted in favour of the petitioner for a period of two years on a fixed licence fee of Rs. 17,084/- to be paid in twenty equal installments. It appears that the complete area, which was agreed upon by the contract, could not be handed over to the petitioner-plaintiff and some lesser area was given for the reason that regarding a part of it, there had been some litigation. Neither he paid the licence fee as per the agreement after expiry of some time, nor paid 10% penalty on the monthly licence fee, nor he complied with the other terms. The non-petitioner revoked the licence, as per the terms and conditions of the agreement, particularly those contained in Clauses 1(b) and 15(b), vide order dated 30.4.99, though the contract could have come to an

end on 16.11.99. Petitioner filed a suit for permanent injunction against the non-petitioners and the trial Court granted temporary injunction vide order dated 3.5.99. In spite of the fact that the contract came to an end on 16.11.99, under the interim order of the Court, petitioner continued to be in possession without paying any licence fee. It appears that in the meanwhile, the suit had been amended and petitioner sought relief that as she had been given the lesser area than agreed, the period of contract should be extended by the Court. Non-petitioners filed an application for vacating the stay order and vide order dated 9.2.2001, the order impugned has been passed.

3. It may be pertinent to mention here that while entertaining this revision, this Court had also passed an interim order dated 21.3.2001 restraining the non-petitioners to dispossess the petitioner and as there has been some dispute, contempt petitioners are pending for non-compliance of the said order.

4. Mr. L.M. Lodha, learned counsel for the petitioner, has submitted that undoubtedly the contract came to an end on 16.11.99, but as the petitioner had not been put in possession of the area agreed upon in the contract, she was entitled to continue in possession for a longer period; as the contractual tenancy came to an end, petitioner automatically became a statutory tenant and as such she could not be evicted without due process of law; and at any cost, even if the trial Court has vacated the temporary injunction, it has no competence to issue a direction to the petitioner to hand over the possession to the non-petitioner within the stipulated period.

5. On the other hand, it has been submitted on behalf of the non-petitioner that once the contract came to an end, petitioner had no right to remain in possession; suit for injunction was not maintainable and at the most, petitioner could have filed a suit for damages, if she was, by any means, aggrieved of termination of contract; and if the contract was terminated for non-compliance of the terms of the contract, she could have no grievance and the trial Court's order does not require any interference whatsoever.

6. I have considered the rival submissions made by the learned counsel for the parties.

7. Admittedly; the contract came to an end on 16.11.99. It is very doubtful as to whether petitioner could retain possession subsequent thereto for the reason that the submission made by Mr. Lodha that once the contractual tenancy came to an end, statutory tenancy came, into existence and the petitioner could be removed only in accordance with law, seems to be preposterous for the reason that petitioner was merely a licensee and not a tenant and the licence came to an end automatically on expiry of its term. Revocation of licence amounts to complete abolition of the right for the exercise of which the licence was granted and it would be tantamount to cancellation for all times to come entailing all vital consequences. (Vide *Laxmi Khandsari v. State of U.P. and Ors.* (1).

8. Licence merely gives a right to do something upon the immovable property for

the grantee which would, in the absence of any such right, be unlawful but it does not create any right, be unlawful but it does not create any right in favour of the grantee in the property. (Vide Constitution Bench judgment of the Hon'ble Supreme Court in *Rameshwar Prosad Khandelwal v. Commissioners, Land Reforms and Jagirs, Madhya Bharat* (2); and *Puran Singh Sahni v. Sundari Bhagwandas Kripalani* (.4).

9. So far as the competence of the Civil Court to issue a direction to petitioner to hand over the possession within the stipulated period is concerned, even if it is beyond its competence, no interference is called for because the order passed by the trial Court has advanced the cause of justice and does not occasion a failure of justice or causes irreparable injury to the-petitioner.

10. Granting of temporary injunction depends upon satisfaction of the ingredients of Order 39 Rules 1 and 2 of the Code, e.g. whether there is a prima facie case in favour of plaintiff, balance of convenience is also in his favour and in case temporary injunction is not granted, plaintiff will suffer irreparable loss. First ingredient may not be there, as the licensee does not seem to have a right to maintain a suit for injunction, as such suits seem to be barred by the provisions of Section 14(1)(c) of the Specific Relief Act, 1963 (for short, "the Act, 1963") and in such a case, petitioner, if was aggrieved, could claim only damages measurable by the extent of emoluments, of which she had been unjustly deprived of. In a case where injunction cannot be granted, the question of granting temporary injunction does not arise. This view may stand fortified by a large number of judgments, including *Union of India v. Bakshi Amrik Singh* (4); *Rajasthan State Electricity Board, Jaipur v. Hindustan Brown Bowery Ltd.* (5); and *Smt. Ajmer Kaur v. Punjab State* (6).

11. In *Ram Chandra Tanwar v. Ramrakh Mal Amichand and Anr.* (7), this Court considered a case where the plaintiff, who was carrying on vending work at a railway station under the contract with the Railways on payment of fee, instituted a suit against the Railways for terminating his contract three months prior to the date of its expiry. The Court held that in such a case, the only remedy available to the petitioner-plaintiff was to recover the damages, if any, on the principle that no temporary injunction could be granted for the reason that in case of licence, no interest is created in favour of the licensee in the premises in dispute and what is created is only a right to use the property. The Court had taken the view considering the provisions of Section 14(1)(c) and 41 of the Act.

12. The said provision of the Act, 1963 provide that where a contract is, in its nature, determinable or where its non- performance may be compensated in terms of money, injunction shall not be granted. From the pleadings, it is abundantly clear that the licence had been revoked prior to the expiry of the period of contract, i.e. before 16.11.99, in terms of Clauses 1(b) and 15(b) of the Agreement. Thus, the contract was determinable and in such eventuality, suit for injunction is barred under the provisions of Section 14(1)(c) of the Act, 1963.

13. In *Mohan Singh and Ors. v. Gram Panchayat, Nadol* (8), this Court has categorically held that a licensee has no legal right to compel the licensor for renewal of licence and continue in possession after expiry of the licence period, this Court, while dismissing the revision of the licensee also directed him to hand over the possession to the licensor and also to make payment of arrears of licence fee till that date in respect of the shop involved therein.

14. A Full Bench of Delhi High Court, in *Chandu Lal v. Municipal Corporation of Delhi* (9), dealt with a similar case and held that "before invoking the jurisdiction of the Court to seek temporary injunction, the petitioners were bound to show that they have the legal right and that there was an invasion of that right." As the licensee cannot ask for temporary injunction if the licence period is over, or it has been determined.

15. Similar view has been reiterated by the Karnataka High Court in *Karnataka State Road Transport Corporation v. Nagraj Hatwar* (10), observing that once the licence expires, the power of licensee to continue with the possession does not arise further and such a person is in unlawful possession or in unauthorised occupation thereof and is "not entitled to seek injunction against his eviction by the disturbance of possession." The Court further observed as under: -

"In fact, the Supreme Court has clarified that in respect of a licence, the lawful way of taking possession is just to walk into the premises and take possession, as it always be the case of a licensee that the possession and control of possession is kept with the licensor. A licensee is after all occupying the premises under the terms and conditions of the licence. So the due process of law has also been interpreted as to mean that on the expiry of the licence, the licensor is entitled to occupy the premises and prevent the licensee from entering into the premises."

16. In *Vijay Kumar Magee v. S.M. Rao and Ors.* (11), the Hon"ble Supreme Court dealt with a criminal case, considering whether locking the premises after revoking the licence of the licensee and leaving the licensee inside the premises would amount to wrongful restraint. The Hon"ble Supreme Court considered that as the Civil Court had refused to grant injunction in favour of the licensee and the appellate Court had considered her to be a trespasser, putting in a lock on the premises by the licensor would not amount to wrongful restraint because after termination of the licence, the licensee had no right to continue in possession.

17. Similarly, in *Makhan Lal v. Asharfi Lal* (12), the Hon"ble Supreme Court held that a suit for injunction by a licensee against the licensor/his legal heirs was unsustainable in law.

18. Mr. L.M. Lodha, learned counsel for petitioner, has placed reliance on the judgment of the Hon"ble Supreme Court in *Corporation of the City of Bangalore v. N. Papaiah and Anr.* (13). However, the facts of that case are distinguishable as in that case the Hon"ble Supreme Court was deciding the second appeal wherein

the title of the agricultural land was in dispute and a decree of perpetual injunction against the defendant Corporation from interfering with the possession over the land in dispute was asked. Thus, the aforesaid judgment has no bearing in the present case.

19. Further reliance has been placed upon the judgment of this Court in *Lucky Minmate (P) Ltd. v. State of Rajasthan and Ors.* (14). The facts of that case are also distinguishable as that was a suit challenging the recovery of the lease amount under the Rajasthan Minor & Mineral Concession Rules, 1959, when the lease itself was in force. Moreso, this Court was deciding a regular first appeal and not a revision and the issue whether the licensee can maintain a suit for injunction, has not been in issue in that case.

20. Thus, in view of the above, *prima facie* as the suit seems to be not maintainable, I am not inclined to grant any relief.

21. It has been averred by the learned counsel for respondents that as petitioner remained in possession for a very long period after expiry of the licence, they should be awarded the mesne profit.

22. It is settled law that no litigant can derive any benefit because of pendency of case in a Court of law, as the interim order always merges in the final order to be passed in the case and if the case is ultimately dismissed, the interim order stands nullified, automatically. A party cannot be allowed to take any benefit of its own wrongs by getting interim order and thereafter blame the Court. The fact that the suit is found, ultimately, devoid of any merit, shows that a frivolous suit has been instituted. The legal maxim *Actus Curie neminem gravabit* is applicable in such a case, which means that the act of the court shall prejudice no one. In such a situation, the Court is under an obligation to undo the wrong done to a party by the act of the Court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralised as institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the Court where the interim order stood merged in the final order. (*Vide Grindleys Bank Ltd. v. Income Tax Commissioner* (15), *Ram Kishan Verma v. State of U.P.* (16); *Dr. A.K. Sircar v. State of Uttar Pradesh and Ors.* (17); *Shiv Shankar and Ors. v. Board of Directors, Uttar Pradesh State Road Transport Corporation and Anr.* (18); *Kannoriya Chemicals and Industries Ltd. v. U.P. State Electricity Board* (19); *Ugam Singh v. State of Raj. and Ors.* (20); the Committee of Management, *Arya Inter College v. Shree Kumar Tiwari* (21); and *G.T.C. Industries Ltd. v. Union of India and Ors.* (22). Similar view has been reiterated by the Hon'ble Supreme Court in *State of Madhya Pradesh v. M.V. Vaishvaraiya* (23).

23. The maxim has been held to be founded upon justice, equity and good conscience, which serves a safe and certain guidance for administration of law. (*Vide Mohammed Gazi v. State of Madhya Pradesh and Ors* (24); *Gaya Prasad v. Pradeep Srivastava* (25); *Jayalakshmi Coelho v. Oswald Joseph Coelho* (26);

O.N.G.C. and Anr. v. Association of Natural Gas Consuming Industries and Ors. (27); and Kedarnath v. Mohan Lal Kesarwari (28).

24. A Constitution Bench of the Hon"ble Supreme Court in Padma Sundara Rao v. State of Tamil nadu and Ors. (29), rejected the plea that a Full Bench of Madras High Court, in a case, had laid down the law which held a field for a long time and the law understood and followed for a long period, should not be disturbed, applying the aforesaid legal maxim.

25. In Upadhyay & Co. v. State of U.P., (30), the Hon"ble Supreme Court up-held the judgment of the Allahabad High Court directing the recovery of licence fee at enhanced rate for the period petitioner therein collected the toll tax after expiry of the licence period.

26. The Court, in Its limited jurisdiction of revision, however, cannot issue any direction in this regard, if the non-petitioners are aggrieved by any means, they are at liberty to resort to the legal proceedings for the same or ask the learned trial Court to determine such an amount, if any; In case the issue is raised by the non-petitioners before the learned trial Court, the said Court is requested to decide the same in accordance with law.

27. Thus, in view of the above, no interference is called for in exercise of the revisional power u/s 115 of the Code. The revision is accordingly dismissed with the cost quantified to the tune of Rs. 1500/- only. Interim order, if any, stands vacated. The trial Court is requested to expedite the trial of the suit, examining all the issues discussed hereinabove.