

(2004) 09 GUJ CK 0041
In the Gujarat High Court

Case No : Company Application No. 249 of 2001 in Company Petition No. 72 of 1991 with Company Application No's. 21, 22, 64, 106, 107 and 203 of 2003

Textile Labour Association

APPELLANT

Vs

O.L. of Amruta Mills Ltd.

RESPONDENT

Date of Decision : 30-09-2004

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1), 28
Companies (Court) Rules, 1959 — Rule 9
Companies Act, 1956 — Section 445(3), 446, 446(2)
Presidency Small Cause Courts Act, 1882 — Section 41

Citation : (2005) 126 CompCas 469 : (2005) 58 SCL 452

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : D.S. Vasavada, in Company application No. 249 of 2001, A.S. Vakil, in Company application Nos. 21 and 64 of 2003, M.K. Patel, in Company application No. 22 of 2003, R.S. Sanjanwala, in Company application Nos. 106 and 107 of 2003 and T.R. Mishra, in Civil application No. 203 of 2002, for the Appellant; R.M. Desai, for Official Liquidator in Company Application No. 21 of 2003 and Civil Application No. 203 of 2002, R.M. Desai, for Official Liquidator for Respondent No. 1 in Company Application No. 249 of 2001, A.C. Gandhi, in Company Application No. 249 of 2001, H.V. Chhatrapati, in Company Application No. 249 of 2001, Singhi and Co. for Respondent No. 4 in Company Application No. 249 of 2001, A.C. Gandhi, Sandeep Singhi, H.V. Chhatrapati and D.S. Vasavada, in Company Application No. 21 of 2003, R.M. Desai, A.C. Gandhi, Sandeep Singhi, H.V. Chhatrapati and D.S. Vasavada, in Company Application Nos. 22, 64, 106 and 107 of 2003 and A.C. Gandhi, Sandeep Singhi, H.V. Chhatrapati and D.S. Vasavada, in Civil Application No. 203 of 2002, for the Respondent

Judgement

K.A. Puj, J.—Since the subject matter of all these applications is common, they are being disposed of by this common judgment.

2. Company Application No. 249 of 2001 is filed by Textile Labour Association

seeking directions interalia, to take possession of around 72 Chawls attached to the Amruta Mills Ltd. (In Liquidation) and to take appropriate steps to recover the amount by disposing of the chawls to the occupants, or alternatively to recover the amount towards the rent from the occupants of the Chawls.

3. This Court has passed an order on 16.12.2002 in this application observing that more than two months time had passed and yet nothing was placed on record as to whether the occupants of the Chawls have vacated the said Chawls. The Official Liquidator was, therefore, directed to issue notices to all the occupants of the Chawls for vacating the rooms. The Court has further made it clear that there was no question of allowing them to buy the said Chawls at present, and as and when the entire property belonging to the Company (In Liquidation) was sold off, the said question could be considered by the Court. The Court has further observed that if the occupants were not vacating the Chawls, the Official Liquidator was directed to take appropriate actions in the matter for getting the vacant possession of the said Chawls from the concerned occupants.

4. Pursuant to the aforesaid order passed by this Court on 16.12.2002, the Official Liquidator has issued notice of eviction to about 77 occupants and in respect of remaining occupants whose premises were closed, notices were affixed.

5. On 23.12.2002, C.A. No. 203 of 2002 was filed by the Amruta Mills Tenaments Occupier Association seeking impleadment of the applicant as respondents in Company Application No. 249 of 2001.

6. After hearing the learned advocates appearing for the respective parties and after considering the submissions made on behalf of some of the occupants, this Court has passed an order on 26.12.2002 whereby the order passed on 16.12.2002 with regard to eviction of the occupants of the Chawls was stayed and the Official Liquidator was directed not to take possession of the Chawls inside as well as outside the Mill Compound till 21.01.2003. The Court has also made it very clear that if the occupants wanted to make modification in the order passed by this Court on 16.12.2002, they could file separate application seeking such modification.

7. Pursuant to the aforesaid order, Company Application No. 21 of 2003 was filed on 22.01.2003 seeking dismissal of Company Application No. 249 of 2001 filed by Textile Labour Association on the ground that the same was not maintainable. Alternatively, the applicant has also prayed for impleadment as party respondent in Company Application No. 249 of 2001 if the prayer regarding dismissal of Company Application No. 249 of 2001 is not granted. The applicant has further prayed for the modification of the order dated 26.12.2002 passed by this Court in Company Application No. 249 of 2001 and seeking direction to restrain respondent No.1 i.e. Official Liquidator of Amruta Mills Ltd. permanently from taking over possession of the applicant's Chawl No. 614-72 situated outside Saraspur Gate, Ahmedabad.

8. Similarly, Company Application No. 22 of 2003 was filed by one Abhaykumar Bansilal Shah seeking similar prayer and direction to the Official Liquidator not to take possession from the applicant - tenant of portion of property in question i.e. 615/12-13, behind Amruta Mills, Saraspur, Ahmedabad on the ground that the applicant has been doing the business on the said part of property for the last more than 50 years.

9. Likewise, Company Application No. 64 of 2003 was filed by Shri Hitendrasinh Gulabsinh and Jagdevsinh Ajitsinh seeking similar prayers as were made in Company Application No. 21 of 2003.

10. Company Application No. 106 of 2003 was filed by Maniba Babaji Chauhan seeking similar prayers as were made in Company Application No. 21 of 2003.

11. Similarly, Company Application No. 107 of 2003 was filed by Shri Champaklal N. Sharma seeking similar prayers as were made in Company Application No. 21 of 2003.

12. On behalf of Textile Labour Association - the applicant in Company Application No. 249 of 2001, Mr. D.S. Vasavada, learned advocate appeared and has submitted that ever since the Company went into liquidation, the Official Liquidator has not taken the possession of the 72 Chawls which were in fact owned by the erstwhile management of the Company in liquidation. He has further submitted that these 72 Chawls were the properties of the Amruta Mills Company (In Liquidation) and, therefore, the Official Liquidator should take the possession of all the 72 Chawls. About 72 workmen are residing in these Chawls and they are actually using these Chawls for the purpose of their residence. The Official Liquidator may be directed to negotiate with the occupants of the Chawls and to dispose of the Chawls with the permission of this Court so that the poor workmen may get the property at the reasonable price and the legal formalities may also be completed.

13. On behalf of the occupants, Mr. T.R. Mishra, learned advocate appeared for Amruta Mills Tenements Occupier Association, Mr. A.S. Vakil, learned advocate appeared on behalf of the applicants in Company Application Nos. 21 of 2003 & 64 of 2003. Mr. M.K. Patel, learned advocate appeared on behalf of the applicant in Company Application No. 22 of 2003. Mr. R.S. Sanjanwala, learned advocate appeared on behalf of the applicants in Company Application Nos. 106 of 2003 & 107 of 2003.

14. On behalf of the Official Liquidator, learned advocate Mr. R.M. Desai appeared and on behalf of the Secured Creditors, Mr. A.C. Gandhi, Mr. H.V. Chhatrapati and Mr. Sandeep Singhi, learned advocates appeared on behalf of their respective clients in this group of applications.

15. The moot question which arises for consideration of the Court is as to whether the occupants who are in possession of the respective Chawls of the Mills Company can be allowed to retain such possession once the Company went

into liquidation especially when their possession of the respective Chawls was only on account of either their relations or relations of their near relatives with the Mills Company by virtue of their employment when the Company was working.

16. Mr. A.S. Vakil, learned advocate appearing for the applicant in Company Applications No. 21 & 64 of 2003 has submitted that the applicants have not authorised the Textile Labour Association. to file Company Application No. 249 of 2001 nor Textile Labour Association is competent to do so. He has further submitted that the applicants are ready and willing to negotiate with the Official Liquidator for the purpose of purchasing the Chawls or in the alternative even pay rent of the Chawls to the Official Liquidator as contemplated by Textile Labour Association. Mr. Vakil has further invited the attention of the Court to the order passed on 12.02.2002 wherein it is observed that since the properties of the Company in liquidation were not required for the purpose of winding up, it was necessary to require the Official Liquidator to take back the possession of the premises from the occupants. It was, however, not clear as to whether the occupants are rent trespassers or whether some of them were rented the premises on lease by the Company prior to liquidation. In any case, even if the premises were authorisedly given prior to liquidation, the Court would consider the question whether the Official Liquidator was entitled to take back the possession of the premises and in this view of the matter, the Official Liquidator was directed to submit his report before the Court. Mr. Vakil has submitted that even thereafter several orders were passed by this Court in Company Application No. 249 of 2001 and the applicants have never been heard on the question whether the Official Liquidator was entitled to take back the possession of the Chawls / premises. All decisions have been taken by this Court in absence and without hearing the applicants or without ascertaining their rights, title and interest in the said Chawls. Even purported verification of the ownership of the Chawls undertaken by the Official Liquidator was behind the back of the applicants and that was undertaken during the time when the city of Ahmedabad was experiencing one of the worst communal riots. The order passed by this Court on 16.12.2002 was inconsistent with the order dated 12.02.2002 and as per the prayer (A) of judges summons of Company Application No. 249 of 2001, the Official Liquidator was straightway directed to issue notices to all the occupants of Chawls for vacating the same, without there being any adjudication or hearing on prayer (A). This Court has observed that there was no question of allowing the occupants of the Chawls including the applicants to buy the said Chawls at present and that the said question would be considered at a later stage. Mr. Vakil has, therefore, submitted that Company Application No. 249 of 2001 deserves to be dismissed. The possession of the applicants are required to be protected by this Court as the right, title and interest of the applicants are not adjudicated by this Court.

17. Mr. R.S. Sanjanwala, learned advocate appearing for the applicants in Company Applications No. 106 & 107 of 2003 has more or less adopted the

arguments canvassed by learned advocate Mr. A.S. Vakil. He has further submitted that the scope of the present application moved by the applicants is very limited and simply because the Company went into liquidation, the rights of the applicants did not get automatically extinguished. In support of this submission, he has relied on the decision of the Hon''ble Supreme Court in the case of Smt. Nirmala R. Bafna/Kershi Shivax Cambatta and others Vs. Khandesh Spinning and Weaving Mills Co. Ltd., and another/Official Liquidator and others, wherein it is held that merely because the Company goes in liquidation and a Liquidator/Official Liquidator is appointed, the rights of the Company viz-a-viz its landlord and/or its tenants do not undergo any change.

18. He has further submitted that before taking possession of the Chawls from the applicants, the Official Liquidator should have followed the proper procedure laid down under the law. The Official Liquidator should have either filed eviction suit before the Court of competent jurisdiction or he should have moved an appropriate application before this Court for getting eviction of the Chawls from the applicants. He has further submitted that the order dated 16.12.2002 passed by this Court does not authorise the Official Liquidator to get the eviction of the applicants from the Chawls. It talks of only issuance of notices. There is no dispute about the fact that the applicants are in possession of the Chawls and it is not necessary to prove that they were in the legal possession. In any case, this issue will have to be adjudicated and decided by the competent Court and till then the possession of the applicants should not have been disturbed by the Official Liquidator. The question of adjudication of the rights, title and interest of the applicants cannot be decided in the present proceedings as there is no substantive application to that effect. Lastly, he has submitted that the decision was taken to take back the possession from the applicants without hearing them and such a decision is palpably wrong and not tenable at law. In this connection, he has relied on the decision of the Hon''ble Supreme Court in the case of H.L. Trehan and Others Vs. Union of India (UOI) and Others, wherein it is held that "The post-decisional opportunity of hearing does not subserve the rules of natural justice. Once a decision has been taken, there is a tendency to uphold it and a representation may not yield any fruitful purpose. The authority who embarks upon a post-decisional hearing will naturally proceed with a closed mind and there is hardly any chance of getting a proper consideration of the representation at such a post-decisional opportunity." He has, therefore, submitted that the order passed by this Court on 16.12.2002 in Company Application No. 249 of 2001 should appropriately be modified and the possession of the applicants be protected till the rights, title and interest of the Chawls are properly adjudicated or decided by the Competent Court.

19. Mr. R.M. Desai, learned advocate appearing for the Official Liquidator has submitted that the occupants of the Chawls have no right whatsoever to retain the possession of the Chawls once the Company went into liquidation. There was no dispute about the title of the property as the property belongs to the Company either as a landlord or as a lessee in some cases and even in that case,

the lease being of a permanent nature. He has further submitted that there was also no dispute about the fact that the possession of the property with the occupants was by virtue of an employee - employer relationship and there was no relationship of the tenant - landlord as contended by the applicants. He has further relied on the provisions contained in Section 445(3) of the Companies Act, 1956 which says that winding up order shall be deemed to be notice of discharge to the Officers and employees of the Company, except when the business of the Company is continued. He has further relied on the provisions contained in Section 477 of the Companies Act, 1956 which says that the Court may, at any time, after the appointment of a Provisional Liquidator or the making of a winding up order, summon before it any Officer of the Company or person known or suspected to have in his possession any property or books or papers of the Company or known or suspected to be indebted to the Company, or any person whom the Court deems capable of giving information concerning the promotion, formation, trade, dealings, property, books or papers, or affairs of the Company. He has, therefore, submitted that the Official Liquidator was justified in issuing the eviction notice to the occupants of the Chawls as the Chawls belong to the Company.

20. Mr. Desai has further submitted that the possession of the Chawls by the occupants is illegal possession in view of the provisions contained in Section 630 of the Companies Act which says that if any Officer or employee of a Company -

(a) wrongfully obtains possession of any property of a Company; or

(b) having any such property in his possession, wrongfully withholds it or knowingly applies it to purposes other than those expressed or directed in the articles and authorised by this Act, he shall, on the complaint of the Company or any Creditor or contributory thereof, be punishable with fine which may extend to Rs. 10,000/-.

Sub-section 2 of Section 630 further empowers the Court trying the offence to pass an order directing such Officer or employee to deliver up or refund, within a time to be fixed by the Court, any such property wrongfully obtained or wrongfully withheld or knowingly misapplied, or in default, to suffer imprisonment for a term which may extend to two years. He has further submitted that the scope and ambit of Section 630 of the Act has come up before the various Courts.

21. Mr. Desai has relied on the decision of the Bombay High Court in the case of GOVIND T. JAGTIANI V/S. SIRAJUDDIN S. KAZI AND ANOTHER, 56 COMPANY CASES 329 wherein the Court has observed that "Section 630 applies not merely to existing officers and employees of a company but also to ex-employees and ex-officers. The features and deduction which flow logically and inescapably on an analysis of S. 630 are that :-

(i) Cl. (a) of S. 630 is self-contained and independent of cl. (b) with the capacity of creating penal liability embracing the case of an existing employee or officer of

the company.

(ii) Cl. (b) is equally independent and distinct from cl. (a) as regards penal consequences squarely covering the case of a past employee or officer.

(iii) The entitlement of an officer to the property of the Company is contingent on the right and capacity of the officer by virtue of his employment which is transformed into actual possession of the property and the duration of such right would be coterminous with the terms of employment. Therefore, the capacity right to possession and duration of it being features integrally blended with the termination of the employment, the capacity and the corresponding right are extinguished with the obligation to hand over the property back to the company. If the property is held back, the retained possession would amount to wrongful withholding of the property of the company."

22. Mr. Desai has further relied on the decision of the Bombay High Court in the case of KRISHAN AVTAR BAHADUR V/S. COL. IRWIN EXTROSS AND OTHERS 59 COMP CAS 417 wherein the Court has held while dismissing the petition,

(i) that Section 630 was intra vires Parliament in so far as it was applicable to immovable property belonging to a Company;

(ii) that merely because the petitioner had filed a declaratory suit in the Court of Small Causes on the ground of tenancy, the High Court was not justified in staying the criminal proceedings on the bare theoretical ground that the question of tenancy could more appropriately be dealt with by that Court;

(iii) that, on the facts, the plea of tenancy was not open to the petitioner. The flat belonged to the Company and it was occupied by the petitioner during the term of his employment with the company and he was entitled to occupy it only during the term of his employment with the Company. After the termination of his services, he could not claim to continue to occupy the premises on the ground that he was a tenant thereof. The criminal court had jurisdiction to entertain the complaint u/s 630 of the Companies Act."

23. Mr. Desai has further relied on the decision of the Hon"ble Supreme Court in the case of BALDEV KRISHNA SAHI V/S. SHIPPING CORPORATION OF INDIA LTD. AND ANOTHER 63 COMP CAS 62 wherein it is held that "Section 630 of the Companies Act, 1956, plainly makes it an offence if an officer or employee of a company, who was permitted to use any property of the company during his employment, wrongfully retains or occupies the same after the termination of his employment. The term "officer of employer" in Section 630 applies not only to existing officers or employees of a company but also to past officers or employees, if such officer or employee either (a) wrongfully obtains possession of any property of the company, or (b) having obtained such property during the course of his employment, withholds the same after the termination of his employment."

24. Mr. Desai has further relied on the decision of the Madras High Court in the

case of P.V. GEORGE V/S. JAYEMS ENGINEERING CO. (P) LTD. (1990) 2 CLJ 62 wherein it is held as under :-

"The term "property" used in Section 630 of the Act is not at all defined by any of the provisions contained therein. It is, therefore, necessary to find out the real meaning that could be ascribed to the term "property" in the context in which it was used in the aforesaid section. For better understanding of the meaning of the word "property" as used in the section, one must have to understand the beneficent provisions adumbrated in that section. Accommodation is provided by the company as a condition of service to attract the best of talents. Therefore, once a person is lawfully employed in the company, he is given office accommodation for efficient discharge of his function during his career in the company. The moment he ceased to be an employee of the company, either on account of his superannuation or otherwise in the sense of his being terminated from service by way of dismissal, then it naturally follows that the company has to retrieve the property allotted to such a person whilst in service. The beneficent provisions has been enacted in the shape of section 630 of the Act for enabling the company to retrieve the property with utmost expediency, once the employee ceased to be an employee of the company. In case, he is not in a position to hand over the office accommodation subsequent to his ceasing to be an employee of the company, launching of prosecution had been contemplated under the said section against such person. Viewed in this light, the term "property" should be construed to signify the subject-matter over which the right of ownership or any lesser right carved out of ownership (e.g., mortgage right, leasehold right, etc.) is exercised. If such a mean is given, it would satisfy the legislative intent, taking into account the object of such benevolent provision as introduced in the Act. Thus, it is not permissible to put any construction on the meaning of the term "property" that it signifies only ownership and not the lesser right carved out of ownership such as mortgage right, leasehold right, etc."

25. Mr. Desai has further relied on the decision of this Court in the case of PRAHLADBHAI RAJARAM MEHTA V/S. POPATBHAI HARIBHAI PATEL AND ANOTHER 87 COMP CAS 557 wherein it is held as under :-

"Section 630 of the Companies Act, 1956, applies to a past officer or employee of a company, if the wrongful obtaining, withholding or application of the property was done in his capacity as such officer or employee. Thus, when an employee refuses to vacate the premises of the company on determination of the employment or on his retirement but continues in possession even after his retirement, the employee can be held liable u/s 630 of the Act.

Section 13(1)(f) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, provides that if premises are let to a tenant for use as resident in consequence of his being in service, it is also a ground for eviction. This clause refers to an occupation by a servant as tenant, whether by way of remuneration or a part-payment for services or whether paying rent or not.

If the company decides to seek possession u/s 13(1) of the 1947 Bombay Act against the employee-tenant the company has to pursue the remedies before a competent court as provided u/s 28 of the 1947 Bombay Act. The provisions of Section 630 of the Companies Act, 1956, also provide a special remedy which is summary in nature against a person who ceases to be in the employment of the company who was given possession of the premises out of such service relation. The company has an option either to pursue the remedy provided u/s 630 of the Companies Act or u/s 13(1)(f) under the 1947 Bombay Act. There are thus two remedies open to companies. Both provisions give different but concurrent remedies to companies.

Even in the case of tenancy, the provisions of Section 630 of the Companies Act are available to a company. The provisions of the 1947 Bombay Act and the provisions of Section 630 of the Companies Act are required to be interpreted harmoniously so that the object of both the statutes is advanced and not defeated. To say that the provisions of Section 630 cannot be invoked in a case of tenancy would be to render the provision otiose.

The Provisions of a Central legislation later in point of time, will prevail over the provisions of an earlier State law. Therefore, even if there were any inconsistency, the remedy under the provisions of Section 630 of the Companies Act, 1956, would be unaffected by Section 28 of the 1947 Bombay Act."

26. Mr. Desai has further relied on the Division Bench judgment of this Court in the case of PETLAD BULAKHIDAS MILLS CO. LTD. V/S. STATE OF GUJARAT AND ANOTHER 97 COMP CAS 900 wherein the aims and objects of incorporating the Provisions of Section 630 in the Companies Act were consistently explained. The Court has held that "Where ex-employees of a company were given the premises during their employment, there was nexus between their employment and the occupation of the premises of the company by them, and they were always expected to return the premises on termination of their employment or superannuation and they cannot be said to be persons who fall in the same class as tenants of partnership firms, private individuals and other entities. The provisions of Section 630 are wide in their amplitude and since the purpose is to protect the property of the company, one of the ways of protecting the property of the company which is given to the employees is to provide for return of such property when the employment ends. Such a provision can never be said to be arbitrary or discriminatory. On the contrary it would make way for the subsequent employees being allotted the premises and would prevent dishonesty on the part of the ex-employees who were required to return the premises to the company."

27. Mr. Desai has further relied on the decision of the Delhi High Court in the case of ELECTRONICS LTD. (IN LIQN.) 2002 C.L.C. 1457 for the proposition that the Company Court can certainly issue directions to the Official Liquidator to take effective steps for getting the employees evicted from the staff quarters and for this purpose, the directions can be issued to the Official Liquidator to seek police

assistance and when such assistance is sought for, the local police is supposed to render all such assistance as is necessary. In this connection, the Court has held that "Upon the passing of a winding up order, S. 630 immediately comes into operation. It provides that if any officer or employee of a company being possessed of company's property wrongfully withholds it from the general use and benefit of the company, he would be liable for prosecution. It is trite to state that this Section applies equally to employees, past and present. Even if there are some doubts as to whether this provision would have application to a company in liquidation they would have application to a company in liquidation they would stand dispelled by Rule 9 of the Companies (Court) Rules, 1959 read with Sections 446 and 456(2) of the Act, which states that all properties and assets of the company shall be deemed to be in the custody of the Court from the date of the order for the winding up of the company. Thereafter Section 468 further specifies that the Court may, at any time after making a winding up order, inter alia require any officer or other employee of the company to deliver, surrender or transfer forthwith or within such time as the Court may direct to the Official Liquidator, any other property in his custody or under his control which the company prima facie entitled to. Keeping these provisions in mind, the Court has directed the Official Liquidator in this case to take effective steps for getting the employees evicted from the staff quarters and for this purpose, the directions can be issued to the Official Liquidator to seek police assistance and when such assistance is sought for, the local police is supposed to render all such assistance as is necessary.

28. Mr. Desai has further relied on the decision of the Bombay High Court in the case of MANOHAR GUNAJI ANUBHAWNE V/S. STATE OF MAHARASHTRA AND ANOTHER 2003 C.L.C. 1089 for the proposition that possession of premises withheld by employee after resignation would not be protected by provisions of Rent Act. Even it is not necessary for the Company to file suit u/s 41 of the Presidency Small Cause Courts Act, the Company can certainly initiate proceedings for recovery of possession u/s 630 of the Companies Act, 1956.

29. Mr. Desai has further relied on the decision of this Court in Company Application No. 268 of 2003 in the case of RAGHVENDRAQPRASAD AVASTHI V/S. O.L. OF JUBILEE MILLS CO. LTD. decided on 16.04.2004 wherein, while rejecting the prayer made by the applicant to the effect that the O.L. may be restrained from taking possession of the residential premises from the occupiers of the quarters of Jubilee Mills Chawl and for giving direction to the O.L. to evolve a scheme for purchase of the premises occupied by the Ex-employees of the said Mill Company, the Court has held that "Taking into consideration that the consequence of winding up proceedings should result in benefit to the largest group of persons including the creditors, workmen and others, the interest of the applicants stands outweighed by the larger interest of the former class of persons and hence it is not possible to accept the prayer made by the applicants. However, it will be open to the applicants to participate in the open bid that may be held once offers are invited by following due process of law."

30. Mr. Desai has further relied on the decision of this Court in Company Application No. 278 of 2001 in Company Petition No. 33 of 1983 and other cognate matters in the case of O.L. OF ARYODAYA SPG. & WEAVING MILLS CO. LTD. V/S. CHARANSINGH DHUPSINGH decided on 16.04.2004 wherein, after referring to the decisions of this Court in the case of Sudarsan Chits (I) Ltd. Vs. O. Sukumaran Pillai and Others, for the purpose of deciding the scope and ambit of jurisdiction conferred on the High Court u/s 446(2) of the Act, the Court has held that the object of Section 446 of the Act is to save the company which is being wound up from unnecessary litigation and expenses and to protect its assets for equitable distribution amongst its creditors and its shareholders. The Court has further held that the contention that the applicant should be called upon to file a separate suit for recovering the property and cannot seek remedy by way of this application requires to be stated only to be rejected in light of the aforesaid settled legal position. As held by this Court the provision of Sections 446(2) and 446(3) of the Act have been specifically incorporated to ensure that the Liquidator in course of winding-up is not required to file suits for recovering properties of the Company as otherwise it will become virtually impossible to order winding-up of a Company (in liquidation). The Court has further observed that u/s 446 of the Act, the legislative intent to permit the High Court from initiating proceedings straightway as if they were proceedings of the Court of an appropriate jurisdiction is clear; that there should be no impediment in the way of the liquidator, necessitating his getting involved in unnecessary litigation as there is public accountability after a winding-up order has been passed to determine the liquidation proceedings as expeditiously as possible, and tenants of companies under winding-up cannot stretch the winding-up proceedings to suit their personal interest. The Court has further held that once it is found that a person is a trespasser, proceedings u/s 446 of the Act are "due process of law", and the trespasser as such can be directed to be evicted, and such direction cannot be said to be without due process of law.

31. Based on the aforesaid statutory provisions contained in the Companies Act, 1956 as well as the decided case law on the subject, Mr. Desai has strongly urged that no protection be granted by this Court against eviction of the occupants from the Chawls belonging to the Company in liquidation and the notices issued by the O.L. for eviction of the occupants from the said Chawls are completely in accordance with law and in conformity with the statutory provisions contained in the Act. He has, therefore, submitted that the order be passed in Company Application No. 249 of 2001 directing the O.L. to get back the possession from the occupants of the Chawls forthwith and to reject all other applications moved by the occupants of the Chawls for dismissal of Company Application No. 249 of 2001 and/or seeking protection against eviction of their respective Chawls.

32. Mr. H.V. Chhatrapati, learned advocate appearing for I.F.C.I. has more or less adopted the arguments of Mr. Desai. He has further placed on record a copy of the letter dated 28.06.2004 issued by I.F.C.I. Limited to him wherein it was

stated that the Asset Sale Committee has unanimously decided that members should take a stand in the High Court that Secured Creditors should not agree to sell the said chawl in isolation mainly in view of the fact that the entire front portion of the land would be occupied by the tenements. If the chawl is sold in isolation, the remaining portion of the land would not fetch better price. In this view of the matter, he has strongly objected to consideration of any proposal put forward by the occupants of the Chawls either directly or through their association for sell of the Chawls in question. He has, therefore, submitted that the applications making such prayers should be rejected forthwith.

33. Mr. A.C. Gandhi & Mr. Sandeep Singhi, learned advocates appearing for the Secured Creditors have also supported the stand taken by the Official Liquidator as well as by the I.F.C.I. Limited.

34. After having heard learned advocates appearing for the respective parties and after having considered the relevant statutory provisions of the Companies Act, 1956 as well as after considering the decided case law on the subject, the Court is of the view that the occupants of the Chawls shall not have any right to occupy their respective Chawls once the company goes into liquidation. Since their occupation was based on the employer employee relationship and as soon as the Company goes into liquidation, as per the Provisions contained in Section 445(3) of the Companies Act, 1956, that relationship has come to an end. Section 468 of the Companies Act, 1956 provides a summary procedure for enabling the liquidator to avoid expensive litigation in discharge of one of his primary duties, namely, collection of the assets of the Company. When the company is prima facie entitled to any property, there is no reason why the Court should not in its discretion make an order u/s 468, even though the exact extent of the property has to be determined. The Court is also of the view that object of Section 477 is to enable the Court in winding up to have a discovery with a view to find out the financial condition and assets and determine what further steps may be taken to release the assets. While exercising its powers u/s 477, the Court can certainly pass an order of eviction as no tenancy rights whatsoever were created by the Company in liquidation in favour of the occupants. By virtue of employment, only right to occupy was granted to the occupants and once an employment comes to an end, the employee has to evict the premises and cannot claim any tenancy.

35. The submissions made by learned advocates Mr. A.S. Vakil and Mr. Sanjanwala to the effect that the notice of eviction was issued by the liquidator pursuant to the order dated 16.12.2002 passed by this Court was violative of the principles of natural justice and the applicants were not heard in the matter were also not acceptable as pursuant to the said notice, they have filed present applications before this Court and the Court has granted stay against eviction and after hearing the parties at length on the subject, the Court has now come to the conclusion that the occupants have no right whatsoever to withhold the possession of the respective Chawls. There is no substance in the submission of

the learned advocates appearing for the occupants to the effect that this would be post-decision hearing which is violative of the principles of natural justice. The Court has not straightaway passed the order of eviction. But the Official Liquidator was directed to issue only notice for eviction. The notice pre-supposes the hearing in the matter and the occupants were in fact heard in the matter and till the final decision is taken in the matter, their possession has been protected by the Court. The Court is, therefore, of the view that there is no violation of the principles of natural justice as alleged by the occupants.

36. Looking to the provisions contained in Section 445(3), 446, 468, 477 and 630 of the Companies Act, 1956, the Court is of the view that the Court has ample power to issue directions for eviction of the occupants from the Chawls belonging to the company as retention of all these Chawls by them is amounting to illegally or unlawfully withholding the properties of the company in liquidation and the duty is cast upon them to hand over the vacant and peaceful possession to the Official Liquidator. Over and above this, Section 630 specifically states that it would amount to a criminal offence for which they are liable to be criminally prosecuted. Even for getting eviction, the Liquidator has not to file any suit for eviction or initiate any other proceedings. On an application filed by the liquidator or by any creditor or by the contributory of the Company, the Court can pass such order of eviction. In the present case, the Textile Labour Association representing workers being Creditors having *pari passu* charge over the assets of the Company have filed Company Application No. 249 of 2001 wherein this Court has issued notice for eviction and while exercising the powers u/s 446 of the Companies Act, 1956, the Court has every power to issue suitable direction looking to the facts involved in the matter. Even while court exercises its power u/s 446 of the Act, the pendency of proceedings before other forums such as Civil Courts would not prevent this Court from passing the order with regard to eviction.

37. The Court is of the view that all the issues raised by the occupants of the Chawls are more or less decided by this Court, other High Courts and/or Hon''ble Supreme Court and in the light of this settled legal position, they do not deserve for any protection from this Court. In the case of KRISHNA AVTAR BAHADUR (SUPRA), the Bombay High Court has taken the view that after the termination of the services of an officer of the Company, he could not claim to continue to occupy the premises on the ground that he was a tenant thereof. In GOVIND T. JAGTIANI's case (SUPRA), the Bombay High Court has taken the view that after termination of the employment, if the property is held back, the retained possession would amount to wrongful withholding of the property of the Company. While explaining the term "property" used in Section 630 of the Act, the Madras High Court in the case of P.V. GEORGE (SUPRA) has taken the view that the said word, not only signifies the ownership, but also the lesser right carved out of ownership such as mortgage right, leasehold right, etc. This Court has also taken the view in the case of PRAHLADBHAI RAJARAM MEHTA (SUPRA) that the Provisions of Section 630 of the Companies Act, 1956 provides a special

provision which is summary in nature against a person who ceases to be in the employment of the company who was given possession of the premises out of such service relation. The Court further held that to say that the provisions of Section 630 cannot be invoked in a case of tenancy would be to render the provision otiose. This Court has further taken the view in the case of PETLAD BULAKHIDAS MILLS CO. LTD. (SUPRA) that one of the ways of protecting the property of the Company which is given to the employees is to provide for return of such property when the employment ends and such a provision can never be said to be arbitrary or discriminatory. The Delhi High Court in the case of ELECTRONICS LTD. (IN LIQUIDATION) has gone to the extent of saying that the Court can direct the Official Liquidator to take effective steps for getting the employees evicted from the staff quarters and for this purpose, necessary directions for police protection can also be issued. This Court made it clear in the case of OFFICIAL LIQUIDATOR. OF ARYODAYA SPG. & WEAVING MILLS CO. LTD. (SUPRA) that the person who is in occupation of the premises belonging to the Company, even after the termination of its employment with the Company is a trespasser and the proceedings u/s 446 of the Act are "due process of law", and the trespasser as such can be directed to be evicted, and such direction can never be said to be without due process of law.

38. This Court is in complete agreement with the above guiding principles and holds that the possession of the occupants of the Chawls is an illegal possession and no protection can be granted to them for retaining such illegal possession. This Court has an ample power to issue direction to evict the occupants from such Chawls while exercising its original jurisdiction in an application moved either by the Official Liquidator or by any Creditor or contributory of the Company in liquidation and for that purpose, the Company in liquidation through its liquidator, has neither to file any suit nor criminal complaint. The Court, therefore, does not see any infirmity in issuance of direction to the Official Liquidator to take possession of the Chawls from the occupants forthwith and for that purpose, he is also permitted to take police assistance in the matter.

39. Taking overall view of the matter and considering the entire case law on the subject which was discussed hereinabove, the Court is of the view that there is no substance in all these applications filed by the occupants for seeking protection against the eviction. The Company Application No. 249 of 2001 is, therefore, allowed to the above extent. Interim relief granted earlier staying the operation of the order dated 16.12.2002 is vacated. Civil Application No. 203 of 2002 which is mainly for joining parties and which is ordered to be heard along with Company Application No. 249 of 2001 and which is listed all through out along with this group, is also disposed off since the Company Application No. 249 of 2001 is being disposed off by this common judgment. Company Applications No. 21, 22, 64, 106 and 107 of 2003 are rejected and interim relief, if any, granted earlier is vacated and the Official Liquidator is directed to take possession of the Chawls in question from them forthwith.

40. Subject to the above, all these applications are accordingly disposed of without any order as to costs.

41. After the judgment is pronounced, Mr. T.R. Mishra, learned advocate appearing for the applicants in Civil Application No. 203 of 2002, Mr. A.S. Vakil, learned advocate appearing for the applicants in Company Applications No. 21 & 64 of 2003, Mr. R.S. Sanjanwala, learned advocate appearing for the applicants in Company Applications No. 106 & 107 of 2003 and Mr. Mahendra Patel, learned advocate appearing for the applicants in Company Application No. 22 of 2003 have prayed for stay against the operation and implementation of this judgment. The occupants are occupying the premises since long and stay was also in operation during the pendency of these applications. Looking to the facts and circumstances of the case, stay granted earlier by this Court is continued for a further period of three weeks from today.