

(2012) 4 RCR(Civil) 136

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 8554 of 2011 (O and M)

St. Joan's Education
Society

APPELLANT

Vs

National Thermal
Power Corporation
Limited and others

RESPONDENT

Date of Decision: Jan. 3, 2012

Acts Referred:

- Public Premises (Eviction of Unauthorised Occupants) Act, 1971 - Section 19
- Registration Act, 1908 - Section 17
- Transfer of Property Act, 1882 - Section 51

Citation: (2012) 4 RCR(Civil) 136

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: Rajiv Atma Ram, with Ms. Trishanjali Sharma and Mr. Saurabh Arora and Mr. Arjun Partap Singh, for the Appellant; Hawa Singh Hooda , with Mr, Yogesh Chaudhary, for the Respondent

Final Decision: Dismissed

Judgement

K. Kannan, J.

I. The lis

1. The writ petition is at the instance of an (sic) institution challenging the continuance of the proceedings initiated by the respondents under the provisions of the Public Premises Act. It is significant to observe even at the outset that the proceedings before the Estate Officer has not been concluded and the writ petition has been filed when the proceedings were in progress and when the case was posted for hearing to a particular date for further evidence.

II. The litigious journey so far

(a) Petitioner's possession of the land of NTPC for running a school

The facts leading up to the litigation would require to be quickly visited. An agreement has been entered into between the petitioner and the 1st respondent in respect of property measuring just under 7 acres of land on 26.06.2000. The agreement allows for the petitioner to establish a school conforming to CBSE pattern and allows for construction to be put up at the cost of the petitioner. The petitioner has given an undertaking through the agreement that it will run the school for a period of 30 years by obtaining rent at nominal rent of Rs. 100/- per year. The agreement allows for the termination of the agreement on setting out a notice to terminate by giving at least one year prior notice. On questions relating to interpretation or meaning of the agreement, as well as resolution of disputes and differences, the agreement recites that parties shall settle through arbitration before a sole Arbitrator appointed by the Chairman and Managing Director of NTPC. The agreement contemplates an execution of a lease deed independently within 3 months from the date of the execution of the agreement.

(b) In the absence of registration, rights of parties to be determined by prior agreement

2. A lease deed has been indeed executed, not within 3 months but however on 16.01.2001. Apart from the setting forth the basic terms already agreed under the agreement for the tenure of lease and the lease amount to payable, the lease deed provides for other clauses as well. The document provides that the cost of stamp duty and registration will be borne by the lessee. If the document purports to be for a term exceeding one year, it is required to be registered. It has not been registered and consequently, the document cannot be used as evidence of what the document contains. I will discard straightway any of the terms of the lease deed as governing the rights between parties except to state that the character of possession of the petitioner is as a lessee and it should only be taken that the petitioner holds the property on lease on month to month basis.

(c) Differences leading to termination of agreement

3. There appear to have arisen differences between parties in the manner of running the school and the completion of the school construction. Consequently, a notice terminating the lease has been executed u/s 19 of the agreement entered into between parties on 26.06.2000. I do not think it is necessary to reproduce the various grievances that NTPC has against the petitioner, but suffice it for our purpose to record the fact that the respondent served a notice of termination of agreement and has also elicited a reply from the petitioner on 27.10.2008 for the intended action.

4. The facts brought out through the petition allows us to see that the petitioner has attempted to address several issues which NTPC had against the petitioner through its communication dated 13.03.2009. The NTPC has not been deterred by the explanations

given by the petitioner and they have informed the Chairman of the petitioner's Society on 22.03.2010 reminding them of the date to surrender possession of the property and following it with a notice on 11.05.2010 that the property must be delivered possession within a stipulated period.

(d) Petitioner's aborted attempt to secure arbitral reference during the proceedings before the Estate Officer

5. After some exchange of notices, it is seen that NTPC has filed a petition under the Public Premises Act on 20.03.2011 seeking for eviction of the piece of land measuring 6.98 acres. The respondent has taken time to file reply and has applied during the proceedings for a reference to arbitration as contemplated in the agreement of the year 2000. The Estate Officer has rejected the prayer by citing a judgment of the Hon'ble Supreme Court in [Booz Allen and Hamilton Inc. Vs. SBI Home Finance Ltd. and Others](#), , that holds that the issue of whether a party had waived his right to secure an adjudication through arbitral process shall be determined by the conduct of parties in the proceedings. The Estate Officer has noticed that after taking several times for filing the statement, the petitioner has also filed a reply to the petition for eviction and has participated in the enquiry by examination of witnesses produced by NTPC. The documents filed by the respondents bear out that PW3 was cross-examined by the petitioner's counsel on 04.05.2011 and on the same day, an application for reference to arbitration had been made. The Estate Officer has received the objection on 06.05.2011 and has also passed immediately an order stating that it could not be referred to arbitration especially when the party had participated in the proceedings and subjected itself to his jurisdiction. On 06.05.2011, the petitioner has given a list of witnesses but had sought for an adjournment of the hearing stating that the counsel was required to take his son for some treatment and after taking an adjournment to 07.05.2011, 09.05.2011 and still later to 17.05.2011 on the ground that the petitioner's counsel himself had been suffering from some ailment, the petitioner has approached this Court by means of the above writ petition and has obtained an order of stay of the proceedings.

III. The objections as canvassed by petitioner for continuation of proceedings before the Estate Officer under the PP Act

6. By the turn of events it could be clearly seen that the petitioner had participated in the proceedings, cross-examined witnesses, produced a list of its own witnesses and when it was at the end of the tether in securing discretionary orders of adjournments, has reached this Court on a wholly different ground that the proceedings before the Estate Officer itself cannot proceed any further. The petitioner has at the time of moving an urgent petition for stay, stated that the agreement has not been terminated and the proceedings before the Estate Officer cannot go any further. Before me, it is argued that the action of the respondent itself is untenable and spirited by bias of the Estate Officer. The petitioner mounts also other objections, such as the incompetency of filing the petition without appropriate sanction of the Board of Directors, as required to be done

under the Companies Act to bind the acts of the Company and that the rights under the lease deed and the agreement could not be considered in the proceedings under the Public Premises Act.

7. Each of the grounds raised by the petitioner is sought to be anchored to certain propositions of law emerging from decisions of the Hon"ble Supreme Court. To a contention that the action for eviction cannot be taken before the Public Premises Act, the counsel relies on the judgment of the Hon"ble Supreme Court in [Express Newspapers Pvt. Ltd. and Others Vs. Union of India \(UOI\) and Others](#), which has considered that the building constructed by a newspaper with the sanction of Union of India will not be a public premise to which the provisions of the Public Premises Act could be applied. Only a properly constituted civil suit would be the competent forum for action. The said case also examines the exercise of the executive power in good faith and the consequence of exercise of such power in bad faith as a necessary tool for examination. For a contention that the petitioner cannot maintain the petition for eviction without appropriate sanction from the Board, the learned senior counsel appearing on behalf of the petitioner relies on the judgment of the Hon"ble Supreme Court in [State Bank of Travancore Vs. Kingston Computers \(I\) P. Ltd.](#), Recent Apex Judgments (R.A.J.) 77 : 2011(3) SCALE 33. The malafides in action itself could be an issue for adjudication even by the Estate Officer and to that proposition, the counsel would rely on a judgment of the Hon"ble Supreme Court in New India Assurance Company Limited v. Nusli Neville Wadia and another, AIR 2008 Supreme Court 876.

IV. The grounds of objection urged by NTPC

8. The learned senior advocate appearing on behalf of NTPC would contend that after the filing of the writ petition, there has been a reference to arbitration and all the disputes as regards the respective entitlement of claims could be considered only by arbitration. The respondent would also refer to the fact that the petition is a gross abuse of process since it fails to disclose the essential features of the enquiry when the petitioner had participated on several dates of hearing but has come to the Court to secure an order of stay of proceedings before the Estate Officer by suppression of the details of proceedings that had taken place before the authority.

9. We have a strange situation that when a reference for arbitration was sought by the petitioner before the Estate Officer, the NTPC opposed the plea and has secured a dismissal of the application filed by the petitioner for reference. After the writ petition has been filed before this Court, the respondent has sought for a reference to an Arbitrator and wants to close the proceedings before the Court by contending that there is an arbitration proceeding for deciding on all disputes other than the issue of eviction before an Arbitrator and hence, the proceedings before this Court cannot continue.

V. Reasons how the action under PP Act is maintainable

(a) The property held on lease is public premises liable to action for ejectment.

10. The jurisdiction is invoked before this Court by the petitioner on the basis that the proceedings before the Estate Officer is not competent. The basis of such a contention is that a property which is allowed to be used by a public authority for construction of a school cannot come within the definition of "public premise" and an action for eviction cannot lie under the Public Premises Act. I have already set out the legal grounding for such a contention is sought to be placed on the judgment of the Hon"ble Supreme Court in Express Newspapers Pvt. Ltd (supra). It was a post emergency case where a newspaper publication house had been carrying a tirade against the executive in power and taking up cudgels against the authorities for executive excesses during the emergency. The newspaper house was trying to contend that the action for eviction was an attempt to muzzle the freedom of press and spirited by malafides. The Hon"ble Supreme Court was considering an extraordinary case under an extraordinary situation. The property granted on lease to the Express Newspaper was a perpetual lease by a registered lease deed dated 17.03.1958 and, therefore, the Court held that there was no question of less or applying for eviction of a building constructed by the Express Newspaper as "public premises". The Court therefore held that an action u/s 5(1) was not competent. I cannot allow for such a contention to prevail in this case, having regard to the fact that admittedly the land belongs to NTPC. The permission to enter upon the property and put up construction for running a school had been founded in an agreement and the parties intended to secure the terms of lease through an independent document, The lease deed has indeed been executed, but I have already observed that the lease was not written appropriately on stamp papers necessary nor was it registered. A lease purporting to create a transfer of interest in an immovable property for a period of 30 years, that is, a period in excess of one year, was required to be registered u/s 17 of the Registration Act and in the absence of such registration, the lease was invalid to read into evidence the terms of lease instrument. The payment of lease which was admittedly done and the character of possession of the petitioner as such a lessee are alone matters that could avail to the petitioner to contend that he holds the property as a lessee. The petitioner admittedly has also put up construction and to that extent the right which the petitioner has for having spent money in the construction could also be an issue for adjudication in the manner provided u/s 51 of the Transfer of Property Act but the State action for recovery of possession after termination of the agreement as contemplated by the agreement prior to the execution of the lease was definitely competent. An action for eviction under the Public Premises Act was, therefore, also perfectly justified.

(b) Bona fides of action shall be a point of adjudication by Estate Officer

11. All the above observations have no bearing to whether NTPC has allowed its action to be guided by any bias against the petitioner or not. It does not also decide the question of whether there was a valid resolution of the Board to continue the proceedings before the Estate Officer. In Nusli Neville Wadia's case (supra), the Hon"ble Supreme Court was not holding that the petition under the Public Premises Act shall not be permissible. The

intervention was sought before the Hon"ble Supreme Court at a preliminary stage of whether the tenant could be permitted to plead that the action of a public authority was lacking in good faith and whether the public authority could force the tenant to state his defence first and examine witnesses before giving evidence and allowing for the tenant to test the public authority"s bonafides in the first place. The disposal of the case by the Hon"ble Supreme Court was at a preliminary stage with an emphatic ruling that all State actions must be guided by the test of reasonableness and non-discriminatory character as prescribed by Article 14 and, therefore, the Estate Officer was bound to allow the tenant to take the contention regarding the alleged lack of good faith in the action of the public authority. The Hon"ble Supreme Court was consequently directing the enquiry to go back to the Estate Officer for a hearing on a day-to-day basis. The petitioner can secure through this writ petition no better right than to contend that either the petition filed before the Estate Officer lacks competence by virtue of alleged defect in not having a valid Board resolution or to contend that the ground taken up for eviction and its characterization that the petitioner had been in unauthorized occupation, was not correct and that the action lacked good faith. Those are surely jurisdictional issues which will be examined by the Estate Officer himself and the authorities constituted under the Act. There is no scope for skirting the process and approaching this Court for intervention.

(c) Action under PP Act cannot be ousted by arbitral process

12. There could be no arbitral process for an adjudication of whether eviction could be obtained or not, as has been held by the Hon"ble Supreme Court in *Booz Allen*"s case (supra). The right which a tenant enjoys through a statute against an eviction or a landlord"s duty to secure eviction by process of law by following a procedure prescribed under the law could not be eclipsed by an arbitral adjudication. The Hon"ble Supreme Court has actually spelt out at least 6 instances where the arbitral process cannot be invoked. In the words of the Hon"ble Supreme Court, the exceptions are, "the well recognized examples of non-arbitrable disputes are: (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship matters; (iv) insolvency and winding up matters; (v) testamentary matters (grant of probate, letters of administration and succession certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes." Although the agreement of the year 2000 had provided for arbitral process, it cannot oust the jurisdiction of the authority under the Public Premises Act.

13. I am not prepared to pronounce on the course of contest that is still pending before the arbitral Tribunal, which the NTPC claims that it has invoked after the institution of this writ petition. The Arbitration and Conciliation Act is a complete code in itself that allows for parties to raise a dispute on the arbitrability of any particular dispute as well as the competence of the Arbitrator himself to invoke his jurisdiction. I will leave it to the parties

to adopt such course of action before the arbitral Tribunal as legally tenable and will make no comment about the same, but through this decision, the litigation challenging the continuance of proceedings before the Estate Officer must close.

VI. Writ petition is not bona fide

Indeed I would find the filing of the writ petition itself is not bonafide. I have extracted various stages of proceedings before the Estate Officer and only when the petitioner failed to secure further time for tiling reply, it sought for arbitral reference, and that further, only when it could not secure further adjournment, the petitioner has filed the writ petition. The petitioner"s challenge is untenable. The Estate Officer has the competence to decide on every kind of objection that the petitioner has placed before this Court. To restate, (i) the competence of the NTPC to prosecute the petition for alleged lack of Board"s sanction; (ii) the lack of bonafides and good faith in seeking for eviction and prosecuting the case against the petitioner; (iii) whether the continuance in occupation of the petitioner amounts to unauthorized possession or not. Consequently, the proceedings shall continue before the Estate Officer constituted under the PP Act. The writ petition is dismissed with costs assessed at Rs. 25.000/- against the petitioner and in favour of the respondents.