

**United Bank of India Vs State of U.P. and Others
Jvine Development Pvt. Ltd. Vs K.P. Mishra and Others**

Court: Allahabad High Court

Date of Decision: Nov. 3, 2009

Acts Referred: Recovery of Debts Due to Banks and Financial Institutions Act, 1993 " Section 20, 30

Hon'ble Judges: P.C. Verma, J; D.R. Azad, J

Bench: Division Bench

Final Decision: Allowed

Judgement

P.C. Verma and D.R. Azad, JJ.

The abovementioned writ petitions are connected matter and thus, they are being dealt with together and

decided by the common order.

The brief facts of the present case as narrated in the memo of the writ petition are as follows. The writ petition No. 775 of 1999 has been filed by

the Petitioner-United Bank of India, against the show cause notice dated 19.12.1998 issued to the Amrit Bazar Patrika Pvt. Ltd. by Additional

District Magistrate (F & R/Nazul), Allahabad as to why their leasehold right may not be cancelled. The petitioner challenged the above notice on

the ground that they are the mortgagee-decree holders of the property in question.

2. The respondent No. 5 i.e. M/s. Amrit Bazar Patrika Pvt. Ltd., having its registered office at 13, Chowranghee Square, Bharat Bhawan,

Calcutta, through its Managing Director (hereinafter referred to as the "Company") is carrying out business of publishing newspapers from Calcutta

as well as from Allahabad and other regional offices all over the country. The Company owns two properties at Allahabad being premises No. 19,

Clive Road, Allahabad and premises No. 10, Edmonston Road, Allahabad.

3. The Petitioner- United Bank of India, had advanced credit facilities to the respondent No. 5 i.e. M/s Amrit Bazar Patrika Pvt. Ltd., Calcutta

and the said company had taken loan for the purposes of giving salaries to their staff as well as to modernize its printing technology for which the

company mortgaged their immovable properties at Calcutta and Allahabad, including the property situated at 19, Clive Road, Allahabad by means

of deposit of title deeds.

4. The aforesaid property was initially leased out to one Ms. Mortha Anthony on 11.8.1887 for 50 years. Subsequently, on 22.10.1945, the lease

was transferred in favour of M/s. Amrit Bazar Patrika Pvt. Ltd. by means of a registered sale deed and by virtue of above sale deed, a lease deed

was executed on 25.07.1949 in favour of M/s Amrit Bazar Patrika Pvt. Ltd. for 50 years w.e.f. 22.03.1947 in pursuance of G.O. No. 1286\XI-

780\45 dated 22.03.1947. By virtue of this, the name of Amrit Bazar Patrika Pvt. Ltd., Allahabad was mutated as lessee of 19, Clive Road,

Allahabad in the Nazul property register.

5. That since the Company became irregular in paying the loan instalments, the petitioner-bank issued a demand notice calling upon Company and

others to pay the outstanding dues. Thereafter, for recovery of its dues, the petitioner-bank had filed a suit No. 510 of 1990 at Calcutta High

Court in the capacity of mortgagee of the various properties of the said Company including 19, Clive Road, (25 and 25-A Chikatpur Nasibpur

Bakhtiyara), Allahabad, which was held by the said Company as lease holder. The said suit was decreed on 09.10.1991 thereby declaring

petitioner- United Bank of India, as mortgagee decree holder. Some of the important terms of the settlement upon which the petitioner's suit was

decreed, inter alia, are as follows:

(a) There will be a decree for Rs. 10,84,34,870.37 in favour of the plaintiff and against the defendant Nos. 1, 2, 3 and 7.

(b) There will be a decree for interest on the decretal due of Rs. 10,84,34,870.37 at 6% per annum simple from August 21, 1991 till realisation of

the decretal dues and in terms of Clause 17 herein below.

(c) There will be a decree for costs assessed at Rs. 2,31,442.08. Such costs shall be paid on or before December 31, 1991.

(d) There will be a decree for Rs. 33,30,000/- of the plaintiff against defendant No. 8 with interest at 6% per annum simple from August 21, 1991,

till realisation of the decretal dues and in terms of Clause 17 herein. This amount, however, is included in the amount stated in paragraph (a)

hereinabove.

(e) There will be a declaration that the suit properties mentioned in Annexure K to the plaint, a copy whereof is annexed hereto, remain

hypothecated and the immovable properties mentioned in Annexure L to the plaint, a copy whereof is annexed hereto, remain mortgaged to the

plaintiff as securities for the payment of the decretal dues with interest and costs, as provided hereinabove.

(f) There will be a decree for sale of the hypothecated assets mentioned in Annexure K to the plaint for payment of the decretal dues. Such sale,

however, shall not be effected except as provided hereinafter or unless and until there is a default in payment of the decretal dues in the manner, as

provided hereinafter.

(g) There will be a preliminary-cum-final decree for sale of the mortgaged properties mentioned in Annexure L for payment of the decretal amount

with interest and costs, as provided hereinafter, but such sale shall not be effected except as provided hereinafter or in the event of default in

payment of the decretal dues in the manner, as provided hereinafter.

(h) The Joint Receivers will take symbolical possession of the suit properties and they will not disturb the possession of the said defendants with the

carrying on the business of the said defendants-judgment debtors unless requested by the plaintiff.

6. That as per Clause 6 of terms of the settlement, the Joint Receivers appointed by the Court are in symbolical possession. However, the

petitioner-bank further granted credit facilities to the Company on the request made by him along with four other banks in order to rehabilitate the

Company.

7. In the meanwhile, the Additional District Magistrate (F & R) Allahabad i.e. respondent No. 3 issued a show cause notice dated 19.12.1998 to

M/s. Amrit Bazar Patrika Pvt. Ltd. i.e. the respondent No. 5 as to why their lease right over 19, Clive Road, may not be terminated. Being the

mortgagee decree holder of the land in question as well as an interested party, the petitioner-bank filed writ petition No. 775 of 1999 for quashing

the above show cause notice. The petitioner-bank further requested that as per the G.O. dated 01.12.1998 issued by the State Government which

lays down a detailed policy along with various provisions about entitlement for getting conversion of lease land into free hold status, the property

situated at 19, Clive Road may be converted into free hold.

8. Thereafter an interim order dated 08.01.1999 was passed by this Court thereby staying the operation of the said show cause notice. The interim

order dated 08.01.1999 is continuously operative and subsequently, vide an order dated 26.04.2004, the said writ petition No. 775 of 1999 was

admitted and the interim order dated 08.01.1999 passed earlier was ordered to be continued.

9. The petitioner as a mortgagee decree holder and as a nominee of the lease holder Company subsequently submitted an application along with

relevant challans in respect of part- payment of free hold charges depositing a sum of Rs. 21, 85,200.00 on 15.06.1999 in the State Bank of India,

Allahabad Main Branch. Moreover, the said Company has admitted the petitioner-bank as their nominee in the paragraphs 14, 16 and 22 of the

counter affidavit filed by the Company in the writ petition No. 775 of 1999.

10. In the meantime, in the recovery proceedings before Debt Recovery Tribunal, Kolkata a settlement was entered into between the petitioner-

bank, Company and the workers and on the basis of said settlement, the Debt Recovery Tribunal, Kolkata passed an order in accordance with the

settlement on 11.02.2004, wherein it was stipulated that the mortgaged properties including 19, Clive Road would be sold and 40% of the sale

proceeds would be paid to the petitioner-bank towards payment of their settlement amount, 40 % to the workers engaged in the Company

towards their P.F., Gratuity and other dues and remaining 20% to the Company for development of the newspaper.

11. The abovementioned orders of Calcutta High Court as well as Debt Recovery Tribunal, Kolkata were neither challenged nor modified, though

the present writ petition was filed in the year 1999 and the interim orders were passed after hearing the State as well.

12. That, subsequently, an auction sale notice was published on 17\18.05.2004 in respect of the immovable property situated at 19, Clive Road,

Allahabad which was challenged in this Hon"ble High court by means of a writ petition No. 20974 of 2004 Adya Prasad Tripathi and Ors. v.

United Bank of India and Ors.. However, it was dismissed by the Division Bench on 27.05.2004 with the following observations.

Admittedly, there is no order of attachment of the property by the Tribunal, therefore, petitioners do not have any chance to file objections in

execution proceedings. However, petitioners have an efficacious remedy u/s 20 and 30 of the Recovery of Debt Due to Bank and Financial

Institutions Act, 1906, as the said provision provide that any person aggrieved, can file the appeal. More so, petitioners have not challenged the

judgment and decree of the Calcutta High Court on any ground, whatsoever. ""The State has not raised any objections at this stage also.

13. In pursuance of the above notice dated 17\18.05.2004 published by the sale Committee, the Jvine Development Pvt. Ltd. and several other

persons deposited the earnest money and the offer of Jvine Development Pvt. Ltd. had been finally accepted and they were asked to deposit 25 %

of the bid amount within 15 days and remaining within 3 months. Although the said Jvine Development Pvt. Ltd. deposited the 25 % amount but

did not deposit the remaining amount as the Company asked the petitioner-bank to first get the said property converted into freehold or have a

transferable right. In this connection, a show cause notice sent to them by the petitioner- bank on 30.09.2004 had been stayed until further orders

by this Hon"ble court in writ petition No. 46115 of 2004 on 03.11.2004.

14. Thereafter, the District Magistrate, Allahabad vide an order dated 07.05.2005 rejected the application of the petitioner- bank for grant of free

hold right in respect of the land in question i.e. 19, Clive Road, Allahabad at the pretext that petitioner does not come within the eligibility criteria of

the G.O. dated 01.12.1998.

15. Pursuant to the order dated 07.05.2005 passed by the District Magistrate, Allahabad, the petitioner-bank moved a representation to the State

Government on 30.08.2005 under Paragraph 7 of G.O. dated 17.02.1996 merged in G.O. dated 01.12.1998 for passing orders for grant of free

hold rights.

16. It is argued by learned Counsel appearing on behalf of the petitioner that the legal opinion sought by the State Government from its law

department in the aforesaid matter has also recommended that the said property may be converted into freehold but the District Magistrate,

Allahabad did not pay any heed to the aforesaid opinion as well as on the recommendation given by the State Government.

17. The learned Counsel for the petitioner has supplied the copy of legal opinion of the Legal Remembrancer (L.R.), which is not denied by the

State.

18. It is also submitted that the petitioner-bank is ready to pay the remaining 75% of the amount towards free hold charges as well as the lease

rent, premium and other charges, if any, payable by the petitioner.

19. It is submitted by learned Counsel for the Jvine Development Ltd.-petitioner, who has also filed writ petition No. 46115 of 2005, which is

connected matter that after the decree of Calcutta High Court and subsequent order of Debt Recovery Tribunal, Kolkata all the rights, title and

interest of M/s. Amrit Bazar Patrika Pvt. Ltd. ceased and it vested into the petitioner-bank and the Bank had acquired first charge over the

aforesaid property.

20. As per the order of Debt Recovery Tribunal, Kolkata, a sale Committee comprising of the members of the Bank and its representatives was

formed with Mr. K.P. Mishra as its Chairman and the said sale Committee started its function by calling bids for the aforesaid property.

Accordingly, a sale Notice was published on 18.5.2004 in Times of India in respect of the immovable properties situated at 19, Clive Road,

Allahabad. In reply to this auction sale notice, the petitioner deposited the earnest money by way of bank draft and also submitted the tender.

21. Subsequently, on 23.07.2004 a letter was issued to the petitioner by the Receiver and Chairman of the sale Committee informing that the offer

has been accepted by the Sale Committee and the petitioner were asked to deposit 25 % of the tender amount within 15 days while the remaining

balance was to be deposited within next 3 months. In reply to this letter, the petitioner deposited the 25 % amount. Apart from making the deposit

of the required amount, a request was made by the petitioner to the petitioner-bank to supply copies of the Title Papers and Certificate of Title in

respect of this property to enable them to pay the balance amount. However, no heed was paid to the said request of the Petitioner and the

necessary documents were not supplied by the petitioner-bank.

22. In the meantime, the petitioner came to know that a writ petition No. 775 of 1999 has been preferred by the United Bank of India in this

Court. It was then learnt that the District Magistrate, Allahabad had issued a show cause notice dated 19.12.1998 to the Company i.e. M/s. Amrit

Bazar Patrika Pvt. Ltd. The validity of the said show cause notice was challenged by the United Bank of India in the aforesaid writ petition No.

775 of 1999 and vide an interim order dated 08.01.1999, the proceedings consequent to the show cause notice dated 19.12.1998 had been

stayed by this Hon"ble court.

23. In view of the aforementioned facts, it is clear that the property situated at 19, Clive Road, Allahabad which is sought to be sold by the United

Bank of India in execution of orders passed by the Debt Recovery Tribunal, Kolkata is subject matter of above Writ Petition and the petitioner-

bank, at present, is not in a position to transfer the said property in favour of the petitioner or to execute a deed of conveyance in favour of the

petitioner.

24. Regarding the issue relating to the eligibility of the petitioner-bank to get the property freehold, a bare perusal of the G.O. dated 01.12.1998

clearly provides that the Bank is eligible to apply to get the same being a mortgagee decree holder. The G.O. provides that the freehold can be

done in favour of the nominee or buyer or an agreement holder. The aforesaid provisions can not be ignored in the present circumstances of the

case and the same must be given effect thereto.

25. The petitioner has submitted the offer under a bonafide belief that the executed property is free from all encumbrances and the same will be

transferred by the petitioner-bank as soon as the entire amount is deposited by the petitioner and the petitioner is ready and has always been ready

and willing to pay the balance amount as per the offer but the petitioner-bank should also be in a position to transfer the property in favour of

petitioner.

26. The Learned Counsel for the petitioner-bank has also submitted that the judgment of Hon"ble Calcutta (Now Kolkata) High court was well

within the knowledge of State Government and by order dated 9.10.1991 the symbolic possession was also given through Joint Receiver

appointed by the Hon"ble Calcutta High Court. It was further submitted that the petitioner- bank is in continuance of its legal possession since

9.10.1991 is entitled to be treated as nominee of the lease holder and has got right to get the land free hold in its name. This comes as a result of

the fact that the lease holder has no objection and the order of the Calcutta High Court was passed on the consent decree.

27. On the other hand, learned Chief Standing Counsel has raised objection that the status of the petitioner-bank is of mortgage decree holder and

there is no provision to convert the land free hold in favour of the petitioner-bank, moreover, the lease holder has flouted the conditions of the

lease and thus, land is deemed to be vested in the State.

28. The contention of learned Chief Standing Counsel that the lease holder-bank has flouted the condition of the lease and thus, the land is vested

in the State Govt. is not tenable and acceptable as the lease deed dated 11.08.1887, which was granted in favour of Ms Martha Anthony had the

power of assignment, which was renewed on 31.09.1937 for fifty years and during this period on 22.10.1945 the land was transferred in favour of

Company i.e. M/s. Amrit Bazar Patrika Pvt. Ltd., therefore, the mortgage being the lease holder in favour of the petitioner-bank is not invalid.

With respect to another contention made by the learned Chief Standing Counsel that there is no provision in the G.O. dated 1.12.1998 to convert

the lease land into free hold in favour of the mortgagee decree holder, the learned Counsel for the petitioner has drawn our attention towards the

legal opinion given by Law Secretary that mortgagee decree holder can be treated as agreement holder i.e. ""Anubandha Karta"". The G.O. dated

01.12.1998 also contains the provision for such agreement holders vide Clause 4 of the G.O. 2268\9-Aa-4-98-704 N/97 dated 01.12.1998.

Learned Counsel for the petitioner-bank further contended that the petitioner-bank, who is a declared mortgagee decree holder, has every right in

preserve and protect its rights in that capacity by preserving and protecting the securities for realization of its dues including the renewal of lease

and conversion of leasehold rights into freehold. Hon'ble Apex Court has observed in a number of cases that the rights of the mortgagee/deeree

holder banks in such circumstances must not be interfered with and be protected so as not to cause any loss of public dues and such has been

observed in the case of Syndicate Bank Vs. New Look Rubbers (P) Ltd. and Others, In the case of Kailash Chandra v. Ashfaq Ahmad (1984)

10 ALR 757 (All), it has been observed that "It is well settled proposition of law that the mortgage is a transfer of interest in specific immovable

property for the purpose of securing payment of money". Therefore if the rights of the mortgagee decree holder are interfered with, it may cause

huge losses of public dues.

29. Learned Counsel for the petitioner-bank further relying upon the decision in the case of Satya Narain Kapoor Vs. State of U.P. and Others,

contended that an application for conversion of nazul land into freehold rights can be filed by a person who is a lessee, his assignee or having an

agreement to sell with the lessee or his nominee or tenant under the Rent Control Act. In the instant case, the petitioner squarely comes within the

perview of the same and thus fully eligible and rightful to get the land free hold in its name.

30. The G.O. Dated 01.12.1998, which contains the procedure and criteria for conversion of Nazul Land into Freehold entitles the bank as

nominee of the leaseholder has each and every right to get the land freehold in its name. Clause 4 of the G.O. states that the provisions in the G.O.

No. 1300/9-Aa-4-96-629 N/95 (T.C.) dated 29th August, 1996 stipulating that the freehold can be done in favour of a nominee/buyer/agreement

holder shall be applied as same. Therefore, the petitioner-bank was always within the eligibility criteria of getting the freehold in its favour being a

nominee of lease holder as well as mortgagee decree holder.

31. The abovementioned G.O. dated 01.12.1998 also ignores the infringement of condition of lease deed while permitting the acceptance of

applications and deleting the penal rate vide Clause 2 sub-clause 3. Learned Counsel for the petitioner-bank submits that the G.O. therefore

wholly condones the irregularities or violation of lease by the lessee and permits the leasehold rights to be converted into freehold rights. In view of

the same, the basis on which the aforesaid show cause notice was issued loses its force and the foundation.

32. Having heard learned Counsel appearing on behalf of the parties and going through the materials on record, we think it just and proper that one

more aspect in this case which needs to be attended is that this Court is also a Court of equity and it has to weigh the conduct of the parties and

welfare of the society. An important aspect of the case is that the judgements of Hon"ble Calcutta High Court and Debt Recovery Tribunal,

Kolkata also deal with welfare of the workers of the Company and 40% of the auction amount is directed to be released in favour of workers. The

abovementioned judgments of Hon"ble Calcutta High Court and the Debt Recovery Tribunal, Calcutta were never challenged by the State Govt.,

though it was well within the knowledge of its authorities.

33. In the facts and circumstances of the case, the maxim of equity, namely, *actus curiae neminem gravabit* - an act of court shall prejudice no man,

shall be applicable. This maxim is founded upon justice and good sense which serves a safe and certain guide for the administration of law. The law

itself and its administration is understood to disclaim as it does in its general aphorisms, all intention of compelling impossibilities, and the

administration of law must adopt that general exception in the consideration of particular cases. The applicability of the aforesaid maxim has been

approved by the Hon"ble Apex Court in Raj Kumar Dey and Others Vs. Tarapada Dey and Others, Gursharan Singh and others etc. Vs. New

Delhi Municipal Committee and others, and Mohammed Gazi Vs. State of M.P. and Others, The term ""equity"" has four different meanings,

according to the context in which it is used. Usually it means ""an equitable interest in property"". Sometimes, it means ""a mere equity"", which is a

procedural right ancillary to some right of property, for example, an equitable right to have a conveyance rectified. Thirdly, it may mean ""floating

equity"", a term which may be used to describe the interest of a beneficiary under a will. Fourthly, ""the right to obtain an injunction or other equitable

remedy"". In the present case, the plaintiffs have sought a remedy which warrants the interference of the Court so that the justice may be done not

only to the parties to the abovementioned suits but also to those who have legitimate interests in the subject matter of the suit. Denying the same

may amount to injustice as well as irreparable loss to a large number of workers who have already been continuously denied their share of the

prospective sale proceeds due to the delay caused by the respondents. The discretion herein which the Court has to exercise is a judicial

discretion. That discretion has to be exercised on well-settled principles. Therefore, the Court has to consider - the nature of obligation in respect

of which performance is sought, circumstances under which the decision came to be made, the conduct of the parties and the effect of the of the

Court granting the decree. Applying the same, it is necessitated that the petition should be allowed.

34. The workers of the Company and their families have kept their eyes on the amount which they will receive, when the auction made by the sale

Committee is finalized, the State Govt. was not at all justified by causing the delay in arriving at any conclusion with regard to the free hold

proceedings and has acted in a most callous manner by keeping such a matter for about 10 years.

35. On equitable considerations and legitimate expectations, Hon"ble Apex Court has observed in the case of Ram Pravesh Singh and Others Vs.

State of Bihar and Others, the relevant portion is quoted as under:

....What is legitimate expectation? Obviously, it is not a legal right. It is an expectation of a benefit, relief or remedy, that may ordinarily flow from a

promise or established practice. The term ""established practice"" refers to a regular, consistent, predictable and certain conduct, process or activity

of the decision-making authority. The expectation should be legitimate, that is, reasonable, logical and valid. Any expectation which is based on

sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be a legitimate expectation. Not being a right, it is not

enforceable as such. It is a concept fashioned by the courts, for judicial review of administrative action. It is procedural in character based on the

requirement of a higher degree of fairness in administrative action, as a consequence of the promise made, or practice established. In short, a

person can be said to have a "legitimate expectation" of a particular treatment, if any representation or promise is made by an authority, either

expressly or impliedly, or if the regular and consistent past practice of the authority gives room for such expectation in the normal course. As a

ground for relief, the efficacy of the doctrine is rather weak as its slot is just above "fairness in action" but far below "promissory estoppel". It may

only entitle an expectant:

(a) to an opportunity to show cause before the expectation is dashed; or

(b) to an explanation as to the cause for denial. In appropriate cases, the courts may grant a direction requiring the authority to follow the promised

procedure or established practice. A legitimate expectation, even when made out, does not always entitle the expectant to a relief. Public interest,

change in policy, conduct of the expectant or any other valid or bona fide reason given by the decision-maker, may be sufficient to negative the

legitimate expectation". The doctrine of legitimate expectation based on established practice (as contrasted from legitimate expectation based on a

promise), can be invoked only by someone who has dealings or transactions or negotiations with an authority, on which such established practice

has a bearing, or by someone who has a recognised legal relationship with the authority. A total stranger unconnected with the authority or a

person who had no previous dealings with the authority and who has not entered into any transaction or negotiations with the authority, cannot

invoke the doctrine of legitimate expectation, merely on the ground that the authority has a general obligation to act fairly.

36. Recently, a Constitution Bench of the Hon"ble Apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others,

referred to the circumstances in which the doctrine of legitimate expectation can be invoked, thus: (SCC pp. 38-39, para 46)

The doctrine can be invoked if the decisions of the administrative authority affect the person by depriving him of some benefit or advantage which

either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do

until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii)

he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for

contending that they should not be withdrawn.

37. From the on going discussion and submission advanced before us and also taking into account the equity, the legal opinion of the law Secretary

and undue delay in disposal of the free hold application by the State, we are of the view that writ of mandamus be issued to the respondents to

convert the land in question as free hold in favour of the Petitioner- Bank.

38. In the result, the writ petition is hereby allowed and the show cause notice dated 19.12.1998 is hereby quashed. The respondents are hereby

directed by the writ of mandamus to issue a demand notice forthwith and convert the land in question into free hold after taking the necessary 75 %

balance amount from the petitioner-bank as per the G.O. dated 1.12.1998.

39. Furthermore, the connected writ petition No. 46115 of 2004 is allowed and the impugned notice dated 30.9.2004 is hereby quashed and the

respondents are directed to transfer the land to the petitioner company after receipt of remaining balance amount of 75 % as per the terms of the

auction. The Land is transferred in the name of the Bank, it is made clear that respondents shall raise the demand of remaining 75 % as soon as the

land is transferred in the name of the bank.