AIR 1967 Guw 23

Gauhati High Court

Case No: Writ Petition No. 9 of 1966

Hem Chandra Chakraborty		APPELLANT
	Vs	
Union of India, New Delhi and another		RESPONDENT

Date of Decision: May 10, 1967

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 80
- Constitution of India, 1950 - Article 19(1)(g), 226
- Transfer of Property Act, 1882 - Section 106, 107

Citation: AIR 1967 Guw 23

Hon'ble Judges: C. Jagannadhacharyulu, J.C.

Bench: Single Bench

Advocate: J.K. Roy and A.K. Shyam Choudhury, for the Appellant; H.C. Nath, Govt. Advocate, for the Respondent

Final Decision: Dismissed

Judgement

C. Jagannadhacharyulu, J.C.

1. This is a petition filed by Hem Chandra Chakaraborty alias H.K. Chakraborty, canteen keeper in the Civil Aerodrome in Agartala in Tripura Territory against the Union of India and the Director General of Civil Aerodromes. New Delhi under Art. 226 of the Constitution of India to issue an appropriate writ restraining the respondents from interfering with his Canteen business in the Civil Aerodrome, Agartala.

2. Briefly stated, the case of the petitioner is that he was a Caterer for about 3 years in the Canteen in the Civil Aerodrome in Agartala prior to 8-5-65, that his tender dated 19-4-65 for the subsequent period was accepted by the President of India, represented by the Assistant Director (Estates) of Civil Aviation in New Delhi and that the then existing

contract for catering arrangements in the Civil Aerodrome, Agartala, was extended with effect from 8-5-65 to 31-12-66, subject to payment of a monthly rent of Rs. 1,111 and the water and electric charges (vide Ext. A-1). He alleges further that he paid away the monthly rents from 8-5-65 upto August, 1965, but that from September, 1965, to 24-3-1966 the business deteriorated owing to stoppage of flights during the conflict between India and Pakistan, that he applied to the second respondent Director General, Civil Aviation, Government of India, New Delhi, to reduce the rent due from September, 1965 upto 24-3-1966 to 10 per cent of the gross sale proceeds, that he remitted rent at the said rate of 10 per cent of the gross sale proceeds from September, 1965 to November, 1965 and at the stipulated rate of Rs. 1,111 from December, 1965 to January, 1966 and the electric and water charges that he paid rent for February, March and April, 1966 at 10 per cent of the sale proceeds and that he paid rent at the contracted rate of Rs. 1,111 for the month of May, 1966, as all the schedule services were re-introduced from 1-5-66. It is also the case of the petitioner that he was under the bona fide belief that the rents paid by him at the rate of 10 per cent of the gross sale proceeds were accepted by the respondents, but that all on a sudden the Assistant Director (Estates) of the Civil Aviation, New Delhi, issued a registered notice (Ext. A-3) dated 1-6-66 on behalf of the first respondent, President of India, terminating the contract with effect from 20-6-1966 on the ground that the petitioner committed breach of the terms of the contract, that the said notice affected the fundamental right of the petitioner under Art. 19 (1) (g) of the Constitution of India and natural justice and that, therefore, the petitioner is entitled to a writ prohibiting the respondents from evicting the petitioner or interfering with his Canteen business.

3. The respondents filed counter stating that the petitioner suppressed in his petition the material terms and conditions of the contract, that he persistently committed breach of the same, that his request to reduce the rent was negatived by the respondents, that he fell into arrears of rent, that the notice (Ext. A-3) terminating the contract is a valid one and that no writ can be issued.

4. The first question for determination is whether the petitioner suppressed in his petition the material terms and conditions of the contract. Ext. A-1, order dated 3-8-1965, issued by the Assistant Director (Estates) of Civil Aviation at New Delhi for and on behalf of the first respondent President of India, shows that the tender made by the petitioner on 19-4-1965 and his letter dated 11-5-1965 for making arrangements for catering in the Civil Aerodrome in Agartala were accepted and that the then existing contract for the same between the petitioner and the respondents was extended ex post facto with effect from 8-5-1965 to 31-12-1966 subject to the six terms and conditions mentioned in para 1 and the seventh condition in para 2 in Ext. A-1. Firstly, the petitioner had to pay a monthly rent of Rs. 1,111 besides the electric and water charges. Secondly, he was to furnish security deposit of Rs. 3,433 for due fulfilment of the terms and conditions of the contract. The respondents stated in Ext. A-1 that the previous security deposit, if any held by the department would be carried over and adjusted towards the enhanced security deposit of

Rs. 3,433, provided it was free from all encumbrances and that no dues to the Government were outstanding. Thirdly, the petitioner was required to keep proper and regular accounts of the sales in the Aerodrome Restaurant and submit a monthly statement of gross sales to the Aerodrome Officer in Agartala and endorse a copy of the same to the office in New Delhi. Also, the petitioner was required to get the statements of account audited by a Chartered Accountant at the close of each year, copies of which should be furnished to the Aerodrome Officer in Agartala and the respondents'' office in New Delhi. Fourthly the contract was subject to the termination by the Government by issuing 15 days'' notice in writing at any time in the event of any breach by the petitioner of any of the terms and conditions of the contract. The respondents further reserved a right to terminate the contract by issuing a 2 months'' notice in writing at any time without assigning any reason. Fifthly, all the notices to be given and all actions to be taken on behalf of the Government might be given or taken by the second respondent Director General of Civil Aviation or the Controller of the Aerodromes or the Aerodrome Officer-in-Charge of the Civil Aerodrome or any officer for the time being entrusted with the functions, duties and powers of the said officer. Sixthly, the petitioner was required to execute an agreement in respect of the contract in the "A" Standard Form of agreement and it was stipulated that till the petitioner executed the agreement the various clauses thereof including the clause regarding interest would be deemed to be in force. Seventhly, the petitioner was required to intimate the first respondent his formal acceptance of the above terms and conditions by filling up the form enclosed with Ext. A-1 by sending it.

5. A perusal of the petition shows that therein the petitioner referred to only the condition No. 1 regarding the payment of the monthly rent of Rs. 1,111 and that he made a vague reference to the condition No. 3 that he was properly maintaining accounts. But, he did not mention in his writ petition the other terms and conditions mentioned above.

The correspondence between the parties and the Annexures filed by the respondents show that the petitioner committed breach of all the material conditions contained in Ext. A-1 (except perhaps condition No. 2). The petitioner did not intimate the respondents his acceptance of the terms and conditions of Ext. A-1 by sending the prescribed form to them as required by condition No. 7. Nor did he execute the agreement in the "A" Standard Form as required by the condition No. 6. Exts. B-2 dated 28-10-65, B-3 dated 13-12-65, B-4 dated 16-3-66 and B-5 dated 26-3-66 show that the respondents'' Officers constantly reminded the petitioner to expedite the execution of the agreement and acceptance of the terms by submitting the prescribed form of acceptance. But, the attitude of the petitioner was one of cold indifference and did not carry out the said terms of the contract.

6. Again, the petitioner committed breach of condition No. 3 that he should maintain regular accounts of the sales and submit monthly statements of gross sales to the respondents and the Aerodrome Officer in Agartala and that he should also get the statements audited by a Chartered Accountant at the close of each and every year. Exts. B-2, B-3 and B-6 go to show that the petitioner submitted the monthly statements of gross

sales for the period from January, 1965 to October, 1965 in November, 1965 after reminders were issued to him by the respondents. He submitted the monthly statement of gross sales for November 1965, in January, 1966. He submitted the monthly statement of the gross sales for the months of December, 1965, and January, 1966 in March, 1966. He submitted the monthly statements of the gross sales from February, 1966 to May, 1966 in June, 1966. The petitioner does not appear to have got the accounts regularly audited by a Chartered Accountant. So he committed breach of condition No. 3.

7. Again, the petitioner, who was to pay the rent within 10th of each and every month, delayed payments, though bills for the relevant periods were despatched to him. Vide Ext. B-7. He paid the rent for May and June, 1965 on 22-7-1965 and the rents for July and August 1965 on 11-11-1965. Admittedly, for most of the other months he did not pay the rent at the stipulated rate of Rs. 1,111 per mensem. According to the petitioner, after the hostilities between India and Pakistan broke out in September. 1965, the number of flights decreased. He alleges that he suffered loss in the business, that, therefore, he sent letters dated 25-9-65 and 15-10-65 to the respondents requesting them to reduce the rent, that the Assistant Director (Estates) sent Ext. A-2 reply dated 30-10-65 that the matter was under consideration, that the petitioner paid the rents at the rate of 10 per cent of the gross sale proceeds from September, 1965 to November, 1965, that he paid the rent at the full contract rate from December, 1965 to January, 1966, but that again for February, March and April, 1966 he remitted rent at 10 per cent of the gross sale proceeds, that for the month of May, 1966 he remitted monthly rent of Rs. 1,111, that even after he filed the writ petition the respondents accepted rents as evidenced by Exts. A-6 to A-10 and that he was under the bona fide belief that the respondents accepted his representation and received the rents as paid by him. But, the case of the respondents is that there was complete cessation of flights on 8-9-65 and between 14-9-65 to 27-9-65 only, that the flights were almost regular upto 5-9-65, that from November, 1965 the number of flights gradually increased and that the position became normal from the second week of February, 1966. The respondents filed Ext. B-8 a statement showing the number of landings of the Aeroplanes from 1-9-1965 to 14-3-1966. It is also the case of the respondents that they rejected his request to reduce the rent on the ground that reduction in sales for a period of 2 months did not justify grant of any financial relief and that there was no case for any variation of the terms of the contract and that they intimated the petitioner accordingly as per Ext. B-9 letter dated 21-1-66.

They further allege that the Aerodrome Officer in Agartala also informed the petitioner by his letter as per Ext. B-10 dated 23-4-1966 that the respondents did not accept the rent of 10 per cent of the gross sale proceeds, but that the petitioner should pay off the arrears at the stipulated monthly rate of Rs. 1,111, that again the Aerodrome Officer in Agartala requested the petitioner by another letter dated 6.5.66 to clear off all the arrears without any delay, but that, yet, the petitioner did not pay the arrears. Exts. B-9 and B-10 prove their allegations. Besides, there are also Exts. B-11 and B-12 copies of receipts dated 21-3-66 and 27-5-66, which show that the payments made by the petitioner were

adjusted towards the outstanding dues on account of the rent and electric and water charges and that they never accepted the rents for the disputed months at the rate of 10 per cent of the gross sale proceeds. So, the allegation of the petitioner that his request to reduce the rent was not rejected, that his subsequent payments were accepted without any demur and that he was under the bona fide belief that the matter was still under consideration as mentioned in Ext. A-2 is wholly incorrect. The petitioner suppressed the fact that the respondents had intimated to him even in January, 1966 that they did not agree to reduce the rent. So the petitioner committed wilful breach of condition No. 1 also by withholding payment of rent at the stipulated rate of Rs. 1,111 per mensem.

8. As the petitioner thus violated and committed breach of all the essential conditions Nos. 1, 3, 6 and 7 mentioned in Ext. A-1, the Assistant Director (Estates) of the Civil Aviation department, New Delhi issued Ext. A-3 registered notice dated 1-3-66 to the petitioner bringing to his notice the breach of the terms of the contract committed by him and informing him that on the expiry of 15 days from the date of issue of the notice the contract stood terminated with effect from 20-6-66 The said notice was issued in pursuance of condition No. (iv) (i) of Ext. A-1.

9. After having committed breach of all the essential conditions of the terms of the contract, the petitioner now seeks the extraordinary remedy of a Writ of Prohibition prohibiting the respondents from cancelling the contract and from interfering with his Canteen business in the Civil Aerodrome in Agartala. But the contention of the learned Counsel for the petitioner is that Ext. A-1 shows that the period of lease was for a period more than one year being from 8-5-65 to 31-12-66, that it is only a unilateral transaction, that it was not executed by the lessor and the lessee as required by para (3) of Section 107 of the Transfer of Property Act, that being unregistered it is inadmissible in evidence, that the other terms of the contract cannot be looked into, that u/s 106 of the Transfer of Property Act the tenancy became a monthly one liable to be terminated by 15 days'' notice expiring with the end of a month of the tenancy by the seventh day of a month and that, therefore, Ext. A-3 notice is inoperative. He relied on Ram Kumar Das Vs. Jagadish Chandra Deb Dhabal Deb and Another, . In this case the defendant executed a registered kabuliyat in favour of the Receiver who was in charge of the plaintiff''s estate under which the defendant took on lease a land for building purposes for 10 years at an annual rent. It was held that the kabuliyat was not an operative document u/s 107 of the Transfer of Property Act and that the tenancy created by implication of law u/s 106 of the Transfer of Property Act in favour of the defendant should be held to be a monthly tenancy.

It is clear from the Writ petition that the above contentions of the learned Counsel for the petitioner raise a new ground not mentioned in the Writ petition. However, even if it is assumed that it is covered by the general ground in the Writ petition that Ext. A-1 is illegal, the above contentions of the learned Counsel for the petitioner and the ruling cited have no application to the facts of the present case. For, firstly, Ext. A-1 is certainly not a lease deed. Its very wording shows that, according to the tender made by the petitioner, he was offered certain terms and conditions and he was required to intimate the

respondents his acceptance of the same in the prescribed form and further he was to execute a regular agreement in the "A" Standard Form. So, Ext. A-1 only shows that it is a mere letter under which the tender of the petitioner was accepted by the respondents subject to the conditions mentioned in Ext. A-1 and that it was for the petitioner to accept the terms by executing the prescribed form and a regular agreement in the "A" Standard Form. If he intimated acceptance of the same and executed a regular agreement, then there would not be a unilateral document. The effect of non-registration of such an agreement would then arise for consideration. As such, Ext. A-1 is not by itself any lease deed. Secondly, if Ext. A-1 is to be construed as a lease deed, it is also governed by condition No. (iv) that the contract is subject to be terminated by the respondents by giving 15 days'' notice at any time for breach of the terms and conditions of the same. Section 106 of the Transfer of Property Act is subject to a contract to the contrary. So, the respondents were entitled to terminate the contract for breach of its conditions by the petitioner by issuing 15 days'' notice as per Ext. A-3. Thirdly the petitioner cannot be permitted to take advantage of the breach of the terms of the contract committed by him and then argue that Ext. A-1 is a unilateral lease deed.

10. Another contention of the learned Counsel for the petitioner is that Ext. A-3 notice was issued by the Assistant Director (Estates) of the Civil Aviation Department in New Delhi but not by any of the persons mentioned in condition No. (v) in Ext. A-1 and that, therefore, the notice is invalid. The entire correspondence with the petitioner and Ext. A-1 itself were signed by the same Assistant Director of the Civil Aviation Department in New Delhi, who issued Ext. A-3 registered notice for and on behalf of the first respondent. The petitioner seeks to enforce his alleged rights under Ext. A-1 signed by the self same officer. The respondents state that the Assistant Director (Estates) was duly authorised according to law to issue the notices and to take action and to perform all the duties, functions and powers of the respondents. So it cannot be stated that Ext. A-3 is invalid.

11. Thus, it is seen that the petitioner wants to invoke the extraordinary jurisdiction of this Court to prevent the respondents from taking action for the breach of the terms and conditions of the contract committed by him This Court cannot decide whether the petitioner was justified in committing breach of all the material conditions of the agreement and enter into the disputed facts like a Civil Court with original jurisdiction. In such circumstances, Article 226 of the Constitution of India cannot apply. The remedy of the petitioner is to seek redress in a Civil Court.

There is a long catena of rulings on this point which support my view. Vide Budh Mal Vs. Gulab Singh and Others, . It was held that if the State goes back on a contract, the High Court should not exercise its extraordinary jurisdiction under Article 226 of the Constitution of India, since a specific, adequate and convenient remedy is available by a suit for damages for breach of contract, even if there was a breach of the same. It was also held that the fact that the applicant would have had to give notice u/s 80 C.P.C. and could not file the suit for two months did not mean that there was no adequate remedy available to him. In P.K. Krishnan Kutty v. State of Travancore-Cochin, AIR 1952 TC 287

it was held that it is not the object of the Constitution of India to enable the citizens of India to break obligations arising under formal contracts entered into by them under the guise of that obligation being something that is repugnant to the recognition of a fundamental right.

In Raghavendra Singh v. State of Vindhya Pradesh, AIR 1952 MP 13 the learned Judicial Commissioner held that an invasion of a right created by contract of lease, for which the lessee can seek relief in the Civil Court for compensation or cancellation of the lease or otherwise, is not such an invasion of a fundamental right as to call for an extraordinary remedy. In Dubar Goala and Another Vs. Union of India (UOI) and Others, Bose J. held that it is inappropriate to grant a declaration in an application under Article 226 of the Constitution of India that a particular contract is illegal and that therefore unenforceable.

In Satish Chandra Anand Vs. The Union of India (UOI), it was held that the petitioner in that case, who had accepted the offer of appointment, had all the rights and remedies available under the contract and that he should have pursued in the ordinary Courts of the land such remedies for breach as he had and that the remedy of a Writ was misconceived. In Chattar Singh Vs. State of Punjab and Another, the facts were similar to the facts of the present case. The Punjab High Court held that the provisions of Article 226 of the Constitution of India do not apply for getting declaration for the purpose of enforcement of a contract or to prevent breach of the contract In Union Construction Co. (Private Ltd.) Vs. Chief Engineer, Eastern Command, Lucknow and Another, the Allahabad High Court held that though the language of Article 226 of the Constitution of India is very wide, the expression "for any other purpose" occurring therein must mean "for any other purpose for which any of the writs mentioned would, according to well-established principles, issue", that in England or America the Courts do not issue a writ in a case where the right which the petitioner wants to enforce by means of a writ is founded purely on a contract and that the law in India on this point is not different.

12. The contention of the learned Counsel for the petitioner is that the petitioner has a fundamental right under Article 19 (1) (g) of the Constitution of India to carry on business, but that, as that right was infringed, the Writ lies. He relied on Maqbulunissa and Others Vs. Union of India (UOI) and Another, , Nain Sukh Das and Another Vs. The State of Uttar Pradesh and Others, , The Samarth Transport Co. (P) Ltd. Vs. The Regional Transport Authority, Nagpur and Others, and The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, . In all these cases it was held if a legal right or a fundamental right is infringed, then the jurisdiction of the High Court under Article 226 of the Constitution of India can be invoked. Article 19 (1) (g) lays down that all the citizens shall have the right to practice any profession or to carry on any occupation, trade or business. In the present case, the petitioner is carrying on business subject to certain terms and conditions which are binding on him. So, it cannot be stated that, even if he broke the terms and the conditions, he is still entitled to carry on the Canteen business in the Civil Aerodrome in Agartala and that his fundamental right to that effect has been infringed. The rights of the petitioner, if any, arise only under a contract and he

has to seek redress in an ordinary Court under the general law.

13. However, the learned Counsel for the petitioner contended that, even though the petitioner has got an alternative remedy to get his grievance redressed in a Civil Court, still the High Court can in its discretion exercise its powers under Art. 226 of the Constitution of India and that the alternative remedy is no bar to the exercise of the same, since the matter is urgent and since the petitioner will be evicted from the premises in pursuance of Ext. A-3 notice. In this regard he relied on a number of rulings namely, Rakhaldas Mukherjee Vs. S.P. Ghose, , Election Commission, India Vs. Saka Venkata Subba Rao and, . Balroop Sharma Vs. State of Uttar Pradesh and Another, , Purushottam Chandra Vs. State of Uttar Pradesh and Another, and Madan Mohan Sen Gupta and Another Vs. State of West Bengal and Others, . The rulings show that it cannot be said that the existence of an alternative remedy is always a sufficient reason for refusing a party a quick relief by a Writ, that it is for the exercise of their own discretion that the Courts have laid down the rule of alternative remedy and that the alternative remedy is no bar to the maintainability of a Writ petition. In the present case, it has to be noted that the petitioner voluntarily entered into a Contract and acted upon Ext. A-1 undertaking to abide by certain terms and conditions. He agreed to the condition that the contract could be terminated by 15 days'' notice in case he committed breach of the conditions and terms of it. It was a voluntary contract into which he entered. It will not be a proper exercise of discretion and jurisdiction on the part of this Court to allow him to commit breach of the terms and conditions of the contract and to wriggle out of it and invoke the extraordinary jurisdiction of the High Court by stating that, if he availed of the alternative remedy, there would be delay. There is no reason why he did not file a Civil suit in a Civil Court after receiving Ext. A-3 notice and obtain interim orders. He misconceived his remedy by moving this Court for the issue of a Writ.

14. The learned Counsel for the petitioner further stated that, even if Ext. A-3 is an administrative order, a Writ lies, since it was passed in defiance of mandatory provisions of law. He referred to Sampu Gowda v. State of Mysore, (AIR 1953 Mys 156) (FB) where it was held that even administrative orders of the Government could be interfered with under Article 226 of the Constitution of India, if they were passed in defiance of mandatory provisions of law. One fails to understand what mandatory provisions of law were defied by the respondents, when the petitioner himself defied and committed breach of the terms and conditions of the contract.

15. The learned Government Advocate argued that there is no error of law apparent on the face of it and that, therefore, the petition is not maintainable. He relied on Veerappa Pillai Vs. Raman and Raman Ltd. and Others, , T.C. Basappa Vs. T. Nagappa and Another, which were referred to in Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, and Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, , where it was held that it is not for the High Court or the Supreme Court to examine the order in any detail and that under Article 226 of the Constitution of India the power of interference may extend to quashing an impugned

order on the ground of a mistake apparent on the face of the record. In this case, there is no error apparent on the face of the record and Ext. A-1 cannot be construed to be a lease deed in the absence of regular agreement, which was required to be executed by the petitioner in the "A" Standard Form. The action of the respondents in cancelling the agreement by giving 15 days" notice is within their power and according to condition No. (iv) of Ext. A-1.

16. The learned Counsel for the respondents also stated that the petitioner suppressed the material conditions and terms in the Writ petition and that it is liable to be dismissed on the ground that the petitioner was mala fide in suppressing them. He relied on Badri Botan Lal v. Vindhya Pradesh Government AIR 1952 MP 18 and Narain Dass and Another Vs. State of Punjab and Others, which support his contention. There is no reason why the petitioner suppressed the material terms and conditions mentioned in Ext. A-1 in the petition and affidavit filed in support of it. This alone would be sufficient for refusal to issue any Writ.

17. The learned Government Advocate further contended that no demand notice was issued by the petitioner before he filed the Writ petition and that, therefore, the petition is not maintainable. But, no rules were framed by this Court so far regarding the Writ jurisdiction of this Court and there is no rule that a demand notice should be issued before the institution of a Writ petition. Its absence is not fatal to the case. Vide also S. Anup Singh v. The State, AIR 1953 Pepsu 24, where it was held that the rule that there should be a prior demand for justice is confined to a Writ of mandamus only.

18. Thus, the petition is without merits and is liable to be dismissed. It is accordingly dismissed with costs. Pleader"s fee Rs. 75.