

(1999) 12 CAL CK 0004

Calcutta High Court

Case No: M.A.T. No"s. 2122 and 2499 of 1999

Union of India (UOI)

APPELLANT

Vs

Old Workman Line Market
Shopkeepers Association

RESPONDENT

Date of Decision: Dec. 22, 1999

Acts Referred:

- Companies Act, 1956 - Section 3
- Constitution of India, 1950 - Article 134A, 226, 227
- Public Premises (Eviction of Unauthorised Occupants) Act, 1971 - Section 15, 2, 3, 9

Citation: (2000) 1 ILR (Cal) 137

Hon'ble Judges: Satyabrata Sinha, J; M.H.S. Ansari, J

Bench: Division Bench

Advocate: Hirak Mitra and P.S. Bose, in M.A.T. No. 2499 of 1999 and Samarendra Nath Chowdhury and Hafizur Rahaman, in M.A.T. No. 2122 of 1999, for the Appellant; Samarendra Nath Chowdhury and Hafizur Rahaman, in M.A.T. No. 2499 of 1999 and Hirak Mitra and P.S. Bose, in M.A.T. 2122 of 1999, for the Respondent

Judgement

Satyabrata Sinha, J.

Both these appeals having arisen out of the same judgment was taken up for hearing together and are being disposed of by this common judgment.

2. The Old Workman Line Market Shopkeepers Association an Association, inter alia, constituted by 106 persons, as also Echapore Babashayae Bazar Samity a registered society filed a writ application before the learned trial Judge claiming, inter alia, the following reliefs:

a) A Writ or Order in the nature of Mandamus directing the Respondents 1-6 to abolish the system of calling tenders and execution of periodic Leases and to direct them further to determine and fix rents of all shop keepers being members of the Petitioner Association on fair, equitable and uniform basis according to provisions of

West Bengal Non-Agricultural Tenancy Act (W.B. Act IX of 1949);

b) A Writ or Order in the nature of prohibition restraining the Respondents Nos. 1-6, their officers and men from proceeding further with the proceedings already taken under Central Act 40 of 1971 and from exercising any manner of jurisdiction relating thereto;

c) A Writ in the nature of Certiorari directing the Respondents 1-6 to certify and send up to this Court the entire record of the proceedings under the Central Act 40 of 1971 and all orders passed therein so that these may be quashed or otherwise dealt with in accordance with law.

3. The basic fact of the matter lies in a narrow compass.

4. The Union of India is owner of Factory which is a Defence Production Unit under the Ministry of Defence, commonly known as Metal and Steel Factory at Ichapore. The said Factory was established in 1905. As at the time of commencement thereof no market existed in and around the said factory, with a view to providing facilities to its workmen, a market was established. The market place was divided in to small plots for identification. Allegedly, allotments had been made with a stipulation that the allottees do not have any right of construction or erection of any structure around their respective allotted area. Other terms and conditions including (1) for keeping the shops clean and in hygienic condition; (2) such allotments had been made on licence basis and not on tenancy basis. The fact that from time to time, rent had been increased and agreements between the parties had been entered into for a period of 5 years is not in dispute. It is also not in dispute that several notices for eviction had been issued upon the individual" shop-owners on different grounds. The Petitioners contend that they were non-agricultural tenants and they had been paying rent in terms of the agreement. It has been contended that disputes and differences arose as regard enhancement of rent, period of lease etc. but shop-keepers had been coerced and/or forced to enter into such agreement.

5. The Writ Petition was filed as far back as in the year 1989 wherein an interim order had been passed in terms of prayer (f) thereof which is to the following term:

Pending hearing of the Rule to restrain the Respondents 1-6, their officers and men from continuing with or drawing up any fresh proceeding under Central Act 40 of 1971 and from interfering in any manner With the possession and business of the members of the Petitioner-Association mentioned above.

6. The learned trial Judge noticed that the Petitioners had been enjoying the fruits of the said interim order without payment or enhancing payment of any rent to the Respondent authorities. Not only during pendency of the writ application but also at the time when the writ applications were heard, several interim applications claiming one relief or the other had been filed by the writ Petitioners which has been taken note of by the learned trial judge.

7. During pendency of these appeals, three applications being C.A.N. No. 9361 of 1999 for punishment, C.A.N. No. 9352 of 1999 for injunction and C.A.N, No. 9360 of 1999 for direction were filed.

8. The contention of the Union of India is that rent had been enhanced as a matter of policy but for more than 10 years they have not been paying rent at all. It is contended that Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to and called for the sake of brevity as the said Act) governs the field and notices issued cannot be subject matter of a writ application.

9. Before the learned trial Judge four submissions were made on behalf of the writ Petitioners which are to the following effect:

A. The Petitioners have obtained their right in respect of the land in question as non-agricultural tenants in the year 1954 which cannot be said to be unauthorised at this belated stage;

B. Public Premises (Eviction of Unauthorised Occupants) Act, 1971 has no application in this respect;

C. The structures constructed by the tenants on the land obtained by settlement. Therefore, such structures are rent-free;

D. Rent, if any, whether will be increased or not cannot be decided under Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

10. Admittedly, the period of lease had expired. The learned trial Judge noticed that each agreement contained an arbitration clause. It, therefore, came to the conclusion that dispute between the parties being related to their respective title and there exist to an arbitration Clause observed:

Therefore, not only the disputes as above are to be adjudicated under civil suits but arbitration Clause is available for application on certain occasions as against lease in respect of independent leasehold interest.

11. The writ Petitioners did not accede to the suggestion of the learned trial Judge that the disputes and differences between the parties be adjudicated upon by an Arbitrator who may be directed to pass a reasoned order.

12. Upon consideration the arguments advanced by the Learned Counsel for the parties, the learned Judge held:

I have carefully considered-the pros and cons of the arguments advanced by the Learned Counsel on behalf of the respective clients; it is true that the aforesaid tenancy rights cannot be adjudged in a writ petition but subject matter of suits which are to be Instituted by the individual lessee/occupant/tenant to establish their individual rights before the civil Court. On the other hand, it is also true that without such adjudication finally all such questions cannot be adjudicated on the basis of a

notice under Public Premises (Eviction of Unauthorised Occupants) Act, 1971, because this requires only eviction without realisation of the arrears of rent and various other factors which cannot be possibly part and parcel of the act alone. More particularly, the implementation of the act may not give final relief to the Respondents. For an example, according to the Respondents, the subject matters are only applicable in respect of the suits but the Union of India has no obligation to institute the suits but to give effect of the act immediately in a summary manner. Assuming before taking a recourse of such notice, a suit instituted by any leasee/occupants/tenants, there would not be any solution again stalemate condition will prevail. It is an admitted position such notices were not issued in respect of all the occupants. Moreover, there is a Clause of arbitration which is also to be remembered. Therefore, longevity of the proceedings cannot be curtailed. Multiplicity of the proceedings and wastage of money cannot be avoided.

Therefore, if no writ, suits or arbitration have prevailing effect by the intervention of either of the parties, dismissal of the writ petition, in limine also cannot help the parties towards finality.

13. Having said so, the learned trial Judge directed appointment of a High Power Committee consisting of Mr. Justice P.K. Banerjee, Retired Chief Justice of Rajasthan High Court, Mr. Justice B.P. Banerjee, Retired Judge of this Court and Mr. Chittaranjan panda-II, an Advocate of this Court to look into following matter:

- a. Survey of the land through the respective surveyor provided by the authority concerned;
- b. They will investigate the nature of occupation and the construction of the respective premises;
- c. They will scrutinise all the papers and documents in connection with the individual plots of land;
- d. They will look into how the total area has been given to the concerned occupants;
- e. They will take into account mode of payment arrears of rent and payability aspect;
- f. They will consider the lease-hold right specially whether any perpetuity occurs or not,;
- g. If occasion arises, they will also suggest the authorities about the eviction process;
- h. In case of any alternative mode, they will have the right to suggest about increasement of rent after making an appropriate rental valuation ;
- i. They will also consider whether any rehabilitation is feasible to shift them to any other plots to clear up the premises for the purpose of defence requirement;
- j. They will also suggest demolition process in the circumstances;

k. They will also consider effect or further effect of the notices under Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and further notices, if any;

l. All such measures will be completed upon giving opportunities of hearing to the parties.

14. The appeal has been preferred by Union of India against the entire judgment whereas appeal has been preferred by the writ Petitioners against that part of the judgment whereby a Committee has been constituted on the ground that judicial function of this Court cannot be delegated.

15. The Public Premises (Eviction of Unauthorised Occupants) Act is a complete code by itself. The validity of the said Act has not been questioned nor could be questioned in view of the decision of the Apex Court in [Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others](#), .

16. The State Rent Act admittedly has no application. The relationship between the parties is whether that of a landlord and tenant or licensee or licensor is essentially a question of fact. Right of the parties are admittedly governed by agreements entered into between them. In a particular case a shop-keeper should be evicted in terms of the provision of Public Premises (Eviction of Unauthorised Occupants) Act of not has to be decided in a proceedings initiated thereunder. It is not a case where on the face of the notice issued under the said Act it has been or could be contended by the writ Petitioners and/or any of the shop-keeper that the Estate Officer lacked inherent jurisdiction in issuing the said notice, as a result whereof he is entitled to issue a writ of prohibition.

17. Public Premises is defined in Section 2(e) of the said Act, which reads thus:

(1) any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Central Government, and includes any such premises which have been placed by that Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1980, under the control of the Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that Secretariat;

(2) any premises belonging to, or taken on lease by, or on behalf of-

(i) any company as defined in Section 3 of the Companies Act, 1956, in which not less than fifty-one per cent, of the paid-up share capital is held by the Central Government or any company which is a subsidiary (within the meaning of that Act) of the first mentioned company;

(ii) any corporation (not being a company as defined in Section 3 of the Companies Act, 1956 or a local authority) established by or under a Central Act and owned or controlled by the Central Government.

(iii) any University established or incorporated by any Central Act.

(iv) any Institute-incorporated by the Institutes of Technology Act, 1961.

(v) any Board of Trustees constituted under the Major Port Trusts Act, 1963.

(vi) the Bhakra management Board constituted u/s 79 of the Punjab Reorganisation Act, 1986, and that Board as and when re-named as the Bhakra-Beas Management Board under Sub-section (6) of Section 80 of the Act; and

(3) in relation to the Union territory of Delhi,-

(i) any premises belonging to the Municipal Corporation of Delhi, or any municipal committee or notified area committee, and

(ii) any premises belonging to the Delhi Development Authority, whether such premises are in the possession of, or leased out by, the said Authority.

18. The premises means any land or any building. Even in a case governed under the Transfer of Property Act if a lessee or licensee is permitted to raise structures, on his eviction from the land he may be entitled to remove the materials of the structures. But that by itself would not mean that no proceedings can be initiated for eviction in terms of the provision of the said Act or otherwise only because certain structures had been raised on the land which was the subject matter of the agreement.

19. Before the Writ Court all the notices issued u/s 3 of the said Act had not been annexed. From one of the notices annexed to the writ application it appears that a notice had been issued on the ground of expiry of period of lease. We do not find any infirmity in the said notice nor do we find any reason as to why such notices should be quashed at the threshold.

20. Even in a case where a statutory authority has a right to determine the rights of the parties, normally the court would ask the parties to appear before it for the purpose of resolving the disputes and differences and even as regard determination of jurisdictional fact at the first instance.

21. In [State of Uttar Pradesh Vs. Brahm Datt Sharma and Another](#), it has been held:

The High Court was not justified in quashing the show cause notice. When a show cause notice is issued to a Govt. servant under a statutory provision calling upon him to show cause, ordinarily the Govt. servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with notice at that stage unless the notice is shown to have been issued palpably without any authority of law. The purpose of issuing show cause notice is to afford opportunity of hearing to the Govt. servant and once cause is shown it is open to the Govt. to consider the matter in the light of the facts and submissions placed by the Govt. servant and only thereafter a final decision in the matter could be taken. Interference by the Court before that stage would be premature. The High Court in our opinion ought not to have interfered with the show cause notice.

22. In [State of West Bengal and Others Vs. Nuruddin Mallik and Others](#), it has been held:

It is not in dispute in this case that after the management sent its letter dated 6-8-1992 for the approval of its 31 staff, viz., both teaching and non-teaching staff, both the District inspector of Schools and the Secretary of the Board sought for certain information through their letters dated 21.9.1992 instead of sending any reply, the management filed the writ petition in the High Court, leading to passing of the impugned orders. Thus, till this date the Appellant-authorities have not yet exercised their discretion, submission for the Respondents was that this Court itself should examine and decide the question in issue based on the material on record to set at rest the long-standing issue. We have no hesitation to decline such a suggestion. The courts can either direct the statutory authorities, where it is not exercising its discretion, by mandamus to exercise its discretion, or when exercised, to see whether it has been validly exercised. It would be inappropriate for the Court to substitute itself for the statutory authorities to decide the matter.

23. In [The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others](#), it has been held:

The High Court undoubtedly has jurisdiction to ask the Industrial Tribunal to stay its hands and to embark upon the preliminary enquiry itself. The jurisdiction of the High Court to adopt this course cannot be, and is indeed not disputed. But would it be proper for the High Court to adopt such a course unless the ends of justice seem to make it necessary to do so? Normally, the questions of fact, though they may be jurisdictional facts the decision of which depends upon the appreciation of evidence, should be left to be tried by the Special Tribunals constituted for that purpose. If and after the Special Tribunals try the preliminary issue in respect of such jurisdictional facts, it would be open to the aggrieved party to take that matter before the High Court by a writ petition and ask for an appropriate writ. Speaking generally, it would not be proper or appropriate that the initial jurisdiction of the Special Tribunal to deal with these jurisdictional facts should be circumvented and the decision of such a preliminary issue brought before a High Court in its writ jurisdiction. We wish to point out that in making these observations, we do not propose to lay down any fixed or inflexible rule; whether or not even the preliminary facts should be tried by a High Court in a writ petition, must naturally depend upon the circumstances of each case and upon the nature of the preliminary issue raised between the parties. Having regard to the circumstances of the present dispute, we think the Court of Appeal was right in taking the view that the preliminary issue should more appropriately be dealt with by the Tribunal. The Appeal Court has made it clear that any party who feels aggrieved by the finding of the Tribunal on this preliminary issue may move the High Court in accordance with law. Therefore, we are not prepared to accept Mr. Sastri's argument that the Appeal Court was wrong in reversing the conclusion of the trial Judge in so far as the Trial Judge

proceeded to deal with the question as to whether the action of the Appellant was a closure or a lockout.

24. In these cases the shop-keepers would have an additional remedy by way of an appeal in terms of Section 9 of the said Act whereafter, an application before this Court by way of judicial review is also permissible.

25. The ground for eviction against each shop owner may be different. Furthermore, each shop-owner may have a different defence. Each case has to be considered on its own merits by the Estate Officer. As indicated hereinbefore, before the Estate Officer all contentions of the Appellant herein can be raised and all defences available to the shop-keepers can be taken.

26. If in a particular case the Estate Officer passes an order contrary to or inconsistent with the provision of the said Act, as indicated hereinbefore, not only an appeal would be maintainable but an application under Article 226 or 227 of the Constitution would also be maintainable against the order of the Estate Officer as also against the appellate order.

27. As noticed hereinbefore, the learned trial Judge held that in the event any dispute arose as regard the rights and obligations of the parties under the agreement there existed an arbitration clause. When, it is well settled, there exists an arbitration clause, the writ court normally refuses to exercise its Jurisdiction. See [Bisra Stone Lime Co. Ltd. and Another Vs. Orissa State Electricity Board and Another](#), and Engineers India Limited and Anr. v. D. Nren International Ltd. and Ors. 1997 (2) C.H.N. 1.

28. Unfortunately, the learned trial Judge although held:

In fact, under the writ petition they have asked for (I) declaration of title; (II) challenging the authority of the Respondent to raise the amount of rent; (III) declaration to the effect that the terms of the contract of the lease is not enforceable against them; (IV) tenancy/lease is heritable; (V) the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 is not applicable; (VI) declaration under the Act that the petitions are governed by the West Bengal Non-agricultural Tenancy with such omnibus prayers having based upon disputed questions of fact and cannot be decided in the constitutional writ jurisdiction. In this respect he relied upon the judgment reported in [State of Rajasthan Vs. Bhawani Singh and others](#), to establish that disputed questions relating to title cannot be gone into or adjudicated in writ petition and in such case petition is liable to be dismissed, proceeded to ban the impugned order.

29. The contention of the Learned Counsel for the writ Petitioner-Respondent to the effect that the said Act does not contain any provision as regard determination of fair rent and/or the provision of Section 15 borrowing the jurisdiction of the Civil Court is not applicable in a case where any order is passed de hors the provision of the

said Act are purely hypothetical. this Court at this juncture cannot determine a hypothetical question as to whether the order passed by the State Officer would be de hors the provision of statute or not warranting intervention by a Civil Court. Such a question may fall for decision by an appropriate court if any occasion arises therefor.

30. So far as the question of fair rent is concerned, the right to pay fair rent by a tenant is not a common law right. It is a statutory right. Rent has been defined in Section 2(f) of the said Act. Under the said Act the occupant is not entitled to pay any fair rent but must pay the stipulated rent.

31. In absence of any provisions for determination of fair rent, the shop-keepers of the market do not have any right to urge that they are only liable to pay fair rent. Such a contention is wholly untenable.

32. Furthermore, the rights of the shop-keepers, if any, vis-a-vis the Union of India flow from agreement. The said "Market" has been established under a statute. It has merely been established for giving facilities to the workmen employed in the factory. The members of the Association, therefore, do not have any statutory right to hold their shops at a particular place on its terms and conditions. Terms and conditions for the grant are negotiable ones, it may be true that the Union of India even in relation to its tenant must act fairly but the quantum of rent will depend upon the location, the nature of business and other relevant factors. In the writ petition no pleading to that effect has been made.

33. An act of fairness or arbitrariness must be determined on the basis of facts pleaded and established. No such fact having been pleaded, the question of the court's going into the said contention of the writ Petitioner would not arise. Further contention of the shop-keepers to the effect that they are non-agricultural tenants is also devoid of any merit in view of the decision of the Appeal Court in Asoka Marketing Supra wherein it has categorically been held that the said Act shall prevail over any Act made in the concurrent list.

34. Furthermore, the Learned Counsel when questioned, failed to show as to how the provision of the Non-Agricultural Tenancy Act could be applicable in relation to the shop-keepers. Furthermore, in any event, the Writ Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot direct the Union of India forbearing from leasing out of its property by way of distribution of its largess only in terms of the rent agreed to be paid, by the shop-keepers and not by taking recourse to the public bid public interest demands that the Government distributes its largess to the highest bidder in a public auction.

35. The learned trial Judge in any event, for resolving the alleged disputes and differences between the parties could not have formed a High Power Committee. If there existed an arbitration clause, the parties could have been directed to resort thereto but no committee could have been thrust upon the parties to the lis, in any

view of the matter, in our opinion, the writ petition suffered from the vice of multifarious as the cause of action is not a common one but are different in respect of different shop-keepers as would appear from the averments made in the writ application itself. The Petitioner, therefore, as an Association could not have maintained the writ application.

36. In [Express Newspapers Pvt. Ltd. and Others Vs. Union of India \(UOI\) and Others](#), upon which strong reliance has been placed by Mr. Chowdhury, the fact of the matter was absolutely different. In that case it had been held that Lieutenant Governor of the Union Territory of Delhi had no jurisdiction to terminate the grant made in favour of the writ Petitioner and in that situation the notice was held to be illegal. Such is not the position here.

37. For the reasons aforementioned the judgment and order passed by the learned trial Judge is set aside. The appeal filed by Union of India is allowed and the appeal filed by writ petitions is dismissed. However, keeping in view the fact that the matter is pending for a long time, the notices may file their respective show-causes within three weeks from the date before the Estate officer. In view of the aforementioned order, the applications filed by the writ Petitioners Appellant are also dismissed. In the facts and circumstances of this case there will be no order as to costs.

M.H.S. Ansari, J.

38. I agree.

39. Later. The Learned Counsel for the writ-Petitioner Appellant in M.A.T.2122/99 prays for grant of certificate of fitness to appeal before the Hon"ble Supreme Court of India in terms of Article 134A of the Constitution of India. These appeals do not involve any question of public importance nor involve interpretation of any constitutional provisions and furthermore, judgment delivered by us is on the basis of the decisions of the Hon"ble Supreme Court of India. The prayer is refused.

40. Xerox certified copy of this judgment, if applied for urgently, may be given on priority basis.