(2010) 06 DEL CK 0062

Delhi High Court

Case No: L.P.A. 298 and 299 of 2010

Paul Properties Pvt. Ltd and Another		APPELLANT
	Vs	
Estate Officer Life Insurance Corp. of India and Another		RESPONDENT

Date of Decision: June 3, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 23 Rule 3, 151, 2(15)
- Constitution of India, 1950 - Article 136, 227
- Evidence Act, 1872 - Section 18
- Public Premises (Eviction of Unauthorised Occupants) Act, 1971 - Section 4(1), 5, 5A(2)

Hon'ble Judges: Dipak Misra, C.J; Madan B. Lokur, J

Bench: Division Bench

Advocate: Arvind K. Nigam, H.S. Chandhoke and Sanjeev Kumar, for the Appellant; Mohinder Singh and Dinksha Ahuja, for the Respondent

Final Decision: Dismissed

Judgement

Dipak Misra, C.J.
In these two appeals preferred under Clause 10 of the Letters Patent, the challenge is to the defensibility and legal substantiality of the composite orders dated 20th January, 2010 and 3rd February, 2010 passed in WP(C) Nos. 9482/2005 and 9637/2005. The factual matrix being common to both the appeals, there is no necessity to exposit them separately.

2. The essential expose'' of facts are that the Life Insurance Corporation of India (for short the Corporation) filed an application under Sections 5 and 5A(2) of the Public Premises (Eviction of Unauthorised zand restoring the suit premises in its original condition to the Corporation. It was contended on behalf of the Corporation that it is the tenant in possession of the premises bearing No. H-73 on the first floor of the

building known as New Asiatic Building situate at H Block, Connaught Circus, New Delhi under M/s Arya Dharam Seva Sangh of 1, Doctors Lane, Gole Market, New Delhi. On an inspection being made of the aforesaid premises on 9th June, 1980, the authorities of the Corporation found that one wooden partition wall existing in the verandah of the said flat had been removed from the original position and had been re-erected at a distance of about 5 feet of the said verandah. In addition to that, it was also noticed that a pucca brick wall had been erected touching the said re-fixed partition wall. The door leading to the verandah which had been locked by the Corporation was also found to have been dismantled and replaced by a new wooden chowkhat. It was put forth that the Corporation had been illegally and wrongfully deprived of the actual possession of approximately 65 sq.ft. which had been trespassed and encroached upon by the Respondent No. 1. It was the stand of the Corporation before the Estate Officer that the Respondent No. 1 had unauthorisedly occupied the premises in respect of which it had no right and thus the same did tantamount to unauthorized encroachment. Being in such a situation, an application was moved for recovery of possession under the Act.

3. A notice was sent to the Respondent No. 1 to vacate the premises failing which the Corporation would be constrained to initiate proceedings under the Act. The Respondent No. 1 instead of vacating the premises further unauthorisedly inducted M/s H.B. Financial Consultants Private Limited and Traders'' Bank Limited. Thereafter, further notices were issued and eventually, a proceeding was initiated under the Act stating, inter alia, that the premises in question are covered under the definition of ''Public Premises'' and, therefore, they were liable to be evicted.

4. The Respondents resisting the aforesaid stand put forth by the Corporation, stated that the Corporation is not the tenant in possession of the premises bearing No. H-73 of the first floor of the building and it is not correct to say that any wooden partition wall existing in the covered verandah of the aforesaid Flat No. H-73 has been removed from its original position and re-erected. There was also denial of receipt of any notice from the Corporation.

5. The Estate Officer, after recording his satisfaction, issued show cause notices to the Respondents under Sub-section (1) of Section 4 and Sub-section (2) of Section 5 of the Act. The show cause was filed by the Respondents stating, inter alia, that the suit premises are not public premises and, therefore, no proceedings can be initiated in respect thereof and the Estate Officer has no jurisdiction and he had not been appointed in accordance with the provisions of the 1971 Act. The Estate Officer, on the basis of the pleadings, framed the following issues:

I. Whether the suit premises are public premises?

II. Whether the appointment of Estate Officer is in order and whether he has jurisdiction to entertain and try this case.

III. Whether the respondents have unauthorisedly occupied an area of 65 sq.ft. of suit premises forming part of flat No. H-73, which was under the occupation of the Petitioner?

IV. Whether the Landlord of the building had to be impleaded as a necessary party?

6. After framing the issues, he came to hold that the suit premises are public premises; that the appointment of the Estate Officer is in order and he has exclusive jurisdiction to proceed under the 1971 Act; that there has been unauthorised encroachment in respect of an area of about 65 sq.ft. of Flat No. H-73 in possession of the Corporation by the Respondents and that all the objections raised by the Respondents were sans merit and accordingly, he directed the Respondents to vacate the said portion within 15 days and hand over the peaceful possession to the Corporation.

7. Being dissatisfied with the aforesaid order, the present Appellants preferred an appeal before the learned District Judge, Delhi which was eventually dealt by the learned Additional District Judge. The Appellate Judge recorded the submissions of learned Counsel for the parties and came to hold that on the basis of the material brought on record, it could be safely concluded that the premises is a public premises and the said conclusion has been rightly arrived at by the Estate Officer; that the Corporation was in occupation of the said flat bearing No. H-73 from a period before nationalisation and was using the same for residential purpose of its employees; that the Appellants therein have not been able to show that they were not unauthorised occupants of the same public premises and that they have erroneously encroached upon the said portion. Being of this view, he dismissed the appeal.

8. Aggrieved by the aforesaid order, the present Appellants preferred two writ petitions and the learned Single Judge, on 20th January, 2010, recorded the following order:

After some hearing, learned Counsel for the petitioner on instructions from his clients states that to buy peace of mind and to bring the litigation to an end, the petitioners will abide by and accept the orders passed by the Estate Officer and confirmed by the Additional District Judge and shall vacate the premises on or before 28th February, 2010. He further states that the petitioners will give an undertaking to this Court that they shall pay the arrears of damages as determined including damages upto 28th February, 2010 and shall vacate the premises by the said date. Undertaking of the Director/Principal Officer of the petitioner-company will be filed in this Court within seven days.

The statement made by the learned Counsel for the petitioner and the undertaking given to this Court is accepted and the Writ Petitions are disposed of in terms of the said undertaking and statement. In case there is violation of the undertaking, the respondent will be at liberty to move a contempt petition and in addition take

coercive steps as may be permissible in law. Writ Petitions are accordingly disposed of.

After the said order came to be passed, an application was filed u/s 151 of the CPC to recall the said order stating, inter alia, thus:

2. That it is respectfully submitted that the arguments in the aforesaid writ petitions were heard and the judgment was dictated. However, this Hon�ble Court, at that stage, was pleased to observe that in case, the counsel for the Petitioners so like, he may take instructions from the clients to vacate the premises and report after lunch. Accordingly, the matter was kept at about 2.15 pm.

3. That during lunch time, the Counsel for the Petitioners tried to speak to the person responsible for the affairs of the Petitioner Companies and could not talk to him as he was not picking the mobile. Accordingly, the Counsel for the petitioners tried to speak to Mrs. Banmala Jha, Vice President (Legal) of the H.B. Stockholding Limited and looking after the legal work of all group companies including Petitioner Companies. Mrs. Jha also could not seek confirmation from the person responsible of the Petitioner Companies and since immediately after lunch, the matter was to be reported, she advised the Counsel for making statement.

The learned Single Judge dealt with both the applications and passed the following order:

2. The petitioner and the LIC are tenants occupying adjacent flats in the building New Asiatic Building, Connaught Circus, New Delhi. The owner of the said building is M/s Arya Dharam Seva Sangh. The flat bearing No. H-73 under tenancy of LIC is on the first floor and has been in their occupation prior to 1956 before nationalization. The allegation made against the petitioner is that the wooden partition wall existing in the covered verandah in the occupation of the LIC was removed and was re-erected by the petitioner at the distance of 5 feet in the area under the tenancy of LIC. The petitioner constructed a brick boundary wall touching the said refixed partition wall and besides a door and some other construction was made.

3. Mr. M.S. Malhotra, PW-2, who had earlier resided in Flat No. H-73 from 1975 to 1980 (April) in his statement had stated that after vacating the said flat he had occasion to visit the same, when it was in occupation of Mr. Balani, Engineer of LIC. He affirmed the fact that the partition wall was shifted. Similarly, Mr. R.N. Alag, Architecture Assistant, Engineering Department, who had visited the flat in the second week of June, 1980, found that the position of the previous wooden partition was visible on the walls of the verandah because of the khadas and gatties. He had also stated that the wooden partition was removed from the original position and had been re-erected at a distance of 5 feet 3 inches. In his cross examination the said witness has pointed out that he had also earlier visited the said flat on three occasions. The respondent corporation had also produced Mr. Mohan H. Nichani, PW-1, who had taken photographs of the newly constructed wall. LIC had also made

a complaint to the landlord about unauthorized encroachment in the premises given on rent to the petitioner by M/s Arya Dharam Seva Sangh, but they refused to interfere.

4. The contention raised by the petitioner that there is no proof of tenancy of LIC is rejected in view of the fact that it is an admitted position that the respondent LIC is in occupation of the said flat even today and there can be oral tenancy under the Transfer of Property Act. This aspect has also been considered by the Estate Officer, who has pointed out that that the predecessors in the interest of LIC had taken the tenancy prior to nationalization, therefore written document regarding creation of tenancy is not available.

5. While the order was being dictated on 20th January, 2010, counsel for the petitioner had stated that they do not want to file any further appeal or contest the matter and, therefore, prayed for pass over to obtain instructions. The matter was accordingly passed over to enable the counsel for the petitioner to obtain instructions and report after lunch. When the matter was taken up at 2.15 P.M., a categorical and clear statement was made by the counsel for the petitioner that they want to withdraw the writ petition as they would not like to have an adverse order and they do not want to contest the eviction order. Time for vacation on their request was given. Unfortunately, now the petitioner wants to back out from the statement made on that date. The petitioner is a company and it is their internal matter as to how and who gives instructions.

9. We have heard Mr. Arvind Nigam, learned Senior Advocate with Mr. H.S. Chandhoke and Mr. Sanjeev Kumar, Advocates for the Appellants and Mr.Mohinder Singh, Advocate for the Respondents in both the appeals.

10. It is submitted by Mr.Nigam, learned senior counsel, that the concession given was erroneously given inasmuch as the counsel could not have given the concession on behalf of the company and this was clarified by the application which was filed by the Directors of the appellant company. It is urged by him that assuming that the concession had been given by the learned Counsel for the appellants, it is a concession in respect of opposition of law, i.e., applicability of the 1971 Act and hence, such a concession or even an undertaking would not bind the appellants. It is further propounded by Mr. Nigam that even if a concession is given contrary to the material facts on record, the same would not bind the parties. To bolster the aforesaid submissions, he has commended us to the decisions rendered in A.V.G.P. Chettiar and Sons and Others Vs. T. Palanisamy Gounder, , Jagdish Lal Vs. Parma Nand, , P.R. Deshpande Vs. Maruti Balaram Haibatti, , Southern Railway Officers Assn. and Another Vs. Union of India (UOI) and Others, , Jet Plywood (P) Ltd and Anr. v. Madhukar Nowalakha and Ors. (2006) 3 SCC 69, Naga People''s Movement of Human Rights Vs. Union of India (UOI), , The Deputy Commissioner of Income Tax Vs. K.S. Suresh, , Sri Swami Krishnanand Govindanand Vs. M.D. Oswal Hosiery (Registered), , (1935) AWR 980 (Privy Council) Privy Council 119, National Textile

Corporation (M.P.) Ltd., Bhopal Vs. M.P. Electricity Board, Jabalpur, S.P.M. Muthiah Chetti and Others Vs. Muthu K.R.A.R. Karuppan Chetti and Others, and Food Corporation of India and Another Vs. SEIL Ltd. and Others,

11. Mr. Mohinder Singh, learned Counsel appearing for the respondent Corporation, supporting the order of the learned Single Judge, canvassed that if the proceedings recorded by the learned Single Judge are appreciated in entirety, it would clearly reflect that a concession has been given to vacate the premises and it is a matter of impropriety on the part of the appellants to take a somersault later on and make a mal-adventure to wriggle out from the said consent. It is urged by the learned Counsel that the concession is not given contrary to any statute but fundamentally it is in respect of facts and, therefore, the authorities relied upon are not applicable. It is also put forth by him that if the appeals of this nature are entertained after giving consent before the learned Single Judge in a given situation, it would usher in the abuse of the process of the Court which is impermissible in law.

12. We have already narrated the facts in detail and the circumstances in which the concession was recorded. The submission of Mr. Nigam is that such a concession would not bind the appellants. In SPM Muthiah Chetti and Others (supra), the High Court of Madras was dealing with the power of the counsel to make admission on the client's behalf. The Bench, after referring to the decisions rendered in Digbijoy Roy v. Ata Rahman (1918) 17 C.W.N. 156, Nundo Lall Bose v. Nistrini Dasi (1900) 27 Cal. 428, Strauss v. Francis (1866) 1 QB 379, Swinfen v. Swinfen (1857) 1 CB (NS) 364, Mathews v. Munster (1887) 20 QBD 141, Ellworthy v. Bird Pamlya 38, B.N. Sen and Bros. Vs. Chunni Lal Dutt and Co., Bhut Nath v. Ram Lal (1902) 6 CWN 82, Swinfen v. Lord Chelmsford (1859) 1 F& F 619, In the Court of Exchequer Chambers v. Mason (1859) 5 CB (NS) 59, Dwar Buz Sirkar v. Fatik Jali (1898) 26 Cal. 250, and Beery v. Mullen (1871) 5 IR 368, culled out the following principles:

(1) A counsel has authority to make admissions in Court on behalf of his client on matters of fact relevant to the issues in the case in which he is engaged. Admissions on questions of law would not bind the client.

(2) A counsel has authority to confess judgment, withdraw or compromise, or refer to arbitration the suit in which he is instructed if his doing so is for his client''s advantage or benefit even though he has no express authority from his client.

(3) A counsel cannot without express authority agree to compromise or refer to arbitration matters unconnected with the subject-matter of the suit in which he is instructed.

(4) Where, in the course of a suit, a counsel makes an admission as to a collateral matter or gives up a doubtful claim which is not a subject-matter of the suit, there is a presumption that the counsel acts under instructions if the admissions or the giving up of the doubtful claim is for the benefit of the client.

(5) It is a question of fact in each case whether the counsel acts under instructions when he compromises or refers to arbitration matters not involved in the suit and the Court on a consideration of the probabilities and the circumstances of the case can find that the counsel acted on instructions even though there is no direct evidence on the point.

(6) A counsel has no power to make an admission in, or compromise or refer to arbitration, a suit if he is instructed not to do so, without express authority from his client.

13. In (Babu) Sheonandan Prasad Singh and Ors. (supra), the Privy Council expressed the view that the matter compromised was collateral to the suit and not only would it not be binding on the parties, but it would in any case also be a matter in respect of which the Court in pursuance of Order 23 Rule 3 should not make a decree.

14. In National Textile Corporation (MP) Limited (supra), the Bench was dealing with the stand of the respondent that after ratification by the NTC of the contracts which were entered into between the respondent and the erstwhile owners, the legal impact is as if the contracts were entered into with the Corporation from the very inception and, therefore, the liabilities for any period prior to the appointed day also become the liabilities of the Corporation under the contract. In fact, it was urged that the ratification is retrospective so as to make the liabilities of the owners the liabilities of the Corporation. The Bench interpreting the statutory provisions did not accept the said stand and expressed the view that the effect of ratification is to continue the contract even after the expiry of the period. On a perusal of the said decision, we really do not find anything which can be pressed into service for determination of the controversy at hand. The said decision does not assist the appellant from any score.

15. In Tripura Goods Transport Association and Another (supra), their Lordships were dealing with the situation where the learned Counsel appearing for the respondent State had stated that if and when the applicants approach the Commissioner of Taxes, he shall ensure that the Forms 18A and 18B are supplied to them. An application was filed by the State of Tripura for recall of the said order. Their Lordships adverted to the provisions contained in the Tripura Sales Tax Rules framed under the Tripura Sales Tax Act 1976 and referred to the requirement of Form 18A and came to hold as under:

The assurance given by the counsel of the State in Court was "whether the applicants are dealers or not, he assures that if and when the applicants approach the Commissioner of Taxes, he shall ensure that these forms are supplied to the petitioners." This assurance was clearly against the law. Form 18A cannot be issued to the transporters.

Although the order dated 3.3.1997 was based on the assurance given by the Senior Advocate appearing for the State the order will have to be recalled. An advocate appearing on behalf of the State cannot undertake that the State will do something contrary to the statute. Therefore, this application is allowed....

Thus, on a perusal of the said decision, it is quite clear that their Lordships had held that an advocate appearing on behalf of the State cannot undertake that the State would do something contrary to the statute.

16. In P.R. Deshpande (Supra), a three-judge Bench of the Apex Court was dealing with the maintainability of the appeal in view of the decision rendered in Prashant Ramachandra Deshpande Vs. Maruti Balaram Haibatti, Be it noted, a preliminary objection was raised by the learned Counsel for the respondent that the tenant is precluded from approaching the Apex Court under Article 136 of the Constitution after giving an undertaking before the High Court. In support of the said proposition, reliance was placed on R.N. Gosain Vs. Yashpal Dhir, . Their Lordships, after referring to the decision in Evans v. Bartlam (1937) 2 All ER 646 and the observations made therein by Lord Atkin and Lord Russel of Killowen, came to hold as follows:

11. A party to a lis can be asked to give an undertaking to the court if he requires stay of operation of the judgment. It is done on the supposition that the order would remain unchanged. By directing the party to give such an undertaking, no court can scuttle or foreclose a statutory remedy of appeal or revision, much less a constitutional remedy. If the order is reversed or modified by the superior court or even the same court on a review, the undertaking given by the party will automatically cease to operate. Merely because a party has complied with the directions to give an undertaking as a condition for obtaining stay, he cannot be presumed to communicate to the other party that he is thereby giving up his statutory remedies to challenge the order. No doubt he is bound to comply with his undertaking so long as the order remains alive and operative. However, it is open to such superior court to consider whether the operation of the order or judgment challenged before it need be stayed or suspended having regard to the fact that the party concerned has given undertaking in the lower court to abide by the decree or order within the time fixed by that court.

12. We are, therefore, in agreement with the view of Sahai and Venkatachala, JJ, that the appeal filed under Article 136 of the Constitution by special leave cannot be dismissed as not maintainable on the mere ground that appellant has given an undertaking to the High Court on being so directed, in order to keep the High Court''s order in abeyance for some time.

17. In Jagdish Lal (supra), the tenant was in appeal before the Apex Court. He had given an undertaking before the High Court in the following terms:

Mr. Goel, learned Counsel for the petitioner, states that the petitioner be allowed some reasonable time to vacate the premises. He undertakes on behalf of the petitioner to hand over vacant possession to the landlord on or before September 1, 1998 and also undertakes to deposit the arrears of rent, if any, together with future rent within two weeks from today. In case the petitioner deposits the arrears of rent, if any, along with future rent within two weeks, the ejectment order against him will not be executed till September 1, 1998 in view of this undertaking.

The tenant did not honour the undertaking and moved the Apex Court under Article 136 of the Constitution. A contention was advanced that as the undertaking given before the Court had not been honoured, the appeal was not maintainable. Their Lordships, repelling the said stand, expressed the view as follows:

The question was examined by this Court in a subsequent decision in P.R. Deshpande Vs. Maruti Balaram Haibatti, in which it was laid down by a Bench of three Judges of this Court that even if the tenant gives an undertaking in the High Court to vacate the premises, his right to approach this Court under Article 136 of the Constitution is not affected. The tenant would still have a right to approach the higher Court and even seek interim relief of stay of eviction despite the undertaking given by him to vacate the premises. This decision, decisively and clearly, has the effect of overruling the earlier decision in Thacker Hariram Motiram's case 1989 Supp. (2) SCC 65 as also two other decisions in Vidhi Shankar v. Heera Lal, 1987 Supp SCC 200 and in Ramachandra Jai Ram Randive v. Chandanmal Rupchand, 1987 Supp SCC 254. The preliminary objection is accordingly overruled.

18. In AVGP Chettiar and Sons (supra), the Apex Court, while dealing with a similar preliminary objection, held as follows:

22. Before considering the correctness of the decision of the High Court, we take up for consideration a preliminary objection raised by the appellants that the appellants were estopped from impugning the High Court''s decision because they had requested for time to vacate the suit premises and such request had been granted by the High Court. The objection is unsustainable. First, an objection to the maintainability of the appeal, like other points of demurrer, may be relevant at the time of the admission of the appeal. Once the appeal is admitted without reserving the issue of maintainability and the matter is heard on merits, such a preliminary objection does not survive. Second, the appellants had no doubt requested for a stay of the execution of the decree. That had been granted by the High Court subject to furnishing of an undertaking by the appellants to vacate the premises within a period of six months. The appellants did not in fact give any such undertaking. Even if they had, they could not be denied the right to appeal to this Court on any principle or estoppel unless the respondent could show that the appellants had thereby gained an advantage which was otherwise not available to them; for example, if the appellants had given an undertaking and obtained a stay of the order of eviction beyond the period allowed for preferring the appeal, or if

the landlord had consented not to execute the decree of eviction in consideration of the appellants' undertaking to vacate. If such or other like circumstances existed this Court may have refused to exercise discretion in favour of the tenant under Article 136 of the Constitution. Otherwise merely giving an undertaking does not foreclose a tenant from availing of any statutory remedies available to him by way of appeal or revision or under the Constitution.

23. In this case, no undertaking was in fact given by the appellants. The question of deriving any advantage by the appellants on the basis of such undertaking therefore did not arise at all. In fact the application under Article 136 was filed well within the period of limitation. The preliminary objection raised by the respondent is misconceived and is accordingly rejected.

19. In Swami Krishnanand Govindanand (supra), their Lordships were considering a statement made by the counsel before the Additional Rent Controller admitting the ground for eviction and the status of the charitable institution that the same was contrary to the written statement. In that backdrop, their Lordships in paragraph 3 have opined thus:

3. Mr. Jaspal Singh, learned senior counsel, appearing for the appellant, has vehemently contended that statement made by the learned Counsel of the respondent across the Bar is indeed an admission of the party and, therefore, the Addl. Rent Controller recorded his satisfaction on the basis of the admission; the order of the Addl. Rent Controller cannot thereby be treated as being without jurisdiction. We are afraid we cannot accede to the contention of the learned Counsel. Whether the appellant is an institution within the meaning of Section 22 of the Act and whether it required bonafide the premises for furtherance of its activities, are questions touching the jurisdiction of the Addl. Rent Controller. He can record his satisfaction only when he holds on these questions in favour of the appellant. For so holding there must be material on record to support his satisfaction otherwise the satisfaction not based on any material or based on irrelevant material, would be vitiated and any order passed on such a satisfaction will be without jurisdiction. There can be no doubt that admission of a party is a relevant material. But can the statement made by the learned Counsel of a party across the Bar be treated as admission of the party? Having regard to the requirements of Section 18 of the Evidence Act, on the facts of this case, in our view, the aforementioned statement of the counsel for the respondent cannot be accepted as an admission so as to bind the respondent. Excluding that statement from consideration, there was thus no material before the Addl. Rent Controller to record his satisfaction within the meaning of Clause (d) of Section 22 of the Act. It follows that the order of eviction was without jurisdiction.

20. In Jet Plywood (P) Limited (supra), the plaintiff, the respondent No. 1 before the Apex Court, applied for grant of leave to withdraw the suit as there were talks for settlement between the parties. No leave was prayed for filing a fresh suit. The

learned trial judge allowed the suit to be withdrawn without liberty to file a fresh suit on the same cause of action. Within a month thereafter, he filed an application for recall of the order. The learned Civil Judge rejected the application. On a revision petition under Article 227 of the Constitution, the learned Single Judge allowed the petition and directed restoration of the suit. Addressing to the aspect whether the Single Judge of the High Court was acting within his jurisdiction or not, their Lordships referred to Section 151 of the CPC and expressed the view that in the obtaining circumstances the trial judge had really not opined that it was not a question of lack of jurisdiction but he was not inclined to exercise the jurisdiction in favour of the plaintiff. Thereafter, their Lordships held that there is no doubt that in the absence of specific provision in the CPC providing for the filing of an application for recalling of an order permitting withdrawal of the suit, the provisions of Section 151 of the CPC can be resorted to in the interest of justice. In view of the well established principle of law laid down in Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal, , it was held that it is the duty of the Court to act ex debito justitiae for doing real and substantial justice between the parties. Being of this view, their Lordships upheld the decision of recall of withdrawal of the suit.

21. In Food Corporation of India (supra), the Court was dealing with the situation of exercising the jurisdiction of review under Article 226 of the Constitution of India. It has been held therein that a clear error or omission on the part of the Court to consider a justifiable claim would be subject to review amongst others on the principle of actus curiae neminem gravabit.

22. In Southern Railway Officers Association and Another (supra), a two-judge Bench of the Apex Court was considering the maintainability of the SLP when undertaking had been given that the impugned judgment would be complied with. In the said case, the Union of India had given an undertaking before the High Court to comply with the directions issued to it. A contention was canvassed that when such an undertaking had been given, the Union of India had waived its right to prefer an appeal. In that context, their Lordships have held thus:

Regarding submission of the learned senior counsel for the respondents that the Union of India had waived its right to maintain SLP by undertaking to comply with the order of the High Court, reliance has been placed on Thacker Hariram Motiram Vs. Balkrishan Chatrabhu Thacker and Others, That case related to a rent control matter. It refused to exercise its discretionary jurisdiction under Article 136 of the Constitution of India stating:

It appears that the undertaking was affirmed on 9-11-1984 wherein it was stated that the appellant would vacate and give vacant possession of the suit premises by 31-12-1985 i.e., to say after one year if "by that time no stay order from the Supreme Court is received as I intend to file an appeal in the Supreme Court". This undertaking filed by the appellant in our opinion is in clear variation with the oral undertaking given to the learned Judge which induced him to give one year''s time.

We do not wish to encourage this kind of practice for obtaining time from the court on one plea of filing the undertaking and taking the different stand, in applications under Article 136 of the Constitution. In that view of the matter the interim order is vacated and we direct that the appellant should hand over possession to the respondents forthwith.

The said judgment is not an authority for the proposition that a right of appeal can be waived only because an undertaking had been given to comply with the order.

On the other hand in P.R. Deshpande Vs. Maruti Balaram Haibatti, a three Judge Bench of this Court held:

A party to a lis can be asked to give an undertaking to the court if he requires stay of operation of the judgment. It is done on the supposition that the order would remain unchanged. By directing the party to give such an undertaking, no court can scuttle or foreclose a statutory remedy of appeal or revision, much less a constitutional remedy. If the order is reversed or modified by the superior court or even the same court on a review, the undertaking given by the party will automatically cease to operate. Merely because a party has complied with the directions to give an undertaking as a condition for obtaining stay, he cannot be presumed to communicate to the other party that he is thereby giving up his statutory remedies to challenge the order. No doubt he is bound to comply with his undertaking so long as the order remains alive and operative. However, it is open to such superior court to consider whether the operation of the order or judgment challenged before it need be stayed or suspended having regard to the fact that the party concerned has given undertaking in the lower court to abide by the decree or order within the time fixed by that court.

In that context the Bench referred to the decision rendered in Thacker Hariram Motiram Vs. Balkrishan Chatrabhu Thacker and Others, and expressed the view that the said judgment is not an authority for the proposition that the right to appeal can be waived in case an undertaking had been given to comply with the order. Their Lordships placed reliance on the decision in P.R. Deshpande (supra) and expressed the view that the appeal was maintainable.

23. In K. Suresh (supra), before the High Court of Madras, it was argued on behalf of the Revenue in appeal that at the time of hearing of the writ petition for admission, the learned Counsel could not have made any concession with reference to the legal consequences in particular about the reassessment proceedings made under Sections 147/148, the provisional attachment passed u/s 281B of the Act as that was contrary to provisions of the Statute. The Division Bench referred to the order of the learned Single Judge and thereafter, placing reliance on Uptron India Limited Vs. Shammi Bhan and Another, Central Council for Research in The Central Council for Research in Ayurveda and Siddha and Another Vs. Dr. K. Santhakumari, , Union of India (UOI) and Others Vs. Mohanlal Likumal Punjabi and Others, Union of India v.

S.C. Parashar AIR 2006 SC 3566, held thus:

Cumulative consideration of the above principles set out in the various decisions would make it clear that in the normal course, a party who made a concession in one court cannot be allowed to resile from it in the appellate court, but yet, under certain exceptional circumstances, when such concession came to be made on a wrong appreciation of law which had led to gross injustice, then in such cases, the appellate court can permit in appropriate cases to resile from a concession on such exceptional grounds. The established legal position, however, remains that there can never be a concession made at the instance of counsel on a wrong appreciation of law on the principle that there can never be an estoppel against the statute. In fact, in the decision of the Hon�ble Supreme Court reported in Central Council for Research in The Central Council for Research in Ayurveda and Siddha and Another Vs. Dr. K. Santhakumari, it is made clear that an admission or concession by a counsel made inadvertently or under a mistaken impression of law will not only bind on his client, but also the same cannot enure to the benefit of the other party.

24. In this context, we may refer with profit to the dictum in Jamilabai Abdul Kadar Vs. Shankarlal Gulabchand and Others, wherein a three-Judge Bench of the Apex Court, while dwelling upon the implied power of a counsel to enter into a compromise, opined thus:

While we are not prepared to consider in this case whether an Advocate or pleader is liable to legal action in case of deviance or negligence, we must uphold the actual, though implied, authority of a pleader (which is a generic expression including all legal practitioners as indicated in Section 2(15), C.P.C.) to act by way of compromising a case in which he is engaged even without specific consent from his client, subject undoubtedly to two overriding, considerations: (i) He must act in good faith and for the benefit of his client; otherwise the power fails (ii) it is prudent and proper to consult his client and take his consent if there is time and opportunity. In any case, if there is any instruction to the contrary or withdrawal of authority, the implicit power to compromise in the pleader will fall to the ground. We need hardly emphasise that the bar must sternly screen to extirpate the black-sheep among them, for Caesar''s wife must be above suspicion, if the profession is to command the confidence of the community and the court.

25. In State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another, , their Lordships have held thus:

The Court is bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. It cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in

the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an Appellate Court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment.

26. From the aforesaid pronouncements, the principles that clearly emerge are that:

i) Admission by a counsel on a question of law would not bind the client.

ii) An advocate appearing on behalf of a party would not do something contrary to the statute.

iii) If a Court requires an undertaking to be given and it is done, the right to prefer an appeal cannot be foreclosed.

iv) An undertaking given by the tenant to vacate the premises would not disentitle him to approach the higher Court and seek an interim order.

v) The matters relating to jurisdiction cannot be conceded to by a counsel.

vi) A mere undertaking given by the State and the Union of India to comply with the directions issued to them would not debar them to prefer an appeal.

vii) Directing a party to give an undertaking in a Court cannot scuttle or foreclose a statutory remedy of appeal or revision much less a constitutional remedy.

viii) If a concession is given on a wrong appreciation of law which has led to gross injustice, the appellate court can permit in an appropriate case to resile from a concession on exceptional grounds.

ix) There is implied authority in a legal practitioner to enter into a compromise if it is not malafide and it is always prudent and proper on the part of a counsel to consult the client and take his consent if there is time and opportunity.

x) Statements made before a Judge cannot be contradicted by the statements at the Bar or affidavits or in evidence.

xi) If a party thinks that what has happened in Court had wrongly been recorded in the judgment, it is incumbent upon the party to call the attention of the very Judge who has recorded the same that the statement made with regard to his conduct was a statement that had been erroneously made.

27. We have culled out these broad principles which in no way can be treated as exhaustive but can always be put into the compartment of illustrative. We have said so as there can be cases where rare facts and circumstances can surface.

28. The issue that falls for consideration in this appeal as Mr. Nigam would submit with all astuteness is that the concession was given without authority; that the concession pertained to the jurisdiction of the Estate Officer; and that the concession was given in respect of the premises which was not a public premises.

29. First, we shall deal with the aspect whether the concession was given without authority. We have already recorded the order passed by the learned Single Judge on 20th January, 2010. The learned Single Judge in an unequivocal manner had recorded that the counsel for the petitioner had instructions from his client and stated that to buy peace of mind and to bring the litigation to an end, his client would abide by and accept the orders passed by the Estate Officer and confirmed by the Additional District Judge and vacate the premises on or before 28th February, 2010. The learned Single Judge accepted the statement and disposed of the writ petition in terms of the statement. In the application for review, it was mentioned that the learned Single Judge had granted time and the matter was kept at 2.15 p.m. and during that time, the counsel for the petitioner tried to speak to the person responsible for the affairs of the petitioner company and could not talk to him as he was not picking up the mobile but as the matter was to be taken up immediately after lunch, she advised the counsel for making the statement. While dealing with the application for review, the learned Single Judge in paragraph 5 of the order has expressed as follows:

5. While the order was being dictated on 20th January, 2010, counsel for the petitioner had stated that they do not want to file any further appeal or contest the matter and, therefore, prayed for pass over to obtain instructions. The matter was accordingly passed over to enable the counsel for the petitioner to obtain instructions and report after lunch. When the matter was taken up at 2.15 P.M., a categorical and clear statement was made by the counsel for the petitioner that they want to withdraw the writ petition as they would not like to have an adverse order and they do not want to contest the eviction order. Time for vacation on their request was given. Unfortunately, now the petitioner wants to back out from the statement made on that date. The petitioner is a company and it is their internal matter as to how and who gives instructions.

30. We have deliberately quoted the said paragraph, though we have reproduced it earlier, only to highlight what had actually transpired before the learned Single Judge. The initial order, the application preferred u/s 151 of the Code and the delineation made by the learned Single Judge would reveal what had transpired before him. It cannot be said that it was consent without authority. In fact, we are disposed to think that the law laid down in the cases of Smt. Jamilabai Abdul Kadar (supra) and Ramdas Shrinivas Nayak (supra) would squarely get attracted to such a

case.

31. At this juncture, while dealing with this issue, we also think it apposite to dwell upon the nature of the undertaking given. It was not an undertaking where the concession was given in respect of a matter which was collateral to the suit; that the court had not directed to file an undertaking; that it was not a conditional order of stay; that the court had not passed an order subject to furnishing of an undertaking; and that was not a simple undertaking to comply with the directions after the judgment was delivered. On the contrary, the order passed by the learned Single Judge would go a long way to show that there was a prayer for getting the case passed over; that there was consultation; and that the statement was made before the learned Single Judge in the course of hearing and an advantage was taken. Thus, by no stretch of imagination, it can be held that the counsel appearing for the writ petitioners was not instructed to make the statement in the course of hearing.

32. The second aspect that emerges for consideration is whether the learned Counsel has conceded contrary to the statutory provisions or against the law. It is held in most of the decisions that an advocate cannot give an undertaking that the party will do something contrary to the statute or could concede to a proposition of law which would bind a party. The submission of Mr. Nigam, learned senior counsel for the appellants is that the learned Counsel for the appellants conceded to the jurisdiction of the Estate Officer. The learned Single Judge in paragraph 4 of the order of recall has dealt with the facet that the Life Insurance Corporation was in occupation of the flat and the said aspect has been duly considered by the Estate Officer. We have also referred to the order passed by the Estate Officer who has recorded a finding that the premises was in occupation of the Life Insurance Corporation and there had been unauthorized encroachment in respect of an area about 65 sq.ft. in flat No. H-73. There is no dispute that the LIC is in occupation of the flat bearing No. H-73, prior to 1956, before nationalization. What is submitted by Mr. Nigam is that the area which is alleged to have been encroached upon by the appellants is not situated on the veranda of the said flat and the appellants have not put any wooden partition covering the veranda of the flat. There is no dispute and rightly so that the property in occupation of the LIC would come within the definition of public premises as understood under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. It is not a case where the learned Counsel by his concession has gone contrary to any statutory provision. It is not a case where the Estate Officer lacked inherent jurisdiction. In Tripura Goods Transport Association and Another (supra), the order was recalled as the counsel had given an assurance which was clearly against the law as Form 18A could not have been issued in law to the transporters. In Swami Krishnanand Govindanand (supra), the rent controlling authority had recorded a satisfaction on the basis of admission though there was no material fact on record to determine the jurisdiction. In the case at hand, what has been actually conceded is the acceptance of the finding recorded by the Estate Officer that there has been encroachment on the veranda of the flat belonging to

the LIC. The Estate Officer had the jurisdiction to record a finding on unauthorized encroachment and actually such a finding was accepted when the learned Counsel gave the concession that he would accept the decision of the Estate Officer. This is an aspect which does not really touch the jurisdiction.

33. At this juncture, we think it appropriate to observe that on a keener scrutiny of the order of the proceedings before the learned Single Judge, it is clear that it is an unequivocal concession with regard to a finding of fact which has been arrived at by the Estate Officer. While the learned Singe Judge was going to dismiss the writ petition, time was sought for and thereafter, concession was given. The concession of a counsel in a court of law has its own sacrosanctity. It is not the case where there was no consultation whatsoever. On a scrutiny of the entire gamut of the facts, it emerges with utmost clarity which can be envisioned that a maladroit attempt was made to take a somersault and wriggle out of the same. In case the same, if we allow ourselves to say so, is permitted, it will usher in a state of anarchy in the process of adjudication and the high tradition of the Bar and the acceptance of statements made at the Bar would be in jeopardy. The law does not countenance the same either in the expanse of substantive law or in the expansion of adjective law.

34. Ex consequenti, the appeals, being sans substratum, stand dismissed without any order as to costs.