

National Textile Corporation (Sm) Ltd.

Vs

Associated Building Co. Ltd. and Others

Civil Appeal No. 2571 of 1994

(S. P. Barucha, B. N. Kirpal, Paripoornan JJ)

31.10.1995

JUDGMENT

PARIPOORNAN, J.

1. The third respondent in Writ Petition No. 270 of 1984 - High Court of Bombay, M/s National Textile Corporation (South Maharashtra) Limited, Bombay, the appellant in this appeal assails the judgment of the High Court rendered in the said writ petition dated 20-7-1993.
2. The Associated Building Company Limited, Bombay, (2) Ahmedabad Advance Mills Company Limited, Bombay, (3) Swadeshi Mills Company Limited, Bombay, (4) Central Indian Spinning, Weaving and Manufacturing Company Limited, Bombay and (5) The Tata Mills Limited, Bombay (5 petitioners) filed Writ Petition No. 270 of 1984 in the High Court of Bombay, praying amongst other reliefs, for the issue of a writ of mandamus, prohibiting the respondents in the writ petition from taking any action to take over possession or control of any area of "Bombay House". The respondents in the writ petition are - (1) The Union of India, (2) National Textile Corporation Limited, New Delhi, (3) National Textile Corporation (South Maharashtra) Limited, Bombay (the appellant herein) and (4) Shri M.N. Acharya. In this appeal the five petitioners in the writ petition are Respondents 1 to 5, the Union of India, the National Textile Corporation Limited, New Delhi and Shri M.N. Acharya (Respondents 1, 2 and 4 in the writ petition) are Respondents 6, 7 and 8.
3. For convenience sake, in this civil appeal we will refer to the parties as they are arrayed in the writ petition.
4. Petitioner 1, the Associated Building Company Limited is the owner of building known as "Bombay House" situate at Homi Mody Street, Fort, Bombay. Petitioner 5, the Tata Mills Limited is a public limited company engaged in the manufacture of cotton textiles and yarn. Petitioners 2 to 4 are also public limited companies engaged in a variety of business. The Tata Mills Limited is located at Dadar, Bombay. Petitioner 1 had permitted the Tata Mills Limited and also petitioners 2 to 4 to use a part or portion of Bombay House as their registered office. It is also seen that Petitioners 2 to 5 were collectively known as Tata Textiles. The petitioners averred that no specific space or area was delineated or demarcated for the use of Tata Mills Limited (Petitioner 5) in the Bombay House premises. The arrangement was a fluid and flexible one depending upon business needs and exigencies. Petitioner 1 used to recover the amount of compensation from Tata Textiles and the amount was contributed by Petitioners 2 to 5 and the share of the Tata Mills Limited came to approximately Rs 468.30 per month. With effect from April 1982, Tata Mills Limited ceased to make any payment for the use of the space in Bombay House. The amount payable by Tata Mills Limited was contributed by Petitioners 2 to 4 and the Tata Mills Limited was permitted to use the

space in Bombay House gratuitously. The Tata Mills Limited had no right to continue to remain in any part or portion of Bombay House. The Tata Mills Limited shifted their office with effect from 2-1-1984 to Army and Navy Building, Fort, Bombay.

5. The Textile Undertakings (Taking Over of Management) Ordinance, 1983 which was replaced by the Textile Undertakings (Taking Over of Management) Act, 1983, (hereinafter referred to as 'the Act') vested the management of 13 textile undertakings in the Central Government. The Tata Mills Limited was one of the undertakings specified as No. 13 in the First Schedule to the Act. The management of the 13 specified textile undertakings so vested in the Central Government was taken over by the Central Government on 19-10-1983. By virtue of Section 4 of the Act, National Textile Corporation Limited was appointed as Custodian and National Textile Corporation (South Maharashtra) Limited was appointed as Additional Custodian. Shri M.N. Acharya, Respondent 4 is the authorised representative of the Custodian.

6. By communication dated 16-1-1984 (Ex. A), the third respondent, National Textile Corporation (South Maharashtra) Limited intimated the Tata Mills Limited, Petitioner 5, that Additional Custodian has appointed and authorised Shri M.N. Acharya to take immediate possession and control of the property of Tata Mills Limited office at Bombay House, Fort, Bombay. The fifth petitioner, the Tata Mills Limited by communication dated 18-1-1984 (Ex. B) intimated the third respondent that the entire Bombay House premises belongs to Petitioner 1 and the Tata Mills Limited have been permitted by the owner only to use part of the said Bombay House premises as a registered office along with 3 other mills (Petitioners 2 to 4), and that they have not been allotted any specific part or portion of the said premises and since October 1982 they are continuing to occupy the registered office gratuitously as borne out from the records of the company. Petitioner 5 clarified that they have no right, title or interest whatsoever in the Bombay House or any part or portion thereof and in such circumstances, the registered office does not form any part of the textile undertaking over which the Custodian has any right. Petitioner 1 by communication dated 18-1-1984 (Ex. C) wrote to the third respondent in similar terms highlighting the fact that no specific portion has been allotted to the Tata Mills Limited in Bombay House, that the Mills had stopped paying compensation in respect of the joint use of the portion of the Bombay House and from July 1982, were using the premises only gratuitously. The petitioner also asserted that the Tata Mills Limited have no right, title or interest whatsoever in Bombay House or any portion thereof. No reply was sent to the above two communications of Petitioners 1 and 5 by the third respondent. Apprehending that the respondents, as threatened in their letter dated 16-1-1984, may seek immediate take-over of the possession and control of the registered office of the Tata Mills Limited in the premises of Bombay House, and if it so ensues, it will subject the petitioners to irreparable harm and hardship and harassment, the writ petition was filed by Petitioners 1 to 5, seeking amongst others, the following relief :

"(a) For a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, direction or order as to this Hon'ble Court appears just and proper, in the circumstances of the case, prohibiting and restraining the respondents, their agents, servants and subordinates from taking any action of any description directly or indirectly for take-over of the possession and/or control of the said space/area at Bombay House or any part thereof and/or ordering and directing the respondents, their agents, servants and subordinates not to take any action of any description, directly or indirectly for take-over of the possession and/or control of the said space or area at Bombay House or any part thereof and/or any of the furniture, fixtures, instruments, machines, equipment, automobiles and other vehicles and goods on or

about the said premises."

Respondents 3 and 4 filed counter-affidavits in the High Court. After perusal of the relevant records placed before the Court and on hearing the parties, a Division Bench of the Bombay High Court, by its judgment dated 20-7-1993, held that the action of the respondents by addressing the letter dated 16-1-1984 seeking possession and control of unspecified portion of Bombay House is without jurisdiction, and consequently, the petitioners are entitled to relief, and the rule was made absolute in terms of prayer (a) quoted hereinabove. It is from the aforesaid judgment the third respondent in the writ petition has filed this appeal impleading Petitioners 1 to 5 and Respondents 1, 2 and 4 as Respondents 1 to 8.

7. The plea of the appellant before the High Court and still before us is that under Section 3(1) and (2) of the Textile Undertakings (Taking Over of Management) Act, 1983 (Act No. 40 of 1983), the management of the textile undertaking, namely, the Tata Mills Limited, Dr Ambedkar Road, Bombay, vested in the Central Government and so the area/space in Bombay House wherein the registered office of the Tata Mills Limited functioned had vested in the Central Government and so the Custodian was authorised to take possession and control of the property of the Tata Mills Limited at Bombay House. It will be useful to bear in mind the relevant provisions of Act 40 of 1983 :

"2. (a)-(c) * * *##

(d) 'textile undertaking' or 'the textile undertaking' means an undertaking specified in the second column of the First Schedule;

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3. (1) On and from the appointed day, the management of all the textile undertakings shall vest in the Central Government.

(2) The textile undertaking shall be deemed to include all assets, rights, leaseholds, powers, authorities and privileges of the textile company in relation to the said textile undertaking and all property, moveable and immovable, including lands, buildings, workshops, projects, stores, spares, instruments, machinery, equipment, automobiles and other vehicles, and goods under production or in transit, cash balances, reserve fund, investments and book debts and all other rights and interests in or arising out of such property as were, immediately before the appointed day, in the ownership, possession, power or control of the textile company whether within or outside India and all books of account, registers and all other documents of whatever nature relating thereto.

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14. (1) Any person who, -

(a) having in his possession or custody or under his control any property forming part of any of the textile undertakings, wrongfully withholds such property from the Custodian or any person authorised under this Act, or

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(d) wilfully withholds from, or fails to deliver to, the Custodian or any person authorised under this Act, any books, papers or other documents relating to such textile undertaking which may be in his possession, power or custody or under his control, or

(e) fails, without any reasonable excuse, to furnish information or particulars as provided in Section 4,

shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to ten thousand rupees, or with both."

8. The definite case of the petitioners throughout was that Petitioner 5, the Tata Mills Limited was permitted to use the (undetermined or undemarcated) space in Bombay House gratuitously and the Mills had no right, title or interest whatsoever to remain in any part or portion of the Bombay House. The circumstance that led to that arrangement as detailed in the writ petition was put forward before the High Court, to contend that since the Tata Mills Limited had no right, title or interest whatsoever in the Bombay House or any part thereof, no question of handing over or taking over possession of any part or portion of the Bombay House through the Custodian or his authorised representative arose. This was specifically stated by Petitioner 5 in its reply dated 18-1-1984 to the notice received from the third respondent (the appellant herein) dated 16-1-1984. In the said reply Petitioner 5 stated, thus :

"The entire Bombay House belongs to the Associated Building Co. Ltd. We have been permitted by the owner, the Associated Building Co. Ltd., to use part of the said Bombay House premises as registered office along with the registered offices of other three mills, namely, the Ahmedabad Advance Mills Ltd., the Swadeshi Mills Co. Ltd. and the Central India Spinning, Weaving and Manufacturing Co. Ltd.

We however, had not been allotted any specific part or portion of the said premises as registered office. In fact, since October 1982 we have been allowed to continue our registered office gratuitously. The records of the company will bear out this fact.

Under these circumstances, we wish to clarify that our company has no right, title or interest whatsoever in the Bombay House or any part or portion thereof of which possession could be handed over to you or your representative. In any event the registered office of our company does not form part of the textile undertaking over which the Central Government or Custodian has any right."

Petitioner 1, the owners of the property "Bombay House", in their communication dated 18-1-1984 to Respondent 3 (the appellant herein) stated thus :

"Re : Tata Mills Office at Bombay House.

We are informed by Tata Mills Limited that you have called upon them to hand over immediate possession and control of their office at Bombay House, Fort, Bombay.

We wish to clarify that we are the owners of the said property 'Bombay House'. We have allowed the Tata Mills Limited, the Swadeshi Mills Company Limited, the Ahmedabad Advance Mills Company Limited and the Central India Spinning, Weaving and Manufacturing Company Limited to have their registered offices in the

Bombay House premises. No specific portion has been allotted and allowed to be used by any of the said mills including Tata Mills Limited.

Since July 1982 Tata Mills Limited have stopped paying any compensation in respect of the joint use of portion of the Bombay House premises. From July 1982 onwards Tata Mills Limited has been using the premises gratuitously. These facts can be verified from the records of the said company. Tata Mills Limited has no right, title or interest whatsoever in Bombay House premises or any part or portion thereof.

No part or portion of Bombay House premises vests in the Central Government or the Custodian. We submit you have no right whatsoever to take possession thereof. We trust you will not take any action regarding Bombay House premises as mentioned in your letter dated 16-1-1984 addressed to Tata Mills Limited."

It is common ground that the respondents did not send any reply to the above communications sent by Petitioners 1 and 5. It is significant to note that the plea of the petitioners that the Tata Mills Limited was (only) permitted gratuitously to occupy the undivided and undemarcated portion of the Bombay House was never controverted specifically by the respondents either in any communication or in the counter-affidavits filed before the High Court. In the above circumstances, the short question which fell for determination before the High Court was, whether the occupation of undivided and undemarcated portion of the Bombay House by the Tata Mills Limited amounts to a right, power or authority or privilege so as to vest the said right in the Custodian.

9. We should remember that the management of the Tata Mills Limited was taken over on 19-10-1983. Nearly four months thereafter, by communication dated 16-1-1984, the third respondent intimated the Tata Mills Limited of its intention to take immediate possession and control of the premises in the Bombay House. In reply thereto Petitioner 5 by communication dated 18-1-1984 positively asserted that the Tata Mills Limited have not been allotted any specific portion or part in Bombay House and they were allowed to continue the registered office only gratuitously and it will be borne out from the records of the company. The respondents did not make any attempt to verify the records of the company to ascertain whether the statement of Petitioner 5 contained in its communication dated 18-1-1984, is true viz. that the Tata Mills Limited was using the premises in the Bombay House gratuitously and that no specific portion was allotted or allowed to be used by the said mills.

10. The High Court held that the plea of the respondents that the Tata Mills Limited was occupying the portion of the Bombay House as lessee (tenant) is based on no material. Indeed it was so conceded before the High Court. It was further found that even on the assumption that the Tata Mills Limited was permitted to occupy the portion of the Bombay House, as a licensee, it is only a personal right which is neither heritable nor transferable and there is no enforceable right in the Tata Mills Limited in that behalf. It was held by the High Court, that it will be futile to suggest that the Tata Mills Limited had any asset, power, authority or privilege as contemplated by Section 3(2) of the Act to authorise the Custodian to takeover the possession of any portion of the Bombay House. In the final analysis, the occupation by the Tata Mills Limited of a portion of the Bombay House gratuitously was found to be an unenforceable right and so the communication of the Custodian dated 16-1-1984 seeking possession and control of unspecified portion of Bombay House, was held to be without jurisdiction.

11. We heard learned Additional Solicitor General, Mr V.R. Reddy, who appeared on behalf of the

appellant and Mr Soli J. Sorabjee, Senior Counsel, who appeared on behalf of the respondents. Mr Reddy assailed the judgment of the High Court on the following grounds :

(1) The rival pleas put forward by the parties, were based on factual matters and some of them required evidence, in support thereof. In such circumstances, the High Court should have declined to exercise its discretionary jurisdiction vested in it under Article 226 of the Constitution of India.

At any rate the matter requires a detailed adjudication and so, the parties may be relegated to the ordinary remedy available at law to seek redress.

(2) Even on the merits, the High Court was in error in holding that no enforceable right vested in the Custodian under Section 3(2) of the Act to take possession of the premises wherein the registered office of the Tata Mills Ltd. in Bombay House was located.

12. On the other hand, Mr Soli J. Sorabjee, counsel for Petitioners 1 to 5 submitted that the maintainability of the writ petition was not put forward before the High Court either in the counter-affidavits filed or during arguments and on the basis of averments contained in the affidavits filed, parties joined issue and argued the matter. It is no longer open to the appellant to contend that the parties may be relegated to the ordinary remedy at law to seek redress. He further contended, that on merits, the High Court was justified in holding that the Tata Mills Limited had no enforceable or definite right in the space where the registered office was located in Bombay House and so the Controller was incompetent and could not seek possession or control of unspecified portion of Bombay House.

13. The affidavits filed in the case disclose that when Petitioners 1 and 5 were informed that immediate possession and control of the Tata Mills office at Bombay House will be taken, they promptly replied by communication dated 18-1-1984 that no specific part or portion of the Bombay House was allotted to the Tata Mills Limited, and the Mills were allowed to continue the registered office gratuitously and the records of the company will bear out this fact. The respondents were also informed that the Tata Mills Limited have no right, title or interest whatsoever in any portion of the Bombay House which could be handed over or taken possession of by the Custodian. The respondents did not care to verify the records of the company. The appellant should have gathered material to know the nature of the arrangement by which the registered office of the Tata Mills Limited was functioning in the Bombay House. Since the entire assets of the Tata Mills Limited had vested in the Government, the records should be available with the Custodian. He could have verified the records. He could have asked Petitioner 1 to produce relevant records, if any, available with it in that regard. When objection was taken regarding the basic facts, one would normally expect the respondents to verify the records and then only to proceed further in the matter, or to stay their hands and intimate the parties concerned that they will proceed only in accordance with law. This is the appropriate procedure to be adopted by any public or statutory authority placed in similar circumstances. The respondents totally failed to do so. Such inaction necessarily led to the filing of the writ petition. We are of the view that the writ petition filed by Petitioners 1 to 5, in the circumstances, is really a defensive action. The fact that Petitioners 1 to 5 figured eo nomine as petitioners in the writ petition, is irrelevant. The burden is on the respondent to prove that the Tata Mills Limited had any definite and enforceable right in Bombay House which vested in the respondents under Section 3 of the Act and capable of being enforced. This is a basic or jurisdictional fact which should have been proved by the respondents. The plea put forward by the

respondents that the occupation of the Tata Mills Limited of a portion of the Bombay House as tenants or that they had any enforceable right or power or asset was not based on any material. It was not substantiated at all. The plea of the petitioners stated in their communications dated 18-1-1984 and reiterated in the writ petition, was not disproved. In the above circumstances, the High Court, in our opinion, correctly reached the conclusion that the action of the respondents by addressing the letter dated 16-1-1984 seeking possession and control of unspecified portion of Bombay House, is without jurisdiction.

14. We are of the opinion that the respondents have totally failed to prove that there was any enforceable right or interest of the Tata Mills Ltd. in any portion of the Bombay House, and in the circumstances, no part or portion of the Bombay House, formerly occupied gratuitously by the Tata Mills Limited, vested in the Central Government under Section 3 of the Act. The assumption by the respondents to the contrary is not justified in law.

15. It is significant to note that no plea was taken in the counter-affidavits filed by the respondents that the writ petition is not maintainable or that further evidence is required to be taken to adjudicate the rival pleas put forward by the parties. We reject the plea so urged before us for the first time in this appeal. Having chosen to fight the case on the basis of affidavits, it is not open to the appellant (sic respondents) to contend that factual aspects involved leading of evidence and the High Court should have declined jurisdiction under Article 226 of the Constitution. The plea that the occupation of the Tata Mills Limited of a portion of the Bombay House was as a tenant or lessee or licensee or that there existed any power or asset, is based on no material, but mere assertion. Respondents had every opportunity to verify the relevant records to ascertain under what arrangement the Tata Mills Limited was occupying the undivided and undemarcated portion of the Bombay House for its registered office. Normally, the records of the Tata Mills Limited should be with the Custodian. Even if the relevant records were not available, the respondents could have required of Petitioner 1 or Petitioner 5, to produce whatever records were available with them, to probe into the matter further. They failed to do so. Instead, they acted at their ipse dixit to take possession of the premises in Bombay House. This was totally unreasonable and unjustified. So, on a consideration of the entire facts and circumstances, we are of opinion that the High Court was justified in exercising the jurisdiction vested in it under Article 226 of the Constitution. On merits, the respondents have no case either. We, therefore, affirm the judgment of the Bombay High Court dated 20-7-1993 and dismiss this appeal. However, there shall be no order as to costs in this appeal.