

SUPREME COURT OF INDIA

Stone India Ltd.

Vs.

Board of Trustees, Port of Calcutta

C.A.No.5158 of 2005

(Tarun Chatterjee and Surinder Singh Nijjar JJ.)

07.12.2009

ORDER

Surinder Singh Nijjar, J.

1. This appeal is directed against the judgment and order dated 5.2.2004 passed by the High Court at Calcutta in MAT No.3993 of 2000. By the aforesaid judgment the Division Bench has upheld the judgment and order dated 30.8.2000 passed by the learned Single Judge whereby the learned Single Judge dismissed the writ petition challenging the newly added clause permitting 25% increase in rent every ten years and the huge amount on account of arrears of rent claimed by the respondents from the appellants for the plots of land leased to the appellants.

2. The appellants are assignees of two separate leases under the respondents, Calcutta Port Trusts. The leases were granted in respect of the Plots at Taratola Road.

“These leases were granted by the respondents in the year 1947 for an initial period of 30 years. The lease deeds contained identical provisions for two further renewals of 30 years each, at the option of the lessees. According to the appellants the renewal clause in both the leases provided that the renewal would be "at such rate of rent to be fixed by the Commissioners in accordance with the rates then prevailing for land in the neighbourhood of a similar character and with and subject to the like covenants, conditions and provisions as are in and by these presents reserved and contained." According to the appellants at the time of renewal the rent was liable to be enhanced (taking into account neighbourhood rents), but all other provisions of the original lease were to be maintained.”

3. The appellants expressed the desire for a renewal of the leases for another 30 years, which expired on 30.6.1977. The respondents by communications dated 17.10.1977 and 29.12.1977 offered the appellants, renewal of the leases of the Plots on similar terms and conditions. However, the letters contained an identical stipulation as follows:

"5. The renewal will be subject to the following conditions, besides other general conditions as embodied in the Trustees' standard lease from:-
XX

(iv) the lease will contain clause reserving to the Trustees the right to raise the rate of rent every 10 years during the initial period of the lease and also during the optional period of the lease upto 25% for the schedule rent prevailing at such time whichever is higher...."

4. At the same time the letters purported to enhance the rent from the original sum of Rs.2,484.37 to Rs.17,226.40 (an increase by 700%). Appellants protested against the unilateral illegal action of the respondents.

"However, the appellants started to pay the enhanced rent, under protest. The draft lease deeds which were sent to the appellants on 15.11.1978 were not signed by the appellants. On 20.1.1983, the respondents purported to notify a schedule of rent charges specifying the rent to be charged for plots of land in various localities. By letter dated 23.7.1987, the appellants were informed about the increase in rent under the lease deeds, upto the schedule rate of rent, under the clause for enhancement of rent every ten years."

5. The Notification dated 20.1.1983 and the letter dated 23.7.1987 were challenged by the appellants by way of writ petition under Article 226 of the Constitution of India. The aforesaid writ petition remained pending in the High Court till 30.8.2000.

6. We may notice here the submissions made before the High Court. It was submitted that the notification dated 20.1.1983 would not be applicable to the appellants as the rights and obligations of the parties were governed by the original renewal clause. Hence communication dated 23.7.1987 was arbitrary and an abuse of discretionary powers. It was claimed that the increase in rent is arbitrary and violates Article 14 of the Constitution of India. It was also pleaded that purported increase of rent is whimsical. Therefore, a prayer was made for recall of the notification dated 20.1.1983 and notification dated 23.7.1987.

7. On the other hand, it was pleaded by the respondent-Board of Trustees, Port of Calcutta that the respondents had the power under Section 49 of the *Major Port Trusts Act, 1963*, inter alia, to frame scale of rates from time to time for use of the properties belonging to the respondents- Port Trust of Calcutta. It was also submitted on behalf of the respondents before the learned Single Judge that the matter is essentially contractual in nature. The appellants having voluntarily entered into the lease agreements were bound to accept the renewal on the stipulated conditions.

8. The appellants submitted before the learned Single Judge that in view of the law laid down by the Supreme Court in numerous judgments including the judgment in the case of *Ramana Dayaram Shetty vs. International Airport Authority of India and Ors.*¹, it was no longer permissible for the respondents to submit that no writ would lie against the Port Trust in

contractual matters. It would also be against the ratio of the law laid down by this Court in *Jamshed Homusji Wadia vs. Board of Trustees, Port of Mumbai and another*².

9. On the other hand counsel for the respondents submitted that the matter is covered against the appellants by a judgment of the Division Bench of the Calcutta High Court in *The Board of Trustees for the Port of Calcutta & Anr. vs. Brooke Bond India Ltd. and Anr.* (dated 21.08.1997 being matter No.2419 of 1986). According to the respondents the said judgment which also pertains to the Port of Calcutta had specifically held that the parties are squarely governed by the explicit terms and conditions in the contract. If it is provided that at the end of 10 years the landlord would be at liberty to raise the rent either at the rate of 25% of the rent originally fixed or as per the schedule of the rent as notified at the relevant time, the action of the Board would be legally justified. The Division Bench had even gone so far as to say that even an opportunity of hearing would not be necessary to be given to the lessee.

10. Learned Single Judge, upon consideration of the above submissions, held that the appellants voluntarily entered into the lease/licences with the respondents.

“Therefore, the matter is purely contractual. Therefore, the appellants are not entitled to seek redress under Article 226 of the Constitution for any breach of the covenants contained in the lease agreements. It is also held that the *Major Port Trust Act, 1963* is applicable to all major Ports. Sections 48 and 49 of the Act empower the Port authorities to fix/refix the rate of rent, which has been duly sanctioned by the Central Government. It is also held that this type of case comes within the purview of a matter of policy and it should be left to the authorities and the High Court will not make an investigation into fixation of rent. The learned Single Judge also held that the enhanced rent is neither arbitrary nor unreasonable.”

These findings were upheld by the Division Bench.

11. These findings have been challenged in this appeal by the appellants.

12. It is submitted before us by Mr. Bhaskar Gupta, learned senior counsel appearing for the appellants, that both the learned Single Judge as well as the Division Bench have not adverted to the primary challenge of the appellants. According to the learned counsel the lease was executed in the year 1947. At that time the Major Port Trust had not been enacted. Therefore, no reliance could have been placed on any notification issued under Section 49. Notifications dated 20.1.1983 and the communication dated 23.7.1987 cannot be made applicable to the appellants. The rights of the appellants qua the demised lands were given by the lease deeds validly executed between the parties. The respondents had quite illegally through letters dated 17.10.1977 and 29.12.1977 purported to add an additional clause to the lease deeds providing for enhancement of rent as contained in clause 5(iv) of the aforesaid letters. The appellants objected to the arbitrary enhancement through letters dated 4.11.1977 and 21.1.1978. It is for this reason that draft lease which was sent for signatures of the appellants on 15.11.1978 was not signed by the appellants. Even thereafter the Port Trust purported to increase the rent firstly on 23.7.1987 and secondly on 17.1.1988. The arrears are

being claimed on the basis of illegal enhancement. Learned counsel submitted that the renewal of the lease at the expiry of 30 years period was automatic. It was a unilateral act of the appellant and consent of the lessor was wholly unnecessary. At the time of renewal the respondent-Board was at liberty to refix the rent as stipulated in the original lease deeds. Learned counsel also submitted that Clause 5 sub-clause (iv) in the two letters cannot be made applicable to the appellants. There has to be strict compliance with the provisions of the lease deeds which do not provide any periodic increase in rent at the interval of every 10 years.

“Learned senior counsel further submitted that the renewal clause in the lease deeds clearly provides that the lessee shall be entitled to seek renewal for a period of 30 years. The clause further provides for a further period of 30 years at such rates of rent to be fixed by the Commissioners. This clause only entitles the Commissioner to fix the new rent by taking into account the prevailing rate in the locality. Such fixation has to be for 30 years. There can be no further revisions at interval of every 10 years. Learned counsel also submitted the finding of the learned Single Judge that no writ would be maintainable in contractual matters is against the settled law by the Supreme Court in a catena of judgments. He has made reference to a number of judgments in support of the submission that action of the respondents had to conform to the mandate of Article 14 of the Constitution of India. It could not be arbitrary. According to him the 20.1.1983 Notification is being made applicable to the appellant without legal sanction as the rights of appellants are entirely covered under the lease deeds.”

13. On the other hand, Mr. Parag P. Tripathi, learned Additional Solicitor General submitted that the appellants have now argued a wholly new case which was not argued before the High Court. He has submitted that in any event the writ petition ought to have been dismissed at the threshold only on the ground of delay and laches. The cause of action, if any, arose to the appellant in the year 1977 when the letters dated 17.10.1977 and 29.12.1977 were sent to them. But the writ petition was not filed till 17th of February, 1988.

“Even otherwise, according to him, the 10 years enhancement on 23.7.1987 was pursuant to the draft lease which had been sent to the appellants on 15.11.1978. He has sought to justify the action of the respondents. According to him the enhancement in rent after a period of every 10 years was necessary to put the appellants lease hold rights at par with other lease holders of the property belonging to the Port Trust. Since, other lease holders are paying lease rental at the schedule rate as fixed under various Notifications issued by the Port Trust the increase in the rent was necessary to bring the appellants at par with the schedule rates.

Therefore, the action of the respondents is reasonable and can be justified even under Article 14 of the Constitution of India. The lease rent has been fixed by the Commissioner in terms of clause 13 of the lease deeds which provide as under:

"13. Any statutory powers hereafter conferred upon the Commissioners shall apply to the premises and shall be deemed to be incorporated in these presents."

According to Mr. Tripathi by virtue of the aforesaid clause the various notifications issued by the Port Trust enhancing the rent periodically are deemed to be incorporated in the lease deeds. Therefore, the proviso relied upon by the appellants containing the original renewal clause has to be read along with clause

13. This would necessarily lead to a conclusion that the Notification dated 20.1.1983 would be applicable to the appellant. In fact, the land belonging to the appellants find mention at Serial Nos.16 and 17 of the schedule attached to the Notification. Therefore, the writ petition had been rightly dismissed by the learned Single Judge.

The Division Bench upheld the findings recorded by the learned Single Judge. Therefore, the order in appeal did not call for any interference."

14. The learned Single Judge seems to have dismissed the writ petitions for three reasons, viz :-

"1) The matter is purely contractual in nature.

Therefore in view of the law laid down by this Court in the case of *Radhakrishna Aggarwal v. State of Bihar*³, and also in *Bareilly Development Authority v. Ajai Pal Singh*⁴, no relief could be granted under Article 226 of the Constitution.

2) The Port Authorities are empowered to fix and enhance the rent under Sections 48 and 49 of the Major Port Trust Act, 1963.

3) What rent is to be fixed is a policy decision.

Even otherwise the Court will not interfere in the absence of proven mala fides.

The Division Bench simply upheld the aforesaid findings of the learned Single Judge."

15. Upon consideration of the entire matter, we are of the opinion that issues which were not agitated before the High Court either before the learned Single Judge or before the Division Bench are sought to be agitated in this Court for the first time. In the peculiar facts and circumstances of this case, it would be in the interest of justice to remand the matter back to the learned Single Judge of the High Court to re-determine the controversy between the parties after giving due opportunity to the parties to place on record any further material in support of their respective submissions. In view of the above the appeal is allowed. The judgments of the learned Single Judge dated 30.8.2000 and Division Bench dated 5.2.2004 are set aside. The matter is remanded back to the learned Single Judge of the High Court for a fresh decision on merits.

16. At this stage we are informed by Mr. Bhaskar Gupta that the respondents have started eviction proceedings against the appellants due to the expiry of lease and non-payment of the enhanced rent. In our opinion, it would be inappropriate to grant any stay in those proceedings. However, the appellants are at liberty to make necessary application before the appropriate court for appropriate relief in the second writ petition. The application if any made, shall be decided on merit. We may also notice here that as an interim measure by the order dated 5.8.2005 this Court had directed that pending disposal of the appeal, the appellants will pay to the respondents a sum of Rs.50,000/- and deposit a sum of Rs.50,000/- per month towards the rent without prejudice to the contentions of either party. The aforesaid amount has been deposited regularly with the Registry of this Court. We permit the respondents to withdraw the aforesaid amount. The respondents have also been in receipt of Rs.50,000/- per month which was directed to be paid by the appellant during the pendency of the appeal. However, in view of the remand and in view of the huge amount in arrears (though according to Mr. Gupta, there are no arrears) we direct that the appellants shall pay at least a sum of Rs. 2 lakhs per month during the pendency of the proceedings before the High Court subject to any further revision that may be made by the High Court, in any future orders.

17. With the aforesaid observations, the matter is remanded back to the learned Single Judge for deciding the writ petition on merits. We request the learned Single Judge of the High Court to decide the writ petition finally within a period of six months from the date of receipt of a copy of this order.

¹*AIR 1979 SC 1628*

²*(2004) 3 SCC 214*

³*ATP 1977 SC 1496*

⁴*1989 (2) SCC 116*