

SUPREME COURT OF INDIA

Bengal Chemicals and Pharmaceuticals Limited

Vs.

Ajit Nain

C.A.No.5230-5231 of 2019

(R.Banumathi and A.S.Bhaopana,JJ.,)

09.07.2019

JUDGMENT

R.Banumathi,J.,

SLP (C) Nos.5230-31 of 2019

1. Leave granted.
2. These appeals arise out of the orders of the High Court of Calcutta in MAT No.586 of 2018 dated 10.12.2018 and 19.12.2018 in and by which the High Court has quashed the order dated 01.10.2018 passed by the Estate Officer under sub-section (1) of Section 5 and sub-sections (2) & (2A) of Section 7 of the Act, 1971 in the application bearing CAN 9489 of 2018 and sig,,a,ureN0,verified remitted the matter to the concerned Estate Officer for consideration of the matter afresh.
3. Brief facts which led to filing of these appeals are as follows:-

Appellant No.1 is the owner of a limited Company, Government of India Enterprises known as Harvard House situated at No.168, Maniktala Main Road, PS Phoolbagan, Kolkata - 700 054. The property in question is a public premises within the meaning of premises as contemplated under the provisions of Section 2(e) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (Act No.40 of 1971).

4. Respondent No.1 was a lessee under appellant No.1 in respect of 6500 sq. ft., a three storied building along with an open space measuring 2575.13 sq. ft. in the said premises at No.168, Maniktala Main Road in terms of the lease agreement dated 21.08.1995 commencing on and from 01.06.1993 at the initial lease rent of Rs.55,000/- per month. Respondent No.1 has been running a Montessori School in the said building known as Harvard House and the entire schedule premises was leased out to respondent No.1-Ajit Nain in terms of the aforesaid lease agreement for 21 years.

5. As per terms of the lease dated 21.08.1995, it was specifically laid down that the lease rent will be enhanced at the rate of 10% every two years until expiry of the period of the lease. The aforesaid period of lease expired by efflux of time on 31.05.2014. Before expiry of lease period at the request of the respondent, a meeting was held on 20.5.2014 in the office of the appellant at Calcutta to consider the renewal of lease.

6. In response to letter dated 28.05.2014 of respondent No.1, appellant No.1 issued a letter dated 30.05.2014 proposing new terms and conditions for the extension of lease period. The communication between the parties led to the earlier round of litigation in WP No.28002(W) of 2017 before the High Court of Calcutta and the same was dismissed vide order dated 22.11.2017 by the Single Judge.

7. Respondent No.1 challenged the order dated 22.11.2017 in MAT No.2023 of 2017 before the High Court of Calcutta. The Division Bench disposed of the appeal by order dated 17.01.2018 with the direction that Union of India will appoint other person as the Estate Officer in place of the present Estate Officer and respondent No.1 to deposit Rs.25,00,000/- towards damages with appellant No.1 within five weeks. The court also directed respondent No.1 to pay the electricity charges. In compliance of the order of the High Court, respondent No.1 has deposited Rs.25,00,000/- and also arrears of electricity charges. In pursuance of the order of the Division Bench dated 17.01.2018, Shri Manotosh Bandhopadhaya, Assistant General Manager (QA) of appellant No.1 was appointed as new Estate Officer vide Gazette Notification No.58017/01/2018-PSU dated 09.03.2018 of Government of India.

8. The Estate Officer issued show cause notice to respondent No.1 on 23.05.2018 in pursuance of clause (b)(ii) of sub-section (2) of Section 4 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 calling upon him to appear before the Estate Officer and also called upon respondent No.1 to pay the damages with interest. The Estate Officer granted number of hearings to respondent No.1 viz. 04.06.2018, 15.06.2018.

9. Being aggrieved, respondent No.1 challenged the notice dated 23.05.2018 and filed a second writ petition being WP No.7934(W) of 2018 before the High Court of Calcutta. The Single Judge of the High Court vide order dated 19.06.2018 dismissed the writ petition by extending the time to file the show cause to the notices.

10. Being aggrieved by the dismissal of the writ petition, respondent No.1 filed an appeal in MAT No.586 of 2018. No stay was granted by the Division Bench in the said appeal nor any direction was issued by the High Court not to proceed with the hearing of the eviction proceedings. As there was no stay granted by the Division Bench in MAT No.586 of 2018, the Estate Officer proceeded with the eviction proceedings. The Estate Officer granted as much as five further hearings dated 29.06.2018, 17.07.2018, 27.07.2018, 07.08.2018 and 21.08.2018. The Estate Officer vide order dated 01.10.2018 passed the eviction order directing respondent No.1 to vacate the premises within a week from the date of the eviction order. By the said order dated 01.10.2018, the Estate Officer assessed the damages and interest at Rs.4,61,63,624/- payable by respondent No.1 (Damages Rs.3,30,33,000/- plus interest at Rs.1,31,30,624/-).

11. Being aggrieved by the order of eviction, respondent No.1 filed an application being CAN No.9489 of 2018. The High Court vide impugned order set aside the order dated 01.10.2018 passed by the Estate Officer and remitted the matter to the Estate Officer to consider the matter afresh in accordance with law. Being aggrieved, appellant No.1-Bengal Chemicals and Pharmaceuticals Limited has filed these appeals. Respondent No.1 entered appearance and filed a detailed counter affidavit.

12. We have heard Mr. Sarad Kumar Singhanian, learned counsel appearing for the appellants and Mr. Biswaroop Bhattacharya, learned counsel appearing for respondent No.1. We have perused the impugned judgment and other materials on record and carefully considered the matter.

13. The learned counsel appearing for the appellants has submitted that respondent No.1 is running a school in the premises comprising of 6500 sq. ft. with open space measuring 2575.13 sq. ft. and respondent No.1 is enjoying the property for commercial purpose of running the school since 01.06.2014 without payment of any rent which is calculated approximately Rs.4.61 crores as assessed by the Estate Officer which is payable to appellant No.1. It was submitted that since respondent No.1 has not paid the rent, the Estate Officer rightly concluded that respondent No.1 is an unauthorized occupant and passed the order under Section 5(1) and sub-section (2) and (2A) of Section 7 of the Act. It was further urged that respondent No.1 has the right to file an appeal against the order dated 01.10.2018 passed by the Estate Officer under the provisions of Section 9 of the Act only before the Appellate Court that is the District Judge of the district and the writ petition filed is not maintainable.

14. The learned counsel appearing for respondent No.1 has submitted that by taking judicial notice of the fact of involvement of the previous Estate Officer in the eviction proceedings, the High Court has rightly set aside the order of eviction dated 01.10.2018 passed by the Estate Officer. It was submitted that no sufficient opportunity was afforded to respondent No.1 and the quantum of damages fixed by the Estate Officer is arbitrary and therefore, respondent No.1 is justified in challenging the order of the Estate Officer before the High Court in the pending appeal. The learned counsel further submitted that a rent of Rs.21/- per sq. ft. cannot all of a sudden become Rs.50/- per sq. ft. without any rhyme or reason and respondent No.1 has always been ready to pay a reasonable rent and not a rent which is unilaterally imposed on him. It was further submitted that in compliance with the order of the High Court dated 17.01.2018, respondent No.1 has deposited Rs.25,00,000/- and also paid the electricity charges which shows the bona fide of respondent-tenant.

15. In the nature of the order which we propose to pass, we are not inclined to go into the merits of the rival contentions of the parties. Admittedly, the lease has come to an end on 31.05.2014 by efflux of time. According to respondent No.1, the meeting was held on 20.05.2014 in the office of appellant No.1 and there was discussion on the question of renewal of lease. It is stated that appellant No.1 has forwarded a letter on 30.05.2014 to respondent No.1 for further renewal of lease subject to the acceptance of the terms:- (i) from June 20, 2014, the rent of the covered space as well as the open space shall be at Rs.50/- per sq. ft. subject to increase of 10% for every two years; (ii) the tenure of the

agreement will be three years and thereafter, the agreement may be renewed for further period upon mutual discussion between the parties. The terms proposed by appellant No.1 in the said letter dated 30.05.2014 was not agreeable to respondent No.1. According to respondent No.1, as per the terms of the lease, the rent payable was only Rs.1,42,656/- per month.

16. Be that as it may, admittedly, from 01.06.2014, respondent No.1 has not paid the rent except the amount of Rs.25,00,000/- which he has deposited in compliance with the order of the High Court dated 17.01.2018. In the proceeding before the Estate Officer, respondent No.1 has not put forth his defence; respondent No.1 was only taking adjournments on the ground of pendency of the appeal before the High Court in MAT No.586 of 2018. In our view, sufficient opportunity has to be given to respondent No.1 and the order of the High Court remitting the matter to the Estate Officer therefore, has to be maintained, however, subject to respondent No.1 paying the reasonable amount as damages by way of interim measure for use and occupation. As pointed out earlier, respondent No.1 is in occupation of land and building measuring 6500 sq. ft. consisting of three storied building plus open space of 2575.13 sq. ft. in Maniktala Main Road, Kolkata. Without prejudice to the contentions of both the parties, we direct respondent No.1 to pay an amount of Rs.2,50,000/- per month as damages for use and occupation from June, 2014 till May, 2018. From June, 2018, respondent No.1 shall pay an amount of Rs.3,00,000/- per month.

17. The order of the High Court dated 10.12.2018 corrected by the order dated 19.12.2018 passed in MAT No.586 of 2018 remitting the matter to the Estate Officer for consideration of the matter afresh in accordance with law is affirmed. These appeals are disposed of with the following directions and observations:-

(i) Respondent No.1 shall pay the amount of Rs.2,50,000/- per month as damages for use and occupation of the premises from June, 2014 till May, 2018. From June, 2018, respondent No.1 shall pay the amount of Rs.3,00,000/- per month as damages and continue to pay the same till consideration and disposal of the matter afresh by the Estate Officer;

(ii) The arrears payable by respondent No.1 (after deducting Rs.25,00,000/- already deposited by respondent No.1 in the High Court) shall be paid to appellant No.1 in three equal installments. The first installment is payable on or before 31st August, 2019. The next two installments are payable by the end of October, 2019 and December, 2019 respectively;

(iii) The damages stated above is tentative. The Estate Officer after providing opportunity to both the parties shall determine the appropriate quantum of damages and the payment presently made shall remain adjustable either way, dependent on the quantum to be decided;

(iv) After respondent No.1 deposits the entire arrears, the Estate Officer shall take up the matter and afford sufficient opportunity to both the parties and determine the

quantum of damages payable and pass appropriate orders in accordance with law.

(v) The appellant is permitted to withdraw the amount of Rs.25,00,000/- (Rupees Twenty Five Lakhs Only) deposited by respondent No.1 forthwith. Appellant No.1 is also permitted to withdraw the electricity charges deposited by respondent No.1, if not already withdrawn.

(vi) On deposit of the first installment of arrears, appellant No.1 shall ensure supply of water if it has been disconnected as alleged by respondent No.1.

(vii) On failure to deposit any one of the installments of arrears or the damages payable for use and occupation for every month, respondent No.1 shall forfeit the right of his defence and consideration. In such an event, the Estate Officer shall restore the proceedings and shall pass an order of eviction in accordance with law. Respondent No.1 shall in such event not be heard to make out any grievance relating to the eviction order; and

(viii) Parties shall bear their respective costs.

Judgment Referred.