

SUPREME COURT OF INDIA

West Bengal Small Industries Development Corporation Ltd.

Vs.

Sona Promoters Pvt. Ltd.

C.A.No.2201 of 2020

(S.Abdul Nazeer and Deepak Gupta,JJ.,)

18.03.2020

JUDGMENT

S.Abdul Nazeer,J.,

SLP(Civil) No. 36170 of 2014

1. Leave granted.

2. This appeal is directed against the order dated 19.09.2014 in G.A. 1172/2014, A.P.O.T. No.175/2014 with Writ Petition No. 36 of 14, whereby the Division Bench of the Calcutta High Court has allowed the Writ Petition and has quashed the order of eviction passed by appellant No.5 against respondent No.1.

3. Appellant No.1 herein, namely, the West Bengal Small Industries Development Corporation Ltd. (for short 'the Corporation') is a government of West Bengal undertaking engaged in developing, assisting and encouraging growth of small-scale industries within the State of West Bengal. It is a government company as defined under Section 617 of the Companies Act, 1956. The entire shareholding of the Corporation is held by the State Government and/or its nominees. The Directors appointed by the Corporation are the nominees of the State Government. The other appellants are the functionaries of the first appellant-Corporation.

4. Registered small-scale industries apply to the Corporation for allotment of industrial plots which are allotted at concessional rates to assist the small-scale industries to set up factories and to operate thereon. The Corporation acts as an arm of the State Government in providing industrial plots to small-scale industries. Whenever an allottee remains a non-starter or its production closes down, after giving reasonable opportunity to re-start/re-open, the plots of land and in some cases the structures, are resumed by the Corporation. The resumed plots/structures thereafter are re-allotted to other small-scale industries which are in the waitlist.

5. Bengal Potteries Limited, a company registered under the Companies Act, owned land with factory standing thereon situated at Tangra in the city of Calcutta. The company went into liquidation and all its immovable properties, including the factory with land

were put up for auction by the Calcutta High Court on “as is where is basis”. The Corporation participated in the auction and its bid was accepted by the company court. The Corporation became the owner of all the buildings and structures along with all lands appurtenant thereto and all assets therein.

6. After purchase of the said property, the Corporation decided to set up a small-scale industrial zone according to the site plan which was sanctioned by the concerned authorities.

7. Thereafter, the Corporation, after demolition of the existing structure, wherever necessary, constructed an administrative block, set up adequate infrastructure, divided the area into small plots and invited applications from small-scale industrial units for leasing out of such plots and for construction of small-scale industrial units.

8. On an application by respondent No.1, the Corporation executed a first lease deed dated 14.12.2007 in favour of the said respondent in respect of plot Nos. 7 and 15 being part of Tangra Industrial Estate, Phase-II for setting up of a small-scale industry on the terms and conditions mentioned therein. On 17.01.2008, the possession of these two plots was handed over to respondent No.1. Another lease deed dated 04.03.2009, in respect of plot No.8 was executed in the same industrial area in favour of respondent No.1. Mutation process of the said three plots was completed on 26.09.2012 by the Calcutta Municipal Corporation.

9. On 10.10.2012, the Corporation issued a notice calling upon respondent No.1 to show-cause as to why the tenancy should not be terminated for violation of the terms of the lease. This notice was issued invoking clause 3 of the lease deed. Respondent No.1 submitted a reply dated 06.11.2012 to the show-cause notice. After hearing, respondent No.1 was informed by a letter dated 12.12.2015 that three months’ time had been extended to commence construction work at the plots. Since nothing was done, the prescribed authority, by notice dated 09.11.2013, terminated the lease deed in accordance with Section 3(2) of the West Bengal Government Premises (Tenancy Regulation) Act, 1976, (for short ‘the Act’) read with Rule 3(1) of the West Bengal Government Premises (Tenancy and Regulation) Rules, 1976 (for short ‘the Rules’). The ground of termination was violation of clauses 2(c) and (g) of the lease deed, i.e. for not taking steps for construction of the factory building. By the said notice, respondent No.1 was directed to vacate the premises within 30 days.

10. Respondent No.1 preferred an appeal before the Managing Director of the Corporation, who is the designated Appellate Authority against the order of the prescribed authority.

11. While the appeal was pending, respondent Nos. 1 and 2 filed the writ petition in the High Court seeking, inter alia, setting aside of the termination notice dated 09.11.2013. The Appellate Authority by order dated 16.01.2014, upheld the order of the prescribed authority. By this order, respondent No.1 was asked to vacate the plots in question by 15.02.2014.

12. Being aggrieved by the order of the Appellate Authority, respondent No.1 filed a general application in the pending writ petition, inter alia, seeking to set aside and/or quash the order of the Appellate Authority dated 16.01.2014.

13. The learned Single Judge, considering the writ petition along with general application, passed ad-interim order restraining the Corporation from taking any steps for eviction of the writ- petitioners from the disputed plots of land until the disposal of the application. While passing the impugned order, the Learned Single Judge recorded that the issue involved in the writ petition relates to the applicability of the provisions of the Act in respect of the lease executed by the Corporation for plots of land without any structure thereon. It was therefore, held that there was, prima facie, case made out by the writ-petitioners and the balance of convenience lay in granting interim protection.

14. Being aggrieved and dissatisfied with the said order of the learned Single Judge, the Corporation and its functionaries preferred an appeal before the Division Bench. In addition, they sought stay of the order of the learned Single Judge by filing a separate application.

15. The Division Bench disposed of the appeal, as well as the writ petition by the impugned order holding that the Corporation is not a government undertaking and further held that the premises is not a government premises. Therefore, on both counts the Division Bench concluded that the Act did not apply to the premises in question. Accordingly, the appeal was dismissed and the writ petition was allowed.

16. Appearing for the appellants, Shri Bhaskar P. Gupta, learned Senior Counsel submits that the High Court has committed grave error in holding that the Corporation is not a Government undertaking. He submits that the appellant-Corporation is a Government company registered under the Companies Act, 1956. Hence, it owes its status as a body corporate to the Companies Act, 1956. The Memorandum and Article of Association of the Corporation demonstrated that it is fully under the administrative and financial control of the State Government. It is further contended that the High Court was not right in holding that the premises in question is not a Government premises within the meaning of Section 2(a) of the Act. The plot leased out to respondent No.1 was a part of the larger premises which included office building, etc. The entirety of the land, as well as the building must be construed as one unit which clearly falls within the definition of "Government premises".

17. On the other hand, Shri Debal Banerjee, learned Senior Counsel appearing for respondent Nos. 1 and 2 submits that the appellant-Corporation does not satisfy the definition of "Government undertaking" in Section 2(b) of the Act. Secondly, it is contended that the premises which is the subject matter of this appeal is not covered under the provisions of the Act. Bare land was leased out by the Corporation to respondent No.1. The said plot of land did not contain any structure. The expression "any premises" in Section 2(a) would by itself be wide enough to cover even bare land but since the term "premises" is defined in Section 2(c) of the Act, that definition would have to be inserted into the expression "Government premises" in Section 2(a). Otherwise, there would be repugnancy between Sections 2(a) and 2(c), which is to be avoided. Therefore, he prays for dismissal of the appeal.

18. Before considering the rival contentions of the parties, let us find out the object and purpose of the Act. Normally, the rights of the lessor and the lessee and the incidence of tenancy are governed by the Transfer of Property Act, 1882. The provision relating to termination of tenancy in case of breach of the conditions of the lease and recovery of possession from the lessee under the Transfer of Property Act is very time-consuming. Even, the execution of decree for possession is a complicated and time-consuming process. In order to avoid all these hurdles and to expedite the recovery of possession, the Legislature has enacted the Act. The preamble of the Act makes it clear that it has been enacted to provide for regulation of certain incidences of tenancy in relation to government premises in West Bengal and for matters connected therewith or incidental thereto.

19. Section 3 of the Act provides for termination of tenancy, which is as under:

“3. Termination of tenancy.- (1) Every tenancy held by a tenant in respect of a Government premises shall stand terminated upon the expiry of the period referred to in a notice to quit served upon such tenant in the prescribed manner. (2) A tenancy in respect of a Government premises shall stand automatically terminated without any notice to quit where the tenant has,-

(i) violated the terms of the lease, or [(ia) subsequently built a house or acquired (by purchase, gift, inheritance, lease, exchange or otherwise) a house or an apartment, either in his own name or in the name of any member of his family, within a reasonable distance from such Government premises. Explanation.- For the purposes of this section and section 3A,-

(a)“apartment” shall have the same meaning as in the West Bengal Apartment Ownership Act, 1972;

(b)“family” shall include parents and other relations of the tenant who ordinarily reside with him and are dependant on him;

(c)“reasonable distance” shall mean any distance not exceeding twenty-five kilometers, or]

(ii) made default in payment of rent for three consecutive months”. Provisos to Section 3 and the other sub-sections are not relevant for the purpose of this case.

20. The definition of the expressions “Government Premises”, “Government undertaking” and “Premises” are relevant. They are as under:

“2. Definitions.-

(a) “Government premises” means any premises which is owned by the State Government or by a Government undertaking but does not include the official residence of any person authorized to occupy and premises in consideration of the office which he holds under the State Government or a Government undertaking for the time being;

(b) “Government undertaking” means a body corporate constituted by or under a Central or State Act which is under the administrative control of the State Government or in which the State Government has exclusive proprietary interest;

(c) “premises” means any building or hut and includes part of a building or hut and a seat in a room, let separately, and also includes,-

(i) the gardens, grounds and out-houses, if any, appurtenant thereto,

(ii) any furniture supplied or any fittings or fixtures affixed for the use of the tenant in such building, hut or seat in, as the case may be.”

21. In the present case, the premises in question are not owned by the government. It is owned by the appellant-Corporation, which is a government company incorporated under the Companies Act, 1956. Therefore, the first question for consideration is whether the Corporation can be regarded as a “Government undertaking” so as to attract the applicability of the provisions of the Act in respect of the premises held by it.

22. It is an admitted position that the Corporation is registered under the Companies Act, 1956. The Corporation is under the administrative control of the State Government and almost all the shares of the Corporation, are held by the State Government, apart from a few shares which are held by IAS officers in their official capacity. It owes its status as a body corporate to the Companies Act enacted by the Parliament. In our considered view, the appellant-company is a “Government undertaking” as defined in Section 2(b) of the Act.

23. The second question for consideration is whether the premises owned by the Corporation and let out to respondent No.1 are government premises within the meaning of Section 2(a) of the Act. The term “Government premises” is defined in Section 2(a) as any premises which is owned by the State Government or by a Government undertaking but does not include the official residence of any person authorized to occupy the premises in consideration of the office which he holds under the State Government or a Government undertaking for the time being. It is clear from this definition that, it refers to any premises owned by the Government or a Government undertaking except those which are official residences of the persons authorized to occupy the said premises in consideration of the office which the government official holds under the State Government or under any Government undertaking for the time being.

24. The expression “premises” is defined in Section 2(c) of the Act. Therefore, a premises can be regarded as “Government premises” only when it satisfies the definition of “Government premises” under Section 2(a) of the Act read conjointly with the definition of “premises” under Section 2(c) of the Act. Government premises defined in Section 2(a) cannot be read in isolation of the definition of “premises” under Section 2(c) of the Act. In order to give complete meaning to the expression “Government premises”, we should first implant the definition of “premises” under Section 2(c) in the place of the “premises” appearing in Section 2(a) and then consider as to whether a premises is a Government premises or not. It is an undisputable canon of construction that when an expression is defined in the statute, unless there is anything repugnant in the subject or context, the expression has to be construed as having the same meaning assigned to it in the dictionary

clause of the statute. Therefore, the definition “premises” under Section 2(c) has to be read into the definition of “Government premises” under Section 2(a).

25. Thus, if we read the definition of “Government premises” appearing in Section 2(a) of the said Act conjointly with the definition of “premises” appearing in Section 2(c) of the said Act, it not only includes a building or a part of it or a hut or a part of it but also includes a seat in a room, let separately, and also includes the gardens, grounds and out-houses, if any, appurtenant thereto together with the furniture, all fittings and fixtures provided for the use of the tenant in such building, hut or a seat in a room let separately. Thus, when a seat in a room of a Government premises is let out to a tenant, certainly it will be a Government premises. Again, if a seat in a room is let out together with the gardens; grounds and out-houses, if any, appurtenant to a seat in a room, such tenancy will be of a “Government premises”.

26. The point for consideration before us is when neither a building nor a part of the building nor a hut nor a part of the hut nor a seat in a room is let out to a tenant but only bare land is let out to a tenant, can such tenancy be regarded as relating to a “Government premises” to attract the provisions of the Act. The expression “includes” is used in two places of the definition of “premises” in Section 2(c) and the expression “includes” which was used for the second time in the said definition without any doubt was included to expand the ambit of “Government premises” so as to attract the provisions of the said Act. The expression “appurtenant to it” carries special significance. We cannot read the definition of “premises” bereft of the expression “appurtenant to it”. The expression “appurtenant” in the context means ‘relating to’, ‘usually enjoyed’, ‘occupied with’ or ‘adjoining’. Therefore, if a garden, ground, or an out-house is let out along with building or hut or a seat in a room, such a garden, ground or an out-house becomes part of the “premises”. However, bare land has not been independently included in the definition of “premises”. Therefore, we have no hesitation to hold that if bare land is let out by the government and/or the government undertaking to its tenant, the incidence of such tenancy cannot be governed by the provisions of the Act and as such a tenant cannot be evicted by taking aid of the provisions of the Act.

27. In the instant case, it is an admitted position that the Corporation had purchased immovable properties including a factory with land belonging to the Bengal Potteries Ltd. The Corporation had become the owner of all the building and structures along with the land appurtenant thereto belonging to the said company. After purchase of the land, the Corporation decided to set up a small-scale industrial zone according to the site plan. The Corporation constructed an administrative block after demolition of the existing structure and wherever necessary, it divided the area into small plots. Respondent No.1 was allotted three plots of land, which did not contain any structure at the time of lease.

28. The lease in respect of these three plots of land was terminated for violation of clauses 2(c) and 2(g) of the lease deed. It is alleged in the show-cause notice at Annexure P-3 dated 10.10.2012, that respondent No.1 failed to take any steps for construction of the factory building as per clause 2(c) of the lease deed since taking over possession of the said plot. By letter dated 19.12.2012 (Annexure P-5), three months’ further time was extended for starting construction work on the plots in question. However, respondent

No.1 failed to start the construction of the factory building even during this extended period. Consequently, the tenancy in respect of these plots of land was terminated.

29. Thus, when the eviction proceedings were initiated, admittedly, the land in question did not contain any structures. If the bare land is let out by the government undertaking and it continues to be a bare land as on the date of initiation of eviction proceedings, the incidence of such tenancy cannot be governed by the provisions of the Act and such a tenant cannot be evicted by taking aid of the provisions of the Act. The material date is the date of initiation of the eviction proceedings. Had respondent No.1 put up the construction on the plots of land leased to it, and if the eviction is sought under Section 3 of the Act for violation of some other clauses of the lease deed or upon satisfaction of the conditions mentioned in sub-sections (1) and (2) of Section 3, the proceedings would have been maintainable. As noted above, the subject matter of this appeal continues to be a bare land as on the date of initiation of the proceedings.

30. Learned Senior Counsel for the appellants has laid emphasis on the fact that the plots leased to respondent No.1 were a part of the larger premises which included office building etc. and that the plots leased cannot be treated separately since it is a part of larger plot of land including building. The entirety of the land as well as building must be construed as one unit which clearly falls within the definition of "Government premises". Hence, the eviction proceedings clearly fall within the ambit of the Act.

31. It is true that, after purchase of the property from Bengal Potteries Limited, the old buildings were demolished, wherever it was necessary, and the administrative block was constructed. Rest of the area was divided into small plots of land. Three such plots were leased to respondent No.1. The plots leased did not contain any structures. The eviction proceedings was in respect of these plots of land and not the entire property purchased by the Corporation from Bengal Potteries Limited. Therefore, we are not in agreement with the learned senior counsel for the Corporation that the entire land as well as building are to be construed as one unit because the entire land with the building has not been leased to respondent No.1. The lease was in respect of three plots of land which did not contain any building and these plots of land do not satisfy the requirements of definition of "Government premises" within the meaning of Section 2(a) read with Section 2(c) of the Act.

32. Therefore, we hold that the eviction proceedings initiated by the Corporation against respondent No.1 under the Act was without jurisdiction.

33. The High Court, in the concluding paragraph of the impugned judgment, has held that the Corporation has to seek eviction of respondent No.1 from the premises in question under the provisions of the West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962. We are entirely in agreement with this view of the High Court.

34. To conclude, while holding that the appellant-Corporation is a government undertaking within the meaning of Section 2(b) of the Act, we further hold that the premises in question does not come within the definition of Section 2(a) of the Act. Reserving liberty to the appellants to seek eviction of respondent Nos. 1 and 2 from the

land in question under West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962, we dismiss this appeal. However, there will be no order as to costs.