

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for orders on :04/03/2020

Order passed on :09/06/2020

WP227 No. 60 of 2020

1. Indian Oil Corporation Ltd., Indian Oil Building, G-9, Ali Yavar Jang Road, Bandra (East), Mumbai 400051 (Maharashtra), District : Mumbai, Maharashtra
2. Indian Oil Corporation Ltd., Through- Chief Divisional Retail Sales Manager, Raipur Division Office, Indian Oil Bhawan, Rajiv Gandhi Mark, VIP Road, Post- Ravigram, Police Station Telibanda, Raipur.

---- Petitioners/Appellants

Versus

1. Steel Authority of India, C/o Bhilai Steel Plant, Through- Assistant General Manager, (Land and Lease), Bhilai Steel Plant, Bhilai, Post and Police Station Bhilai, District- Durg, Chhattisgarh. (Applicant), District : Durg, Chhattisgarh
2. M/s Chopda Auto Centre, Forest Avenue, Sector- 10, Bhilai Nagar, District- Durg, Chhattisgarh. (Non-Applicant No. 3), District : Durg, Chhattisgarh

----Respondents

For Petitioners – Shri Anand Shukla, Advocate.

For Respondent No.1– Shri Kishore Bhaduri and Shri Sunny Agrawal, Advocates.

For Respondent No.2– Shri V.G. Tamaskar, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

09-06-2020

1. This petition has been brought challenging the legality and validity of the order dated 22-04-2019 passed by the Fourth Additional District Judge, Durg in Miscellaneous Civil Appeal No.53/2017 by which the ex-parte order dated 22-09-2017 passed by the Estate Officer holding the petitioners as unauthorized occupants of the suit land has been upheld.

2. The petitioners are Government of India enterprise. The suit land situated in Bhilai Town admeasuring 18000 s.f. was given on lease to the petitioners, for which a lease deed was executed on 10-06-1981. Subsequent to that, the petitioners have raised construction and started a retail outlet of

petroleum products. The period of lease was for 33 years which has expired on 20-03-2013. According to the clause 5(1) of the lease deed, the petitioners had entitlement to apply for extension of the lease on the terms of enhancement of rent and that the enhancement agreed shall not to exceed 50% of previous rent.

The respondent No.1 has by letter dated 03-04-2013 demanded land premium of Rs.1,35,00,000/- and security deposit Rs.10,80,000/- and further ground rent at 1% of land premium and 2% of the service charge of land premium vide Annexure-P/6. The condition laid down by respondent No.1 was not acceptable to the petitioners.

Respondent No.1 then vide letter dated 01-07-2013 informed the petitioners that the lease was non-renewable. Therefore, the petitioners are now unauthorized occupants of the disputed property.

The objections raised and the correspondence made by the petitioners with respondent No.1 have remained unanswered. In the meanwhile, respondent No.2 who is a dealer of the said petrol pump has filed a W.P.(C) No.1098/2014 in this High Court and by order dated 19-06-2014 an order has been passed to maintain status quo on the lease land.

Respondent No.1 has moved an application before the Estate Officer under Section 4 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (in short 'the Act, 1971), consequent to which, a show cause notice has been issued by the Estate Officer to the petitioners asking why they should not be evicted from the lease land, to which the petitioners have replied.

The petitioners have then filed WPC No.2382/2014 challenging the notice dated 04/06-06-2014 by the Estate Officer, earlier petition WPC No.1098/2014 and WPC No.2382/2014 both were disposed off vide order dated 18-11-2015 on the basis of the order of Division Bench in Writ Appeal No.438/2015. In Writ Appeal No.438/2015, the Division Bench of this Court has

made observations and disposed off the case.

The petitioners have then filed civil suit praying for reliefs of declaration and permanent injunction against respondent No.1 and also filed application under Order 39 Rule 1 and 2 of the CPC.

The Estate Officer has passed the order dated 21-10-2017 directing the petitioners to vacate the suit premises. The petitioners then preferred appeal under Section 9 of the Act, 1971 and the learned appellate Court has dismissed the appeal by the impugned order.

3. It is submitted by learned counsel for the petitioners that sub-section 6 of clause 5 of the lease agreement provided that if the lessee wants to retain the lease in question for further 33 years, then a fresh lease can be executed. Sub-clause 1 clause 5 further provides that lesser shall be entitled for enhanced rent but the increase would not exceed 50%. It is submitted that ignoring this agreement clause respondent No.1 has made demand of such premium, security deposit and enhanced rent, which is not acceptable to the petitioners because the agreement clause provides only for the enhancement of the rent. It is submitted that respondent No.1 has no entitlement to demand deposit of premium, as it has already been paid at the first instance when the lease deed was executed, therefore, the land premium is payable only once. Hence, the objection raised by the petitioners should have been entertained and the lease deed should have been extended.

It is submitted that respondent No.1 had suppressed the pendency of WPC No.1098/2014 and moved application before the Estate Officer under Section 4 of the Act, 1971. In Writ Appeal filed by the respondent the Division Bench of this Court has made serious observation that the respondent is a State within the meaning of Article 12 of the Constitution. Therefore, it should not pray like a private litigant. The filing of proceedings before the Estate Officer during pendency of the writ petition before the High Court was not

appreciated and deep anguish has been expressed.

The Estate Officer has passed the ex-parte order dated 21-10-2017 against the petitioners in which they have not been given proper opportunity of hearing. The application filed under Order 9 Rule 13 of the CPC has also been dismissed by him and thereafter the appeal has also been dismissed erroneously, illegally and arbitrarily. The ex-parte order passed by the Estate Officer against the petitioners was fit to be set aside.

Reliance has been placed on the judgment of Hon'ble the Supreme Court in the matter of **V.K. Industries and others Vs. M.P. Electricity Board Rampur, Jabalpur**, (2002) SAR (Civil) 307 and the judgment of this Court in the matter of Niwas Ram Vs. Pawan Kumar Singhania in Miscellaneous Appeal No. 5 of 2018 delivered on 10-02-2020.

The other objection raised by the petitioners is this, that according to Section 9 of the Act, 1971, an appeal shall lie from order of Estate Officer before a District Judge of the District or other judicial officer in their District, of not less than 10 years standing as a District Judge who may be designated in this behalf. The learned Additional District Judge who has entertained and decided this appeal was not qualified to decide the same as per requirement under Section 9 of the Act, 1971. She has been promoted to the post of District Judge in the year 2014, therefore, the period of her standing as a District Judge is only five years.

Second objection raised is this, that according to Section 3 of the Act, 1971, the person who is qualified to be appointed as Estate Officer, should be Gazetted Officer of the Government or Officers of equivalent rank of the Statutory Authority. The Estate Officer in this case is not a Gazetted Officer of the Government, therefore, he had no authority to act against the petitioners invoking the powers under Section 4 and 5 of the Act, 1971. Hence, the whole proceeding against the petitioners initiated by the Estate Officer is illegal and

similarly the order of the appellate Court is also not an order in the eyes of law as it has not been passed by a competent Court. Hence, it is prayed that this petition be allowed and the relief be granted to the petitioners.

4. Learned counsel for respondent No.1 opposes the submission made by learned counsel for the petitioners and submits that the petition filed under Article 227 of the Constitution of India is not maintainable. The petitioners' company enjoying the disputed property without any authority after expiry of the lease on 2013 and total amount due for recovery as per the order of the Estate Officer and confirmed by the appellate Court is Rs.03,03,46,167.40/-. It is submitted that the petitioners side is misinterpreting the lease deed. The sub-clause 6 of clause 5 provides, that if the lessee wants to retain the taken land for further period of 33 years, then the notice should be given to the lesser six months prior to the date of expiry of said period and the lesser may grant such lease in respect of the land in the such lease, there is no use of word renewal of the lease deed used in that clause. Hence, the petitioners have no entitlement on that ground which has been raised by them in this petition. As there is neither a fresh lease nor renewal of lease, therefore, the lease standing in favour of the petitioners stands terminated since the year 2013.

Placing reliance on the judgment of this Court in WPC No.6956/2011 and WA No.76/2013 parties being Bharat Prasad Sharma Vs. Union of India and others, in which the Division Bench of this Court has held that officer of Steel Authority of India Limited can be appointed as Estate Officer under the Act, 1971, therefore, the Estate Officer has lawfully proceeded against the petitioners and lawfully passed the order which has been lawfully confirmed by the appellate Court which needs no interference.

5. Learned counsel for respondent No.2 adopts the arguments submitted by learned counsel for the petitioners side and places reliance on the judgment of Hon'ble the Supreme Court in the matter of **Dr. S.L. Agrawal Vs. General**

Manager, Hindustan Steel Ltd. Bhilai, 1971 M.P.L.J. 825 and the judgment in case of **Steel Authority of India Ltd. Vs. Shri Ambica Mills Limited and others**, AIR 1998 SC 418 on this point that Steel Authority India Limited is not a department of Union of India. On this basis it is argued that the Estate Officer has no authority to proceed for eviction against the petitioners. Further reliance has been placed on the judgment of Hon'ble the Supreme Court in the matter of **Dr. Jagmittar Sain Bhagat Vs. Dir., Health Services Haryana & Others**, AIR 2013 SC 3060. It is submitted that the question of jurisdiction can be raised at any stage as it goes to the root of the matter, doctrine of waiver does not apply in such a case.

6. In reply, it is submitted by learned counsel for the petitioners that respondent No.1 has never made any demand for payment of arrears of rent. Subsequent to the date of termination of the lease, the petitioners have tendered rent which has been accepted by respondent No.1, which implies that their lease has been renewed. It is further submitted that the Estate Officer is the officer of Union of India because he has been appointed by the Central Government by Ministry of Steel vide notification dated 24-04-2014, copy of which is attached at page No.96 who does not have qualification as required under Section 3 of the Act, 1971. The impugned order and the order of Estate Officer both suffer from illegality and infirmity which are not at all sustainable.

7. Heard learned counsel for the parties and perused the documents.

8. It would be appropriate to decide at first the objection raised by the petitioners regarding legality of the proceeding before the Estate Officer and also the proceeding before the appellate Court.

9. Section 3 of the Act, 1971 is as under:-

3. Appointment of estate officers.—The Central Government may, by notification in the Official Gazette,—

(a) appoint such persons, being gazetted officers of Government or of the Government

of any Union Territory or officers of equivalent rank of the statutory authority, as it thinks fit, to be estate officers for the purposes of this Act:

Provided that no officer of the Secretariat of the Rajya Sabha shall be so appointed except after consultation with the Chairman of the Rajya Sabha and no officer of the Secretariat of the Lok Sabha shall be so appointed except after consultation with the Speaker of the Lok Sabha:

Provided further that an officer of a statutory authority shall only be appointed as an estate officer in respect of the public premises controlled by that authority;

Provided also that the Custodian, Deputy Custodian and Assistant Custodian of the enemy property appointed under section 3 of the Enemy Property Act, 1968 (34 of 1968) shall be deemed to have been appointed as the Estate Officer in respect of those enemy property, being the public premises, referred to in sub-clause (4) of clause (e) of section 2 of this Act for which they had been appointed as the Custodian, Deputy Custodian and Assistant Custodian under section 3 of the Enemy Property Act, 1968 (34 of 1968).

(b) define the local limits within which, or the categories of public premises in respect of which, the estate officers shall exercise the powers conferred, and perform the duties imposed, on estate officers by or under this Act.”

10. It has not been denied that the Estate Officer in this case is an officer of Steel Authority of India Limited. The Division Bench of this Court in case of *Bharat Prasad Sharma Vs. Union of India* (supra) has very clearly held that an officer of Steel Authority of India Limited can be appointed as Estate Officer under the Act, 1971 and further the judgment of Hon'ble the Supreme Court in *Dr. S.L. Agrawal Vs. General Manager, Hindustan Steel Ltd. Bhilai* (supra) and in *Steel Authority of India Ltd. Vs. Shri Ambica Mills Limited and others* (supra) it has been held that the Steel Authority India Limited is not a department of India. The Steel Authority of India Limited is an enterprises of Union of India.

11. The public premises has been defined under Section 2(e) of the Act, 1971 which is as follows:-

2.(e) “public premises” means—

(1) any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Central Government, and includes any such premises which have been placed by that Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1980 (61 of 1980), under the control of the Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that Secretariat;

(2) any premises belonging to, or taken on lease by, or on behalf of,—

- (i) any company as defined in section 3 of the Companies Act, 2013 (18 of 2013), in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government or any company which is a subsidiary (within the meaning of that Act) of the first-mentioned company;
- (ii) any corporation (not being a company as defined in section 3 of the Companies Act, 2013 (18 of 2013), or a local authority) established by or under a Central Act and owned or controlled by the Central Government;
- (iii) any company as defined in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013) in which not less than fifty-one per cent. of the paid-up capital is held partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary (within the meaning of that Act) of the first-mentioned company and which carries on the business of public transport including metro railway.
- (iiia) any University established or incorporated by any Central Act.
- (iv) any institute incorporated by the Institutes of Technology Act, 1961 (59 of 1961)
- (v) any Board of Trustees or any successor company constituted under or referred to in the Major Port Trusts Act, 1963 (38 of 1963);
- (vi) the Bhakra Management Board constituted under section 79 of the Punjab Reorganisation Act, 1966 (31 of 1966), and that Board as and when re-named as the Bhakra-Beas Management Board under sub-section (6) of section 80 of that Act,
- (vii) any State Government or the Government of any Union territory situated in the National Capital Territory of Delhi or in any other Union territory,
- (viii) any Cantonment Board constituted under the Cantonments Act, 1924 (2 of 1924); and

(3) in relation to the National Capital Territory of Delhi—

- (i) any premises belonging to the Council as defined in clause (9) of section 2 of the New Delhi Municipal Council Act, 1994 (44 of 1944) or Corporation or Corporations notified under sub-section (1) of section 3 of the Delhi Municipal Corporation Act, 1957 (66 of 1957), of Delhi, or any Municipal Committee or notified area committee;
- (ii) any premises belonging to the Delhi Development Authority, whether such premises are in the possession of, or leased out by, the said Authority; and,
- (iii) any premises belonging to, or taken on lease or requisitioned by, or on behalf of any State Government or the Government of any Union Territory;”
- (iv) any premises belonging to, or taken on lease by, or on behalf of any Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013).

(4) any premises of the enemy property as defined in clause (c) of section 2 of the Enemy Property Act, 1968 (34 of 1968);”

12. The disputed property in this case falls within the definition of Public Premises under Section 2(e) (2) for the simple reason that the Steel Authority of India Limited Bhilai Steel Plant, Bhilai is totally owned by the Central Government and there is no private partnership.

13. The definition of Statutory Authority is given under Section 2(f)(a) which is as follows:-

2.(fa) “statutory authority”, in relation to the public premises referred to in clause (e) of this section, means,—

(i) in respect of the public premises placed under the control of the Secretariat of either House of Parliament, the Secretariat of the concerned House of Parliament,

(ii) in respect of the public premises referred to in item (i) of sub-clause (2) and in item (iv) of sub-clause (3) of that clause, the company or the subsidiary company, as the case may be, referred to therein,

(iii) in respect of the public premises referred to in item (ii) of sub-clause (2) of that clause, the corporation referred to therein,

(iv) in respect of the public premises referred to, respectively, in items (iii), (iv), (v) (vi) and (vii) of sub-clause (2) of that clause, the University, Institute or Board, as the case may be, referred to therein, and

(v) in respect of the public premises referred to in sub-clause (3) of that clause, the Council, Corporation or Corporations, Committee or Authority, as the case may be, referred to in that sub-clause;”

14. The definition under Section 2(fa)(ii) very clearly shows that respondent No.1 is included within this definition.

15 The second proviso to Section 3(a) provides further that the officer of a statutory authority shall only be appointed as an estate officer in respect of the public premises controlled by that authorities, which means that respondent No.1 in capacity of statutory authority is empowered to appoint one of its officer as the Estate Officer and that has been done accordingly. Hence, on the basis of this discussion, I find no force in the argument submitted by the petitioners side that the Estate Officer has no authority to proceed against the petitioners

and respondent No.2 under Section 4 and 5 of the Act, 1971.

16. Second objection raised regarding the competency of the appellate Court needs consideration. Section 9 of the Act, 1971 is reproduced herein:-

“9. Appeals. – (1) An appeal shall lie from every order of the estate officer made in respect of any public premises under section 5 or section 5B or section 5C or section 7 to an appellate officer who shall be the district judge of the district in which the public premises are situate or such other judicial officer in that district of not less than ten years' standing as the district judge may designate in this behalf.”

(2) xxxxxx xxxxxx

17. The provision gives a mandate as to who shall be the valid official making it clear that the appellate officer shall be a District Judge of the District in which the public premises are situated and/ or such other judicial officer to whom the District Judge may transfer the case in appeal, ensuring that the officer designated should be a District Judge of standing not less than 10 years. Section 9 of the CPC provides that the Court shall have jurisdiction to try of suit of civil nature excepting the suit of which their cognizance is either expressly or implidely barred. Section 96(1) of the CPC also provides that save as otherwise expressly provided in the body of this Code or any other law for the time being in force, an appeal shall lie from any decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decision of such Court. Similar words are used in Section 104 and 105 of the CPC which provide for appeal against order mentioning that “save as expressly provided in the body of this Code or any law for time being in force”. On reading these provisions, it appears to be clear that there is no restriction provided in the CPC for making of another enactment and for providing as to what order shall be appealable and which court shall be competent to hear the same. The judicial officer presiding as the Fourth Additional District Judge has been promoted from the post of Civil Judge, Senior Division to the post of District Judge entry level in the year 2014, as it is

verified from the official website of Chhattisgarh High Court, therefore, the presiding officer of the Court had standing of only five years as District Judge entry level, when she heard and decided the miscellaneous appeal by the impugned order on 22-04-2019. The learned District Judge of District Durg has clearly overlooked the provisions under Section 9 of the Act, 1971 when he transferred the case to the judicial officer as not being a District Judge for a period of 10 years or more.

18. There is no need to mention that there are many pronouncements that an order passed without jurisdiction is a nullity. The criteria of the Court having jurisdiction has mentioned in Section 9(1) of the Act, 1971 has not been fulfilled in this case. Therefore, the impugned order cannot be regarded as an order at all. There is no need to consider on the merits of the case in this petition subsequent to this finding that the impugned order is an order passed without jurisdiction, therefore, this petition is disposed off at motion stage. The impugned order is set aside. The case is remanded to the Court of District Judge, Durg with direction to make strict compliance of Section 9 of the Act, 1971 and that it may either may be decided by the District Judge himself and in case he finds it necessary to be transferred to a judicial officer posted in their District, then such transfer be made ensuring that the competence of such Court is in accordance with Section 9 of the Act, 1971.

19. The petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge