REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2878 OF 2014
(Arising from SLP(C) No.21436/2012)

M/s Band Box Private Limited ..Appellant

versus

Estate Officer, Punjab & Sind Bank and Anr. ..Respondents

O R D E R

Leave granted.

2. We have heard Mr. Harin P. Raval, learned senior counsel in support of this appeal and Mr. Vikas Singh, learned senior counsel appearing for the respondents.

3. This appeal seeks to challenge the judgment and order dated 13.07.2012 passed by a Division Bench of the Delhi High Court in L.P.A. No.250/2012, whereby the Division Bench confirmed the order passed by the learned Single Judge as well as the orders passed by the District Judge and the Estate Officer. The appellant has been directed to be evicted under these orders from the concerned premises situated at 18/90, Connaught Circus,New Delhi-110001.

4. The case of the appellant is that the appellant has been occupying these premises right from 26th March, 1952 and the respondent-Bank became owner of this property only on 31.12.1978. There were some initial notices issued to the appellant to vacate the premises, but ultimately it is the notice dated 15.11.1999 with which we are concerned

in the present matter. It was the notice issued by invoking the provisions of Section 106 of the Transfer of Property Act. This was followed by the proceeding to evict the appellant which has led to the eviction order passed by the Estate Officer, and which has been confirmed, as stated above, all throughout.

5. Mr. Raval submits that the appellant had raised the point of not being covered under the Public Premises Act, 1971 at all stages. He has drawn our attention to the order passed by the Estate Officer, wherein it has been recorded that the appellant canvassed that the appellant's tenancy continued under the protection of Delhi Rent Control Act, and the respondents were not capable of terminating the tenancy by mere service of the notice. That submission was specifically rejected by the Estate Officer by relying upon the judgment of this Court in *Ashoka Marketing Limited and another vs. Punjab National Bank and others reported in (1990) 4 SCC 406.*

6. Mr. Raval submits that the said plea was reiterated before the District Judge, and it is reflected in paragraph 5 of the order of the District Judge. Thereafter, this plea has been raised before the learned Single Judge, and also in the Special leave petition before this Court. Mr. Raval has drawn the attention of this Court to the judgment in the case of *Dr. Suhas H. Pophale vs. Oriental Insurance Co. Limited reported in 2014 (2) SCALE 223.* In this judgment, to which one of us (H.L. Gokhale, J.) was a party, this Court has held that the Public Premises Act cannot be applied to the premises where

the occupants have come in possession thereof, prior to the application of the Act, i.e., prior to 16th September, 1958. In the circumstances, Mr. Raval submits that all these orders should be set aside, the appeal should be allowed and the eviction proceedings should be dismissed.

7. On the other hand, it was submitted by Mr. Vikas Singh, learned senior counsel appearing for the respondent-Bank that the appellant had raised at an intermediate stage the plea of not being covered under the Public Premises Act, and had subsequently dropped that plea. They had then relied upon guidelines and, therefore, the plea, which is sought to be raised at a second stage, cannot be allowed to be raised now on the ground of res judicata, as well as constructive res judicata. As far as this objection of Mr. Vikas Singh is concerned, inasmuch as the plea raised by Mr. Raval is based on a legal submission, we would not like the appellant to be denied the opportunity of raising the legal plea and, therefore, we do not accept this submission.

8. There are two other submissions raised by Mr. Vikas Singh. Firstly, he drew our attention to the fact that in *Ashoka Marketing Limited (supra),* there were two properties involved, namely, one that was of Ashoka Marketing Limited and the second was of M/s Sahu Jain Services Limited. Both the parties were occupying the premises concerned since 1.7.1958, i.e., prior to the date when the Public Premises Act became applicable, and in spite of that their submissions have been rejected by the Constitution Bench. This being the position, in his

submission, the view taken by a Bench of two Judges in the case of *Dr. Suhas H Pophale(supra)* is erroneous. We have noted this submission of Mr. Vikas Singh. In paragraph 47 of the judgment in the case of *Dr. Suhas H. Pophale,* this Court has referred to the judgment in the case of *M/s Jain Ink Manufacturing Company vs. L.I.C. reported in (1980) 4 SCC* 435, and has observed that the issue of protection under a welfare legislation being available to the tenant prior to the premises becoming public premises, and the issue of retrospectivity, was not under consideration before the Court in *M/s Jain Ink Manufacturing Company* (supra). The same holds good for the judgment rendered *in Ashoka Marketing Limited (supra),* and that being so, since those aspects were not gone into in the judgment of *Ashoka Marketing Limited (supra),* this Court has examined them in the case of Dr. Suhas H. Pophale (supra). This Court has specifically observed in paragraph 50 thereof that for a moment this Court was not taking any different position from the propositions in *Ashoka Marketing Limited* (supra). In fact, what was done was to clarify that the Public Premises Act will apply only in certain circumstances. That being so, this submission of Mr. Vikas Singh cannot be accepted.

9. He then referred us to a judgment of another Constitution Bench in the case of *Kaiser-I-Hind Pvt. Limited and another vs. National textile Corporation (Maharashtra North) Limited and others (2002) 8 SCC 182,* and particularly paragraphs 40, 42 and 65 thereof. Paragraph 40 of this judgment reads as follows:

> **"40. Once the PP Eviction Act is enacted, then the Bombay Rent Act would not prevail qua the repugnancy between it and the PP Eviction Act. To the extent of repugnancy, the State law would be void under Article 254(1) and the law made by Parliament would prevail. Admittedly, the duration of the Bombay Rent Act was extended up to 31.3.1973 by Maharashtra Act 12 of 1970. The result would be from the date of the coming into force of the PP Eviction Act, the Bombay Rent Act qua the properties of the Government and government companies would be inoperative. For this purpose, language of Article 254(1) is unambiguous and specifically provides that if any provision of law made by the legislature of the State is repugnant to the provision of law made by Parliament, then the law made by Parliament whether passed before or after the law made by the legislature of the State, would prevail. It also makes it clear that the law made by the legislature of the State, to the extent of repugnancy, would be void."**

10. As seen from paragraph 40, quoted above, the judgment clearly says that the Bombay Rent Act would not prevail qua the repugnancy between it and the Public Premises Eviction Act. That aspect has not been contradicted in *Dr. Suhas H. Pophale's case* (supra). It also relies upon the judgment in *Ashoka Marketing Limited* (supra) which says that the Public Premises Act as well as the State Rent Control Laws are both referable to entries in concurrent list and they operate in their own field. It is only in the area of its own that the State Rent Control Act applies and in its own time frame. The judgment in *Dr. Suhas Pophale's* case accepts that the Public Premises Act will prevail over the Bombay Rent Act to the extent of repugnancy i.e. for eviction of unauthorised tenants and for collection of arrear of rent, but, not prior to 16.9.1958 when the Public Premises Act became applicable. Paragraphs 42 and 65 which are relied upon also do not deal

with the aspect of retrospectivity and being protected under the welfare legislation. That being so, it is not possible to accept this submission of Mr. Vikas Singh.

11. For the reasons stated above, we allow this appeal and set aside the order passed by the Division Bench as well as by the Single Judge, by the District Judge, and the Estate Officer. The eviction proceedings initiated against the appellant will stand set aside.

12. Although, this appeal has been allowed in favour of the appellant, Mr. Vikas Singh has pointed out that when this appeal came up for consideration at an earlier stage, this Court had passed an order on 6.8.2012, that the appellant shall pay a sum of Rs.1,80,000/- per month as rent. Mr. Raval has taken instructions, and has very fairly stated that the appellant is aggreable to continue to pay this amount, though otherwise the recorded rent is only Rs.183/- per month. The appellant has been paying this amount, as per the order passed by this Court on 6.8.2012 and shall continue to pay that amount, hereinafter by way of rent. Mr. Raval has however sought that the appellant shall pay this rent regularly, but it should get some protection, inasmuch as he is agreeing to pay this substantial higher amount. Mr. Vikas Singh has taken instructions and he states that the appellant will be allowed to continue in the premises, at least, for a period of 12 (twelve) years, provided the appellant pays the monthly rent regularly, with a rider that at the end of every financial year, the respondent-Bank will have the right to revise the rent by an increase of ten per cent.

Mr. Raval agrees to the suggestion of Mr. Vikas Singh. Therefore, the next revision of rent will be from 1.4.2015. We record this understanding between the parties and though this appeal is allowed, the appellant will pay the rent of Rs.1,80,000/- per month till the end of 31.3.2015, whereafter the Bank will be entitled to revise the rent by ten per cent every year. In the event of any default in paying the monthly rent, the respondent-Bank will be entitled to take the appropriate proceedings. The 12 years period will be counted from 1.4.2013. We make it further clear that after the expiry of twelve years, it will be open to the respondents to take steps under the Public Premises Act, 1971, if required.

.....J.
[H.L. GOKHALE]

NEW DELHI;
FEBRUARY 25, 2014.

.....J.
[KURIAN JOSEPH]