EVEREST INDUSTRIES LTD. AND ANR. A

v.

BOARD OF TRUSTEES FOR THE PORT OF CALCUTTA AND ORS.

SEPTEMBER 29, 2006

[S.B. SINHA AND DALVEER BHANDARI, JJ.] B

Interim relief—Grant of interim relief by High Court in exercise of its discretionary jurisdiction—Scope of interference by Supreme Court—Held, interference therewith not called for—Major Port Trust Act, 1963.

C

Respondent constituted under the Major Port Trust Act, 1963, owned large plot of land. Appellants were given plot of land on a long lease. When period of lease came to an end, appellants made representation to respondent for renewal. By a Notification dated 19.9.1996, the rent schedule of land was altered. The terms of notification were that the lessee was required to pay 4 years rent as non-refundable and non-adjustable premium in addition to the monthly rent; enhancement of rent every year and a clause that if such escalated rent is found to be lower than the schedule rent after every five years, then the rent payable would be raised to the level of prevailing schedule rent. Aggrieved appellants challenged the *vires* of the said notification on the ground that the quantum of rent has been increased by more than 5200% and as they were required to pay a huge amount by way of premium and security, the same was violative of Article 14 of the Constitution.

D

E

Single Judge of High Court dismissed the Writ Petition. On appeal, Division Bench of High Court upon taking into consideration, the hardship which could be faced by appellant if it is directed to pay the premium as also the increased rent, directed them to pay enhanced interest at the rate of 80% of the enhancement which has been enforced by the aforesaid Schedule along with necessary payments/deposits introduced by the said schedule and pay within 4 weeks, 50% of the arrears without prejudice to their rights and contentions in the appeal and for the balance of rent and 50% of the arrear amount, the appellants were directed to furnish bank guarantee with any nationalized bank. Pursuant to the said direction, appellant No.1 had paid 80% of the current rate and also furnished bank guarantees, except the premium.

F

G

In appeal to this Court, appellant contended that the Division Bench of

H

A the High Court failed to take into consideration that no premium was payable under the Deed of Lease. Demand, therefore, on the basis of the impugned notification which has no statutory backing, was *per se* illegal.

Disposing of the appeal, the Court

B **HELD: 1. The Division Bench of the High Court exercised its discretionary jurisdiction in the matter of grant of interim relief. Ordinarily, this Court does not interfere therewith. A major part of the directions issued by the High Court has been complied with. The only payment which is required to be made by appellant is 50% of the amount of premium and furnishing of Bank Guarantee in respect of the rest 50%. Appellant is an industry. It** C **employs 600 persons, The High Court on consideration of the afore-mentioned fact passed an order which according to it would not be totally harsh. It directed payment of only 50% of the amount of premium. No interference with the said direction is made. However, appellant is directed that an adequate security in respect thereof to the satisfaction of the Registrar, Original Side of the** D **High Court, be furnished in place of furnishing bank guarantee for the rest of 50% of amount of premium. In the event, Respondents are held not to be entitled to the entire increased rent or the amount of premium, the payment of the amount deposited towards security in terms of the said notification as also the demand, as contained in letter dated 13.7.2001 by Respondent shall be subject to the condition that in the event Respondents are found liable to** E **get refund of any amount, the same shall carry interest @ 12% per annum.**

[841-E-H; 842-A]

Jamshed Hormusji Wadia **v.** *Board of Trustees, Port of Mumbai and Anr.*, **[2004] 3 SCC 214, referred to.**

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4332 of 2006.

From the final Judgment and Order dated 27.4.2005 of the High Court of Calcutta in G.A. No. 54 of 2005 in APO/T No. 7/2005 arising out of W.P. No. 1690/2001.

G Ranjit Kumar, Bhargava V. Desai, Anil Kher, Kapil Kher and Rahul Gupta for the Appellants.

Siddharth Bhatnagar, Anuradha Priyadarshini and Indra Sawhney for the Respondent.

H The Judgment of the Court was delivered by

S.B. SINHA. J. Leave granted. A

Respondent herein is constituted under the Major Port Trusts Act, 1963 (for short, "the Act"). It is owner of a large plot of land. By an indenture of lease dated 15th March, 1938, Appellant No.1 was given in lease a plot of land bearing No. D-117, measuring 28344.716 square metre for a period of 30 years with effect from 1st February, 1938. The said deed of lease contained a renewal B clause providing that at the expiration thereof it could be renewed for a further period of 10 years with two further options of renewal of 10 years each, but at an increased rate of rent, which would not exceed 50% of the rent for the period immediately preceding. Another deed of lease was executed by Respondents in favour of Appellants in respect of plot No. D-117/1, measuring C 2380.919 square metre for a period of 10 years with effect from 1st February, 1958. The said deed of lease also contained identical renewal clause.

The period of lease in terms of the said instrument having come to an end, a representation was made by Appellant No. 1 herein to Respondents for renewal thereof. By a notification dated 19th September, 1996, the Rent D Schedule of land, *inter alia*., was altered. The said notification was issued purported to be in terms of Section 56 of the Act. Item No. 17 of the said notification refers to the lease hold properties in question, stating :

17.	Turawla Road from Budge	777.00 (50 Metres)
	Budge Road to Circular	416.00 (2nd Belt) E
	Garden Reach Road"	

Notes were appended to the said notification whereby, *inter alia*, it was directed :

"(2) (a) In future long term leases will be granted for the period for 15 years on recovery of 4 years'5 rent as non-refundable and F non-adjustable premium in addition to the monthly rent.

(b) the long term leases coming up for further extension after expiry of the lease term and where no renewal option is existing, the full schedule rent will be applicable straightway and premium equivalent to 4 years rent will be recovered. G In cases of renewals of leases having option for the same, those will be governed by relevant covenants of the lease.

(c) In case of Port-owned structures generally monthly leases/ licences will be granted.

H

A (3) The schedule rates of rent will be applicable to all existing tenancies, licences and leases excepting that the rates of rent in existing long term leases will be governed by the relevant covenant of the lease.

(4) In cases of all long term leases granted in future and all existing B monthly leases and licences, the rent will be enhanced at the rate of 5.1% per annum. In addition to the enhancement as stated above, the future long term leases will also contain a provision to the effect that if such escalated rent is found to be lower than the scheduled rent after every 5 years, then the rent payable will be raised to the level of the prevailing schedule rent."

C

Appellants herein, *inter alia*, contended that as by reason of the said notification, the quantum of rent has been increased by more than 5200% and as they were required to pay a huge amount by way of premium and security, the same was violative of Article 14 of the Constitution of India being arbitrary in nature. Further contention of Appellants was that the said D notification is ultra vires the provisions of the Act.

Before the High Court the minutes of the meeting of the Public Accounts Committee were placed recommending increase in rent in the manner specified therein. It was opined that the notification in question was not violative of E Article 14 of the Constitution of India. It was further held that a fresh lease was required to be granted in view of the conditions laid down in original lease as the period of sixty years had expired. Referring to various provisions of the Transfer of Property Act, 1882, it was held :

".....No attempt was made to show that the petitioners have got any F equity in their favour to be classified as a preferred class than others, who may be interested to take the properties now in the occupation of the petitioners on lease. On the other hand, as aforesaid, the lessees having option to renew their existing leases have got a right inbuilt in their leases to have a renewal and accordingly, they can always be classified as a separate class and be dealt with separately G in order to honour the commitment the Board of Trustees have already made in the leases, which granted such a right of renewal."

The court refused to apply the 'Doctrine of proportionality', stating

"....It would be totally inappropriate to compare the rent, that was

H

being paid by the Petitioners, with the rent, which is now being sought for on the basis of the said Schedule and to conclude that the rise in the rent is utterly disproportionate. The reason for the action was lapse of time from the previous rent schedule and the result of the action was the schedule itself. It was not urged that the same is disproportionate." A

B

It was noticed:

"In case of the Petitioner in W.P. 1690 of 2001 there was no renewal clause in the expired lease. The case of the said petitioner is that it reasonably expected that after expiry of the lease in question the same would be renewed for further period upon reasonable increase in rent since on an earlier occasion after expiry of earlier leases, the expired lease was executed." C

On the aforementioned findings, the learned Single Judge dismissed the said writ petition. An intra-court appeal was preferred by Appellants before the Calcutta High Court which was registered as G.A. No. 54/2005 in APOT No. 7/2005. The Division Bench of the High Court, while admitting the appeal for hearing, and upon taking into consideration the hardship which could be faced by Appellant-Company if it is directed to pay the premium as also the increased rent, passed the order impugned herein. Before the High Court, the parties extensively relied upon a judgment of *Jamshed Hormusji Wadia* v. *Board of Trustees, Port of Mumbai & Anr.*, [2004] 3 SCC 214. D E

Upon hearing the parties on the merit of the matter, it was directed :

"(i) Both the appellants shall pay the enhanced interest at the rate of 80% of the enhancement which has been enforced by the aforesaid Schedule along with necessary payments/deposits introduced by the said schedule with effect from the month of April, 2005. F

(ii) In so far as the arrears are concerned, the appellants will pay within 4 weeks from the date 50% of the arrears without prejudice to their rights and contentions in the appeal. The authorities will accept the same without prejudice to their rights and contentions. G

(iii) In so far as the balance of 20% of the rent as well as 50% of the arrear amount is concerned, both the appellants shall furnish within 8 weeks from date bank guarantee with any nationalized H

A Bank and shall keep on renewing the same till the disposal of the appeal. We make it clear that if the above directions are not complied with, the Port Trust Authorities will be at liberty to take appropriate steps in accordance with law.

(iv) Payments in respect of the enhanced schedule of Rent as well B as the arrears shall have to be made within a period of four weeks from date."

Liberty, however, was granted to the parties to mention the matter for early hearing of the appeals.

C This Court, by an order dated 12.5.2005, while issuing notice, stayed only the demand of premium.

Pursuant to the said direction Appellant No.1 had paid 80% of the current rate, as directed by the High Court. It also furnished bank guarantees as directed. It is not in dispute that except for the premium, all other directions D of the High Court have since been complied with.

Mr. Ranjit Kumar, learned Senior counsel appearing on behalf of Appellants submitted that the demand of Respondents is highly arbitrary and, thus, violative of Article 14 of the Constitution of India. The learned counsel would urge that the Division Bench of the High Court committed a serious E error in passing the impugned judgment in so far as it failed to take into consideration that no premium was payable under the Deed of Lease. Demand, therefore, on the basis of the impugned notification, which has no statutory backing, was *per se* illegal.

The learned counsel appearing on behalf of Respondents, on the other F hand, submitted that the quantum of rent fixed for the lands in question is much below the market rent. According to the learned counsel, the term of lease having expired, in terms of the order passed in the writ petition, a benefit has been conferred upon Appellant No. 1 as it had no right of renewal.

G Respondent-Board is a 'State' within the meaning of Article 12 of the Constitution of India. It is not bound by the Rent Acts. The short questions which would, therefore, arise for consideration before the Division Bench, *inter alia,* is : As to whether the action impugned in the writ petition by Appellants herein was arbitrary?'

H In *Jamshed Hormusji* (supra), the law was stated in the following terms:

"The position of law is settled that the State and its authorities including instrumentalities of States have to be just, fair and reasonable in all their activities including those in the field of contracts. Even while playing the role of a landlord or a tenant, the State and its authorities remain so and cannot be heard or seen causing displeasure or discomfort to Article 14 of the Constitution of India.

It is common knowledge that several rent control legislations exist spread around the country, the emergence whereof was witnessed by the post-World War scarcity of accommodation. Often these legislations exempt from their applicability the properties owned by the Government, semi-government or public bodies, Government-owned corporations, trusts and other instrumentalities of State."

This Court proceeded to decide the questions in regard to the purpose for granting such exemption and opined that the validity of the actions of Respondents in the field of landlord-tenant relationship is available to be tested not only under the rent control legislations but also under the Constitution observing :

"The rent control legislations are temporary, if not seasonal; the Constitution is permanent and an all-time law."

The writ petition filed by Appellants has been dismissed. The Division Bench of the High Court exercised its discretionary jurisdiction in the matter of grant of interim relief. Ordinarily, this Court does not interfere therewith. We have noticed hereinbefore that a major part of the directions issued by the High Court has been complied with. The only payment which is required to be made by Appellant is 50% of the amount of premium and furnishing of Bank Guarantee in respect of the rest 50%. Appellant is an industry. It employs 600 persons. The High Court on consideration of the afore-mentioned fact passed an order which according to it would not be totally harsh. It directed payment of only 50% of the amount of premium. We are not inclined to interfere with the said direction. We, however, instead of directing Appellant to furnish bank guarantee for the rest 50% of the amount of premium, direct that an adequate security in respect thereof to the satisfaction of the Registrar, Original Side of the High Court, be furnished. In the event, Respondents are held not to be entitled to the entire increased rent or the amount of premium, the payment of the amount deposited towards security in terms of the said notification dated 19th September, 1996 as also the demand, as contained in letter dated 13.7.2001 by Respondent, shall be subject to the condition that

A in the event Respondents are found liable to get refund of any amount, the same shall carry interest @12% per annum.

We would, however, in the peculiar facts and circumstances of this case, request the Division Bench of the High Court to consider the desirability of disposing of the appeal as expeditiously as possible and preferably, within
B a period of two months from the date of issuance of this order.

This appeal is disposed of on the aforementioned terms. In the facts and circumstances of this case, the parties shall pay and bear their own costs.

D.G. Appeal disposed of.