

**Express Newspapers Ltd. Vs. Union of India**

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**SooperKanoon Citation :** [sooperkanoon.com/688603](http://sooperkanoon.com/688603)

**Court :** Delhi

**Decided On :** Dec-18-1989

**Reported in :** 1990RLR104

**Judge :** S.N. Sapra, J.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Order 39, Rule 1

**Appeal No. :** Suit No. 52 of 1981 and Interim Application No. 145 of 1988

**Appellant :** Express Newspapers Ltd.

**Respondent :** Union of India

**Advocate for Def. :** Mr. R.K. Anand

**Advocate for Pet/Ap. :** F.S. Nariman, ; Arun Jaitley,; R.K. Anand and;

**Judgement :**

**S.N. Sapra, J.**

(1) Before granting a temporary injunction, the Court should be satisfied that plaintiff has a good prima facie case, Court's interference is necessary to protect him from an irreparable loss or at. least, serious injury, and the balance of convenient is in favor of plaintiff.

(2) As already stated above, plaintiffs challenged the re-entry notice, issued by L & D.O. and the demolition notice, issued by the Corporation, by writ petitions u/Art. 32 of the Constitution of India, in the Supreme Court.

(3) Vide judgment dated 7.10.85, as : AIR 1986 SC872 , the Supreme Court quashed the impugned notices. Mr. Justice A, Sen gave the lead judgment and held :

'WE cannot possibly in these proceedings under Article 32 undertake an adjudication of this kind but I am quite clear that respondent No. 5, the L&D.O., having already indicated his mind that the amount of conversion charges would be more than Rs. 3.30 crores, it would not subserve the interests of justice to leave the adjudication of a question of such magnitude to the arbitrary decision of the L & D.O. who is a minor functionary of the Ministry of Works & Housing. We are informed by Shri Sinha, learned counsel for the Union of India that Central Govt. were contemplating to undertake a legislation and to provide for a forum for adjudication of such dispute. As stated earlier, we had suggested that the dispute as to the quantum of conversion charges payable be referred to the arbitration of an impartial person like a retired Judge of the Supreme Court of India but this was not acceptable to the respondents. The Union of India may in the contemplated legislation provide for the setting up of a tribunal with a right of appeal, may be to the District Judge or the High Court, to the aggrieved party. If such a course is not feasible, the only other alternative for the Lesser i.e. the Union of India, would be to realize the conversion charges and additional ground rent, whatever be recoverable, by a duly constituted suit. Till then, I would restrain the Union of India, Ministry of Works & Housing and the L and D.O. or any other officer of the Ministry from taking any steps for termination of the lease held by petitioner of conversion charges or otherwise for the construction of the Express Building till the final determination of such amount to be realized by a statutory tribunal or by a Civil Court. For these reasons, I would, therefore, for my part, quash the impugned notice. The result therefore is that these petitions u/Art. 32 of the Constitution must succeed and are allowed with costs. The notice issued by the Engineer Officer, L. & D.O. dated March 10, 1980 purporting to act on behalf of the Govt. of India, Ministry of Works & Housing requiring the Express Newspapers Pvt. Ltd. to

show cause why the Lesser i.e. the Union of India, Ministry of Works & Housing should not re-enter upon and take possession of plots Nos. 9 and 10, Bahadurshah Zafar Marg, New Delhi together with the Express Buildings built thereon, under Clause 5 of the indenture of lease dated March 17, 1953 for alleged breaches of Clauses 2(5) and 2(13) thereof, and the earlier notice dt. March 1, 1980 issued by the Zonal Engineer (Building), M.C. Delhi requiring them to show cause why the aforesaid buildings should not be demolished u/Ss. 343 and 344 of the Delhi Mun. Corp Act, 1957, are quashed. It is declared that the construction of the new Express Building on the residual portion of 2740 square yards on the western side of plots Nos. 9 and 10, Bahadurshah Zafar Marg with an increased Far of 360 with a double basement for installation of a printing press for publication of a Hindi daily newspaper was with the permission of the Lesser i.e. the Union of India, Ministry of Works & Housing and did not constitute breach of clauses 2 (5) and 2 (14) of the lease-deed, It is directed that the respondents, particularly the Union of India, Ministry of Works & Housing, the Dda, and the Mcd, shall forbear from giving effect to the impugned notice in the manner threatened or in any other manner whatsoever. It is further directed that the Union of India, shall enforce its claim for recovery of conversion charges by a duly constituted suit or by making a law prescribing a forum for adjudication of its claim. It is also directed that the Mcd shall compound the construction of the double basement of the new Express Building, the excess basement beyond the plinth limit and the underground passage on payment of the usual composition fee.'

Mr. Justice E.S. Venkataramiah while quashing the impugned notices, held :

'THE material available in this case is sufficient to hold that the impugned notice suffer from arbitrariness and non-application of mind. They are violative of Article 14 of the Constitution. Hence they are liable to be quashed. It is not necessary therefore to express any opinion on the contentions based on Article 19(1)(a) of the Constitution. The rest of the questions relate truly to the civil rights of the parties flowing from the lease deed. These questions cannot be effectively disposed of in this petition under Article 32 of the Constitution. The question arising out of the lease, such as, whether there has been breach of the covenants under the lease, whether the lease can be forfeited, whether relief against

forfeiture can be granted etc. are foreign to the scope of Article 32 of the Constitution. They cannot be decided just on affidavits. These are matters which should be tried in a regular civil proceedings. One should remember that the property belongs to the Union of India and the rights in it cannot be bartered away in accordance with the will of an officer or a minister or a Lt. Governor, they should be dealt with in accordance with law. At the same time a person who has acquired rights in such property cannot also be deprived of them except in accordance with law. The stakes in this case are very high for both the parties and neither of them can take law into his own hands. I, therefore, quash the impugned notice and direct the respondents not to take any further action against the petitioners pursuant to them. I express no opinion on the rights of the parties under the lease and all other questions argued in this case. They are left open to be decided in an appropriate proceedings. It is, however, open to both the parties if they are so advised to take such fresh action as may be open to them in law on the basis of all the relevant facts including those which existed before the impugned notice dated March 10, 1980 was issued by the Engineer Officer of the L. & D.O. to vindicate their respective rights in accordance with law. This order is made without prejudice to the right of the Union Government to compound the breaches, if any, committed by the lessee and to regularise the lease by receiving adequate premium there of from the lessee, if it is permissible to do so.'

Mr. Justice R.B. Misra held :

'I have perused the judgment prepared by brother Justice A.P. Sen as also the judgment of brother Justice E.S. Venkataramiah. While I agree that the impugned notice threatening re-entry and demolition of the construction are invalid and have no legal value and must be quashed for reasons detailed in the two judgments, which I do not propose to repeat over again. I am of the view that the other questions involved in the case are based upon contractual obligations between the parties. These questions can be satisfactorily and effectively dealt with in a properly instituted proceeding or suit and not by a writ petition on the basis of affidavits which are so discrepant and contradictory in this case.'

(41) Mr. D.S. Nariman, appearing for plaintiffs, contended that the several issues, concluded by Mr. Justice A.P. Sen, had been concurred in expressly, or by implication by the other two Hon'ble Judges. As such, on the settled principle of interpretation of judgment, the judgment of Mr. Justice A.P. Sen, constitute the ratio of the Supreme Court, and also law laid down by the Court, u/Art. 141 of the Constitution. Moreover, as between plaintiffs and defendants, in this suit, the judgment of the Supreme Court is, therefore, binding, as, the law declared u/Art. 141 of the Constitution.

(42) Mr. Nariman, has further urged that under law, when an Hon'ble Judge expresses himself, on an issue or any order is passed by him, and the other Hon'ble Judges, do not express any view on the same, then, the view expressed by the former Judge, is the ratio or the law, laid down by the Court. In that case, the other two Hon'ble Judges, chose not to express any views on various points, decided by Mr. Justice A.P. Sen. In other words, the other two Hon'ble Judges, did not expressly disassociate themselves or dissent from the views expressed by Mr. Justice A.P. Sen, so, the views expressed by Mr. Justice A.P. Sen, now constitute the judgment of the Court.

(43) According to Mr. Nariman, the judgment of Mr. Justice A.P. Sen which consists of 80 printed pages, is admittedly a lead judgment, and it is evident that the other two Hon'ble Judges, had gone through the judgment. It is also clear that the other two learned judges did not expressly Disagree or disassociate themselves, from the conclusions of Mr, Justice A.P. Sen as decided in his judgment,

(44) In the next place, Mr. Nariman has urged that if, defendant were in doubt, with regard to the question, whether the judgment of Mr. Justice A.P. Sen, was a minority judgment or not, defendants were under an obligation to seek clarification from the Supreme Court. Prior to the clarification, defendants were under an obligation to obey the orders of the Court.

(45) Admittedly, no clarification was ever sought by the Union of India, on this question. On the contrary, a review application was filed by Lt. Governor, Delhi, in which a letter of the counsel for Union of India, Mr. Lal Narain Singh, was

annexed, purporting to point out that certain remarks, in the nature of admission, attributed to them in the judgment of Mr. Justice A.P. Sen were incorrect. This review application was dismissed by the Court.

(46) Mr. Nariman has also urged that in his judgment, Mr. Justice A. P. Sen, restrained the Union of India, Ministry of Works & Housing and Land and Development Officer, or any other officer of the Ministry, from taking any steps for termination of the lease, held by Express Newspapers Pvt., Ltd., for non payment of commercial charges, or otherwise for the construction of the Express Building, take the final determination of such amount, to be relished by a statutory Tribunal or by a civil court. Thus, according to him, defendants have disobeyed the injunction, issued by the Supreme Court, in terminating the lease of the plaintiffs. Thus, the Union of India, should have taken permission of the Supreme Court, before issuing the re-entry notices, when there was a doubt. In these circumstances, it is submitted, that the termination of the lease, is of no effect, and Union of India could not file the suit.

(47) On the other hand, Mr. R.K. Anand, learned counsel for defendants, has urged that the judgment of Mr Justice A P. Sen, is a minority judgment, while the majority view, has clearly permitted defendant no. 1 to terminate the lease and to proceed with, to enforce its rights, in accordance with law.

(48) With regard to suit No. 2480/87, filed by Union of India, Mr. Anand has urged that the same is in accordance with law and that the Union of India could terminate the lease.

(49) According to Mr. Anand, the other two Hon'ble Judges, have differed and expressed contrary opinions, in respect of the scope of Art. 32 of the Constitution of India and refused to go into the question on merits, viz-a-viz, the breaches, in respect of the property in question. The other two Hon'ble Judges expressly held that petition, u/Art 32 of the Constitution of India was not maintainable, so far as, the contractual obligations were concerned, since the same were foreign to the scope of Art. 32 of Constitution this matter was left to be decided by the Civil Court Thus, according to Mr. R.K. Anand, the suit filed by Union of India is in accordance with the judgment of the Supreme Court and that defendants 2 to 8, in that suit,

have to pay the rent to L & D.O. as demanded by the said Officer in notice dated 2.11.87.

(50) Thus, the main question, involved in the present case, is as to whether the judgment of Mr. Justice A.P. Sen, was a minority judgment or it constituted the ratio of the Supreme Court. In other words, the question, which has arisen for decision, is as to whether the Union of India was precluded from issuing the impugned notices, to terminate the lease and to take constructive possession of the building by directing tenants to pay rent to Union of India, as, according to plaintiffs, there was an injunction, issued by Mr. Justice A.P. Sen.

(51) This is purely a legal question. No. doubt, at the time of deciding an application for temporary injunction, this Court is to take only a prima facie view. But, the decision on this legal question, is likely to dispose off the present suit, filed by plaintiffs, as well as, the suit No. 2480/87, filed by Union of India.

(52) I, therefore, do not consider proper to express any opinion, at this stage. As, there are issues of law, involved in the present suit, as well as, the suit filed by Union of India, proper issues can be framed and can be tried as preliminary issues, as provided under Order 14 Rule 2 of Civil Procedure Code

(53) It is thus evident that there are serious questions, which are to be tried in the suit.

(54) Defendants, have alleged that, subsequent to the judgment of the Supreme Court in Express Newspapers (P) Ltd (supra), there had been new grounds, on the basis of which, the impugned termination had been effected and, the grounds for the termination were not subject matter of disputes, before the Supreme Court. Mr. Nariman has controverted these allegations.

(55) After going through the show cause notice and the documents, prima facie, it appears that in substance, the grounds prior to the judgment, were repeated in the impugned show cause notice which was issued after the judgment of the Supreme Court. However, this question has to be decided on merits, after trial.

(56) In addition, plaintiffs have filed various documents to show that huge expenses are incurred by plaintiffs for maintenance of the building, payment of property taxes and other charges. Moreover, plaintiff no. 1 has been the lessee, under the lease-deed and constructed the building, at its own expense. Plaintiff No. 1 cannot be denied the benefits, as lessee. Thus, in my view, plaintiffs have got a good prima facie case.

(57) Plaintiffs are in possession of the premises and have been enjoying all benefits as lessees for several years. Balance of convenience is in their favor. If they are denied benefits they will suffer irreparable loss.

(58) Application allowed.

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