

Texmaco Ltd. Vs. State and anr.

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SooperKanoon Citation : sooperkanoon.com/713908

Court : Delhi

Decided On : Jul-27-2007

Reported in : (2008)1CompLJ292(Del); [2008]83SCL215(Delhi)

Judge : S. Ravindra Bhat, J.

Acts : Companies Act 1988 - Sections 630 and 630(1); Code of Criminal Procedure (CrPC) - Sections 452, 452(1) and 482

Appeal No. : CRL. M.C. 4662/2005

Appellant : Texmaco Ltd.

Respondent : State and anr.

Advocate for Def. : Santosh Kohli, Adv.

Advocate for Pet/Ap. : Pradeep Kumar, Adv

Disposition : Petition dismissed

Judgement :

S. Ravindra Bhat, J.

1. The present petition is preferred against the impugned order dated 24.05.2005 passed by the learned trial court.

2. The brief facts necessary to decide this present petition are that the Petitioner company acquired the proprietary rights in respect of M/s. Birla Mills as well as the latter's housing colonies by virtue of a scheme of compromise and arrangement in 1983. M/s. Birla Cotton Spinning and Weaving Mills had installed a mill in Delhi known as Birla Cotton Spinning and Weaving Mill located at Kamla Nagar. The mill had more than 3000 employees and had 900 quarters in its nearby vicinity. The quarters provided accommodation to the employees. The quarters/residential colonies are popularly known as New Birla lines, Old Birla lines, Shivaji Lines, Khilonawala Bagh etc. They were allotted by the company to its employees on license basis. The allotments were allegedly made with the terms and conditions that the employee would be entitled to reside in the quarter so long as he continued in employment and would vacate it and handover the vacant possession back to the company upon cessation of his employment.

3. The Respondent no-2 joined the services of the company on 14.11.1948. He was allotted quarters bearing no. 78 on 10.4.1980 and quarters no.79 on 9.7.1976 Old Birla Lines, subject to the terms and conditions of license and allotment letters of the said dates. The charges for the use and occupation of the quarter were Rs. 2.75(Rs. Two and seventy five paise) The Respondent No.2 ceased to be in employment of the Petitioner Company with effect from 30.03.1987. It is averred that the Respondent was bound to vacate the quarter which he did not despite the alleged requests and reminders from the company. The Petitioner Company thereafter filed a complaint case under Section 630 of the Companies Act 1988.

4. The company was closed down with effect from 30.11.1996 and none of its employees who were in service on the effective date 30.11.1996 vacated the quarters. The company filed similar complaints under Section 630 of the Companies Act. In the matter relating to Respondent no.2 , the court took cognizance and he was granted bail. It is alleged that the second respondent has been illegally and unauthorizedly occupying the accommodation since the last 18 years without paying any rent.

5. The petitioner filed an application under Section 452 Cr.P.C. for securing possession of the premises, pending disposal of the proceeding under Section

630, Companies Act.

6. The trial court by its order dated 24.5.2005 dismissed the application under Section 452 of the code. The extracts of the order are as follows;

The beneficent provision contained in Section 630(1)(b) of the Act has been enacted by the Legislature with the object of providing summary procedure for retrieving the property of the company. The companies Act is a special enactment having precedence over the code as it explicitly provides the mode for retrieving the property of the company in the hand of its past employees as noticed above. If the prayer made in the application is allowed, it would be contrary to the legislative intent contained in Sections 630(1) and (2) of the Act and would amount to nullifying the provision empowering the court to give direction to the past employee for delivery of the possession of the property of the company within a time fixed by it after finding him guilty under Section 630(1) of the Act. Undoubtedly the accused has succeeded in prolonging the trial of this case for 18 years which has defeated the very object of providing summary procedure for such matters for speedy retrieval of the property of the company but that cannot be a ground for awarding the relief prayed by the complainant in this application. The application under Section 452 of the code is without merit and liable to be dismissed.

7. The Learned Counsel for the Petitioner Shri J.V.Rana contended that the petition under Section 452 of the Code is maintainable as all ingredients of the section are fulfilled. The Respondent no.2 can be directed to deliver the possession of the quarter to the Petitioner company. He further contended that the provisions of Section 630 of the Companies Act are beneficial and specially enacted to provide speedy relief to the company for retrieval of possession of its property. The Learned Counsel urged that a complaint under Section 630 is in the nature of a summary trial as per the Code but the present case has already taken 17 years and the beneficial provision of Section 630 of the Companies Act has been defeated.

8. Learned Counsel for the petitioner relied upon the judgments of the Calcutta High Court reported as *Tata Tea Ltd. v. Fazlur Rahman* 2001(104) Com.Case 718 and *Metal Box (India) Ltd. v. State of West Bengal* 1999 III LLJ (Supp) 1349. It

was contended that the company's right to retrieve his property, is explicit and is statutory right in view of Section 630 of the Companies Act. Learned Counsel contended that the power to restore possession even during the pendency of criminal proceedings is well recognised by virtue of that provision as well as the two decisions cited.

9. The trial court which considered the application of a present petitioner took into consideration the text of Section 452(1). It was of the opinion that the Court's power to make an appropriate order for disposal to any person claiming to be entitled to possession of the property, a document produced before it or its custody or regarding which any offence appears to have been committed, has to be read in the context of the term 'inquiry' defined in Section 2(g). It also analysed Section 630 of the Companies Act. The Court concluded that the trial in the proceedings has not yet been completed since the petitioner was yet to prove that the accused was allotted the quarter in question during the course of his employment and that he failed to hand it back after termination of his services. The Court also considered the objections raised by the respondent accused about the locus standi of the present petitioner to institute and prosecute the complaint under Section 630.

10. I have considered the materials on record, as well as the submissions of the petitioner. The Calcutta High Court in the Tata Tea Ltd. case intervened and directed the accused ex-employee to vacate the premises in exercise of its inherent powers under Section 482 Cr.P.C. Likewise, in the Metal Box(India) Ltd. case too the Court invoked its inherent powers under Section 482 and directed the accused to vacate the premises. In neither decision did the Calcutta High Court have any occasion to consider the inter-play between Section 452 Cr.P.C. and Section 630 of Companies Act - which has been done by the trial court in the present case.

11. It is undoubtedly a fact that the proceedings were initiated way back in 1988 and have not culminated or achieved finality. The trial has not been completed and apparently has dragged on. The reasons for this are, however, unclear. From the factual narrative itself the original owner (M/s. Texmaco Ltd.) entered into a

scheme of compromise arrangement which was sanctioned by this Court. Thereafter, the successor entity closed down operations and sought to recover the other premises. In these circumstances, it would be imprudent for the Court in exercise of its inherent power to virtually short cut and forestall a trial (where the parties have contested) and virtually allow the complaint. Undoubtedly, Parliamentary intention in enacting Section 630 of the Companies Act was to ensure a speedy resolution of disputes relating to possession of company's immovable properties. Yet that does not mean that what ordinarily should be done at the final stage, ought to be done at the interim stage. In my opinion, recourse to such interlocutory power should be in exceptional situations and not in all cases. In these circumstances, where the dispute itself pertains to entitlement of the property and its possession, the Court should slow in exercising its powers under Section 452.

12. In view of the above, I am not persuaded by the submissions on behalf of the petitioner that the trial court's approach or the impugned order was either illegal or in any manner improper.

13. The petition, therefore, has to fail. It is accordingly dismissed without any order as to costs.