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Court : Gujarat

Decided On : Oct-01-1987

Reported in : AIR1988Guj104; (1988)1GLR160

Judge : A.P. Ravani, J.

Acts : [Constitution of India](#) - Article 226; [Transfer of Property Act, 1882](#) - Sections 105

Appeal No. : Special Civil Appln. No. 4030 of 1986

Appellant : Kwality Pulp and Paper Mills

Respondent : The Gujarat Industrial Development Corporation

Advocate for Def. : A.H. Mehta, Adv.

Advocate for Pet/Ap. : G.N. Desai, Adv.

Judgement :

ORDER

1. The petitioner is a lessee -of Plot No. 183 admeasuring 8238 sq. m. of land Situated in Vapi Industrial Estate of the respondent-Corporation. The lease is for a period of 99 years commencing from August 26, 1976. A regular lease deed has

been executed between the parties and it is produced at annexure-A to the petition. In substance the petitioner prays that it be permitted to commit breach of contract or at any rate certain terms and conditions of the' lease deed be treated as illegal and void and the respondent-Corporation be directed not to enforce the same. Thug, in short, the question is - can a decree for setting aside the terms and conditions of lease deed be passed in a petition under Article 226 of the [Constitution of India](#)? Obviously such a prayer cannot be granted and hence the petition can never be entertained. Therefore on this short ground alone the petition is liable to be rejected. However, certain points which have been urged on behalf of the petitioners be examined.

2. Under the terms and conditions of the lease deed -the petitioner is required to pay water-charges; and if water charges are paid late, late payment charges are also required to be paid by the petitioners. The petitioner contends that the respondent-Corporation is not entitled to levy penalty either on account of improper working of the water meter or on account of late payment of water-charges. The petitioner contends that there is no provision in the lease agreement for imposition of such penalty. In response to the notice issued by this court, affidavit in reply is filed on- behalf of the respondent Corporation . In para 4.1. of the affidavit-in reply it is clearly stated that the petitioner is a lessee and the petitioner is also governed by the water-supply regulations framed by the respondent-Corporation. These regulations provide for penalty for improper working of the water -meter and for late payment of water charges The regulations are applicable to all the lessees including the petitioner. In view of factual position the contention that the respondent-Corporation is exacting money without there being any authority of law has no basis. Action of the respondent Corporation in levying penalty on account of improper working of the water meter and/or on account of late payment of water charges is in accordance with the terms and conditions of the lease deed executed by and between' the parties. As per the lease deed the water supply regulations framed by the respondent Corporation are applicable to the petitioner.

Therefore, the -petitioner's contention that the respondent-Corporation is not entitled to recover the aforesaid penalty charges cannot be accepted.

3. It is contended by the petitioner that it is engaged in the business of manufacturing paper including craft paper. For the purpose of manufacturing the aforesaid commodities, water is required in abundant quantity. Since the petitioner required water in abundance, the petitioner sought to excavate a bore for the purposes of fetching water, It is contended that the respondent-Corporation cannot restrain the petitioner from digging bore and fetching water. In the submission of the learned counsel for the petitioner the terms and conditions in the lease deed would not come in the way of the petitioner and the petitioner cannot be restrained from digging the land for the purpose of fetching water. The relevant clause of the lease deed reads as follows

'That they will not make any excavation upon any part of the demised premises nor remove any stone, sand, gravel, clay or earth, therefore, except for the purpose of forming foundation of building or for the purpose of executing any work pursuant to the terms of this lease.'

The aforesaid submission cannot be accepted. The term 'excavate' would include even digging of land for the purpose of making 'bore'with a view to fetching water. A similar question came up for consideration, in Civil Revn. App1n. No. 994 of '1984, decided on December 12,1984 (Coram: G.T. Nanavati, J.). After refering to the dictionary meaning of the term 'excavate' the court observed as follows:

When a bore is constructed for the purpose of obtaining water excavation of the land is done. The word 'bore means to make a hole in or through something by hollowing it out. Thus, when boring is done for the purpose of obtaining underground water, what is first done is to make a hole in the land by digging out a portion thereof so that in that hollow pipe can be inserted. By making the hole deeper and deeper by digging out more and more land and by inserting pipes there in under ground water is reached and thereafter with the help of a pump water is taken out. This is the normal method of boring. It is not the case of the opponent that it inserted pipes in the earth without digging out the land. or apart thereof. If the land is- thus dug out, it would certainly amount to excavation of land.'

I am in respectful agreement with the view taken by my learned brother G.T. Nanavati, J. in the aforesaid case. By no stretch of reasoning it can be said that digging the land for making bore with a view to fetching water would not amount to excavation of land. In this view of the matter, if the respondent Corporation insists that without the permission of the Corporation the petitioner cannot excavate land or any part thereof for the purpose of boring, the respondent Corporation cannot be said to be in any way acting arbitrarily or unreasonably. On the contrary the respondent Corporation would be within its rights if it seeks to enforce the terms and conditions of the lease deed.

4. The learned counsel for the petitioner submitted that the petitioner is a small industrial unit and on the other hand the respondent-Corporation is an instrumentality of State and it is a giant Corporation. The petitioner had to enter into agreement with such a giant and the petitioner has agreed to unfair terms and conditions of the agreement. Therefore it is submitted that the terms and conditions of the lease deed which are unfair be not permitted to be enforced. Assuming for a moment that there is some substance in what the petitioner says, it would amount to examining the terms and conditions of a contract arrived at between the parties. The proceedings under Article 226 of the [Constitution of India](#) would be converted into proceedings of a civil suit for examining the legality and validity of a contract arrived at between the parties. Extraordinary jurisdiction of the High Court under Article 226 of the [Constitution of India](#) cannot be exercised for determining such questions arising out of contractual rights and obligations of respective parties. Hence, even if it is assumed that there is some substance in the contention raised by the petitioner, the same cannot be examined in a petition under Article 226 of the [Constitution of India](#). Moreover, the petitioner has taken possession of the land in the year 1976 or 1977. A formal lease deed has been executed between the parties on July 26, 1983. The petitioner has acted upon the contract. It has taken possession of the land. It is utilizing the land for the purpose of its industry. Now in all petition filed on August 6, 1986 under Article 226 of the [Constitution of India](#) wherein discretionary powers of the Court are to be exercised, the petitioner cannot be permitted to retain the benefits of part of the contract and avoid the liabilities and obligations arising out of the contract of lease. The petitioner cannot be extended the protection of provisions of Article 226 of the

[Constitution of India](#) for avoiding liabilities and obligations arising out of the contract.

5. However, in the facts and circumstances of the case it cannot be said that the agreement of lease arrived at between the parties is an agreement between two unequals, and that there are certain terms and conditions in the lease deed which are unfair and unconscionable. The petitioner, as stated at the Bar, has invested about Rs. 50 lacs in the industrial unit which manufactures paper. It is also stated at the Bar that about 100 workers are employed in the unit of the petitioner. The petitioner is a firm. By no stretch of imagination partners of the petitioner firm can be said to be illiterate and ignorant people who did not understand the terms and conditions of the lease deed. There is nothing to show, except a vague allegation in the petition that the partners of the firm were pressurised to enter into the agreement of lease deed. It appears that the lease deed executed between the petitioner and the respondent-Corporation is in a standard form it is not that there is any departure in the case of the petitioner alone. The petitioner firm runs an industrial unit with the employment potential of about 100 workmen. Lacs of rupees have been invested by the partners of the petitioners firm in the industrial unit. There is nothing to show in the petition that the partners of the firm did not understand the ways of the world. On the contrary they appear to be prudent businessmen. They have taken advantage of various governmental schemes which give incentives to budding industries. On the other hand the respondent Corporation is an instrumentality of the State. It is truly stated by the petitioner that it is a giant Corporation. But the largeness of the Corporation itself makes it imperative that its administration would be impersonal. Such Corporations function like Government Departments. Normally no one would take special interest with a view to see that some industrial unit is pressurised and forced to enter into account act. No circumstance, much less any compelling circumstance, is pointed out in the petition to show that the respondent Corporation had brought pressure on the petitioner-firm for entering into the lease deed. Therefore, the argument that the petitioner was constrained to enter into the large agreement lease deed that containing unconscionable terms and conditions and therefore the respondent Corporation should be restrained from enforcing the same cannot be accepted.

6. The learned counsel for the petitioner relied upon the decision of the Supreme Court in the case of Central Inland Water Transport Corporation Limited v. Brojo Nath Ganguly, AIR 1986 SC 1571. In that case the Supreme Court reiterated or has rather elaborated the principles underlying the provisions of Section 23 of the Contract Act. That case pertains to service contract between employer and employees. The employees were required to sign service contract wherein a term was inserted to the effect that their services may be terminated with three months' notice. The employees who had entered into the contract had no option but to accept the contract. Had they not accepted the contract they would have lost their job on that very day. It was in the background of these facts and circumstances that the Supreme Court applied the principles underlying the provisions of Section 23 of the Contract Act. In the instant case no such factual position is available. Therefore the decision of the Supreme Court referred to and relied upon by the learned counsel for the petitioner is of no help to the petitioner.

7. Here reference may be made to the decision of the Supreme Court in the case of Ambica Quarry Works v. State of Gujarat, AIR 1987 SC 1073. In para 18 of the judgment the Supreme Court has observed as follows:

'The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. (See Lord Halsbury in Quinn v. Leathern, (1901) AC 495)

In the 'instant case the factual background is quite different. By no stretch of reasoning or imagination the petitioner can be said to be in any inferior position than that of the respondent-Corporation. There is nothing to show that the petitioner was under pressure from respondent Corporation or for any other reason was obliged to enter into a contract. Therefore, what the Supreme Court has decided in the case of Central Inland Water Transport Corporation Ltd (AIR 1986 SC 1571) (supra) has no application whatsoever to the facts and circumstances of this case.

8. No other contention is raised. For the aforesaid reasons the petition is liable to be rejected. Hence the petition is rejected. Notice discharged

9. Petition dismissed.

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