

CASE NO.:
Appeal (civil) 2528 of 2006

PETITIONER:
Board of the Trustees, Port of Kolkata

RESPONDENT:
Efclon Tie-up Pvt. Ltd. & Ors.

DATE OF JUDGMENT: 08/05/2006

BENCH:
H.K. Sema & Dr. AR. Lakshmanan

JUDGMENT:
J U D G M E N T
(Arising out of S.L.P. (Civil) No. 571/2005)

Dr. AR. Lakshmanan, J.

Leave granted.

This appeal was directed against the final judgment and Order dated 01.12.2004 passed by the Division Bench of the High Court at Calcutta in ACO No. 87 of 2003 in APOT No. 318 of 1998 whereby the High Court allowed the claim of the respondents herein.

The brief facts of the case are as follows:-

An indenture of lease was entered into by Das Reprographics (in short 'the Company') and the Kolkata Port Trust (in short 'Port Trust') in respect of premises at P-10, Taratola Road, Kolkata. The lease deed stipulated that, the lease is for a period of 29 years, 1 month and 25 days, w.e.f November 28, 1962 on a monthly rental basis of Rs. 1,049.12. It was stated in the deed that, the lessee may have the option of a fresh lease for a further term of 30 years provided a notice stating the same was given to the Port Trust at least six months before expiration of subsisting lease. According to the deed, the Municipal Taxes in respect of the land was to be paid by the Company. The Port Trust had the option of renewing the lease for such further period, provided the covenant conditions are duly performed and the increase in rent is upto 25%, but not exceeding the rent as per the 'Schedule of Rates'.

It was also clearly stipulated in the Lease deed that, if the company goes into liquidation or is wound up compulsorily or voluntarily, the Port Trust would re-enter possession and the lease would be brought to an end.

On 01.08.1991, a letter was written by the Company to the Port Trust requesting the appellant for considering the renewal of the lease executed in their favour in 1962 for another term of 30 years. It was also stated in the letter that, the company has rental dues and municipal taxes to be paid which they will clear before the expiry of the lease which was subsisting. The Port Trust however, did not respond to this letter. Later on 26.11.1991, another letter was sent by the company to the Port Trust requesting for the extension of the lease of the land. The lease deed expired on 22.01.1992 by efflux of time. The company had not even then, paid of their outstanding dues, thereby was

still in breach of the stipulations in the lease deed.

On 07.03.1992, the Port Trust informed the company that a total sum of Rs.66,312/- was outstanding towards rent and taxes including 15% interest and this should be cleared before any extension of lease could be considered. However, by taking into consideration the fact of a large number of workmen working in the company, the Port Trust asked the company to correct its breaches so that the extension of lease could be considered.

On 21.12.1994, by an order in Company Petition No.151/1986, the High Court of Calcutta, directed to take possession of the assets of the company forthwith. By an order dated 27.08.1997, invitation for offers for purchasing the assets of the liquidated company was made. Various advertisements were issued as per the order of the High Court after which many offers were made by different parties.

The High Court accepted the offer made by the present respondent No. 1(Efclon) by an Order dated 16.01.1998, for Rs. 50 lakhs and also on an agreement made by the respondent with the workmen of the liquidated company to re-employ them.

Aggrieved by this order of the High Court, United Bank of India filed an appeal in the High Court on the ground that the sale of assets of the company was conducted with undue haste and without trying to ensure that the maximum price was fetched for the assets of the company. The Division Bench held on 09.04.2003, that, the finding of the learned single Judge was correct and thereby confirmed the sale of all the assets of the company at, P-10, Taratolla Road, Kolkata. The Division Bench also observed that the lease over the land had expired and since the purchaser, Efclon, does not intend to destroy the character of the factory, it would be desirable that the Port Trust should grant a fresh lease of the Taratola land which has expired in favour of respondent No.1 (Efclon). On 11.08.2003, an application was made by the respondents in the High Court, for the modification of the order of the Division Bench dated 09.04.2003, stating that, the option of renewal has been found to be validly exercised by the liquidated company and therefore, the Port Trust had no option but to renew the lease in terms of the indenture of lease which existed between the liquidated company and the Port Trust.

The High Court while deciding on this matter on 01.12.2004, allowed the claim of the respondents and thereby ordered the Port Trust that, upon the respondent clearing all the outstanding rental dues and taxes, the Port Trust shall grant fresh lease in consonance with the lease indenture that existed between the Port Trust and Das Reprographics.

The present appeal before this Court is preferred against this order dated 01.12.2002 of the High Court.

We heard Mr. T.R. Andhyarujina, learned Senior Counsel, appearing for the appellants and Mr. U.U.Lalit, learned Senior Counsel, appearing for the respondents and Mr. Vijay Hansaria, learned Senior Counsel appearing for the workmen.

Learned Senior Counsel appearing for the appellant submitted that, the question of renewal of lease deed could not arise owing to the fact that the option to renew the lease was not validly exercised by the Company in liquidation as the Company was in breach of various terms and conditions of the indenture of lease by having outstanding rental dues and municipal taxes.

Also the lease deed provided that, if the company (Das Reprographics) was either voluntarily or compulsorily wound up, the lease deed would be brought to an end. Here since the company has been wound up, the lease is presumed to have come to an end and therefore, the question of granting extension of lease would not arise.

The appellant further submitted that respondent No.1 (Efclon) is only the owner of the assets of the Liquidated Company which includes fixtures and furnitures. Therefore, they could exercise their rights only over the assets of the company and not on the land which is the property of the Port Trust. Also since the lease had come to an end, the company has absolutely no right over the property in question.

Mr. Andhyarujina, submitted that the Port Trust after the order of the High Court has agreed to grant a fresh lease to the company, as per the prevailing rates in Schedule of rates of the Port Trust which are based not on profiteering, but on inflationary tendencies. But the High Court granted fresh lease at the rates prescribed under the lease deed which was drawn in 1962 which is not fair.

Mr. U.U.Lalit, learned senior advocate for the respondents submitted referring to the letters written by the company and the Port Trust that the correspondence would indicate that the company did exercise their option to renew the lease in the procedure mentioned in the lease and also the letter by the Port Trust reveals that, it was not the intention of the Kolkata Port Trust to terminate the lease but to grant a fresh lease to the lessee upon payment of the balance dues.

Mr.U.U.Lalit submitted that, the respondent after acquiring the assets of the company entered into a contract with the employees of the liquidated company for re-employing them, clearly shows that the sole object of the respondent was to revive and rehabilitate its units and to reemploy its workmen.

It was further contented by the respondents that renewal of the lease must be from the date of expiry of the original lease, and also that the amount should be in accordance to what was prescribed in the original lease deed between the Port Trust and Das Reprographics.

Another submission made by the respondent was that, if Das Reprographics had not gone into liquidation, while renewing the lease, the company would have only had to pay 25% over and above the last rent paid under the original lease for the period of renewal of the same. The Kolkata Port Trust is now demanding rent at its scheduled rates for a fresh grant of lease which is three times than the last rent, which will make it impossible for the respondents to reopen the closed units of the company or to reemploy its workmen.

Mr. Vijay Hansaria, learned Senior Counsel, appearing for the workmen submitted that the Port Trust has no right to refuse formal renewal of the lease, particularly with the knowledge that the livelihood of a large number of people are dependant on it. Also that the Port Trust, by allowing the erstwhile lessee to continue to occupy the property even after the expiry of the original terms of the lease and thereby renewed the lease by conduct.

We heard all the parties extensively and also went through

the documents placed before us. The issues in this case that deserve discussion according to us is whether:

? The respondent No.1 (Efclon) due to the fact of them having bought over the assets of the company that was liquidated could exercise right over the property (land) which the Port Trust had by an indenture of lease, leased to the liquidated company (Das Reprographics)?

? Whether the high Court was correct in granting a fresh lease to the respondent No.1 (Efclon) on the terms specified in the original indenture of lease between the Port Trust and the liquidated company (Das Reprographics)?

In other words, the question we are really concerned with now is whether a fresh lease should be granted on the basis of the rates as subsisting according to the schedule to the major Port Trust or whether a fresh lease or whether a fresh lease could be allowed to be executed on the terms and conditions as were existing in the earlier lease.

The lease could not be granted to respondent No.1 \026 Efclon Tie-up Private Limited for the following reasons:-

1. The option to renew the lease was not validly exercised by the Company in liquidation. The Company was in breach of various terms and conditions of the indenture of the lease, inter alia, relating to non-payment of rent, municipal taxes, unauthorized construction of land in question etc.;

2. M/s Efclon Tie-up Private Limited were the auction purchasers of only the assets of the company (fixtures and furnitures) lying, inter alia, in the premises in question. It was incorrect to assume that a further right to renew the lease deed vested in M/s Efclon Tie-up Private Limited;

3. M/s Efclon Tie-up Private Limited were not the successors in interest of the Company in liquidation qua the right to renew the lease deed;

4. It was the admitted position that the lease deed came to an end in 1992 and no renewal was granted thereon, particularly, since the right to grant renewal was in the discretion of the Port Trust, such discretion existed even if the terms and conditions of the indenture of the lease had not been breached by the Company in liquidation;

5. In all fairness the Port Trust had agreed to the grant of a fresh lease to M/s Efclon Tie-up Private Limited as per the prevailing rates in the schedule of rates in the Port Trust which was unacceptable to the said Company which wanted renewal at the rates prescribed in the lease deed.

The High Court ought to have seen that the schedule of rent changes on the basis of the economic condition that is prevailing at a given point of time in every economy. Therefore, the rent that is demanded by the Port Trust from Efclon now is absolutely fair and reasonable and the schedule of rent changes has been declared valid by the Calcutta High Court.

The High Court should have seen that, in any case, the indenture of lease clearly provided that if the Company in liquidation M.L. Das Reprographics was either voluntarily or compulsorily wound up, then the lease deed would be brought to an end. In that case, of course, no question of granting extension of the lease deed would arise. Even if it is assumed that the extension of lease was to be granted from 1992 onwards the lease deed itself would automatically have come to an end by operation of the express terms of the indenture of lease.

The lease granted in 1964 did not provide renewal as a matter of right and, in fact, the lease ended by efflux of time on 22.01.1992 whereupon no extension was given. The option for renewal of lease was not given to the respondent No.3 Company but was given to the Port Trust. The Port Trust had agreed in fairness to execute a fresh lease deed with respondent No.1. The rent would not be the market rent and, in fact, would be in consonance with the schedule of rates framed under the Major Port Trust Act, which have the prior approval of the Central Government.

It is also relevant to note that respondent No.1 had purchased the assets of the Company in liquidation excluding the land belonging to the Port Trust.

We are of the opinion that:

1. There is no right over the property of the Port Trust existing with the respondent No.1 (Efclon) as claimed by them. In the present case only the assets of the company which was liquidated has been bought by the respondents, the land belonged to the Port Trust. Even according to the original indenture of lease between the Port Trust and the liquidated company, there were clauses which very clearly stated that, the Port Trust had the option of renewing the lease for such further period, provided the covenant conditions are duly performed. It was also clearly stipulated in the Lease deed that, if the company goes into liquidation or is wound up compulsorily or voluntarily, the Port Trust would re-enter possession and the lease would be brought to an end. In the present fact situation, the company in liquidation was clearly in breach of the covenant conditions by having outstanding rental dues and tax liability with interest. Also the company did go into liquidation and therefore as the lease indenture says, the original lease has come to an end and the Port Trust is presumed to have automatically come into possession of the land in question.

Therefore we hold that, there is no lease that is subsisting between the Port Trust and the liquidated company and hence the respondent No.1 (Efclon) claim that the original lease deed is subsisting thereby giving them an automatic right to the land in question is untenable and has no merit.

2. To the question as to whether the High Court was correct in granting a fresh lease to the respondent No.1 (Efclon) in accordance with the clause stipulated in the original lease agreement, we are of the opinion that the High Court is correct as far as the grant of fresh lease is concerned. Coming to the second part of the question as to whether the rental amount should be based on the stipulation mentioned in original lease deed is concerned; we believe that the rates that are present in the current Schedule of the Port Trust Act in Kolkata should apply. We are of the view that, the claim of the respondent that they should be allowed to pay the rates in accordance to the clause in the original lease indenture of 1962 is not fair on the Port Trust. Also we are satisfied that the prices that are prevalent in the schedules of the Port Trust Act are not based on profiteering, but on inflationary tendencies.

3. With regard to the respondent No.1's (Efclon) claim of, if Das Reprographics had not gone into liquidation, while renewing the lease, the company would have only had to pay 25% over and above the last rent paid under the

original lease for the period of renewal of the same, does not hold good in our view, as such a renewal need not be contemplated at this point, as the company itself is not in existence and also the clause in the original lease indenture will come in the way which specifically mentions that if the company goes into liquidation or is wound up compulsorily or voluntarily, the Port Trust would re-enter possession and the lease would be brought to an end. The larger interest of the workmen was canvassed by Mr. Vijay Hansaria and also by respondent No.1 for its own commercial purposes. The interest of workmen can be met by the Port Trust's willingness to grant a fresh lease of the premises not at the market rate but at the rate prescribed in the schedule framed under the major Port Trust Act.

It has now brought to our notice that respondent No.1 who are continuing in possession are now inducting the third parties and seeking to alienate the property to them. In these circumstances, I.A. No.3 of 2006 was filed by the Port Trust to direct respondent No.1 to handover possession of the property to the Port Trust. In these circumstances, a contention was also raised by the Port Trust that they were not required to execute the lease deed in favour of respondent No.1.

The fact remains that respondent No.1 Company remained in possession of the property. It has now come to the knowledge of the Port Trust that despite the fact that no right over the property existed in favour of respondent No.1. They are not only carrying out unauthorized constructions in the premises but have also parted with the possession to various individuals and companies not connected with their own business and are creating third party rights. Such construction and part of the possession is not only impermissible in view of the order of stay granted by this Court but in any event was not even permitted under the lease of 1964.

We cannot also, at the same time, close our eyes to the realities. We have, therefore, to safeguard the interest of the Port Trust, the interest of the first respondent and the workmen by one stroke of pen. The trade unions has applied for intervention and is represented by Mr. Vijay Hansaria, learned senior counsel which has a large number of membership of workers working in Das Reprographics Ltd. (in liquidation). Much water has flown after the order of liquidation of respondent No.3 Company. Any adverse orders passed by this Court, at this stage, would affect the right and interest of the members of the union. The Company was directed to be wound up and the Official Liquidator was directed to take charge of the assets and properties. The assets and properties thereof were put up for sale in terms of a sale notice made and published on 05.09.1997. In these circumstances, in an attempt to protect the livelihood of its members, the union entered into an agreement with respondent No.1 providing, inter alia, that respondent No.1 would take necessary steps in Court to purchase the assets and properties of the Company and also would assure employment to all the eligible workers of the Company in phase-wise manner. There are other conditions with which we are not now concerned. In terms of the commitment made, respondent No.1 participated in the sale of the assets and properties of the Company and was declared the successful purchaser in respect thereof by an order dated 16.01.1989. Several other proceedings were taken by both the parties with which also we are not concerned. It is stated that in terms of the order, respondent No.1 has made payment of the entire consideration to the Official Liquidator. The intention of the High Court while passing the orders dated 16.01.1998 and

09.04.2003 is manifest from the fact that while confirming the order dated 16.01.1998 for sale of the assets and properties of the Company, the High Court made the same free from encumbrances and without any liabilities on account of any other dues. With the revival and rehabilitation of the Company in mind, the High Court directed that the properties where the factories of the Company are situate be provided to respondent No.1. The High Court also directed that a fresh lease in respect thereof be granted to Respondent No.1 presently in possession of the factory premises. Respondent No.1 is also in possession of the assets and properties located therein. It is also not in dispute that respondent No.1 is not operating the factory for want of former renewal of the lease. As a result, the right of the members of the workers of the union has been put in jeopardy. The Port Trust itself allowed the erstwhile lessee to continue to occupy the property even after the expiry of the original terms of the lease.

In our view, the workmen of the Company have a right to earn their livelihood. The workmen are as such vitally interested in the renewal of the lease in respect of the property in question. The Port Trust, by its conduct, accepted the right of the Company to obtain renewal of the lease. The Port Trust has never called upon the Company or the official liquidator to vacate the property. The act of the Port Trust in allowing the respondent to continue is only a benevolent act of the Port Trust keeping in view the consequences that can arise if this was not allowed for the large number of workmen of the company. As such, the lease of the property has been renewed or must be deemed to have been renewed as the workmen being interested in the renewal of the lease of the property. They were also heard through their senior counsel.

Social justice demands that the lease in respect of the factory premises be renewed by the Port Trust in favour of respondent No.1 so that the operation of the factory thereof can be commenced. However, the lease can be renewed only subject to the payment of all the arrears and dues together with interest. We are, therefore, inclined in the larger interest of the industry as also the workmen and of the Port Trust to direct the Port Trust to grant a fresh lease to respondent No.1 herein subject to the respondent No.1 complying with the terms relating to the payment of the arrears/dues together with interest at the rate of 15% p.a. as suggested by the Kolkata Port Trust in its letters dated 07.03.1992 and 13.04.1995. The Port Trust shall also grant a fresh lease in favour of respondent No.1 on the basis of the scheduled rate from the date of possession i.e. 04.08.2003.

In conclusion, we order a fresh lease indenture to be drawn from the date the company came into possession of the land (i.e.04.08.2003) between the Port Trust and the Respondent No.1 (Efclon) with regard to the premises situated at P-10, Taratola Road, Kolkata at the rental rates contained in the present Schedule of the Kolkata Port Trust Act as soon as the dues of the liquidated company are discharged with by the respondents.

We are, therefore, directing the Port Trust to inform the Efclon Tie-up Private Limited; respondent No.1 herein of the rental arrears together with interest as suggested by the Port Trust in its letters dated 07.03.1992 and 13.04.1995 within four weeks from the date of this order. In other words, the Port Trust shall inform the first respondent herein of the rental arrears from the date of expiry of the earlier lease (21.01.1992) till the date of the execution of the fresh lease at the old rate together with interest at the rate of 15% p.a. within 4 weeks from the date and

upon such intimation the said dues are to be cleared by the first respondent within 2 weeks thereafter and upon such dues being cleared, the Port Trust shall grant a fresh lease from 04.08.2003 i.e. the date on which the first respondent was to be in possession of the property by the official liquidator on the basis of the scheduled rate as now prevalent. The rate fixed by the Kolkata Port Trust as per the scheduled rate will be effective from 04.08.2003. We are inclined to grant the lease in favour of the respondent No.1 who sought renewal of the lease with the sole object of reviving and rehabilitating its units and to re-employ its workmen thereof.

In the result, the civil appeal stands allowed. However, there shall be no order as to costs.