

B.K.Nanda (Through His General Power Of ... vs Advisor To The Administrator And Ors on 13 January, 2020

Bench: Sanjay Kishan Kaul, K.M. Joseph

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.236-237/2020
[@ SLP [C] NOS.28118-28119/2012]

B.K.NANDA (THROUGH HIS GENERAL
POWER OF ATTORNEY HOLDER SH. SK.NANDA)

Appellant (s)

VERSUS

ADVISOR TO THE ADMINISTRATOR AND ORS

Respondent(s)

WITH

CIVIL APPEAL NO.371/2020
SLP(C) No. 12309/2013 (IV-B)

CIVIL APPEAL NO.372/2020
SLP(C) No. 25077/2013 (IV-B)

CIVIL APPEAL NO.373/2020
SLP(C) No. 33493/2013 (IV-B)

SLP(C) No. 37117/2013 (IV-B)

SLP(C) No. 11827/2014 (IV-B)

SLP(C) No. 11826/2014 (IV-B)

O R D E R

CIVIL APPEAL NOS.236-237/2020 @ SLP [C] NOS.28118-28119/2012 16:45:00 IST Reason:

Leave granted.

Heard learned counsel for the parties. The appellant was allotted a site SCO No.17 measuring 153.33 square yards in Sector 20 D, Chandigarh in a open auction held on 10.03.1989 and allotment letter was issued consequent thereto setting out the total premium of Rs.10,91,000/-. The rights were confirmed for a 99 years lease and 25 per cent of the amount of Rs.2,72,750/- was deposited as per Clause 4 on the fall of hammer.

In terms of Clause 5, the balance 75 per cent had to be paid in three annual installments and if not paid by the due date, the interest was leviable at 12 per cent per annum from the date of accrual of the installment. On repeated failure, as per Clause 8, the Estate Officer was entitled to issue show cause notice for cancellation of the lease on the payment not being made by the 10 th of the next month or the extended period. Since the appellant did not pay the very first installment, out of the three installments, a notice was issue on 06.09.1990 requiring the amount to be paid within 15 days of the notice. The appellant sought extension for six months which was acceded to vide order dated 31.10.1990 extending the time period up to 31.03.1991. The appellant was served by the Estate Officer with a notice dated 09.04.1991 as the first installment was still not paid and suffice to say that the non-payment resulted in cancellation of the lease vide order dated 11.07.1991.

The appellant preferred an appeal before the Chief Administrator, Chandigarh under Rule 10 of the Capital of Punjab (Development and Regulation) Act, 1952. The appeal was allowed by the order dated 04.5.1992 renewing the lease of the appellant and directing the appellant to make the outstanding payment within six months. We may notice that on account of the initial payment of the amount, possession was already handed over to the appellant. The undisputed position is that the first installment was paid within the extended period of time on 18.11.1992. However, in the meantime, second and third installments also became due for which the appellant sought six months' time.

It is in the deposit of the extended period granted by the Administrator qua second and third installments as there has been a delay of one month and seven days in depositing and this delay has been held to be fatal to the appellant as the request of the appellant for extension of time was construed as amounting to taking recourse to review jurisdiction which the competent authority did not have, as opined. This is as per the order dated 07.07.1993 rejecting the request of the appellant. The matter came up in writ petition being CWP No.2059/1995 before the learned Single Judge and was allowed vide order dated 07.03.2011. The administration belatedly filed an appeal after a delay of 238 days, as is quite usual, and the application for condonation of delay was apparently allowed and delay was condoned in routine. Thereafter, on merits the Division Bench ruled against the appellant in terms of the impugned order dated 26.07.2012. In the given facts and circumstances of the case, we do not think it necessary to go into all the controversies raised before us, the reason for the same is that insofar as the second and third installments were concerned, no notice had been issued to the appellant under Rule 12(2) and (3) of the Chandigarh Lease Hold of Sites Building

Rules, 1973 as had been done qua the first installment. It is only while dealing with the issue of the delay in payment of the first installment, that the Administrator found that even the second and third installments had become due as observed in that behalf.

Thus, there was really no occasion to even exercise the so- called review jurisdiction as the order had to deal with the aspect of first installment and that was deposited within the extended period of time.

Since no notice was issued qua the second and third installment and yet the payment was made qua those installments and those payments were honoured but with ultimately delay of one month and seven days, the extension ought to have been granted as the full amount stood deposited. As noticed, there was technical difficulty in terms of absence of notice.

Learned counsel for the appellant also seeks to contend that while this delay of one month and seven days has been found to be fatal, the delay of 238 days in preferring the appeal against the favourable order of the learned Single Judge did not meet the same fate and the appellant did not even get time to respond. Be that as it may, we are really not required to go into this aspect in view of what we have observed aforesaid.

Thus, during the pendency of the proceedings as per the directions issued from time to time that the ground rent has been paid and we are informed that all amounts with penalty and interest have been paid. The appellant is in possession of the property.

In view of all the aforesaid facts and circumstances, we set aside the impugned order of the Division Bench and restore the order of the learned Single Judge.

If there are still amounts owned by the appellant, the respondent authority may inform the appellant within one month from today and the appellant will pay the same within two months thereafter. In case the conveyance deed has not been executed the needful be done within a period of four months from today. The appeals are disposed of.

CIVIL APPEAL NO.371/2020 [@ SLP(C) No. 12309/2013 (IV-B)] & CIVIL APPEAL NO.373/2020 [@ SLP(C) No. 33493/2013 (IV-B)] Leave granted.

On hearing learned counsel for the parties what emerges is that after payment of the initial amount since 1999 none of the three installments have been paid and yet the appellants continued to be in possession. This position cannot be countenanced. Learned counsel for the appellant(s) state that there was some water logging problem but still the appellant(s) would like to retain the premises if the three installments with overdue interest and penalty can be worked out. They may also pay the amount due from the date of allotment letter. This is an offer being made on account of a plea that subsequent endeavours of the respondents to auction this property have not been successful. We are not inclined to go into this issue and it is for the appellant(s) to negotiate with the respondents if they so desire. We may also note that the occupation of the appellant(s) for almost two decades is without paying any amount. Thus, in the aforesaid situation, the respondents are within their rights

to recover their dues for use and occupation charges and damages for that period of time apart from recovering possession. The appeals are dismissed with the aforesaid observations. CIVIL APPEAL NO.372/2020 [@SLP(C) No. 25077/2013 (IV-B)] Leave granted.

Learned counsel for the appellant pointed out that as per an interim order dated 5.8.2013, Rs.50 lakhs has been deposited. In View of the aforesaid, learned counsel for the respondent submits that they will examine the case of the appellant subject to payment of all dues with interest and penalty and pass appropriate order within three months from today.

The appeal stands disposed of.

SLP(C) No. 37117/2013 (IV-B), SLP(C) No. 11827/2014 (IV-B) & SLP(C) No. 11826/2014 (IV-B) Learned counsel for the appellant(s) states that the appellant(s) may be permitted to move the authorities for consideration if on payment of certain amounts they are willing to examine the case of the appellant(s).

We grant the liberty to do so within one month and the authorities to take a call of the same within a period of three months thereafter.

We make it clear that this would not give rise to another round of litigation.

The Special Leave Petitions are dismissed as withdrawn in terms aforesaid.

.....J. [SANJAY KISHAN KAUL]J. [K.M. JOSEPH] NEW DELHI;

JANUARY 13, 2020.

ITEM NO.26

COURT NO.12

SECTION IV-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C)
28119/2012

No(s). 28118-

(Arising out of impugned final judgment and order dated 26-07-2012 in CM No. 199/2012 in LPA No. 90/2012 and order dated 16-08-2012 in LPA No. 90/2012 passed by the High Court Of Punjab & Haryana At Chandigarh) B.K.NANDA (THROUGH HIS GENERAL POWER OF ATTORNEY HOLDER SH. SK.NANDA) Petitioner(s) VERSUS ADVISOR TO THE ADMINISTRATOR AND ORS. Respondent(s) (FOR [PERMISSION TO FILE ANNEXURES] ON IA 5/2015 and IA No.128786/2017-PERMISSION TO FILE ADDITIONAL DOCUMENTS IA No. 5/2015 - PERMISSION TO FILE ANNEXURES) WITH SLP(C) No. 12309/2013 (IV-B) SLP(C) No. 25077/2013 (IV-B) SLP(C) No. 33493/2013 (IV-B) SLP(C) No. 37117/2013 (IV-B) SLP(C) No. 11827/2014 (IV-B) SLP(C) No. 11826/2014 (IV-B) Date : 13-01-2020 These matters were called on

for hearing today. CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL HON'BLE MR. JUSTICE K.M. JOSEPH Counsel for the parties:-

Mr. Neeraj Kumar Jain, Sr. Adv. Mr. Sanjay Singh, Adv.

Mr. Aniket Jain, Adv.

Mr. Umang Shankar, AOR Mr. Puneet Bali, Sr. Adv.

Mr. Aditya Soni, Adv.

Mr. Shree Pal Singh, AOR Mr. Gagan Gupta, AOR Mr. Shubham Bhalla, AOR Mr. Yajur Bhalla, adv.

Mr. Vivek Bhati, Adv.

Mr. Deepak Samota, Adv.

Mr. Bharat Upreti, Adv.

Mr. Ravi Prakash, Adv.

Mr. Chandra Prakash, AOR Mr. Chandra Prakash, AOR Mr. Vivek Singh, Adv.

Mr. C.P. Rajuar, Adv.

Mr. Mohit Kr. Daraad, adv.

Mr. Sudarshan Singh Rawat, AOR Mrs. Rachana Joshi Issar, AOR UPON hearing the counsel the Court made the following O R D E R SLP [C] NOS.28118-28119/2012 Leave granted.

The appeals are disposed of in terms of the signed order. Pending applications stand disposed of.

SLP(C) No.12309/2013 (IV-B) & SLP(C) No. 33493/2013 (IV-B) Leave granted.

The appeals are dismissed in terms of the signed order. Pending application if any, stands disposed of.

SLP(C) No. 25077/2013 (IV-B) Leave granted.

The appeal stands disposed of in terms of the signed order. Pending application if any, stands disposed of.

SLP(C) No. 37117/2013 (IV-B), SLP(C) No. 11827/2014 (IV-B) & SLP(C) No. 11826/2014 (IV-B) The Special Leave Petitions are dismissed as withdrawn in terms of the signed order.

(ASHA SUNDRIYAL)
COURT MASTER

(ANITA RANI AHUJA)
COURT MASTER

[Common signed order is placed on the file]