



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 12.03.2012*

+ CM (M) No. 485/2001

HINDUSTAN COMMERCIAL BANK LTD. & ANR. .... Petitioner

Through: Mr. Y.P. Chandana and  
Mr. Pankaj Nagpal, Advocates.

versus

BRITISH MOTOR CAR COMPANY (1934) LTD. .... Respondent

Through: Mr. Sanjay Jain, Sr. Adv. with  
Ms. S.K. Gandhi, Ms. Ruchi Jain  
and Ms. N. Gupta, Advocate.

**CORAM:**

**HON'BLE MS. JUSTICE INDERMEET KAUR**

**INDERMEET KAUR, J.** (Oral)

1 The impugned judgment is dated 21.05.2001. It had disposed of two appeals, one filed by the landlord i.e. British Motor Co. Ltd. and the other by the tenant i.e. Hindustan Commercial Bank Ltd. (HCB). The eviction petition filed by the landlord being EP No.229/1988 had been dismissed by the Additional Rent Controller (ARC) vide judgment dated 03.11.1995. Appeal filed by the landlord was allowed; eviction petition stood decreed. This was on the ground of subletting as contained in



Section 14 (1)(b) of the Delhi Rent Control Act (DRCA). Tenant is aggrieved by this finding.

2 Briefly stated the facts are that the landlord was aggrieved by an act of subletting of his tenant M/s HCB. Contention was that the tenant had sublet/assigned/parted with possession of the suit premises in favour of Punjab National Bank (PNB) without obtaining the written consent of the petitioner. It is not in dispute that M/s HCB had since been amalgamated with PNB by virtue of a Gazette Notification issued by the Ministry of Finance (Banking Division) Govt. of India; necessary effect was that M/s HCB became non-existent and its complete power and control vested with the transferee company i.e. PNB. Contention of the landlord was that this merger amounted to a subletting and the ground under Section 14 (1)(b) of the Delhi Rent Control Act (DRCA) became available to him. The ARC had dismissed his petition. The RCT had reversed this finding.

3 The only question which now has to be answered by this Court is whether the merger of M/s HCB with the PNB by virtue of a Gazette Notification dated 18.12.1986 issued by the Government of India under Section 45 (7) of the Banking Regulation Act, 1949 sanctioning the CM(M) No. 485/2001



scheme of amalgamation of the HCB (Kanpur) with the PNB amounted to a subletting under Section 14 (1)(b) of the DRCA or whether being an involuntary act, it did not attract the provisions of Section 14 (1)(b) of the said Act.

4 On behalf of the tenant, it has been contended that the impugned judgment suffers from an illegality as the view taken in the impugned judgment has now been set at rest by the judgment of this Court reported in *Asha Rohtagi and Others Vs. Erstwhile New Bank of India through General Manager PNB* 119 (2005) DLT 538 which was followed by a subsequent Division Bench judgment of this Court in *Allahabad Bank Vs. M/s K. Kishore (HUF)* in RFA No. 15/2006 dated 23.07.2007.

5 These arguments have been refuted. Contention of the learned counsel for the respondent is that the impugned judgment in no manner suffers from any infirmity; submission being that the ratio of *Asha Rohtagi* (Supra) and *Allahabad Bank* (Supra) would not be applicable to the factual scenario of the instant case. Learned counsel for the respondent submits that a clear distinction has to be drawn between the an administrative act and a legislative enactment; the notification issued under Section 45 (7) of the Banking Regulation Act, 1949 and a CM(M) No. 485/2001



notification under Section 9 of the Banking Acquisition Act are not paramateria one another; reliance has been placed upon AIR 1988 Supreme Court 686 K.I. Shephard and Others Vs. Union of India and others as also the judgment of the Apex Court reported in AIR 1996 Supreme Court 3208 New Bank of India Employees Union and another Vs. Union of India and others where the ratio of K.I. Shephard (Supra) had been quoted with approval; contention being that a legislative act is the creation and promulgation of a general rule of conduct without reference to a particular case; an administrative act is the making and issue of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy; contention being that the notification issued in the present case which was a notification under Section 45 (7) of the Banking Regulation Act, 1945 was only an administrative process; such an administrative process is distinct from a legislative enactment; the presumption of involuntariness on the part of the tenant could not have been presumed; further submission being that this distinction between the legislative act and administrative process has not been noted in either of the two judgments relied upon by learned counsel for the petitioner in Asha Rohtagi



(Supra) and Allahabad Bank (Supra); submission being that by applying the ratio of the aforementioned judgment of K.I. Shephard (supra) and New Bank of India Employees Union (supra) coupled with the judgment of the Apex Court reported in (2004) 7 SCC 1 Singer India Ltd. Vs. Chander Mohan Chadha and others, it is clear that unless and until there is a protection available to the tenant under a statutory enactment; the original tenant in this case being the HCB and not the PNB, tenanted premises now in occupation of the PNB amounted to a subletting.

6. Arguments have been afore-noted. This matter now stands settled in view of the judgment of a Bench of this Court reported in Asha Rohtagi and Others Vs. Erstwhile New Bank of India through General Manager PNB 119 (2005) DLT 538; appeal filed against this judgment has also been dismissed by the Apex Court on 29.08.2005. This was a case where a similar Notification under Section 45 (7) of the Banking Regulation Act had been issued; this was a merger of New Bank of India with the PNB; similar contentions had been raised and were noted; they were repelled; the finding of the Bench of this Court was returned as follows:-



“9. In the present case the tenancy rights have been conferred on the PNB by statute namely clause 4(2) of the notification dated 4.9.1993 promulgated by Central Government under section 9 of the Banking Companies (Acquisition and Transfer of Undertaking) Act 1980 which scheme is legislative in character. It does not amount to merger of two companies under the provisions of Companies Act. Therefore the ratio of *M/s Parasram Harnand Rao (Supra); M/s General Radio and Appliances Co. Ltd. and Ors. and Cox and Kings Ltd. and Anr. v. Chander Malhotra (Smt.)* will not apply to the facts of the present case. One more decision which must be taken note of is a three judges bench decision in the case of *G. Sridharamurti v. Hindustan Petroleum Corporation Ltd. and Anr.*” [MANU/SC/0067/1996](#) : AIR1996SC264 . The facts of the case were that an open space, was in the possession of Esso company pursuant to a lease dated 17.7.1969 granted by the appellant. Esso company was merged into respondent corporation on 14.3.197. The appellant filed eviction petition under section 21(1)(f) of the Karnataka Rent Control on the ground of sub-letting, assignment parting with possession . The courts below dismissed the application on the ground that the Esso company had not sub-set the demised premises but by virtue of statutory provisions under the Esso Act, the respondent-corporation stood transposed as a tenant which is an involuntary act pursuant to section 7 of the Act and notwithstanding the specific embargo created under Section 21(1)(f) of the Act, it cannot be construed to be a case of sub-letting. The High Court also reached the same conclusion. In appeal Supreme Court upheld the order of the High Court and took note of section 5(1) of the Esso Act and observed that pre-existing tenancy rights held by Esso company with the appellant initially stood transferred and vested in the Central Government, and thereafter, by operation of section 7 of the Esso Act; the said rights in turn stood transposed and vested in



*the government company as if the government company initially became the tenant of the appellant- landlord. On the Esso Act coming into force, by operation of sections 5 and 7 of that Act, the respondent corporation became statutory tenant and thereby it cannot be construed to be an assignment of tenancy rights, which the appellant landlord had entered into with the Esso company. The ratio of Parasram Harnand Rao (supra) was distinguished with the observation that in that case the Official Liquidator had sold the tenancy rights in favor of the respondents and though the same was made in favor of the respondent through court, it amounted to transfer of an interest by the tenant.*

*10. It will thus be seen that consistent view of the Supreme court has been that take over of a company by the Central Government under a statute stands on a different footing than merger of two companies under the provisions of companies Act. Vesting of tenancy rights in the Central Government or a Government company by virtue of the provisions of the statute was upheld by the apex court in the case of HPCL case (supra) and this decision was cited with approval in the case of Singer India Ltd. (Supra). Whereas in cases of later category i.e transfer of tenancy rights under an scheme of amalgamation under provisions of company Act has been consistently held to be sub letting, assignment or parting with possession, in cases falling in the former category viz. where tenancy rights of one company are taken over by the Government and are conferred on some other government company under a statute have never been held to tantamount to sub letting, assignment or parting with possession. The case in hand falls in this category. As already noticed leasehold rights on PNB have been conferred by clause 4 (2) of the notification dated 4.9.93 issued under section 9 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980 which*



*scheme is legislative in character. It cannot fall in the category of any voluntary or involuntary transfer of interest by the tenant. Therefore, it does not amount to sub-letting assignment or parting with possession of tenancy rights by the tenant. The impugned order passed by the learned Tribunal Therefore does not call for any interference.”*

7 In the case of Allahabad Bank (supra) the facts were identical; this was a merger between a private bank with a Government bank; private bank being the United Indian Bank and the Government bank being the PNB. In this context, the Division Bench of this Court has noted as under:-

*“In contradistinction, by notification issued under Section 45 of the Banking Regulation Act, scheme is foisted upon the shareholders, creditors and other stakeholders. In a case like this, the respondents would not be entitled to say that there is a breach of clause (8) of the Sub-lease on the part of UIB which stipulated as under:-*

*8The sub-tenant shall not assign or part with the possession of the flat or any part thereof of any person or any basis whatsoever and will use the same entirely for its own banking business.*

*It is not the voluntary act of the UIB parting with possession of the suit premises but a consequence of statutory step taken by a third party, namely the Central Government in the instant case making appellant bank as successor-in-interest. Moreover, it cannot be denied that the premises continued to be used for banking business by the appellant Bank, including the one which was hitherto carried out by the*



*UIB.*

*We are, therefore, of the opinion that the learned Single Judge was right in deciding issue No. 1 and holding that the appellant bank was not in unauthorized occupation when it got possession of the suit property as a result of the amalgamation of UIB with the appellant bank.”*

8 Applying the ratio of the aforementioned judgments, it is clear that the merger of HCB with PNB was the consequence of a statutory step which was taken by a third party i.e. by the Central Government although admittedly pursuant to a recommendation of the RBI. This merger was thus an involuntary act on the part of the tenant; it was no voluntary act on his part by virtue of which the PNB came to be operating from the suit premises; it was a merger consequent to a Gazette Notification issued by the Central Government over which the tenant had no control; banking business which was carried out by HCB was now being carried by PNB as all the rights and liabilities of the transferor company i.e. HCB had now vested with the transferee bank which was the PNB. The Gazette notification dated 18.12.1986 specifically postulates that the Central Government has sanctioned the scheme under Section 45(7) of the Banking Regulation Act, 1949 and all rights, powers, claims,



interests, authorities, privileges including movable and immovable properties including premises subject to all incidents of tenure, of the transferor bank (HCB) shall stand transferred and become properties/assets of the transferee bank (PNB).

9 In these circumstances, the ground of subletting was rightly held to be not available to the landlord. The impugned judgment holding otherwise thus suffers from an illegality. Petition is allowed. Eviction petition stands dismissed.

**MARCH 12, 2012**  
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**INDERMEET KAUR, J**