IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

&

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

TUESDAY, THE 02ND DAY OF JULY 2019 / 11TH ASHADHA, 1941

WA.No.2598 of 2017

AGAINST THE JUDGMENT IN WPC 17866/2017 of HIGH COURT OF KERALA DATED 13-06-2017

APPELLANTS/RESPONDENTS:

CENTRAL BANK OF INDIA
CHANDER MUKHI, NARIMAN POINT,MUMBAI-400021,REPRESENTED BY ITS REGIONALMANAGER, REGIONAL OFFICE, ERNAKULAM NORTHKOCHI 18

ASSISTANT GENERAL MANAGER,
CENTRAL BANK OF INDIA,
ERNAKULAM, COCHIN-682 035.
REPRESENTED BY ITS REGIONAL MANAGER,
REGIONAL OFFICE, ERNAKULAM NORTH,
KOCHI-18.

BY ADVS.
SRI.GEORGE CHERIAN (SR)
SMT.K.S.SANTHI
SMT.LATHA SUSAN CHERIAN

RESPONDENT/PETITIONER:

BEENA THIRUVENKITAM
AGED 55 YEARS, D/O T.THRUVENKITAM,PROPRIETRIX, M/S SEEMATI, M.G ROAD,ERNAKULAM, KOCHI.682035

BY ADVS.
SRI.M.GOPIKRISHNAN NAMBIAR
SRI.E.K.NANDAKUMAR (SR.)
SRI.JOSON MANAVALAN
SRI.K.JOHN MATHAI
SRI.KURYAN THOMAS
SRI.PAULOSE C. ABRAHAM
SRI.P.GOPINATH (SR.)

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 20.06.2019, THE COURT ON 02.07.2019 PASSED THE FOLLOWING:

"CR"

C.K.ABDUL REHIM
&
R.NARAYANA PISHARADI, JJ.
****
W.A.No.2598 of 2017

Dated this the 2nd day of July, 2019

J U D G M E N T

R.Narayana Pisharadi, J

The first appellant is a nationalised bank. The second appellant is the Assistant General Manager of the bank. The bank is the tenant of the building owned by the respondent.

2. The respondent filed W.P.(C) No.17866/2017 against the appellants seeking the following reliefs:

> *"(i) Issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents to surrender vacant possession of the petitioner's premises covered by Exhibit P-1 lease deed, within a reasonable period of time;*
>
> *(ii) Issue a writ of mandamus or any other appropriate writ, order or direction, directing the Chairman and Managing Director to the respondents to consider Exhibit P-14 representation and pass appropriate orders*

on it in accordance with law and the policy of the respondents, after affording the petitioner an opportunity of being heard;

(iii) Issue such other directions that this Honourable Court may deem fit and expedient, to meet the ends of justice, in the facts and circumstances of the case."

3. The learned Single Judge disposed of the writ petition by directing the bank to surrender vacant possession of the building occupied by it to the respondent within four months from the date of the judgment. The aforesaid judgment is under challenge in this appeal.

4. We have heard Sri.George Cherian, learned Senior Counsel who appeared for the appellants and also Sri.E.K.Nandakumar, learned Senior Counsel who appeared for the respondent.

5. Learned Senior Counsel for the appellants contended that the writ petition filed by the respondent is not maintainable. He would contend that no direction could be issued by this Court to a tenant, in exercise of its writ jurisdiction under Article 226 of the Constitution, to surrender vacant possession of the building occupied by him to the landlord. He would contend that, while issuing the direction,

the learned Single Judge has omitted to take into consideration the bar contained in Section 11(1) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act')

6. *Per contra*, learned Senior Counsel for the respondent has contended that, when the writ petition came up for hearing, the counsel who appeared for the bank had submitted that the bank was ready to surrender possession of the premises to the respondent and it was on the basis of such undertaking that the writ petition was disposed of. He has submitted that the appellants cannot now turn around and contend that the writ petition filed was not maintainable.

7. The respondent purchased the building occupied by the bank with the land appurtenant thereto on 30.11.2015. The lease agreement had been entered into between the bank and the then owners of the building. After the respondent became the owner of the building, the appellant had paid the rent of the building to the respondent and she had received it. The period of the lease expired on 31.12.2016. Thereafter, the respondent had informed the bank that she was not willing to renew the lease.

8. There is a plea raised in the writ petition that, after the expiry of the period of lease, the status of the bank was that of a tenant at sufferance. There is no merit in this plea. The Act is a special statute governing and regulating tenancy. The provisions of the Act supersede the general law of tenancy (See **Ram Saran v. Pyare Lal : AIR 1996 SC 2361**). Section 2(6)(ii) of the Act recognises the principle of holding over, by including in the definition of tenant "a person continuing in possession after the termination of the tenancy in his favour". This provision is incompatible with Section 116 of the Transfer of Property Act. Therefore, the status of the bank, after the expiry of the period of lease, is that of a tenant by holding over.

9. It is stated in the third paragraph of the impugned judgment as follows:

> *"3.The learned Senior Counsel for the Bank pointed out that the Bank has now located a suitable premises, and negotiations are on to fix the terms and conditions of the lease. It is also pointed out by the learned Senior Counsel that once the terms and conditions of the lease are finalized, permission of the Reserve Bank of*

India will have to be obtained for shifting the Currency Chest and the Currency Chest has to be constructed thereafter in the new premises. It is stated by the learned Senior Counsel that the premises will be surrendered immediately after the construction of the Currency Chest. To a pointed question put by the Court to the learned Senior Counsel as to the time limit within which they would complete the formalities for shifting, the learned Senior Counsel was evasive in his answer. According to the learned Senior Counsel, no commitment can be made as regards the time limit within which all the aforesaid formalities can be completed."

10. It was on the basis of the aforesaid submissions made by the learned Senior Counsel, who appeared for the bank at the time of hearing of the writ petition, that the learned Single Judge issued direction to the bank to surrender vacant possession of the building occupied by it to the respondent, fixing a time limit of four months from the date of the judgment.

11. At this juncture, we may notice the provision contained in Section 11(1) of the Act, which reads as follows:

"Notwithstanding anything to the contrary contained in any other law or contract a tenant shall not be evicted, whether in execution of a decree or otherwise, except in accordance with the provisions of this Act".

12. Section 11(2)(a) of the Act provides that a landlord who seeks to evict his tenant shall apply to the Rent Control Court for a direction in that behalf.

13. A conjoint reading of the provisions contained in Sections 11(1) and 11(2)(a) of the Act would show that in respect of a building situated in an area to which the Act is made applicable, the jurisdiction to pass an order for eviction of a tenant is exclusively vested with the Rent Control Court. There is implied ouster of jurisdiction of other forums to order eviction except in cases specifically provided under the Act.

14. True, a literal interpretation of the provision contained in Section 11(1) of the Act would mean that it does not oust the jurisdiction of a court to pass any order or decree for eviction otherwise than in accordance with the Act. This provision only bars eviction of a tenant except in accordance with the provisions of the Act. But, an order or a decree for eviction of a tenant passed by a court, without

jurisdiction over the subject matter, is a nullity (See **Sushil Kumar Mehta v. Gobind Ram Bohra [(1990) 1 SCC 193**]. Any proceedings instituted by a landlord for eviction of a tenant from a building falling within the ambit of the Rent Control Act, otherwise than as stipulated by the provisions in the Act, is incompetent for lack of jurisdiction of the court and any order or decree of the court in such proceedings is null and void (See **M/s. East India Corporation Limited v. Shree Meenakshi Mills Limited : AIR 1991 SC 1094**). It is the settled legal position that in a case where the court lacks jurisdiction to pass an order of eviction of a tenant from a building situated in an area which comes within the purview of the Act, the order is null and void. When a special statute gives a right and also provides a forum for adjudication of the right, remedy has to be sought only under the provisions of that statute. There is no meaning in a court passing an order which is null and void and which is not executable. It is well settled that a void order cannot create neither legal rights nor obligations.

15. Even in a case where the landlord and the tenant have entered into a compromise, in which the tenant has

agreed to vacate the premises, a court ordering eviction has to satisfy itself that a statutory ground of eviction has been made out by the landlord. An order for eviction of a tenant cannot be passed solely on the basis of a compromise between the landlord and the tenant. The court is to be satisfied whether a statutory ground for eviction has been pleaded which the tenant has admitted by the compromise. If the court does not find the permissible grounds for eviction disclosed in the pleadings and other materials on the record, no consent or compromise will give jurisdiction to the court to pass a valid order of eviction. The Rent Control Court is not competent to pass an order for possession with the consent of the parties on a ground which is dehors the Act or ultra vires the Act. The existence of one of the statutory grounds mentioned in the Act is a sine qua non to the exercise of jurisdiction by the Rent Control Court. Even parties cannot by their consent confer such jurisdiction on the court to do something which according to the legislative mandate, it could not do. No doubt, the court can pass an order for eviction on the basis of the compromise. But, order of eviction cannot be based merely on an agreement between

the landlord and the tenant. The compromise must indicate either on its face or in the background of other materials in the case that the tenant expressly or impliedly agreed to suffer a decree for eviction because the landlord is entitled to have such an order under the law. In cases where protection under a Rent Act is available, no eviction can be ordered unless ground seeking eviction is made out, even if parties have entered into a compromise (See **Bahadur Singh v. Muni Subrat Dass: 1969 (2) SCR 432, Roshan Lal v. Madan Lal : AIR 1975 SC 2130, Nai Bahu v. Lala Ramanarayan : AIR 1978 SC 22, Ferozi Lal Jain v. Man Mal : AIR 1970 SC 794 and M/s. Alagu Pharmacy : Magudeswari : AIR 2018 SC 3821**).

16. At this juncture, we may put a word of caution. An order for eviction of a tenant is not necessarily void, if the existence of one or more of the conditions provided under the rent control statute were shown to have existed when the court made the order. Satisfaction of the court, which is no doubt a pre-requisite for the order of eviction, need not be by the manifestation borne out by a judicial finding. if the tenant in fact admits that the landlord is entitled to

possession on one or other of the statutory grounds mentioned in the Act, it is open to the court to act on that admission and make an order for eviction (See **K. K. Chari v. R. M. Seshadri: AIR 1973 SC 1311**). If at the time of the passing of the order of eviction, there was some material before the court, on the basis of which the court could be prima facie satisfied, about the existence of a statutory ground for eviction, it will be presumed that the court was so satisfied and the order for eviction passed on the basis of a compromise would then be valid. Such material may take the shape of an express or implied admission made by the tenant in the compromise agreement itself (See **Nagindas Ramdas v. Dalpatram : AIR 1974 SC 471**). An admission by the tenant about the existence of a statutory ground, expressly or impliedly, will be sufficient and there need not be any evidence before the court on the merits of the grounds before order of eviction is passed on the basis of the compromise (See **Suleman Noormohamed v. Umarbhai : AIR 1978 SC 952**).

17. The upshot of the discussion above is that, except in cases as otherwise provided under the Act, the jurisdiction to

pass an order for eviction of a tenant of a building situated in an area to which the Act is made applicable, is exclusively vested with the Rent Control Court on satisfaction of the existence of one or more of the statutory grounds.

18. The question now arises whether the High Court can issue a direction to a tenant, in exercise of the power under Article 226 of the Constitution of India, to vacate the premises occupied by him, inspite of the bar under Section 11(1) of the Act.

19. Article 226 of the Constitution confers upon every High Court power to issue directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose. Exercise of the jurisdiction under Article 226 is discretionary. But, the discretion must be exercised on sound judicial principles. The Court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. This plenary power of the High Court to

issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless the action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandates or for other valid and legitimate reasons, for which the court thinks it necessary to exercise the said jurisdiction.

20. The prayer in the writ petition is to issue a writ of mandamus. Mandamus literally means a command. A writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the authority or the officer concerned and there is a failure on the part of that authority or officer to discharge the statutory obligation. A mandamus can be issued by the Court only when the applicant establishes that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought. Mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there

would be a failure of justice. The chief function of the writ of mandamus is to compel the performance of public duties prescribed by statute. The duty that may be enjoined by mandamus may be one imposed by the Constitution or a statute or by rules or orders having the force of law. But no mandamus can be issued to do something which is contrary to law.

21. In the case at hand, the first appellant bank does not owe any public duty towards the respondent to vacate the building occupied by it. The legal right of the respondent, to get the building owned by her vacated by the bank, has to be enforced by her through the forum provided for that purpose. It cannot be said that there was any failure on the part of the bank in discharging any statutory obligations, so as to enable the respondent to invoke the writ jurisdiction of this Court under Article 226 of the Constitution. The bank has no legal duty or obligation to vacate the building occupied by it unless the owner of the building establishes any one of the grounds specified under the Act. Normally, resort to the jurisdiction under Article 226 of the Constitution is not intended as an alternative remedy, which may be obtained by other mode

prescribed by statute. In such circumstances, we are of the considered view that no writ of mandamus or direction could have been issued to the bank to surrender vacant possession of the the building occupied by it as a tenant, by by-passing the provisions contained under the Act. In our opinion, the learned Single Judge has erred in issuing such direction in exercise of the power under Article 226 of the Constitution of India.

22. Learned Senior Counsel for the respondent has contended that the direction to surrender the premises was issued to the bank on the basis of the undertaking given by the bank to vacate the premises. He has contended that this Court has got the power to enforce an undertaking given before it by issuing appropriate direction. Reliance is placed upon the decision of the Allahabad High Court in **Anand Mohan Sharma v. Niranjan Lal Gupta: 2003 (1) AWC 578** in support of this contention.

23. There can be no quarrel with the proposition that this Court has got power to issue appropriate directions to enforce an undertaking given before it by a party. However, the decision in **Anand Mohan Sharma** (supra) has no

application to the facts of the instant case. It was a case in which the landlord had filed petition for eviction against the tenant before the statutory forum. The petition was rejected and the revision petition filed by the landlord was also dismissed. Thereafter, a writ petition was filed challenging the order in revision. In that writ petition, a joint affidavit was filed by the parties wherein the tenant stated that he would vacate the premises within a period one year from the date of filing the compromise. The writ petition was dismissed on the basis of that affidavit. In a subsequent writ petition filed by the landlord, the tenant who was present in the court offered to vacate the building provided he was granted reasonable time. He was granted three months time to vacate the building on the condition that he would file an undertaking in writing before the authority concerned. The tenant filed such undertaking. The writ appeal filed by the tenant was dismissed by the Allahabad High Court holding that while exercising jurisdiction under Article 226 of the Constitution, the High Court can issue appropriate directions for enforcing an undertaking given by a party before it. It was a case in which the landlord had approached the statutory forum to get

an order of eviction against the tenant. The writ petition, in which the undertaking given by the tenant, was a proceeding in continuation of the proceedings before the statutory authority. This decision has no application to the facts of the present case.

24. In **Babu Ram Gupta v. Sudhir Bhasin : AIR 1979 SC 1528**, to which reference is made in **Anand Mohan Sharma** (supra), it has been held that any person appearing before the Court can give an undertaking in two ways : (1) that he files an application or an affidavit clearly setting out the undertaking given by him to Court, or (2) by a clear and express oral undertaking which is incorporated by the court in its order. In the instant case, there was no application or affidavit filed in the Court by the bank containing an undertaking to vacate the building. The contention of the respondent is that the bank had given an oral undertaking before the Court. In order to ascertain whether there was any oral undertaking given by the bank that it shall vacate the building, we have to ascertain whether any such undertaking is incorporated in the impugned judgment.

25. The impugned judgment reveals that the Senior Counsel who appeared for the bank had explained before the Court the procedures and formalities to be complied with by the bank before shifting to another building. What the Senior Counsel had thereafter stated before the Court was only that the premises will be surrendered immediately after the construction of the currency chest. The impugned judgment would also show that the Senior Counsel for the bank was not prepared to state before the Court the time limit within which the formalities for shifting would be completed.

26. It has been held by the Apex Court in **Babu Ram Gupta** (supra) that even if there was an undertaking given by the counsel on behalf of his client, the undertaking should be carefully construed to find out the extent and nature of the undertaking actually given by the person concerned. It is not open to the Court to assume an implied undertaking when there is none on the record. In the instant case, the Senior Counsel for the bank had not given any undertaking before the Court that the premises shall be vacated within four months or within any specific time.

27. The matter can be looked from another angle also. Jurisdiction cannot be conferred by consent. Statutory provisions cannot be violated by consent. Conferment of jurisdiction is a legislative function. Jurisdiction can neither be conferred with the consent of the parties nor by a superior court. The Court cannot derive jurisdiction apart from the statute. In such eventuality the doctrine of waiver also does not apply (See **Jagmittar Sain Bhagat v. Health Services, Haryana : AIR 2013 SC 3060**). A wrong concession, on a question of law, made by counsel is not binding on his client (See **Uptron India Limited v. Shammi Bhan: AIR 1998 SC 1681**). Neither the client nor the Court is bound by the lawyer's statements or admissions as to matters of law or legal conclusions. A lawyer generally has no implied or apparent authority to make an admission or statement which would directly surrender or conclude the substantial legal rights of the client unless such an admission or statement is clearly a proper step in accomplishing the purpose for which the lawyer was employed (See **Himalayan Co-operative Group Housing Society v. Balwan Singh : AIR 2015 SC 2867**). Therefore, immunity from eviction enjoyed by the

bank under the provisions of the Act is not lost on account of the statement made by the counsel for the bank in the Court that the premises would be surrendered immediately on construction of currency chest in another building.

28. Learned Senior Counsel for the respondent has submitted that the respondent had sent Ex.P14 representation to the bank requesting it to vacate the building and a direction may be issued to the bank to consider it. We are not inclined to accept this prayer. The bank, as a tenant under the respondent, has no legal obligation to consider such representation and pass orders thereon. No writ of mandamus or direction can be issued to the bank to that effect.

29. True, the bank succeeds in the appeal on technicalities of law. But, the Act does not prohibit a tenant from vacating the premises on a request made by the landlord. When such surrender is made by a tenant, it would not be illegal. Surrender of the building by the tenant, at the request of the landlord, would only promote healthy business relations (See **George v. Oommen: 2005 (2) KLT 92**). We take note of the fact that it was in June, 2017 that submission

was made by the bank in the writ petition that it had located suitable premises to shift its functioning. Even after the lapse of two years, nothing has happened. We hope that the authorities of the bank would take earnest efforts to vacate the building avoiding another round of litigation. We make it clear that it is not a direction issued to the bank.

30. Consequently, the appeal is allowed. The impugned judgment is set aside and the writ petition is dismissed. We make it clear that none of the observations made in this judgment would preclude the respondent from pursuing appropriate legal proceedings before the appropriate forum for eviction of the first appellant bank from the building owned by her. No costs in the appeal.

(sd/-)

C.K.ABDUL REHIM, JUDGE

(sd/-)

R.NARAYANA PISHARADI, JUDGE

jsr/24/06/2019

True Copy

PS to Judge