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AFR

Reserved on 25.09.2023

Delivered on 31.10.2023

Court No. - 40

Case :- WRIT - C No. - 22688 of 2023
Petitioner :- Vigyan Parishad And Another
Respondent :- Union Of India And 4 Others
Counsel for Petitioner :- Sanjeev Singh,Nitinjay Pandey,Utkarsh Tripathi
Counsel for Respondent :- A.S.G.I.,Kunal Ravi Singh,Kunal Shah,Saumitra Singh

Hon'ble Mahesh Chandra Tripathi,J.
Hon'ble Prashant Kumar,J.

1. The petitioner no.1 Vigyan Parishant is a society registered under the Societies Registration Act, 1860. The petitioner no.2 is a General Secretary of the petitioner no.1.

2. According to the petitioners, the Vigyan Parishad was founded on 10.03.1913 by four renowned scholars of Muir Central College (now the University of Allahabad) with the object of developing scientific activities in Hindi. The then Principal of Muir Central College Mr. J.P. Hennings provided a place for opening an office for petitioner no.1. For this purpose a resolution dated 27.01.1953 was passed by the Executive Council of the University, which is quoted hereunder:-

"ITEM NO.41 OF THE EXECUTIVE COUNCIL[1]

Report of the meeting of the Committee appointed by the Executive Council its resolution No.118, dated April 5, 1952 to consider the question of the construction of a "Prayag Vishwa Vidyalaya Vigyan Bhavan" in the Muir Central College Premises, held on January 27, 1953 in the Vice-Chancellor's Chambers, Senate House, Allahabad.

Member Present

Dr. Babu Ram Saksena — *Prof Saligram Bhargava*

Dr. Parmanand — *Dr. Satya Prakash*

Dr. Gorukh Prasad — *Dr. Mirendra Varma*

The Vice-Chancellor nominated Dr. Babu Ram Saksena to take the chair as he was busy otherwise.

The committee considered the question of the construction of a "Prayag Vishva Vidyalaya Vigyan Bhavan" the Muir Central College premises for the development of scientific activities in Hindi in all its aspects.

1ITEM NO.41 OF THE EXECUTIVE COUNCIL

1. The Committee recommends that the offer of the Vigyana Parishad provide funds for the building of a Vigyan Bhavan on the grounds the M.C. College at an estimated cost of not less than 15,000 housing the offices etc. of the Parishad, be accepted and the Parishad be permitted to erect the proposed building by an agency of its choice.

2. The Committee suggests that the Parishad be permitted to occupy the building when constructed on the following conditions-

i. That the building shall be constructed on a plan approved by the University.

ii. That the building shall be the property of the University and shall be named Vigyan Bhavan.

iii. That the building shall be allowed to be occupied and used by the Vigyan Parishad for so long as it continues to function with its present aims and objects or with such other aims and objects as might be approved by the university.

iv. That the building shall be kept in good condition and repair by the Vigyan Parishad at its own cost.

v. That in case the Parishad adopts aims and objects which the University does not approve of it shall vacate the premises within six months of receiving notice to this effect from University.

3. The Committee recommends that the University should make over a donations or funds that it may receive a collect for the purpose of the Vigyan Bhavan to the Vigyan Parishant.

4. The Committee recommends that the officer or a donation of 1000/ from Dr. Satya Prakash for the purpose be accepted and transfrred as above, and that the University should have no objection to the building or a part of it being named after a donor making a gift of a substantial amount.

5. In the Committee's option the site to the South-West of the Muslim Hostel, east of the South-East gate of the M.C. College and adjoining the Thornhil Road, is suitable for the Vgyan Bhavan."

3. Plain reading of Clause 2 (ii) of the aforesaid resolution lays that the building made by the Parishad shall be the property of the Univertisy and shall be known as Vigyan Bhawan. Clause 2 (iii) lays that the building shall be allowed to be occupied and used by the Vigyan Parishad for so long as it continues to function with its present aims and objects or with such other aims and objects as might be approved by the university. Clause 2 (v) of the resolution of the Executive Council lays that in case the Parishad adopts aims and objects which the University does not approve of, it shall vacate the premises within six months of receiving notice to this effect from the University.

4. After the resolution was passed and the land was handed over to the Parishad, the Parishad set up a building and started to pursue the aims and objects for which the Parishad was created and the land was allotted to them.

5. The present office bearers of the petitioner no.1 realising the location and potential of the building started misusing and rented out a part of the premises to a commercial entity to earn profit from the said building. Apart from this commercial activity, it is alleged by the respondents that the petitioners have started renting out the other portion for various other commercial activities, which has nothing to do with the aims and objects of the Parishad nor had any permission from the University to do so.

6. On inspection by the University authorities it was found that the petitioners were indulging in illegal commercial activities renting the part of the premises, and also using the property as banquet hall for organizing parties and events instead of carrying on the activities for which the land was allotted to them. Thereafter, the respondent no.3 issued a notice to the petitioner on 23.02.2023, pointing out the illegal use of the premises. on 23.02.2023. This notice is as follows:-

पत्रांकः 4781/ए०मै०/2023 दिनांक 23.03.2023

डा० शिवगोपाल मिश्र,

प्रधानमंत्री, विज्ञान परिषद, प्रयाग,

महर्षि दयानन्द मार्ग, प्रयागराज-211002 (उ०प्र०)

विषयः विज्ञान परिषद भवन में व्यवसायिक गतिविधियों को रोकने के सम्बन्ध में।

कृपया अवगत हो कि माननीय कार्यपरिषद के संकल्प सं० 118 दिनांक 05 अप्रैल, 1952 की संस्तुति पर आपको विश्वविद्यालय द्वारा विज्ञान परिषद के निर्माण एवं विज्ञान के प्रचार प्रसार हेतु निर्धारित शर्तो पर विश्वविद्यालय की भूमि को प्रदान किया गया था।

विश्वविद्यालय के सक्षम अधिकारियों के द्वारा मौके पर निरीक्षण किया गया एवं विश्वविद्यालय में उपलब्ध साक्ष्यों से ज्ञात हुआ कि आप द्वारा विज्ञान परिषद के भवन में शैक्षणिक गतिविधियों का संचालन न करके भवन का उपयोग व्यवसायिक गतिविधियों के लिए किया जा रहा है जो कि माननीय कार्यपरिषद के पारित संकल्प का उलंघन है।

उक्त के आलोक में आपको सूचित किया जा रहा है कि आप विज्ञान परिषद में व्यवसायिक गतिविधियों को तत्काल प्रभाव से बन्द करके अधोहस्ताक्षरी को एक सप्ताह के अन्दर सूचित करने का कष्ट करें।

भवदीय,
(प्रो० एन०के०शुक्ला)
कुलसचिव

प्रतिलिपि- निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित।

1- कुलपति के सचिव को कुलपति महोदया के सादर सूचनार्थ
2- कुलसचिव।
3- कुलानुशासक।
4- सुरक्षा अधिकारी।

(राजीव मिश्रा)
सम्पत्ति अधिकारी

7. On 29.03.2023 the petitioners replied to the aforesaid notice. The reply dated 29.03.2023 is quoted hereunder:-

सेवा में,

कुलसचिव
इलाहाबाद विश्वविद्यालय

विषयः विज्ञान परिषद् प्रयाग के भवन के शैक्षणिक उपयोग के संबंध में

सन्दर्भः आपका पत्र संख्या 4781/ए.मै./2023, दिनांक 23.03.2023

महोदय,

आपको उपरोक्त संदर्भित पत्र के संबंध में निवेदन है कि विज्ञान परिषद् भवन का उपयोग शैक्षणिक गतिविधियों के लिये ही होता रहा है।

किन्तु कोरोना की अवधि में शैक्षणिक गतिविधियाँ बन्द हो जाने के कारण हमें आर्थिक कठिनाईयाँ हुई और हमने सीमित संख्या में कुछ अन्य कार्यों के लिए भी परिसर का उपयोग करने दिया था।

हमने भविष्य में होने वाली सभी अन्य गतिविधियों पर रोक लगाते हुए मात्र शैक्षणिक गतिविधियों के लिये विज्ञान परिषद् भवन का उपयोग करना आरंभ कर दिया है।

हम आपको आश्वस्त करते हैं कि भविष्य में विज्ञान परिषद् परिसर का उपयोग मात्र शैक्षणिक गतिविधियों के लिए ही होगा।

सादर

भवदीय
(डॉ. शिवगोपाल मिश्र)
प्रधानमंत्री

The reply itself is clear that the petitioners had admitted of carrying on other commercial activities in the said premises and rented it to the U.P. Chamber of Commerce Industries, which was allotted for a particular reason. They further agreed to comply the aims and objects of the Parishad in future. This letter itself is a clear admission of the petitioners that they had indulged in commercial activities which was not allowed as per resolution dated 27.01.1953 by which land was allotted to the petitioners.

8. The petitioners claim that on 04.04.2023, they have sent a notice to the President/Secretary, Eastern U.P. Chamber of Commerce and Industries to vacate the premisses. The petitioners further in paragraph 12 of the writ

petition admitted that they have been carrying out the commercial activities, in the said building, but now they are stopped all type of commercial activities and have cancelled the future bookings.

9. The Executive Council of respondent no.2, Allahabad University had passed a resolution no.07/75 on 20.06.2023 asking them to vacate the said premises, this was communicated to the petitioners 04.07.2023, (Comm.Sec.2023/1832), which is impugned herein. In response to the said notice, the petitioners had sent their representation on 07.07.2023. Thereafter, the petitioners filed instant writ petition under Article 226 of the Constitution of India with the following reliefs:-

> *"A) Issue a writ, order or direction in the nature of certiorari quashing the impugned order No.Comm.Sec./2023/1832 dated 04.07.2023 passed by the respondent no.3.*
>
> *B) Issue a writ, order or direction in the nature of certiorari calling for the records and quashing the Resolution No.-07/75, dated 20.06.2023 (which is not in possession of the petitioners) passed by the respondent no.4.*
>
> *C) Issue a writ, order or direction in the nature of mandamus restraining the respondent University from undertaking any action against the petitioners in pursuance of the impugned order dated 04.07.2023 emerging from the resolution no.-07/75 dated 20.06.2023."*

10. The respondent no.2 filed a short counter affidavit wherein it was submitted that the petitioners have violated the terms and conditions of the allotment of the premises wherein the petitioners were supposed to only carry on the activities and functions for which the land was allotted to them. Further, they place reliance on the clauses of the agreement, by which with which the property belonging to the University was given to the petitioner and, in case, the petitioners adopt aims and objects, which are not approved by the University then the petitioners shall vacate the premises within six months of receiving the notice to that effect.

11. The petitioners filed a rejoinder affidavit wherein they claim that the impugned order dated 04.07.2023 should be set aside as they have made the building on the premises by their own funds and it was the petitioners, who were supposed to maintain it. In the year 2014 all kinds of grants were stopped by the Central Government and in the Pandemic petitioner society was in absolute financial crisis so they have rented the premises to U.P.

Chamber of Commerce and Industry to run their office, however, after 23.03.2023 the petitioners have asked to vacate the premises, and all the other commercial activities carried out in the said premises have been stopped.

12. Mr. Rakesh Pande, learned Senior Advocate assisted by Sri Nitinjay Pandey appearing on behalf of the petitioners has raised the following issues:-

A. No opportunity of hearing was given, nor any notice of six months was ever given to the petitioners in terms of clause 2 (v) of the resolution of the Executive Council dated 27.01.1953. He submitted that even going by the terms of the license, it was mandatory on the respondent no.2 to have issued a notice to the petitioners giving them six months as was laid down in the terms of the license. All the letters sent by the University on 04.10.2018, 19.11.2018 and 19.07.2019 can not be treated as show cause notice as they were only letters requesting the petitioners to produce the documentary evidence regarding resolution of the University creating license in favour of the petitioners. The last notice of 23.03.2023 was also not a show cause notice for cancellation of license or vacating the premises. It was merely a direction on the petitioners to stop the alleged commercial activities and the same was immediately stopped.

B. The petitioners having not changed its aims and objects and the University having not disapproved the subsequent conduct of the petitioners by which he has rented out the premises to U.P. Chamber of Commerce and Industry, no occasion arose for the respondent no.2 (University) to pass the order impugned to vacate the premises. It was out of the necessity during the Covid-19 Pandemic where the activities of the petitioners were obstructed, because of the economic difficulties and it was for a limited number of time where the campus had been used for other activities. However, an assurance was given that the petitioners would put the campus back to the educational activities for which the premises had been allotted to them. The impugned order to vacate the premises is actually in the teeth of the resolution of the University dated 27.01.1953.

C. The University vide its letter dated 23.03.2023 had only directed cessation of activities for which the petitioners had given a suitable reply and all the activities, which were objected by the University has been closed. Therefore, the University could not have directed the petitioners to vacate the said premises.

D. The license granted by the respondent no.2 has been rendered irrevocable as per mandate of Section 60 (b) of Easement Act, 1882. The revocation of license would not be permissible as a licensee acting upon the license had executed work of a permanent character and incurred expenses in execution.

E. The University can only evict the petitioners by instituting a separate proceedings in a Court of law for taking back the possession of the petitioners.

13. Learned counsel for the petitioners further submits that it was during the outbreak of Covid-19, the activities of the petitioner was obstructed due to economic difficulty for a limited period of time, the building had been used for other activities, which was later stopped. He further submits that the activities of the petitioners society were in consonance of the aims and objects of the society and it was callous to order the society to vacate the premises only for alleged commercial use of the building during the pandemic. It is admitted by the petitioners that some portion of the building which was rented (to the U.P. Chamber of Commerce and Industry) would not amount to change of aims and objects of the society calling for the eviction by invoking terms and conditions of the license. He has relied on a judgement of Delhi High Court in the case of **Thomas Cook (India) Limited vs. Hotel Imperial[2].**

14. Mr. Amit Saxena, Senior Advocate assisted by Sri Kunal Shah appearing on behalf of the respondent nos.2 to 5 had given a categorical reply to each and every averments raised by the counsel for the petitioners. The reply of the respondents are as follows:-

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2 (2006 (88) DRJ 545)

A. The averments of the petitioners that no opportunity of hearing was given to them neither any notice was given to them is completely baseless. The terms of the license does not envisage any opportunity of hearing prior to passing of the order of eviction. It is trite law that mere fact that the petitioner was not afforded an opportunity of hearing before passing the impugned order would not render the impugned order illegal, until and unless the petitioner pleads and proves that because of non-grant of opportunity of hearing his case got prejudiced. It is no longer res-integra, that in case there is admission of facts on part of the party against whom the order has been passed, the order would not be invalidated on account of non-adherence to the principles of audi alteram partem as the same would be only an empty formality. In the entire writ petition, there is not even a whisper of the prejudice that has ensued upon the petitioners by not granting an opportunity of hearing to the petitioners.

Further, it has been admitted by the petitioners that they have breached the terms of the license and had misused the premises for carrying out commercial activities, which was not the aims and objects for which the premises was given to them.

B. In response to the averment of the petitioners that the University has not disapproved the subsequent conduct of the petitioners and, hence, no occasion arose for passing the impugned order, is absolutely baseless and misconceived. The respondent further submits that no such contention has been raised by the petitioners in the writ petition or by way of supplementary affidavit but has only argued during the course of hearing. From the terms of the grant, it is discernible that the purpose for which the premises was let out to the Petitioner was for propagation and development of scientific activities through the medium of the vernacular language, i.e., Hindi. Sub-Clause iii of Clause 2 of the terms of the grant postulates that the petitioner shall be allowed to occupy and use the premises only for so long as it continues to function with its present aims and objects or which such other aims and objects which the Answering Respondent may approve. Moreover, Sub-Clause v of Clause 2 of the terms of the grant provides that in case the

Petitioner adopts aims and objects, which the University does not approve of it the Petitioner shall vacate the premises within six months. The Petitioner could have used the premises only for the aforesaid purposes and no other purpose. In case the Petitioner wanted to use the premises for any other purpose, the Petitioner ought to have sought approval from the University. The same is evident on a bare perusal of Sub-Clause iii of Clause 2 of the terms and conditions of the grant.

Further by using the expression "present aims and objects" in clause 2 (ii) of the terms and conditions of the grant, it has been made crystal clear that the Parishad would use the premises only for its present purposes, viz., propagation and development of scientific activities through the medium of the vernacular language. The said object was set out in the grant itself. In order to ascertain whether the Petitioner has deviated from the terms of the grant or not, the only thing which is to be seen is whether the Petitioner has in the premises let out to it, carried out any activity different from the one for which it had been let out. The fact as to whether any changes have been made in the bye- laws of the Petitioner's Society as regards its aims and objects are not relevant to the controversy involved herein. During the course of the arguments, it was also contented by the Petitioner that the University never disapproved the conduct of the Petitioner in utilizing the premises for a purpose different than the one for which it was let out. The aforesaid contention of the Petitioner is not liable to be accepted on account of the following reasons:

(i) As per Sub-Clause iii of Clause 2 of the terms of the grant, the Petitioner could have used the premises only for the purpose set out in the Grant itself. In case the Petitioner desired to use the premise for any other purpose, the Petitioner ought to have sought approval of the University. Thus, in light of the fact that no approval was sought by the Petitioner from the University before utilizing the premises for commercial activities, no question of disapproving the conduct of the Petitioner arose.

(ii) Secondly, the contention of the Petitioner that the University did not disapprove the conduct of the Petitioner in utilizing the premises for commercial purposes is also factually incorrect. By letter dated 23.03.2023 the Registrar of the University had conveyed the Petitioners that the Petitioners are carrying out commercial activities which is not in tune with the terms of the grant. Thereafter, once the Petitioner vide its letter dated 29.03.2023 admitted the fact that it has carried out activities not in consonance with the terms of the grant, the Executive Council of the University seeing the misuse of the premises vide its resolution no.7/75 dated 20.06.2023 unanimously resolved to get the premises vacated from the petitioner and to form a New Publication Committee, that would henceforth undertake the exercise of publishing the journals. The respondent no.2, University was set up in the year 1887 and was known as Muir Central College. With the promulgation of University of Allahabad Act, 1921[3] later it became State University. At that point of time, the entire medium of education was Engligh. In order to develop and disseminate the scientific activities in Hindi, Vigyan Parishad was set up to do the same. After enactment of Central Universities Act, 2009, Allahabad University became a Central University. As per Section 5 of the Central Universities Act the object of the University was to disseminate the knowledge by providing instructional and research facility in such branches of learning as may it deem fit in the courses of Humanity Science Technology etc. and to take appropriate measures in promoting innovation in teaching and learning process and entire disciplinary studies and research to educate the trained manpower. In pursuance of the objects of the University as per Central Universities Act, the respondent no.2 has taken a decision to form a New Publication Committee to carry out the dissemination and development of scientific activities in Hindi, which is same work the petitioners were supposed to do.

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3 University of Allahabad Act, 1921

C. In response to the aforesaid averment, the counsel for the respondent states that on acquiring the information that the petitioner has in derogation to the terms and conditions carried out commercial activities in the premises, the Registrar of the University as an immediate measure directed cessation of such activities. By the said letter, the University did not condone the breach, and by no means can it be said that the University waived off its right to get the premises vacated from the petitioner.

Further, the aforesaid letter has been issued by the Registrar of the University, who in his limited capacity could only direct cessation of activities. When the entire matter was placed before the Executive Council of the University, the body which had granted permission to the petitioner to occupy the premises subject to certain terms and conditions set out in the grant itself, the same seeing the misuse of the premises vide its resolution no.7/75 dated 20.06.2023 unanimously resolved to get the premises vacated from the petitioner. Pursuant to aforesaid resolution dated 20.06.2023 of the Executive Council of the University, the impugned order dated 04.07.2023 was issued, thus no question of condoning the breach arises.

D. In response to the averment , the learned counsel for the respondent submits that the license granted to the petitioner pursuant to which the petitioner asserts to have raised construction of the building and to have incurred expenses would not render the license irrevocable, in as much as the express terms of the grant make it a revocable one. It is trite law that even if the conditions stipulated in Clause (b) of Section 60 of Easement Act, 1881 is attracted, the same would not render the license irrevocable if a per the terms of the grant, the nature of such grant is revocable. As such Clause (b) of Section 60 of the Act would not incur any benefit to the petitioner.

E. In response to the averment, learned counsel for the respondent submits that the contention of the petitioner is absolutely misconceived and is liable to be rejected. The petitioner has raised varied arguments assailing the validity of the impugned order. The petitioner has invited a judicial

pronouncement and once this Hon'ble Court finds that the case set up by the petitioner lacks merit and is liable to be rejected, the requirement of 'due process" of law stands fulfilled and the answering respondent would then not be compelled to institute a separate proceeding for taking back the possession from the petitioner, rather this Hon'ble Court itself would pass orders directing the petitioner to hand over the possession of the premises. It is trite law that it does not matter as to who has instituted the proceedings. Even if a person files a writ petition praying that the respondents be refrained from interfering with their possession and this Hon'ble Court comes to the conclusion that the case set up by the petitioner is not tenable in the eyes of law, this Hon'ble Court would in the writ proceedings itself direct the petitioners to hand over the possession of the premises to the answering respondent.

15. Heard learned counsel for the parties and perused the record.

16. The relevant terms and conditions of the grant in the sacrosanct document that govern the relationship between the petitioners and the Allahabad University are quoted hereunder:

> *The Committee considered the question of construction of a Prayag Vishva Vidyalaya Bhavan in the Muir Central College premises for the development of scientific activities in Hindi in all its aspects.*
>
> *2. The Committee suggests that the Parishad be permitted to occupy the building on the following conditions-*
>
> *ii. That the building shall be the property of the University and shall be named Vigyan Bhavan.*
>
> *iii. That the building shall be allowed to be occupied and used by the Vigyan Parishad for so long as it continues to function with its present aims and objects or with such other aims and objects as might be approved by the university.*
>
> *v. That in case the Parishad adopts aims and objects which the University does not approve of it shall vacate the premises within six months of receiving notice to this effect from University.*

17. With regard to the **first issue** that no notice and opportunity of hearing was granted to the petitioners, we hold that as far as the opportunity of hearing is concerned, since the grant was in the nature of license and does not envisage an opportunity of hearing prior to the passing of the order of eviction, it is not the case of the petitioner that in absence of any opportunity

of hearing any of his rights are being prejudiced. It is clear case of misuse of property, which has been admitted by the petitioners. Technically, even if an opportunity of hearing is given to the petitioners, it cannot make their case better. No prejudice is caused to the petitioners by not giving them an opportunity of hearing. It is no longer *res-integra* as there is an admission on the part of the petitioners. The eviction order cannot be invalidated on account of any adherence to the principles of *audi alteram partem.* The entire exercise would be nothing but an empty formality.

18. Since the petitioner has admitted the case against him, no prejudice can be said to have been caused to the petitioner and, thus, non adherence to the rule of audi alteram partem would in the facts and circumstances of the case, not render the impugned order illegal.

19. The Hon'ble Supreme Court in **State of U.P. v. Sudhir Kumar Singh** [4] expounded that breach of *audi alteram partem* rule in itself is not sufficient and the Courts would not interfere until the party pleads and establish the prejudice that has been caused to him. The Hon'ble Supreme Court further held that prejudice can never be said to be caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. The relevant extract of the judgement of the Hon'ble Supreme Court rendered in **Sudhir Kumar Singh (supra)** is being reproduced herein-below for the kind consideration of this Hon'ble Court:

> *"42. An analysis of the aforesaid judgements thus reveals:-*
>
> *42.1. Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is hereby caused.*
>
> *42.2. Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.*
>
> *42.3. No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the*

4(2021) 19 SCC 706

> *Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.*
>
> *42.4. In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.*
>
> *42.5. The "prejudice" exception must be more that a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice."*

20. Vide resolution of the Executive Council dated 27.01.1953 the premises was given to the petitioners was for protection and development of scientific activities in Hindi. In terms of the license, the petitioners could have used the premises only for the aforesaid purposes and not for anything else. In case, the petitioners wanted to use the premises for any other purposes they ought to have taken approval from the University. In absence of any approval the action of the petitioners amounts to contraventions of the conditions of the license. Since no approval was sought by the petitioners from the University before putting the premises to commercial activities, no question of justifying the conduct of the petitioners ever arose.

21. With regard to the **second issue** where the petitioners averred that the University having not disapproved the subsequent conduct of misusing the premises, there was no occasion for the University to pass the impugned order, we hold that a bare reading of the resolution of the Executive Council by which the premises was given to the petitioner it is clear that the premises was only to be used by the petitioner for propagation and development of scientific activities through the medium of the vernacular language Clause 2 (iii) postulates that the petitioners shall be allowed to occupy the said premises only as long as it continues to function with its aims and objects or with such other aims and objects which would be approved by the University. Clause 2 (v) postulates that in case, the petitioner adopts to carry out any other activity, which is beyond the aims and objects approved by the University, the petitioner shall vacate the premises within six months. It is clear that the premises was given to the petitioners for a particular purpose

and any deviation without approval of the University shall invite eviction of the petitioner within six months. The University had disapproved the illegal Commercial use of the property and accordingly, passed a resolution to vacate the property.

22. With regard to the **third issue** where the petitioner alleged that the letter dated 23.03.2023 was only information to stop a particular activity, which was subsequently stopped by them and, hence, the letter dated 29.03.2023 cannot be the basis for eviction of the petitioner from the premises. The reply of the University that this letter was sent by the Registrar of the University, who had limited capacity and could only direct the cessation of the activity where the entire matter was placed before Executive Council of the University, who had passed the impugned order asking the petitioner to vacate the property. There is nothing wrong with the impugned order as the same has been passed because the petitioner had been misusing the premises by renting it out to the U.P. Chamber of Commerce and Industry and also renting the remaining portion of the premises for other commercial activities, which was way away from the aims and objects for which the premises was allotted to the petitioner.

23. In response to the **fourth issue** where the petitioner argued that the license had been rendered irrevocable as per Section 60 (b) of the Easement Act, 1882, and hence, the impugned order could not have been passed. We hold that though the building was constructed by the petitioners after grant of license but the terms of the license were clear, the license was revocable if the petitioner carries out any other activities then for which the premises was given to them, the license would be revoked. It is trite law that even if the conditions stipulated in Clause (b) of Section 60 of the Easement Act, 1881 is attracted, the same would not render the license irrevocable if as per the terms of the grant, the nature of such grant is revocable. As such Clause (b) of Section 60 of Easement Act would not enure any benefit to the petitioner.

24. That the Hon'ble Supreme Court in **Ram Sarup Gupta v. Bishun Narain Inter College and others**[5] expounded that if by the express terms of

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5**(1987) 2 SCC 555**

the grant, the license has been made revocable, the licensee cannot claim the benefit of the Section 60 (b) of the Act, 1882 even if the conditions set out in Section 60 (b) are being fulfilled. The relevant extract from the judgement rendered by the Hon'ble Supreme Court in **Ram Sarup Gupta (Supra)** is being reproduced herein-below:

> *"9……...Section 60 enumerates the conditions under which a license is irrevocable. Firstly, the license is irrevocable if it is coupled with transfer of property and such right is enforced and secondly, if the licensee acting upon the license exe- cutes work of permanent character and incurs expenses in execution. Section 60 is not exhaustive. There may be a case where the grantor of the license may enter into agreement with the licensee making the license irrevocable, even though, none of the two clauses as specified under section 60 are fulfilled. Similarly, even if the two clauses of section 60 are fulfilled to render the license irrevocable yet it may not be so if the parties agree to the contrary. In Muhammad Ziaul Hague v. Standard Vacuum Oil Company, 55 Calcutta Weekly Notes 232 the Calcut- ta High Court held that where a license is prima facie irrevocable either because it is coupled with a grant or interest or because the licensee erected the work of perma- nent nature there is nothing to prevent the parties from agreeing expressly or by necessary implication that licence nevertheless shall be revocable."*

25. This Hon'ble Court in **Ganga Sahai v. Badrul Islam**[6] held thus:

> *3. Here again, the document is not by the zamindar granting to the defendant a right to do or continue to do, in or upon the immovable property of the zamindar something, etc., but it is a Mryanama executed by the defendant containing certain terms on which the defendant accepted to buld a house on the land. The document having been legally proved the defendant must be held bound by it. Section 60 of the Easements Act, was pleaded by the defendant throughout, and I may concede for the defendant that the construction which has been built upon the premises is a work of a permanent character within the meaning of that expression in section 60 of the Easements Act. I agree, however, with Mohammad Ismail, J. in what he said in A.I.R. 1938 All. 32, Mohammad Hasan vs. Budhu. At page 34:*
>
> > *"Again, I have not been referred to any provision of law which precludes a party from binding itself to surrender land, although there may be a construction of a permanent character standing thereon."*
>
> *4. In 1931 A.L.J. 649 Nbi Mohammad vs. Bhagwat Prasad.] a Bench of this Court, of which I was a member, said:*
>
> ***In the absence of any express terms to the contrary,** the case would come under Section 60 of the Easements Act, under which a licence cannot be revoked when the licensee, acting upon the licence, has executed a work of a permanent character and incurred expenses in the execution."*
>
> *5. It was clearly recognized in this case that a contract to the contrary would desentitle the licensee from deriving advantage conferred by section 60 of the Easements Act, and in the present case the defendant has, in terms*

6**AIR 1942 All 330**

expressed and in unambiguous language, given out that the landlord would have the right to get the site vacated whenever he so chose.

6. I have not been able to appreciate the argument of learned counsel for the appellant based on Section 23 of the Contract Act. There is nothing illegal in the contract such as I have been considering and I cannot see why the contract cannot be given effect to. For the reasons given above, there is no force in this appeal and I dismiss it with costs.

26. The aforesaid position of law was reiterated by this Hon'ble Court in **Chotey Lal vs. Mt. Durga Bai**[7]**.** This Hon'ble Court held thus:

(5.) The appellants' contention is that the qabuliat executed by Mt. Kallo is not admissible in evidence and that by virtue of Section 60, Easements Act they are not liable to ejectment. It is true that the appellants' predecessor, Mt. Kallo; made certain constructions on this site and thus executed a work of a permanent character by incurring expenses; but she knew full well that after her death her heirs would not have any right of residence. Section 60, Easements Act, does not override any such condition in a license. Where a licensee executes a work of a permanent character under a clear understanding that he or his heirs may be called upon after certain time to leave the land, it is not open to him to plead such work as a bar against his eviction on a suit brought by the plaintiff in pursuance of the solemn undertaking given by him.

27. Again this Hon'ble Court in **Bhagwauna v. Sheikh Anwaruzzaman**[8] held that the terms of the grant are binding on the parties and in case by way of express terms the parties agree that the nature of the license would be revocable then even if the conditions specified in Section 60 (b) of the Act of 1982 are being fulfilled, the licensee would be precluded from claiming the benefit of the same. The relevant extract of the judgement rendered by this Hon'ble Court in Bhagwauna (supra), is reproduced herein-below:

8. It is, therefore, clear from the above that where there are certain terms whether in a rent note or a qabuliat or in any other such paper and it limits the right of a licensee while making a construction on a piece of land owned by the other party, he is bound by the terms thereof. If he has undertaken to vacate the land on the happening of some event, then he is precluded from raising the plea that his constructions are protected by virtue of S.60 (b) of the Easements Act. The undertaking given by the licensee is a solemn undertaking and I see no reason why should a court lean in favour of such a person to flout the undertaking. In my opinion, that would not be an action guided by justice, good conscience or even equity.

7AIR 1950 All 661

8 1980 All LJ 368

The undertaking given by such a person would be binding on him and he would be estopped from pleading to the contrary.

28. The controversy as regards of the applicability of Section 60 (b) of the Act 1882 in a case where the licensee as per the terms of the Government order was permitted to raise permanent construction, fell for consideration before a co-ordinate bench of this Hon'ble Court in **Meena Pandey vs. Union of India and Ors.**[9] This Hon'ble Court in this case had observed that the Government Order expressly postulated that the State Government would retain the power of resumption and the said power could be exercised at any time on giving one month notice. Taking into consideration the aforesaid condition stipulated in the Government Order, this Hon'ble Court held that the petitioner therein would be bound by the terms of the Government Order and he cannot derive any advantage out of Section 60 of the Act 1882.

29. Thus, in view of the fact that by way of express condition mention in the Grant, the University has retained to itself the power to get the premises vacated in case the petitioner carries out activities other than for which the premises had been let out and also the fact that the building upon construction was to remain the property of the University, this clause renders the license revocable thereby denuding the petitioner the right to claim benefit of Section 60 (b) of the Act of 1882.

30. In response to the **fifth issue** where the petitioner contended that even if the writ petition is dismissed, the petitioner cannot be evicted from the premises unless the petitioner institutes separate proceeding for eviction, the respondents have vehemently opposed this argument and argued that the contention of the petitioner is absolutely misconceived and is liable to be rejected. The petitioner has raised varied arguments assailing the validity of the impugned order. The petitioner has invited a judicial pronouncement and once this Hon'ble Court finds that the case set up by the petitioner lacks merit and is liable to be rejected, the requirement of "due process" of law stands fulfilled and the answering respondent would then not be compelled to institute a separate proceeding for taking back the possession from the

9 2023 (2) ADJ 442

petitioner, rather this Hon'ble Court itself would pass orders directing the petitioner to hand over the possession of the premises within such time period which this Court may deem appropriate.

31. The Hon'ble Delhi High Court in **Thomas Cook vs. Hotel Imperial**[10] elucidating the law on the aforesaid point held thus:

> *28. The expressions `due process of law', `due course of law' and `recourse to law' have been interchangeably used in the decisions referred to above which say that the settled possession of even a person in unlawful possession cannot be disturbed `forcibly' by the true owner taking law in his own hands. All these expressions, however, mean the same thing -- ejectment from settled possession can only be had by recourse to a court of law. Clearly, `due process of law' or `due course of law', here, simply mean that a person in settled possession cannot be ejected without a court of law having adjudicated upon his rights qua the true owner.*
>
> ***Now, this `due process process' or `due course' condition is satisfied the moment the rights of the parties are adjudicated upon by a court of competent jurisdiction. It does not matter who brought the action to court. It could be the owner in an action for enforcement of his right to eject the person in unlawful possession. It could be the person who is sought to be ejected, in an action preventing the owner from ejecting him. Whether the action is for enforcement of a right (recovery of possession) or protection of a right (injunction against dispossession), is not of much consequence. What is important is that in either event it is an action before the court and the court adjudicates upon it. If that is done then, the `bare minimum' requirement of `due process' or `due course' of law would stand satisfied as recourse to law would have been taken. In this context, when a party approaches a court seeking a protective remedy such as an injunction and it fails in setting up a good case, can it Page 321 then say that the other party must now institute an action in a court of law for enforcing his rights i.e., for taking back something from the first party who holds it unlawfully, and, till such time, the court hearing the injunction action must grant an injunction anyway? I would think not. In any event, the `recourse to law' stipulation stands satisfied when a judicial determination is made with regard to the first party's protective action. Thus, in the present case, the plaintiff's failure to make out a case for an injunction does not mean that its consequent cessation of user of the said two rooms would have been brought about without recourse to law.***

32. The aforesaid dictum of the Hon'ble Delhi High Court received the imprimatur of the Hon'ble Supreme Court in **Maria Margarida Seqeria Fernandes v. Erasmo Jack De Sequeria.**[11] The relevant extract of the judgement of the Hon'ble Supreme Court rendered in **Maria Margarida**

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10 2006 (88) DRJ 545

11 2012 AIR SEW 2162

(Supra) is reproduced herein-below for the kind consideration of this Hon'ble Court:

> *81. Due process of law means nobody ought to be condemned unheard. The due process of law means a person in settled possession will not be dispossessed except by due process of law. Due process means an opportunity for the defendant to file pleadings including written statement and documents before the Court of law. It does not mean the whole trial. Due process of law is satisfied the moment rights of the parties are adjudicated by a competent Court.*
>
> *82. The High Court of Delhi in a case* Thomas Cook (India) Limited v. Hotel Imperial *2006 (88) DRJ 545 held as under:*
>
> *"28. The expressions `due process of law', `due course of law' and `recourse to law' have been interchangeably used in the decisions referred to above which say that the settled possession of even a person in unlawful possession cannot be disturbed `forcibly' by the true owner taking law in his own hands. All these expressions, however, mean the same thing -- ejectment from settled possession can only be had by recourse to a court of law. Clearly, `due process of law' or `due course of law', here, simply mean that a person in settled possession cannot be ejected without a court of law having adjudicated upon his rights qua the true owner.*
>
> *Now, this `due process' or `due course' condition is satisfied the moment the rights of the parties are adjudicated upon by a court of competent jurisdiction. It does not matter who brought the action to court. It could be the owner in an action for enforcement of his right to eject the person in unlawful possession. It could be the person who is sought to be ejected, in an action preventing the owner from ejecting him. Whether the action is for enforcement of a right (recovery of possession) or protection of a right (injunction against dispossession), is not of much consequence. What is important is that in either event it is an action before the court and the court adjudicates upon it. If that is done then, the `bare minimum' requirement of `due process' or `due course' of law would stand satisfied as recourse to law would have been taken. In this context, when a party approaches a court seeking a protective remedy such as an injunction and it fails in setting up a good case, can it then say that the other party must now institute an action in a court of law for enforcing his rights i.e., for taking back something from the first party who holds it unlawfully, and, till such time, the court hearing the injunction action must grant an injunction anyway? I would think not. In any event, the `recourse to law' stipulation stands satisfied when a judicial determination is made with regard to the first party's protective action. Thus, in the present case, the plaintiff's failure to make out a case for an injunction does not mean that its consequent cessation of user of the said two rooms would have been brought about without recourse to law."*
>
> ***83. We approve the findings of the High Court of Delhi on this issue in the aforesaid case.***

33. This position of law was further reiterated by Hon'ble Supreme Court in **Padhiyar Prahladji Chenaji vs. Maniben Jagmalbhai**[12]**.**

34. It would be apposite at this stage to drawn the attention of this Hon'ble Court to the dictum of Hon'ble Andhra Pradesh High Court in ***G.***

12 (2022) 12 SCC 128

Silver Spoon Restaurant and Entertainments vs. State of Andhra Pradesh[13]. The facts in the case before the Hon'ble Andhra Pradesh High Court was very close upon the heels of the facts of the instant matter. There also the petitioner had approached the Hon'ble High Court with the prayer that the respondents be directed not to interfere in their possession. The Hon'ble High Court after examining the case of the petitioner herein found the cae of the petitioner to be not tenable, an argument thereafter was raised that even if the Hon'ble Court did not find favours with the case set up by the petitioner therein, the respondents be refrained from dispossessing the petitioner except by instituting proceedings before the competent court and getting a decree in its favour. The Hon'ble Andhra Pradesh High Court relying upon the dictum of the Hon'ble Delhi High Court in **Thomas Cook (Supra)** as well upon the dictum of the Hon'ble Supreme Court rendered in **Maria Margarida (supra)** rejected the contention put forth by the petitioner therein and held that once the Court after examining the case set up by the petitioner arrives at the conclusion that the same is not tenable in the eyes of law, the Court would in the Writ Proceedings itself direct the petitioners to hand over the possession of the premises to the respondents. The relevant extract of the judgement of the Hon'ble Andhra Pradesh High Court in **G. Silver Spoon Restaurant and Entertainments (Supra)** is reproduced herein-below for the kind consideration of this Hon'ble Court:

> *"19. Hence, the questions that arise in this issue are: what is this "due process of law" for eviction?. Is it always necessary to initiate fresh legal proceedings in every case to take over possession?. According to the learned counsel for the petitioner, the answer is a resounding -Yes. As per him (as stated in the writ affidavit/the prayers/the oral and written submissions) the respondents have only one option-to file a proceeding under the AIR 2002 SC 2051 AP Public Premises Act, secure an order of eviction and then take over the possession. The counsel of the respondent on the other hand says that this will amount to an extension of a expired lease and that too a forced extension. His contention (without prejudice to the taking over issue) is that by doing so the Court is giving a virtual extension of the lease of an expired lease and allowing a person to stay on when his right to enjoy/to retain possession have ceased. The long delay is disposal of cases is also a factor pointed out.*
>
> *20. For deciding this point, the following passage from the Hon'ble Supreme Court's decision in East India Hotels Ltd v. Syndicate Bank6 are very relevant. This is the clear definition of due process.*

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13 (2021) 3 ALD 364

> *30. What is meant by due course of law? Due course of law in each particular case means such an exercise of the powers by duly constituted Tribunal or Court in accordance with the procedure established by law under such safeguards for the protection of individual rights. A course of legal proceedings according to the rules and principles which have been established in our system of jurisprudence for the enforcement and protection of private rights. To give such proceedings any validity, there must thus be a Tribunal competent by its constitution, that is bylaw of its creation, to pass upon the subject-matter of the suit or proceeding; and, if that involves merely a determination of the personal liability of the defendant, it must be brought within its jurisdiction by service of process within the state, or his voluntary appearance. Due course of law implies the right of the person affected thereby to be present before the Tribunal which pronounces judgment upon the question of life, liberty or property in its most 1992 Supp (2) SCC 29 comprehensive sense; to be heard, by testimony or otherwise, and to have the right of the controversy by proof, every material fact which bears on the question of fact or liability be conclusively proved or presumed against him. This is the meaning of due course of law in a comprehensive sense.*
>
> *32. It is thus clear that the courts have viewed with askance any process other than strict compliance of law as valid in dispossessing a person in occupation of immovable property against his consent. The reason is obvious that it aims to preserve the efficacy of law and peace and order in the society relegating the jurisprudential perspectives to a suit under Section 5 of the Act and restitute possession to the person dispossessed, irrespective of the fact whether he has any title to possession or not.*

21. This Court in view of the settled law has also to agree that force can never be used to evict a tenant/licensee or a person in settled possession. At the same time due to the laws delays more so India - can the submission of the respondents be overlooked ? The average life of a simple suit for an injunction is a few years in the trial court and then the hierarchy of appeals .If the argument of the petitioners is accepted then a fresh proceeding must be commenced ,an order or decree must be obtained and then only eviction is permissible. Laws proverbial delays however are not the concern of the tenant or the party in possession. The judgment of the Supreme Court in Maria Margarida Sequeria Fernandes and Ors. v. Erasmo Jack de Sequeria (Dead) through L. Rs..7 is a classic example.

22. In the opinion of this Court, the answer to this vexed problem is found in this case of the Delhi High Court reported in 2012 (5) SCC 37 Thomas Cook (India) Limited v. Hotel Imperial and others8.

23. The Court held that the due process of law is fulfilled when a Court hears the matter and that there is no need to file a further or a fresh suit for eviction. It was also held in this case that it is immaterial whether the suit is filed for recovery of possession by the landlord or an action for an injunction against forceful dispossession by the tenant/licenses. What is important is that in either case it is an action before the Court and the Court adjudicates upon that. The learned single Judge also held that it is not necessary for the other party to again file a suit for enforcing his rights i.e for taking over the property.

……...

26. It also held in paragraph 81 that in real estate litigations, the ever escalating prices of real estate are a factor, which are encouraging unscrupulous litigants. The delay in adjudication of cases is also pointed out by the Hon'ble Supreme Court and ultimately it is held that a pragmatic approach must be taken. The delays that occur in Courts encourage tenants/occupants etc., to file a case and prolong matters after paying a pittance as rent.

27. If the present case is viewed against the backdrop of this judgment of the Delhi High Court as approved by the Hon'ble Supreme Court (and thus the law of the land), this Court holds that it is not necessary once again for the Municipality to initiate a separate proceeding for eviction. Since this Court had adjudicated upon the rights of the parties, the basic necessity of due process of law is satisfied. The petitioner has raised his pleas- that there is no valid notice, that possession was not taken over, that till the due process of law is followed he is entitled to continue, that as he submitted a representation to the Government he is entitled to continue, that there is discrimination between him and similarly placed others etc. A reply/counter has been filed as also a rejoinder. Both counsels were given an opportunity to argue the case, they had filed case law, written notes etc. The issues raised are being answered a by a Court of competent jurisdiction. Hence this Court holds that the due process is followed.

28. In line with the judgment of the learned single judge of Delhi , which has been approved by the Hon'ble Supreme Court of India, this Court holds that once an action is commenced in a Court of law (whether it is for a mere injunction against forceful eviction or a writ to prevent forceful eviction/protection of possession or an action for recovery of possession by a tenant/person who was forcefully evicted etc.,) the due process of law is satisfied and the Courts can pass an order in that proceeding itself that the property must be vacated etc., if the Court is satisfied that the tenant/licensee/person in possession is not entitled to any relief. In the opinion of this Court, in such cases, the landlord need not initiate fresh proceedings once again seeking eviction. The order or decree that is passed refusing to aid the petitioner/plaintiff etc., is a sufficient adjudication of his rights and thus compliance with the "due process of law". The court in the very same proceeding can direct the tenant/lease holding over /person in possession etc., to vacate the premises or the property in a fixed time.

35. Once the petitioners have admitted that they have been carrying out the activities in derogation of the terms of the grant they cannot challenge the impugned order.

36. In this case, it is clear that after the petitioners have made a categorical admission that the petitioners were carrying out activities in derogation of the terms of the grant and as per Clauses 2 (ii), (iii), (v) of the terms of the agreement. Undoubtedly, the building belongs to the respondent no.2 and the petitioners could have used it as long it continue to function according to the aims and objects for which the premises was given to them. It was also clear that in case, the petitioners deviates from its aims and objects and starts to

do something else, which was not approved by the University they shall vacate the premises within six months. The petitioners herein had started engaging in commercial activities, which was contrary to the terms on which the premises was given to the petitioners. Hence, the respondent no.2 had all the rights to ask the petitioners to vacate the premises. As far as the notice or opportunity of hearing is concerned, the Hon'ble Apex Court has laid down that breach of *audi alteram partem* rule is itself not sufficient and the Court would not interfere unless the party pleads and establishes that a prejudice has been caused to him. Since the petitioners in derogation of the terms and conditions were carrying out the commercial activities in the premises, the Registrar of University, who had a limited power issued a letter for cessation of activities. By this letter the University had not condoned the breach neither waived off its rights to get the premises vacated from the petitioners. The letter was sent by the Registrar of the University in its limited capacity. The order to vacate the premises was to be taken by the Executive Council of the University, which they had taken vide resolution no.07/75 on 20.06.2023 and asked the petitioner to vacate the premises vide order dated 04.07.2023. By doing so there was no illegality on behalf of the University in asking the petitioners to vacate the premises. Section 60 (b) of the Easement Act will not be attracted in this case as the license expressly laid down that in breach of certain conditions the license was revocable. Since the petitioners had admitted that they were carrying out activities, which were contrary to the aims and objects for which the premises was given to them. Hence, the license was rightly revoked by the respondent no.2 and the petitioners cannot claim any benefit under the Easement Act.

The last contention of the petitioners that they cannot be evicted even if the writ petition is dismissed and the respondents have to take separate legal action in the Court of law is also not tenable as the petitioners have invited the judicial pronouncement and once this Court finds that the case set up by the petitioners lacks merit is liable to be rejected, the requirement of "due process of law" stands fulfilled. Even the Hon'ble Apex Court has held that in event "recourse course of law" stipulation stands satisfied when a judicial determination is made with regards to the first party's proactive

action, hence, there will be no need for the respondents to initiate separate legal action for eviction of the petitioners.

37. Accordingly, the instant writ petition is devoid of merit and, is hereby dismissed.

Order Date :- 31.10.2023

S.P.