



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



D.B. Special Appeal Writ No. 1634/2018

CNR: RJHC021179602018 | URN: SAW / 3556U / 2018

M/s. Santokba, The Pharmacy - Opd (A Unit Of Tara Medicoose Pvt. Ltd.) Ground Floor, Rdmc Block, Opd Building, Santokba Duralbhji Hospital, Bhawani Singh Road, Jaipur, Through Its Director Sh. Amit Kasliwal

-----Appellant

Versus

1. License Authority And Asst. Drug Controller, Jaipur, Mini Swasthya Bhawan, Sethi Colony, Jaipur- 302004
2. Rajasthan Rajya Sahkari Upbhokta Sangh (Confed), 237, Second Floor, Nehru Sahkar Bhawan, Bhawani Singh Road, Jaipur, Through Its Managing Administrator.

-----Respondents

Connected With

D.B. Special Appeal Writ No. 906/2019

CNR: RJHC020517822019 | URN: SAW / 1604U / 2019

Rajasthan Rajya Sahakari Upbhokta Sangh (Confed), Through Its Managing Director, 237, Second Floor, Nehru Sahakar Bhawan, Bhawani Singh Marg, Jaipur (Rajasthan)

-----Appellant

Versus

1. Santokbha Durlabh Ji Trust Through Its Secretary, Shri Yogendra Durlabh Ji Son Of Late Shri Khel Shankar Durlabh Ji, Aged About 68 Years, Resident Of Emerald House, Subhash Marg, C-Scheme, Jaipur.
2. Jaipur Development Authority Through Its Secretary, Jawahar Lal Nehru Marg, Jaipur.
3. Deputy Commissioner Zone-1, Jaipur Development Authority, Jaipur.

-----Respondents

D.B. Special Appeal Writ No. 907/2019

CNR: RJHC020517882019 | URN: SAW / 1605U / 2019

Rajasthan Rajya Sahakari Upbhokta Sangh (Confed), Through Its Managing Director, 237, Second Floor, Nehru Sahakar Bhawan, Bhawani Singh Marg, Jaipur (Rajasthan)

-----Appellant

Versus

1. M/s. Tara Medicos Pvt. Ltd., Through Director Nimit Kasliwal Son Of Shri Tara Chand Kasliwal, Resident Of A-7, 22 Godown, Industrial Area, Jaipur.



2. Jaipur Development Authority Through Its Secretary,
Jawahar Lal Nehru Marg, Jaipur.

----Respondents

D.B. Special Appeal Writ No. 912/2019

CNR: RJHC020530482019 | URN: SAW / 1610U / 2019

1. Jaipur Development Authority, Through Its Secretary,
Jawahar Lal Nehru Marg, Jaipur.
2. Deputy Commissioner Zone-I, Jaipur Development
Authority, Jaipur

----Appellants

Versus

Santokbha Durlabh Ji Trust, Through Its Secretary Shri Yogendra
Durlabh Ji Son Of Late Shri Khel Shankar Durlabh Ji, Aged About
68 Years, Resident Of Emerald House, Subhash Marg, C-Scheme,
Jaipur.

----Respondent

D.B. Special Appeal Writ No. 1010/2019

CNR: RJHC020530512019 | URN: SAW / 1742U / 2019

Jaipur Development Authority, Through Its Secretary, Indira
Circle, Jawahar Lal Nehru Marg, Jaipur.

----Appellant

Versus

M/s Tara Medicos Private Limited, Through Its Director Nimit
Kasliwal Son Of Shri Tara Chand Kasliwal, Resident Of A-7, 22
Godown Industrial Area, Jaipur.

----Respondent

For Appellant(s)	: Mr. Vivek Dangi with Ms. Chanchal Sharma and Mr. Junaid Khan Mr. Yuvraj Samant through VC with Mr. Tilak Vaid Mr. Bhrigu Sharma through VC with Mr. Ritik Yadav (respondent in D.B. SAW No.1634/2018)
For Respondent(s)	: Mr. M.M. Ranjan, Sr. Adv., assisted by Mr. Rohan Agarwal and Mr. Samar Pratap Singh Naruka Mr. J.P. Gargey Mr. Ravi Shanker Sharma Mr. Pawan Sharma



HON'BLE MR. JUSTICE SUDESH BANSAL
HON'BLE MR. JUSTICE ANUROOP SINGHI

Order

13/10/2026

1. The factual backdrop of all these appeals is interlinked, hence, with the consent of the learned counsels appearing on behalf of the respective parties, these appeals have been heard together and would stand decided by this common order.

2. The seminal facts which have been culled out from the record, may be recapitulated as under:-

2.1 A land measuring 3048.790 Sq. meters was allotted by Jaipur Development Authority (JDA) to Santokba Duralbhji Trust (hereinafter referred as "SD Trust"), on a concessional rate, vide allotment letter dated 17.10.1998, for the purpose of operating a blood bank and carrying out other allied medical activities. The allotment was followed by execution of a lease deed dated 19.12.1998 in favour of the SD Trust.

2.2 It appears that, upon noticing certain breaches of the terms and conditions of the allotment, the JDA issued several notices, the last of which was issued to the Secretary, Santokba Durlabhji Hospital and Research Centre on 13.07.2018. The notice specifically stipulated that the SD Trust had committed clear breaches of Conditions No. 8 and 9 of the allotment letter, as the premises had been sub-leased for financial benefits without obtaining any prior permission from the JDA, and the sub-lessees have been permitted to use the premises for commercial activities. It was specifically pointed out that appellant has permitted the



sub- lessees to use the premises for commercial purposes where upon commercial activities by shops, a canteen, parking facilities, and other commercial establishments is being carried out. The notice also set out the particulars of the premises being used for commercial purposes.

Accordingly, the SD Trust was called upon to discontinue all commercial activities being carried out within the premises, within a period of 15 days, failing which the JDA would be at liberty to initiate appropriate action in accordance with law.

2.3 Against the notice dated 13.07.2018, M/s. Santokba Duralbhji Trust preferred an appeal, being appeal No.498/2018 before the Appellate Tribunal, JDA. The JDA, through its Secretary, and the Deputy Commissioner of the concerned Zone were impleaded as respondent parties in the said appeal.

2.4 Thereafter, since no response to the notice dated 13.07.2018 was received from the SD Trust, the JDA proceeded further and issued a subsequent notice dated 31.07.2018, seeking to seal the premises, pursuant to which the premises of SD Trust, occupied by the M/s. Tara Medicos Private Limited, as well as the shops occupied by two other shopkeepers, namely, M/s. Radhey Lal Bankar and M/s. Mool Chand Prajapati, were sealed on 31.07.2018 itself.

Then, an another notice dated 03.08.2018 was issued by JDA, notifying that the sealed premises would be opened on the next date, i.e., 04.08.2018, at 9:00 AM, for the purpose of allowing the occupiers to remove their medicines and belongings, failing which, the articles, medicines, and other material lying in



the sealed premises would be handed over on *Supurdgi* to the Rajasthan Rajya Sahakari Upbhokta Sangh [RRSUS (CONFED)], along with the vacant possession of the premises, to enable RRSUS (CONFED) to operate and use the same as a medical store.

In pursuance thereof, as no response to the notice dated 03.08.2018 was received, the sealed premises, after removing the medicines, belongings, and other material lying therein, were handed over to RRSUS (CONFED) on 06.08.2018.

2.5 Thereafter, against the notice and sealing order dated 31.07.2018 so also against the notice dated 03.08.2018, M/s. Tara Medicos Private Limited preferred an another appeal, being Appeal No. 523/2018, before the Appellate Tribunal, JDA, and prayed for quashing the notices dated 13.07.2013 and 31.07.2018 and the proceedings relating to the sealing of the premises, and sought restoration of possession of its premises. In this appeal as well, only JDA was impleaded party and RRSUS (CONFED) was not made party respondent.

2.6. Both appeals came to be decided by the Appellate Tribunal, JDA, Jaipur, vide a common judgment dated 23.10.2018. The Tribunal finally quashed only the subsequent notice dated 31.07.2018, issued by the JDA for sealing the premises, and simultaneously directed to de-seal the premises and to restore the position antedated, in respect of possession of the sealed premises, to appellants. In respect of the impugned notice dated 13.07.2018, the Tribunal directed the JDA to provide an opportunity of hearing to both the appellants, namely, M/s. Santokba Durlabhji Trust and M/s. Tara Medicos Private Limited,



and other stakeholders, if any, and then to take the decision in accordance with law.

2.7 It is noteworthy that it had already come on record of the Tribunal as an admitted fact that the premises of SD Trust, which were in occupation of M/s. Tara Medicos Private Limited etc., and were sealed on 31.07.2018, have been handed over to the RRSUS (CONFED) on 06.08.2018. Indeed, the occupiers were permitted to remove their medicines and other articles lying therein, however, since the articles were not removed, the JDA prepared an inventory of the articles and handed them over on *Supurdgi* to RRSUS (CONFED), and thereafter, the vacant possession of the sealed premises was also handed over to RRSUS (CONFED) on 06.08.2018, for the purpose of operating a medical store. Despite the fact that the premises in question are in actual possession of RRSUS (CONFED), it was not impleaded as a party respondent in either of the appeals, and the Tribunal, without providing any opportunity of hearing to RRSUS (CONFED), issued directions to restore the possession antedated to the appellants.

2.8 Thereafter, the judgment dated 23.10.2018, passed by the Tribunal, came to be challenged by the JDA by filing two separate writ petitions being S.B. CWP No.24901/2018 and S.B. Civil Writ Petition No.24902/2018 so also by RRSUS (CONFED) through filing two separate writ petition being S.B. Civil Writ Petition No.24447/2018 and S.B. Civil Writ Petition No.24509/2018. All four writ petitions were dismissed by the learned Single Judge, vide a common order dated 29.05.2019.



2.9 Hence, against the order of the learned Single Judge dated 29.05.2019, two special appeals being Special Appeal (Writ) Nos.912/2019 and 1010/2019 have been filed by the JDA and two special appeals being Special Appeal (Writ) Nos.906/2019 and 907/2019 have been filed by RRSUS (CONFED).

2.10 As far as fifth Special Appeal (Writ) No. 1634/2018 is concerned, the same has been filed by M/s. Santokba, The Pharmacy – OPD (A Unit of M/s. Tara Medicos Pvt. Ltd.). This appeal has been filed in the backdrop of the facts that the drug licence issued to the appellant under the Drugs and Cosmetics Act, 1940 and Rules 1945, was cancelled and invalidated by the Licensing Authority vide order dated 07.08.2018, since the premises of M/s. Tara Medicos Pvt. Ltd. were sealed and its operation was seized to operate by Company, rather the same was handed over to RRSUS (CONFED) to operate a medical store, for which two drug licenses were issued by the Licensing Authority to RRSUS (CONFED).

Initially, appellant approached the Appellate Authority, however, its appeal was dismissed on 29.08.2018. Thereafter, the appellant filed S.B. Civil Writ Petition No. 20317/2018, which came to be decided vide order dated 27.11.2018. The learned Single Judge set aside the orders dated 07.08.2018 and 29.08.2018, thereby allowing the activation and restoration of the appellant's drug licence, but declining to cancel the two drug licences issued in favour of RRSUS (CONFED). Feeling aggrieved by the order to this extent, the instant appeal has been filed by M/s Santokba.



2.11 It is noteworthy here that the drug license of the appellant – M/s. Santokba was valid upto 18.02.2020 only, and that period has now already expired, which fact has also been not denied by learned counsel for appellant.

3. We have heard the counsels for the respective parties at length and perused the record.

4. Admittedly, physical possession of the premises, which were sealed by the JDA pursuant to the impugned notices dated 13.07.2018 and 31.07.2018, had been handed over by the JDA to RRSUS (CONFED) w.e.f. 06.08.2018, with the right to use the premises for running a drug store at a concessional rate, and since then, the premises have remained in the continuous use, occupation and possession of RRSUS (CONFED).

5. The Appellate Tribunal, vide its judgment dated 23.10.2018, has set aside only the notice dated 31.07.2018. In respect of the notice dated 13.07.2018, the JDA was directed to provide an opportunity of hearing to the SD Trust as well as M/s Tara Medicos and other stakeholders, and to pass a reasoned and speaking order thereafter, deciding the allegations made in the notice dated 13.07.2018, regarding the breach of Conditions Nos. 8 and 9 of the allotment letter by the SD Trust. In addition, simultaneous directions were issued to de-seal the premises and restore possession thereof ante-dated. The judgment of the Appellate Tribunal has been affirmed as it is by the learned Single Judge vide order dated 29.05.2019.

6. As far as the directions issued by the Appellate Tribunal vide judgment dated 23.10.2018, as affirmed by the learned Single





Judge vide order dated 29.05.2019, to the extent of providing an opportunity of filing response to the notice dated 13.07.2018, are concerned, parties herein are *ad idem* that the said directions deserve to be sustained, as they do not adversely affect either party, rather, ensure compliance of the principles of natural justice. Accordingly, both parties agree that the said directions, to that extent, may be sustained.

7. As far as the directions for de-sealing the premises are concerned, same have already been rendered infructuous, as admittedly, the premises were de-sealed by the JDA on 04.08.2018, and possession thereof has been handed over to RRSUS (CONFED) on 06.08.2018. Admittedly, RRSUS (CONFED) is presently in actual use, occupation and possession of the premises in question and is running a drug store therein. This factual position, as on date, is admitted and undisputed between the parties.

8. As far as the directions issued by the Appellate Tribunal, as affirmed by the learned Single Judge, for restoration of possession of the premises ante-dated, are concerned, firstly, it is an admitted fact that prior to issuance of such directions on 23.10.2018, possession of the premises had already been handed over to RRSUS (CONFED) on 06.08.2018. However, RRSUS (CONFED) was not impleaded as a party in either of the two appeals, nor any opportunity of hearing to RRSUS (CONFED) was afforded before the Tribunal. Thus, the aforesaid directions for restoration of possession, have been issued by the Tribunal,



without affording an opportunity of hearing to the RRSUS (CONFED).

Secondly, it is also undisputed that such directions have not been implemented till date. From the record, it is clear that during the pendency of writ petitions, implementation of such directions was not pursued, and neither the SD Trust nor M/s Tara Medicos initiated any contempt proceedings, because of furnishing an undertaking before the High Court not to initiate such proceedings, which was taken on record in the order sheet dated 03.11.2018, and after dismissal of the writ petitions, implementation of the impugned judgments/orders has been stayed by this Court, while admitting the present appeals for hearing, vide order dated 14.10.2019. It appears that, during the pendency of appeals, the SD Trust has filed an application claiming for grant of mesne profits, but the said application is pending, and no order has been passed thereon. Thus, the present and true fact is that the actual possession of the premises in question continues to remain with RRSUS (CONFED).

9. During the course of hearing, learned Senior Counsel appearing on behalf of the SD Trust submits that, subsequent to the allotment, a lease deed dated 19.12.1998 was executed by the JDA in favour of the SD Trust, and the SD Trust has deposited the one-time lease money. It has, therefore, been contended that the lease in favour of SD Trust has become a freehold lease and, consequently, the impugned notice dated 13.07.2018, issued by the JDA alleging breach of Conditions Nos. 8, 9, 10 and 12 of the allotment letter, itself is bad in law. It has further been submitted



that the JDA arbitrarily issued subsequent notice dated 31.07.2018 for sealing the premises and the premises have been sealed illegally, pursuant to the said notice, and thereafter, possession thereof has been taken and handed over to the RRSUS (CONFED), hence, the entire action is illegal and against the terms of leave and license, therefore, the possession of sealed premises is liable to be restored to the SD Trust.

10. The aforesaid submissions have been strongly repelled by learned counsel, appearing on behalf of the JDA, that the execution of a lease deed could at the most supplement, but cannot supplant, the terms and conditions of the allotment. It has further been contended that the allotted land was leasehold land and not freehold property. Accordingly, upon noticing breach of terms and conditions of the allotment, the action of the JDA, commencing with the issuance of notices, including the impugned notice dated 13.07.2018, and the subsequent proceedings of sealing undertaken pursuant thereto, are valid in law as much as in consonance with the terms and conditions of the allotment.

11. It is worthy to take note of the fact that having confronted with the aforesaid position and the fact that the premises in question is in actual and continuous possession of the RRSUS (CONFED) since 06.08.2018, learned Senior Counsel appearing on behalf of the SD Trust submits that since the SD Trust is ready and willing to avail the opportunity of hearing before the JDA, pursuant to the notice dated 13.07.2018 and to submit its reply, along with the relevant documents, before the JDA, whereupon a decision would be taken by the JDA, hence, on instructions from the SD



Trust he admits that implementation of the directions for restoration of possession in the meanwhile, may be deferred, until a final decision by JDA in respect of the allegations made in the impugned notice dated 13.07.2018, is taken. Learned Senior Counsel would further submit that the SD Trust would definitely file its written response to the notice dated 13.07.2018 within a period of two weeks from today, hence, the JDA may be directed to decide the matter and to pass an appropriate order expeditiously, preferably within a period of four weeks, because due to delay, the SD Trust is suffering as on one hand, the SD Trust is being deprived the possession of the premises, and on the other hand, no order, on its application demanding mesne profits, has been passed.

Learned Senior Counsel further submits that, in case the JDA, after considering the matter, arrives at a conclusion that there is no breach of the terms and conditions of the allotment, particularly those governing the lease deed, being a freehold lease, and consequently, drops the notice dated 13.07.2018, as has been done in respect of other commercial establishments indicated in the notice, because only premises belonging to M/s Tara Medicos and two other shops, namely, M/s Radhey Lal Bankar and M/s Mool Chand Prajapati, were sealed, then, in that case, the possession of the premises be restored immediately by JDA to the SD Trust, failing which, the SD Trust would be held entitled to claim mesne profits right from the date of its dispossession.

12. Learned counsel appearing on behalf of M/s Tara Medicos submits that, at the time when the premises were sealed by the



JDA, M/s Tara Medicos, being a lessee of the SD Trust under a valid lease deed, was in actual possession thereof. Hence, in case, the JDA drops the impugned notice dated 13.07.2018 after affording an opportunity of hearing to the parties, possession of the premises deserves to be restored to M/s Tara Medicos.

Further submission of learned counsel is that valuable medicines, other articles, belongings and equipment of M/s Tara Medicos were lying in the premises at the time of sealing. The said articles and items were taken into custody by the JDA and handed over to RRSUS (CONFED) on *supurdgi*, after preparation of an inventory. It has, therefore, been prayed that, at the very least, the medicines, articles, belongings and equipments of M/s Tara Medicos be directed to be released and handed over forthwith.

13. Learned counsel appearing on behalf of RRSUS (CONFED) submits that, it is evident from the record and is also an admitted fact that the premises in question have remained in the actual use and continuous possession of RRSUS (CONFED) since 06.08.2018. The premises are being used by RRSUS (CONFED) for running a drug store at a concessional rate in the public interest. Therefore, it has been submitted that RRSUS (CONFED) ought to be afforded a proper opportunity of hearing by the JDA before passing any order or taking any decision pursuant to the impugned notice dated 13.07.2018, more particularly in respect of possession of the premises in question. Learned counsel further submits that the Appellate Tribunal committed a grave jurisdictional error in issuing directions for restoration of possession ante-dated, without affording RRSUS (CONFED) an opportunity of hearing, despite the



fact being evident from the record that the premises are in its actual possession. It has further been submitted that the learned Single Judge erred in affirming such directions, which are contrary to the basic principles of natural justice insofar as RRSUS (CONFED) is concerned. Hence, the impugned judgment/order, to the extent of issuing directions for restoration of possession, which consequently results into dispossession of the RRSUS (CONFED), deserves to be quashed and set aside.

14. Learned counsel appearing on behalf of the JDA, having instructions, submits that due opportunity of hearing shall be afforded to the SD Trust, M/s Tara Medicos, RRSUS (CONFED) and any other stakeholders, if any, and that at least six weeks' time may be granted to enable the JDA to pass a reasoned and speaking order in accordance with law. It has further been submitted that the issue of restoration of possession would arise only in case, the JDA decides to drop the notice dated 13.07.2018, hence, until the matter is decided by the JDA, the directions for restoration of possession may not be held sustainable.

15. Learned counsel appearing on behalf of M/s Santokba, in S.A.W. No. 1634/2018, admits that the drug licence of the appellant was valid only up to 18.02.2020 and that period has expired. Hence, as on date, the grievance raised by appellant does not survive. However, it has been prayed that liberty be granted to the appellant to raise the issue of revival of the existing drug licence or issuance of a fresh drug licence, and to seek cancellation of both the drug licences issued in favour of RRSUS (CONFED), as and when a fresh cause of action arises in the



changed circumstances, following the decision of the JDA on the notice dated 13.07.2018. Accordingly, it has been submitted that the appeal may be disposed of in these terms.

16. Having considered the rival submissions advanced by learned counsels appearing on behalf of the respective parties, and in view of the factual matrix obtaining in the present cases, the following order is passed in terms of the agreement reached between learned counsel for the respective parties:-

(i) The JDA shall afford a due opportunity of hearing to the SD Trust, M/s Tara Medicos and other stakeholders, if any, before passing any order and taking any decision pursuant to the notice dated 13.07.2018. The concerned parties may submit their respective replies to the said notice, along with supporting documents and evidence, within a period of four weeks, i.e., on or before 30.11.2026. Although, parties requested for a period of two weeks only, but considering the overall facts, the period of four weeks has been fixed by this Court.

(ii) RRSUS (CONFED) is also permitted to participate in the hearing and submit its stand before the JDA, if so desired.

(iii) The JDA shall pass a reasoned and speaking order in respect of its notice dated 13.07.2018, after taking into consideration the relevant documents and evidence available on record, within a period of four weeks thereafter.

(iv) The JDA is directed to objectively arrive at a decision/ pass order within a period of four weeks from 30.11.2026, and to communicate the said order to all parties within seven days from the date of its passing.





(v) It is made clear that the JDA is free to decide the matter on its own merits, in accordance with the material available on record, without being influenced by the findings or observations made by the Appellate Tribunal in its judgment dated 23.10.2018, by the learned Single Judge in the order dated 29.03.2019, or by us in the present order.

(vi) Until the JDA passes its order/ decision, the premises in question shall continue to remain in use, occupation and possession of RRSUS (CONFED). Thereafter, the JDA may pass an appropriate order afresh, either permitting RRSUS (CONFED) to continue in possession or directing restoration of possession to the SD Trust or M/s Tara Medicos, as the case may be, in accordance with its final order/ decision.

In case, restoration of possession is directed, the SD Trust or M/s Tara Medicos, as the case may be, shall be at liberty to pursue its claim for mesne profits, in accordance with law, for the period during which it remained out of possession.

(vii) RRSUS (CONFED) is directed to forthwith release and hand over to M/s Tara Medicos, the articles, belongings, medicines, equipments, etc., belonging to it, as per the inventory prepared at the time of sealing of the premises and seizure of the articles. No third party, including the JDA, shall raise any objection to handing over of the said articles. Both parties, viz, RRSUS (CONFED) and M/s Tara Medicos, may mutually fix a date and a procedure for handing over and taking over of the said articles and belongings, preferably within a period of four weeks.



(viii) The impugned judgment dated 23.10.2018 passed by the Appellate Tribunal of the JDA and the order dated 29.05.2019, passed by the learned Single Judge, stand modified accordingly, as per the above terms arrived at between the parties.

17. Accordingly, Special Appeal (Writ) Nos. 912/2019 and 1010/2019, filed by the JDA, and Special Appeal (Writ) Nos. 906/2019 and 907/2019, filed by RRSUS (CONFED), stand disposed of in the above terms.

18. Special Appeal (Writ) No. 1634/2018, filed by M/s Santokba, stands disposed of as having become infructuous. However, liberty is granted to the appellant to raise the issue of revival of its drug licence or issuance of a fresh drug licence and to seek cancellation of the drug licences issued in favour of RRSUS (CONFED) for running a drug store in the premises in question, in accordance with the provisions of the Drugs and Cosmetics Act, 1940, and the Drugs and Cosmetics Rules, 1945, as and when a fresh cause of action arises.

19. Stay application(s), application for claiming mesne profits and pending application(s), if any, also stand disposed of.

(ANUROOP SINGHI),J

(SUDESH BANSAL),J

SA/03 to 07/Sachin Sharma/Danish Usmani