

(2013) 04 DEL CK 0072
In the Delhi High Court
Case No : Co. App. 11 of 2013

Ashok Kumar Krishnalal Patel and Another	APPELLANT
Vs	
Continental Textile Mills Ltd.	RESPONDENT

Date of Decision : 05-04-2013

Acts Referred:

Transfer of Property Act, 1882 — Section 107, 108

Citation : (2013) 4 AD 271 : AIR 2013 Delhi 166 : (2014) 182 CompCas 582 : (2013) 3 CompLJ 433 : (2013) 199 DLT 733

Hon'ble Judges : Siddharth Mridul, J; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Venkita Subramaniam, Mr. Dharmesh Shah and Mr. Rahul Bansal, for the Appellant;

Judgement

C.M. No. 2197/2013

Exemption allowed subject to all just exceptions.

The application is disposed of.

CM. 2196/2013 & Co. Appeal 11/2013

1. There is delay of 47 days in filing of the appeal. Before issuing notice on the application for condonation of delay, we have deemed it appropriate to examine the grounds of appeal on merits. The appellants' predecessor-in-interest had executed two registered perpetual or permanent lease deeds dated 23rd March, 1918 and 3rd November, 1927 in respect of agricultural lands in favour of Chandulal Karsandas, Mohanlal Vardhmanbhai and Lallubhai Narsinhdas Patel and Seth Rathilal Nathalal. Subsequently, Seth Rathilal Nathalal established a company under the name of New Commercial Mills Co. Ltd. It appears that the lessees mentioned above transferred their rights in respect of the land in favour of New Commercial Mills Co. Ltd. The said transfer/assignment of the leasehold rights was accepted by the predecessors of the appellants. In other words, New Commercial Mills Co. Ltd. became the perpetual lessee. Subsequently, there were

transactions with New Commercial Mills Co. Ltd. transferring the land to Bharat Vijay Mills Ltd., who in turn vide registered sale deed sold or transferred the lease hold rights to National Textile Corporation and ultimately to Continental Textile Mills Ltd., the company under liquidation. The transfer in favour of Continental Textile Mills Ltd. was made in the year 1991. The said transfer/assignments were accepted by the predecessors of the appellants.

2. During the course of liquidation proceedings, the official liquidator attempted to sell/dispose of the lease hold rights in the said land. Auction was held wherein M/s. Suchit Pavitra Industrial Cooperative Society gave the highest bid, but their bid was rejected because auction money was not deposited within time.

3. The appellants herein who claim right, being inheritors of the original lessors, filed company application C.A. No. 219/2007, inter alia, alleging that the company in liquidation has no right, title or interest in the property and the lease hold right subsisting with them stands terminated. They claim that since the object of the lease stands completed and the Continental Textile Mills Ltd. is being wound up, the land subject matter of the lease deeds should revert to them and the official liquidator cannot transfer or alienate the lease land and the sale proceeds cannot be used for disbursement amongst the creditors/contributories.

4. By the impugned order dated 7th November, 2010, the aforesaid application has been dismissed.

5. Learned counsel for the appellant has submitted that The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short "the said Act") has been extended and is applicable to whole State of Gujarat. Our attention has been drawn to Section 2(1) of the said Act wherein it is stipulated by Parts I and IV of the State of Gujarat. Part I of the said Act consists of Sections 1 to 5 and Part IV consists of Sections 47 to 51. None of the provisions in Part I and IV prohibits or bar a lessee from transferring the leasehold rights in favour of a third person. Learned counsel has relied upon Section 13 (e), 13 (ee) and 15 of the said Act. The said provisions are included in Part II of the said Act. Assuming though not accepting that Part II is applicable, we do not think that there is a bar or prohibition or the Official Liquidator must surrender the leasehold rights to the appellant. Section 15 (1) of the said Act reads as under:-

15. In absence of contract to the contrary tenant not to sublet or transfer.-[(1)] Notwithstanding anything contained in any law [but subject to any contract to the contrary,] it shall not be lawful after the coming into operation of this Act for any tenant to sublet the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein:

[Provided that the [State] Government may, by notification in the official Gazette, permit in any area the transfer of interest in premises held under such leases or class of leases and to such extent as may be specified in the notification.]

6. Bare reading of the aforesaid Section shows that subletting may be permitted under a contract between the landlord and the tenant and if there is a contract to the said effect, subletting will not be unlawful and it is open to the tenant to assign or transfer his leasehold rights to a third party. Assuming that the said Act and Part II thereof is applicable, it is clear to us that the contracts in question i.e. the Registered Permanent Lease Deeds dated 23.03.1918 and 03.11.1927 permit and allow the lessee to assign and transfer their rights. In fact, such transfers/assignments have taken place in the past, without any objection from the appellants or their predecessors.

7. The first lease deed dated 23rd March, 1918 records that the land in question was government land and was being given on perpetual or permanent lease on a fixed annual lease rent of Rs. 341/-. We reproduce clauses 1 and 2 of the Lease Deed dated 23.03.1918.

1) The said land, as written hereinabove, has been taken on lease. If we make the use of the said land in the work of mill, etc. or construct building or use it as per our wish and will, or keep it vacant, then also, we and our heirs/successors, guardians shall fully pay the lease amount, as stated above, to you, your heirs/successors and guardians, or the one in whose possession this land is, and shall go on paying what is stated hereinabove, and shall not raise any objection or dispute therein. In case objection or dispute is raised or get raised, then, it shall not be permissible by this agreement. But, if this land is leased out to anybody else, then, you, your heirs/successors and guardians shall not raise any kind of objection and dispute in respect thereof.

2) As stated above, we, our heirs/successors, guardians, administrators shall go on paying the lease amount of the said land every year by year and in case do not pay within 30 days from the date of this lease deed, then, on expiry of the said period, you shall issue a notice to us or our heirs/successors, guardians, administrators, and if within the period of notice do not pay, then, you shall, after taking recourse of law, be entitled to claim such amount of expenses from the date of the lease deed; you shall recover the same from that date with the accruing interest uptill it has fallen due. And moreover, you can redeem the land given on lease, but, if we redeem the said land or are compelled to redeem, then, from the date when your land is taken on lease by us or our heirs/successors and guardians, after deducting the lease amount for the years, which is collected by you, from the lease amount for fifteen years, we or our heirs/successors, administrators, whoever is there, shall give the amount, as is found due for the years, plus further amount for one year to you or your heirs/successors and guardians immediately, as written herein above. If those years have been completed, then, shall give the accumulated lease amount plus further lease amount for one year. That for this expenditure, by taking recourse of the law, you shall recover from us or our heirs/successors your lease amount with the expenses along with the accruing interest on the due amount and after taking the land from you, your heirs/successors, administrators and assignees,

we shall hand over the land after making it into cultivable condition, duly filling or surfacing the pits, knolls, including hedge, and if do not return the land and pay the lease amount, then, you or your heirs/successors and administrators shall be entitled to recover the expenditure so incurred in the above connection, including interest thereupon and as stated hereinabove, until we or our heirs/successors, administrators, do not return the land after duly cleaning the same, then, the lease amount shall go on accruing and all such shall be on our shoulders.

8. Similarly, the second lease deed dated 3rd November, 1927 records that the land in question was government land and the lessor had granted permanent lease on annual rent of Rs. 138/-. The various covenants state that the lessee was entitled to transfer or alienate their lease hold rights in favour of third parties. Clauses 1, 2, 3 and 5 of the subsequent Lease Deed of 03.11.1927 records as under:-

1) The lease amount of the said field has been agreed to be Rs. 138=00 (Rupees One Hundred Thirty Eight Only) for every year. The said lease amount shall be paid by the Second Party or heirs - guardians of the Second Party to the heirs-guardians of the First Party every year by year in future.

2) The Second Party has taken the aforesaid land on lease from the First Party permanently. If the Second Party uses the said land for the use of mill, etc. or raise construction thereupon, or the Second Party uses it as per his wish and will or keep it surplus, then also, the Second Party shall go on fully paying the aforesaid lease amount to the First Party and his guardians, heirs/successors, and shall not raise any kind of objection or obstacle whatsoever and if the Second Party or the guardians and heirs/successors of the Second Party takes any objection, then, it shall not be permissible under this deed, but, in case the Second Party let out or assign this land to any party, then, the First Party or the guardians and heirs/successors of the First Party shall not raise any dispute in connection thereof.

3) As written hereinabove, the Second Party, heirs/successors or guardians of the Second Party-administrators shall go on paying the lease amount every year by year in future and if any delay or procrastination is caused therein, then, shall give those dues with interest from the date when it became due and in making default thereof, if the Second Party gives notice and if the Second Party does not make payment with interest within one month from the receipt of that notice also, then, the First Party shall be entitled to get the land vacated and the First Party shall be entitled to claim the expenditure incurreds in doing so, lease amount and interest from the Second Party. Moreover, the Second Party is binding himself to retian the said land on lease for a minimum period of twenty one years and if within the said period, the Second Party has to return the land, then, by giving the lease amount of the period, which is still left out of twenty one years, at that time only, shall hand over the land to the First Party, and after completion of the period of twenty one years, the Second Party shall go on

paying the lease amount, as above, until the Second Party retains the land, and if we surrender the land in between the year, then also, shall give lease amount for the entire year, but, on surrender of the land in the half term i.e. before twenty one years, the First Party has right in respect of the lease amount of the half term, which the Second party has to give, and the Second Party or the heirs/successors, guardians, attorneys, assignees of the Second Party bind themselves to give the same to the First Party and in accordance thereto, if the Second Party or the heirs/successors and guardians of the Second Party then, the First Party has absolute right to recover such amount from the Second Party or heirs/successors of the Second Party, including all expenses and the accruing interest thereupon. No any kind of dispute by the Second Party or heirs/successors and guardians of the Second Party therein shall be permissible and in that event, after filling up and surfacing the pits and knolls and making it in a cultivable condition by duty preparing the hedge, the Second Party or heirs/successors and guardians of the Second Party shall hand over the said land to the First Party or heirs/successors, guardians, attorneys of the First Party after duly receiving the receipt. And, if the Second Party does not hand over the land in that manner, then, all expenditure so incurred in that regard by the First Party, shall be recovered by the First Party from the Second Party with interest. Until the land is not handed over after duly cleaning the same by the Second Party or heirs/successors, guardians, administrators of the Second Party, the lease amount shall go on accumulating and all such shall be on the shoulders of the Second Party.

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5. If the Second Party sub-lease this land to any person or assign his right in any manner whatsoever, then too, as per this lease deed, all the liabilities of the Second Party shall remain absolute and if the person, in whose favour the Second Party assign his right, is agreeable by the First Party, then, in accordance with the wish of the First Party, the First Party shall get the agreement executed from him. But, it shall be the wish of the First Party whether to release the Second Party from all the liabilities under this lease deed or not, after getting the agreement so executed. The Second Party has no any right whatsoever therein and if the Second Party assigns his rights in any manner whatsoever to anyone, then, subject to complying of all conditions of this lease deed, he can do so.

9. A perusal of various covenants of the said lease would further show that the lessees therein were entitled to transfer the possession and sell their lease hold rights in favour of third parties. The lessors are bound by the said transfers, assignment.

10. We have noticed and recorded the factual position that there have been transfers of lease hold right from time to time. The last transfer was affected in 1991 when the lease hold right was transferred by National Textile Corporation in

favour of Continental Textile Mills Ltd., the company under liquidation.

11. Before we part on this point, it is pertinent to bring to notice the observation of Laxmidas Bapudas Darbar and Another Vs. Smt. Rudravva and Others, high held as under:

17. It may have to be scrutinized as to what extent the provisions of Section 21 of the Karnataka Rent Act shall have an overriding effect over any other law or a contract. The Rent Acts have primarily been made, if not wholly, to protect the interest of tenants, to restrict charging of excessive rent and their rampant eviction at will. In that view of the matter, Section 21 of the Karnataka Rent Act provides that notwithstanding anything to the contrary contained in any contract, no order for eviction of a tenant shall be made by the court or any other authority. Undoubtedly, it is a provision providing statutory protection to the tenants as it is also evident from the heading of Section 21 of the Act. This prohibition is however relaxed under the proviso saying that an order for recovery of possession of the premises can be made on an application made on that behalf only on the grounds as enumerated in clauses (a) to (p) to the proviso. The non obstante clause contained u/s 21 of the Act, will override any condition in any contract which may provide a ground for eviction other than those enumerated in clauses (a) to (p) of sub-section (1) of Section 21. Such an additional ground in a contract shall be rendered ineffective. The use of the word "only" in the proviso is significant to emphasise that it relates to grounds alone which cannot be added over and above as provided. The whole contract or other conditions not related to eviction or grounds of eviction shall not be affected. So far as a fixed-term lease is concerned, it shall be affected only to the extent that even after expiry of period of the lease the possession cannot be obtained by the lessor unless one or more of the grounds contained in Section 21 of the Act are available for eviction of the tenant. There is nothing to indicate nor has it been held in any case that in view of Section 21 of the Karnataka Rent Act a contract of fixed-term tenancy stands obliterated in totality. As indicated in the earlier part of this judgment in the case of V. Dhanapal Chettiar Vs. Yesodai Ammal,] it has been observed in para 5 that none of the State Rent Acts have abrogated or affected the provisions of Section 107 of the Transfer of Property Act which provides for lease of immovable property from year to year or for a term more than a year or reserving a yearly rent. As indicated earlier, the proviso to sub-section (1) of Section 21 of the Karnataka Rent Act limits the grounds on which a landlord can seek eviction of a tenant. Nothing has been indicated by reasons of which it can be concluded that a contract of tenancy loses significance on coming into force of the Karnataka Rent Act. The effect of the non obstante clause, in our view has been rightly explained in the Full Bench decision in the cases of Sri Ramakrishna Theatres Ltd. v. General Investments and Commercial Corpn. Ltd. Sri Ramakrishna Theatres Ltd. Vs. General Investments and Commercial Corporation Ltd. and others, In one of the decisions of this Court reported in Modern Hotel, Gudur, Represented by M.N. Narayanan Vs. K. Radhakrishnaiah and Others,] it has been held that period of a subsisting lease for fixed term

could not be curtailed in the absence of a forfeiture clause in the lease.

18. The effect of the non obstante clause contained u/s 21 of the Karnataka Rent Act on the fixed-term contractual lease may be explained as follows:

(i) On expiry of period of the fixed-term lease, the tenant would be liable for eviction only on the grounds as enumerated in clauses (a) to (p) of sub-section (1) of Section 21 of the Act.

(ii) Any ground contained in the agreement of lease other than or in addition to the grounds enumerated in clauses (a) to (p) of sub-section (1) of Section 21 of the Act shall remain inoperative.

(iii) Proceedings for eviction of a tenant under a fixed-term contractual lease can be initiated during subsistence or currency of the lease only on a ground as may be enumerated in clauses (a) to (p) of sub-section (1) of Section 21 of the Act and it is also provided as one of the grounds for forfeiture of the lease rights in the lease deed, not otherwise.

(iv) The period of fixed-term lease is ensured and remains protected except in the cases indicated in the preceding paragraph.

12. Lease hold rights of permanent nature are a capital asset and have market value, when they can be assigned or transferred to a third person unless there is a contractual or statutory bar/prohibition. Section 108 of Transfer of Property Act permits assignment. Such lease hold rights cannot be equated and treated as similar to limited or short term tenancy rights, which are granted in favour of a tenant with a rider, bar or prohibition on further transfer/assignment or subletting.

13. Acquisition of the lease hold rights in question by the company under liquidation was for value and consideration paid to the earlier lessee. The official liquidator is entitled to encash the capital asset and sell the lease hold rights for payment of dues to the creditors/contributories. The lease hold rights have market value is apparent and established from the fact that auction was held and bids were received. To reconstitute or return the land in question to the appellants will result in dissipation of an asset of considerable value, to the detriment/loss of the creditors/contributories.

14. The contention of the appellants is that there is violation of the terms and conditions of the two perpetual/permanent lease deeds and rentals have not been paid. However, it is admitted and accepted that no proceedings for ejectments etc. have been initiated for recovery of possession. If rent control legislation apply, then proceedings under the specific statute have to be initiated as per the procedure. If the Transfer of Property Act applies, then proceedings have to be initiated before the civil court. These are separate aspects and need not be examined in the present appeal. Normally an auction purchaser would acquire the lease hold rights with the stipulation or covenants in the perpetual lease. This would not affect the rights of the lessor under the lease deed, subject

of course to statutory protection, if any, to the new lessee/purchaser. In view of the aforesaid legal position, we do not find any reason to issue notice on the application for condonation of delay. Consequently, the application for condonation of delay and the appeal are dismissed.