
(1953) 05 P&H CK 0014
In the Punjab And Haryana At Chandigarh
Case No : Second Appeal No. 901 of 1950

Basheshar Nath

APPELLANT

Vs

Delhi Improvement Trust

RESPONDENT

Date of Decision : 12-05-1953

Acts Referred:

Evidence Act, 1872 — Section 115

Transfer of Property Act, 1882 — Section 106, 113

Citation : AIR 1953 P&H 243

Hon'ble Judges : Kapur, J;Falshaw, J

Bench : Division Bench

Advocate : D.K. Mahajan and D.N. Awasthy, for the Appellant; Bishan Narain, for the Respondent

Final Decision : Dismissed

Judgement

Kapur, J.—This is a defendant's appeal against an appellate decree of the First Addl. District Judge. Delhi, dated 28-10-1950, confirming the decree of the trial Court whereby the suit of the plaintiff was decreed.

2. Two leases were entered into between Basheshar Nath and the Delhi Improvement Trust, one dated 21-8-1940, and the other dated 5-9-1941. In both cases the land demised was vacant land which was owned by Government but was under the management of the Delhi Improvement Trust. The terms of the leases were the same excepting that in the first lease an eighth clause was added. The relevant conditions of the lease were:

(1) that the lease was not to be determined until one of the parties thereto gave thirty days' notice in writing to the other to quit;

(2) that the lease was determinate at the option of the lessor without any notice if there was default in the payment of the rent or on any breach of the covenants;

(3) that at the determination of the lease, no matter how it was brought about, the lessor had the right to enter upon the property leased and take possession of

it with all buildings, etc.

In the first lease there was an eighth clause which was not in the second lease and it was as follows:

"(8) The lessee will vacate the land at one month's notice without fuss if it is wanted at any time for building."

On behalf of the Delhi Improvement Trust the leases were signed by the Chairman and on behalf of the lessee by Basheshar Nath.

3. On 21-1-1946, three months' notice was given by the lessor to the lessee to quit which was to begin with effect from 1-2-1946. On 22-1-1945, Basheshar Nath asked for a year's period of grace. This was refused on 13-5-1946, and the lessee was asked to quit within fifteen days of the receipt of the notice.

4. As neither the rent was paid nor did the lessee quit a suit for ejectment and for recovery of Rs. 2,668/1/- was filed as arrears of rent. Several issues were raised but the only ones which are necessary for the purposes of this appeal are 2, 4, & and 6. The findings of both the Courts are against the defendant on these points and the defendant has come up in second appeal to this Court.

5. It is submitted on behalf of the appellant that the Chairman of the Trust had no power to institute the present suit. Reference in this connection was made to the various sections of the United Provinces Town Improvement Act, 1919, as extended to Delhi. u/s 3 of this Act. the duty of carrying out the provisions of the Act vests in a Board to be called "The Delhi Improvement Trust & such Board is a body corporate and shall sue and be sued in that name. Section 54-A gives to the Trust the power to hold Government property. Chapter VI of this Act beginning with Section 55 deals with acquisition and disposal of land. Section 56 provides for compulsory acquisition. Section 64 (2) provides the method of enforcement of the orders of the Tribunal, the power being given to the Court of Small Causes. Section 65 of this Act gives the power to the Chairman of the Trust to dispose of land and is as follows:

"65--Subject to any rules made by the Chief Commissioner u/s 72 of this Act, the Trust may retain or may let on hire, lease, sell, exchange or otherwise dispose of, any land vested in or acquired by it under this Act."

Chapter X of the Act gives the supplemental provisions. Section 95 deals with powers of Chairman to institute legal proceedings and is as follows:

"95--The Chairman may, subject to the control of the Chief Commissioner:

- (a) institute, defend or withdraw from legal proceedings under this Act,
- (b) compound any offence against this Act, (O admit, compromise or withdraw any claim made under this Act, and
- (d) obtain such legal advice and assistance as he may from time to time think it necessary or expedient to obtain, or as he may be desired by the Trust to obtain,

for any of the purposes referred to in the foregoing clauses of this section, or for securing the lawful exercise or discharge of any power or duty vested in or imposed upon the Trust or any officer or servant of the Trust."

Section 96 is an indemnity section and Section 97 puts certain restrictions on suits brought against the Trust.

6. It is on the basis of these sections that St is submitted for the appellant that the Chairman had no power to institute the present suit. u/s 54-A of the Act property is held by the Trust and u/s 65 the Chairman has the power to give the land on lease. Section 95 provides that the Chairman, subject to the control of the Chief Commissioner, can institute, defend or withdraw from legal proceedings under this Act. Mr. Mahajan emphasises that the power of the Chairman to do these various things is in regard to those proceedings which are under this Act, but he has not shown us what legal proceedings can be under the Act only. u/s 65 the Chairman has the power to give the land on lease. If we read the language of Section 95 as Mr. Mahajan would like us to read, it would mean that although under the powers vested in him the Chairman can lease out the land he cannot recover possession of it if the lease is terminated or there is a breach of any covenant. Bead in that way, the Interpretation of section 95 will become almost absurd Which according to the rules of interpretation is to be avoided. What the section really means is that if any right of the Trust is to be enforced in a Court of law or is to b3 defended in a Court of law, the Chairman shall have the power to either institute the necessary legal proceedings or defend them and, if he thinks proper, to withdraw from these proceedings. I am therefore of the opinion that the learned Judge has rightly come to the conclusion that the Chairman has the authority to institute this suit.

7. It is then submitted by Mr. Mahajan that the first notice should be taken to have been .waived because a second notice was given by the Trust. I am unable to agree with this submission also. By giving three months" notice which ended on 30-4-1946, the tenancy was terminated and the letter of 13-5-1946, was not really a notice but it was a reply to the request of the lessee for one year"s grace which was refused and fifteen days were given to the lessee to quit. This does not constitute a new tenancy but it was merely a period of grace given to the defendant to remove his fixtures. Mr. Bishan Narain for the plaintiff-respondent has relied on a judgment of the King"s Beach Division in -- "Loewenthal v. Van-houte (1947) 1 All B B 116 (A), where it was held that where a notice to quit has been given, a subsequent notice to quit is of no effect unless it can be inferred from other circumstances that a new tenancy has been created after the expiry of the first notice. It was observed by Denning J. in that case:

"In my opinion, the law is well settled now that, when a forfeiture of a lease is incurred, the lease is voidable and not void, and in those circumstances the giving of a notice to quit may recognise the subsistence of the lease and may, therefore, waive the forfeiture, but in the case where a tenancy is determined by a notice to quit, the position is entirely different."

I am therefore of the opinion that no waiver was proved and the second notice is of no substance to the appellant.

8. It was then submitted that the eighth clause in the first lease of 1940 is a bar to the present suit because the plaintiff could only sue for ejectment if it wanted the land for building. I do not think that the terms of the contract read as a whole are capable of this meaning. According to the first clause of the lease deed, the lease could be terminated by thirty days' notice and according to fourth clause the lessor could without notice put an end to the lease if there was any default in the payment of rent or breach of any covenant. Thereupon the lessor had a right of entry. As I read clause 8 all that it means is that if the land was wanted for any building, the lessee was not to make any "fuss". I do not think that clause 8 is in derogation of the powers which the lessor had under the other clauses of the lease deed. In this view of the matter the observations of Earl Loreburn, L. C., in -- "*Commissioners of Inland Revenue v. Southend-on-Sea Estates Co. Ltd.*". (1915) A. C. 428 at p. 431 (B), are wholly inapplicable.

9. On these facts there is no question of estoppel which can be raised against the plaintiff. I would therefore dismiss this appeal with costs throughout.

Falshaw, J.

10. I agree.