

(1971) 05 DEL CK 0038

In the Delhi High Court

Case No : Regular First (OS) Appeal No. 16 of 1970

Durga Chand Kaushish

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 26-05-1971

Acts Referred:

Citation : (1971) ILR Delhi 350

Hon'ble Judges : S.I. Rangarajan, J; Narain Andley, J

Bench : Division Bench

Advocate : Ramesh Chandra, Prakash Chandra, Keshav Dayal and J.N. Aggarwal, for the Appellant;

Judgement

S. Rangarajan, J.

(1) The plaintiff-appellant is a lessee of a plot of land measuring 5444 square yards situated in Basti Ara Kashan. Pahar Ganj. Delhi, under a lease deed dated 17th September 1931, executed between him through his father as guardian, and the Secretary of State for India in Council, through the Deputy Commissioner, Delhi. The lease was stated to be for a term of 90 years, commencing from 1st April 1931. The plaintiff paid a premium of Rs. 18,154.00. The annual rent was Rs. 365.00, payable in two equal half yearly Installment of Rs. 182.50 paise each. The demised land as well as other nazul land in Delhi were placed at the disposal of the Delhi Improvement Trust (hereinafter referred to as the Trust) which held and managed this land on behalf of the Government as its statutory agent till it was superseded in 1957.

(2) The Trust framed a scheme for the improvement and development of the Basti Ara Kashan area in which the demised land was situate. To ensure development of the said area, the plaintiff was required to enter into an agreement to erect new buildings, on a part of the demised area, in accordance with the plans approved by the Trust and also to pay a sum of Rs. 10,888.00 in lieu of development and betterment charges. An agreement to this effect was

executed on 27th May 1955 (Exhibit P. 4). By virtue of the said agreement the annual rent under the original lease, which had by then run for 24 years, was kept as before, at the same yearly rent of Rs. 365.00 which the plaintiff continued to pay to the Trust, and after its supersession to its successor the Delhi Development Authority (second defendant).

(3) On 3rd June 1964, a sum of Rs. 4,657.75 Paise was recovered from the plaintiff as arrears of rent by the second defendant through the Collector. The plaintiff was also compelled to pay, which he did under protest, further sums of money on the supposition that at the end of 20 years commencing from 1st April 1931 the rent became enhanced by one hundred per cent. The enhanced rent between 1st January 1952 and 30th June 1963 was thus stated to be Rs. 4,472.25 Paise. According to the plaintiff, however, annual rent at the rate of Rs. 365.00 was alone payable by him for 90 years from 1st April 1931 and that such renewal, as was contemplated by the lease deed involving the payment of enhanced rent, was to come into operation only at the expiry of 90 years from 1st April 1931. He, Therefore, laid the present suit, out of which this appeal arises, on 10th July 1967, for a declaration that he was entitled to enjoy the demised land for a period of 90 years from 1st April 1931 at a rent of Rs. 365.00 per annum only, for an injunction restraining the second defendant from recovering anything in excess of the said rent, and for recovery of what was illegally collected from him.

(4) The suit was resisted inter alia on the grounds that the enhanced rent was payable as demanded under the lease deed, that the present suit itself was barred u/s 53B of the Delhi Development Act and that no notice, as required thereby, had been served on the second defendant.

(5) The suit was decreed ex parte by Hardayal Hardy J. on 10th September 1967, holding that on a proper construction of the lease deed no rent in excess of the amount of rent of Rs. 365.00 could be recovered until 1st April 2021.

(6) Subsequently the ex parte decree was set aside by Jagjit Singh J. who, by his subsequent order, dated 8th January 1969, over-ruled all the preliminary objections raised by the second defendant to the maintainability of the suit and directed the suit to be set down for disposal on the merits.

(7) OM Parkash J. dismissed the plaintiff's suit holding that under the terms of the lease deed the rent could be enhanced as demanded by the second defendant which had taken the place of the Trust, as statutory agent of the "Government, for managing the said area.

(8) It was contended by Mr. Ramesh Chand, counsel for the plaintiff, that no enhanced rent is payable under the lease deed before 1st April 2021. Mr. Keshav Dayal, counsel for the second defendant not only contended contra but also raised the aforesaid two preliminary objections to the maintainability of the suit.

(9) In order to appreciate the rival contentions on the merits it is necessary to

read the following material portions of the lease deed (Exhibit P.2-)-

"NOW this indenture witnesseth that in consideration of the rent hereinafter reserved and of the covenants on the part of the said Lessee hereinafter contained the said Lesser does hereby demise unto the said Lessee all that plot of land containing by measurement 5444 square yards situated at Ara Kashan, Pahar Ganj, in the Municipality of Delhi which said plot of land is more particularly described in the schedule hereunder written, and with the boundaries thereof has, for greater clearness, been delineated on the plan annexed to these presents and thereon coloured blue. together with all rights easements and appurtenances whatsoever to the said Lessee for the term of 90 years commencing from 1st day of April 1931 rendering Therefore during the said term the yearly rent of Rs. 365.00 only clear of all deductions, by equal half yearly payments on the first day of January and first day of July at Rs. 182/8.00 each at the Nazul Office of the Deputy Commissioner of Delhi or of such Officer as may from time to time be appointed by the Local Government in this behalf. The first of such payments to be made on the first day of July next. Subject always to the exceptions, reservations and conditions and covenants hereinafter contained that is to say as follows..... (4) The Lessee hereby agrees that he will during the term hereby granted pay up to the Lesser the yearly rent here reserved on the days and in the manner hereinbefore appointed. (9) The Lesser will at the request and cost of the Lessee at the end of the term hereby granted and soon from time to time thereafter at the end of each such successive further term of years as shall be granted, execute to the Lessee a new lease of the premises hereby demised by way of renewal for a further term as follows:- (a) At the first renewal.....Twenty years. (b) At the second renewal..... Twenty years. (c) At the third renewal.....Thirty years. Provided always that each such renewed term of years as shall be granted shall not with the original term of the years and any previous renewals exceed in the aggregate the period of ninety years. (10) The rent of the said premises hereby demised is hereby expressly made subject to enhancement on the granting of each renewed lease but the enhancement on the first renewal shall not exceed one hundred per cent of original rent and the enhancement on the second renewal shall not exceed one hundred per cent of that reserved at the first renewal. Leases renewed for the third period provided for in the last preceding clause may be granted at the then prevailing market rate of rents for building land in the vicinity".

(10) The opening paragraph clearly connotes two things: (1) the lease was for a term of 90 years, commencing from the 1st day of April 1931, (2) during the said term, i.e.. until 1st April 2021, the yearly rent was Rs. 365.00 only, clear of all deductions, which was to be paid in equal half-yearly Installments, on the first day of January and first day of July at Rs. 182/8.00 each at the Natul Office of the Deputy Commissioner, Delhi. The first of such payments was to be paid on the first day of July next.

(11) The exceptions, reservations and conditions, referred to in the opening

paragraph are to be gathered from clauses I to 16 of the lease deed. The first clause provides that the premium of Rs. 18, 252.00 would be paid by the plaintiff in Installments; according to the second clause the lease shall become determined ipso facto on breach of the said condition in clause I, the sixth clause provides that the arrears of rent and other payments due in respect of the demised premises would be recoverable in the same manner as arrears of land revenue.

(12) In the view of the learned single Judge though the ninth clause was not happily worded the proviso to the said clause made it clear that renewals were to be made within, but not after, the period of 90 years from 1st April 1931. The learned Judge felt that this view would give effect to all the clauses of the lease deed, whereas if the construction sought to be placed on it by the plaintiff is to be adopted it would render the proviso to the ninth clause nugatory.

(13) The principles of construction of documents are well known. The intention of the parties has to be gathered by reading the document as a whole and by giving effect to all the words used therein. The surrounding circumstances can also be taken into account to understand the document. In a document inter vivos in there is any conflict between the earlier and later clauses and it is not possible to give effect to all of them then the earlier clause will over-ride the later but not vice Versa (vide Radha Sundar Dutta Vs. Mohd. Jahadur Rahim and Others, -and Gowramma Vs. Yella Reddy Chenga Reddy and Others,).

(14) The learned single Judge construed the later clauses in such a manner as to interpret paragraph I of the lease deed in the manner contended for by the second defendant. We respectfully differ because our reading of paragraph I of the lease deed does not warrant the interpretation placed upon it by the second defendant. On the other hand, it seems to us that the interpretation placed upon the lease deed by the second defendant would render the provisions of paragraph of the lease deed both with reference to the term as well as rent nugatory. It also seems to us that the interpretation placed upon the said lease deed by the plaintiff has the merit of harmoniously interpreting all the clauses in the lease deed without rendering any particular clause, particularly the proviso to clause 9, nugatory.

(15) When a lease is executed for a fixed term (in this case 90 years) it cannot include (within it) a period to be extended by way of the lessee exercising an option to renew the said lease. The term of 90 years, Therefore, was a term which had been agreed upon between the Lesser and the lessee independently of any option on the part of the lessee to renew; in other words, the term of the lease was fixed--for 90 years from 1st April 1931 Not only was the term thus fixed to cover a period of 90 years, even the rent to be paid by the lessee for the entire period of 90 years was fixed at Rs. 365.00 per year. It would not be permissible to curtail by a process of interpreting any later clause in the said deed the term of the lease, which had been thus fixed as 90 years from 1st April 1931 or enhance the rent, which had been fixed at the said figure for the entire

period of 90 years.

(16) The next question for consideration is whether on a construction of clauses 9 and I O of the lease deed a meaning conflicting with what is thus apparent from the opening clause of the lease deed can be spelt out. Clause 9 of the lease deed provides for the period after the expiry of its term of 90 years and this is made clear by the words "at the end of the term hereby granted". On the expiry of the aforesaid term of 90 years several options are open to the lessee. He may ask for renewal of the lease only for 20 years in which case "a new lease by way of renewal" for a term of 20 years without any option for further renewals shall be granted. Or he may ask for renewal of the lease for 20 years with an option to request for further renewals in which case "a new lease-by way of renewal" far a term of 20 years with such option shall be granted and further new leases will be granted as and when the period of the new lease or leases by way of renewal expires.

(17) The other option of the lessee is that he may, on the expiry of the term of 90 years, request for the grant of a new lease, not being a new lease by way of renewal, for a further term of years "succeeding the term of 90 years". If the request is granted, the new lease for the renewed term will not be a "new lease--by way of renewal" but a new lease for a renewed term on the expiry of the "renewed term" of the new lease. a similar new lease for another renewed term may be granted and so on. These new leases will give to the lessee a right to obtain new leases by way of renewal for the three period of 20 years; 20 years and 30 years. It is when such new leases for renewed terms, which are not specified in clause 9 re granted that the proviso comes into play. It provides that the aggregate period of such new leases for renewed terms which arc not by way of renewal and the aggregate term of the leases by way of renewals shall not exceed ninety years.

(18) On this interpretation, every word and expression in Clause 9 is given effect and meaning. In short, clause 9 means that a lessee can remain a lessee for a maximum period of 160 years comprising the first period of ninety years and the period of 70 years for the three renewals if new leases for renewed terms after the expiry of the first 90 years are not granted But if such new leases for renewed terms are granted, he can remain a lessee for a maximum period of 180 years including the period of the three renewals.

(19) On the interpretation advanced by the second defendant the words "and soon from time to time thereafter at the end of each such successive further term of years as shall be granted in clause 9 are not given any meaning at all and would be redundant.

(20) The same conclusion could be reached by another process of reasoning also. The entire difficulty is caused by reading " with" in the proviso as meaning "in addition". Among the meanings of the expression "with", stated in the Webster's Third New International Dictionary Volume Iii, Page 2626, is "along side of".

Understood in that sense the proviso would only mean that each such renewed term of years of the new A lease as shall be granted shall not, along side the original term of years and any previous renewals exceed in the aggregate the period "of ninety years, if the proviso is understood in this manner no violence would be done to the opening paragraph of the lease fixing the term at 90 years.

(21) After the opening paragraph set out both the term of the lease as well as the rent payable during the did term. clauses 1 to 16 were incorporated as the exceptions, reservations, conditions and covenants subject to which the lease deed has been executed. Clause 4 of the lease deed has specifically referred to the lessee having agreed "during the term hereby granted" to pay to the Lesser the yearly rent reserved "on the days and in the manner hereinbefore appointed" those days were the first day of January and .first day of July-the amount was Rs. 182.50 paise for each of those two Installments and the manner was to pay the said Installments to the Nazul Officer of the Deputy Commissioner, Delhi, or such officer as may from time to time be appointed by the local Government in this behalf. It is important to bear in mind that clause 4 of the said lease deed referred to the payment of rent reserved on the days and in the manner "hereinbefore appointed".

(22) We are fortified in reading the lease deed (Ex. P.3) in the above manner for the following additional reasons:- (1) There was no request by the lessee for renewal of the lease at the end of 20 years from 1st April 1931; nor did the Lesser call upon the lessee to exercise the option of renewals at the end of 20 years from 1st April 1931 and to execute a new lease. (2) Under the Agreement (Exhibit P.4), executed on 27th May 1955, between the plaintiff and the Trust, the predecessor-in-interest of the second defendant, the original annual rent of Rs. 365/ was maintained even though the plaintiff had been required to agree to develop the property on the lines required by the second defendant and a betterment levy was also charged from him. This would not have been the case if the lease deed required a renewal at the end of 20 years from 1st April 1931 and enhanced rent was payable on the expiry of 20 years from the said date. It is also worth noticing that if the second defendant's construction were to be adopted the defendant could not claim only enhancement of rent without the execution of a fresh lease at the end of 20 years from 1st April 1931 (i.e. on 1st April 1951). In other words, if renewal of the lease was necessary the plaintiff, admittedly not having executed a fresh lease by exercising his option to renew, would in law be only a tenant at will who was holding over at the expiry of the term and the original annual rent of Rs. 365.00 alone could be demanded A from him. In no view of the matter, Therefore, could the second defendant make any claim for any enhanced rent."

(23) Our attention has been drawn to the decision of the Circuit Bench of the Punjab High Court by H. R. Khanna J. (as his Lordship then was) in *Dau Doyal v. The Union of India* and another (Civil Regular Second Appeal No 5 3-D of 1958 decided on 29th April 1964) interpreting a similar lease deed in the manner the

learned Single Judge has done. Having regard to our discussion of the terms of the lease deed (Exhibit P.2) in this case; the other circumstances and the subsequent agreement (exhibit P. 4) between the parties which support the interpretation adopted by us the said decision would not help the second defendant.

(24) This next contention of Mr. Keshav Dayal, counsel for the second defendant that since no notice of the suit had been served on the second defendant as required by section 53B(1) of the Delhi Development Act, the suit was not maintainable has nothing to commend it. It was mentioned in paragraph 20 of the amended plaint that a notice u/s 80 of the CPC was served on the Secretary to the Central Government in the Ministry of Home Affairs, New Delhi, on 22nd April 1967 and that a copy was also served on the second defendant on the same day even though, it was also asserted, the second defendant being the statutory agent of the first defendant and acting on its behalf was not entitled to any notice. The averment in paragraph 20 of the written-statement of the second defendant in this regard was that no notice, as required u/s 80 of the Code of Civil Procedure, was served on the first defendant (Union of India) and that no notice was given, as required u/s 53B of the Delhi Development Act. It was, however, admitted by DW.3 (Dharam Singh), who was in charge of the files of the Land Section of the second defendant, that a copy of the plaintiff's notice to the Secretary to the Government of India, Ministry of Home Affairs, was also sent to the second defendant and that the Ministry had also forwarded the notice sent to it to the second defendant with the endorsement that it had been so forwarded in compliance. In our opinion, the notice served as stated substantially complied with the provisions of section 53B(1) of the said Act.

(25) The next objection to the maintainability of the suit was the one raising the bar of limitation u/s 53B(2) of the Delhi Development Act. Section 53B reads as follows: -

"(1) No suit shall be instituted against the Authority, or any member thereof, or any of its officers or other employees, or any person acting under the directions of the Authority or any member or any officer or other employee of the Authority in respect of any act done or purporting to have been done in pursuance of this Act or any rule or regulation made there under until the expiration of two months after notice in writing has been in the case of the Authority, left at its office, and in any other case, delivered to, or left at the office or place of abode of, the person to be sued and unless such notice states explicitly the cause of action, the nature of relief sought, the amount of compensation claimed and the name and place of residence of the intending plaintiff and unless the plaint contains a statement that such notice has been so left are delivered. (2) No suit such as is described in sub-section (1) shall, unless it is a suit for recovery of immovable property or for a declaration of title thereof, be instituted after the expiry of six months from the date on which the cause of action arises. (3) Nothing contained in sub-section (1) shall be deemed to apply to a suit in which the only relief

claimed is an injunction of which the object would be defeated by the giving of the notice or the postponement of the institution of the suit".

(26) It is also necessary to read section 40A of the said Act in this context:--

"Any money due to the Authority on account of fees or charges, or from the disposal of lands ,building or other properties, movable or immovable, or by way of rents and profits may, if the recovery thereof is not expressly provided for in any other provision of this Act, be recovered by the Authority as arrears of land revenue."

(27) The present being a suit for a declaration of the plain till's title as lessee would be saved, in any event, by section 53B(2). In any case there could be no question of limitation with regard to the said declaratory relief or the relief of injunction restraining the second defendant from demanding rent in excess of Rs. 365.00 per year during the term of 90 years of the said lease. Out of the reliefs asked for in the plaint the plea of limitation can conceivably be raised only with reference to relief (c) viz. for refund of the amount recovered from the plaintiff in excess of what was due under the lease deed, the same having been recovered more than six months prior to the suit. Having regard to the clear language employed in section 40A it would be applicable only to cases where money is legally due; any money not legally due could not be the subject matter of recovery by a mode permitted by section 40A of the Act. On our finding that no annual rent in excess of Rs. 365.00 could be demanded during the period of 90 years commencing from 1st April 1931 the second defendant could not plead any limitation with reference to the amount collected in excess of what was legally due under the said lease deed.

(28) Our attention has been invited to a Full Bench decision of the Bombay High Court in Municipal Borough of Ahmedabad Vs. Jayantilal Chhotalal Patel, . While construing section 206 of the Bombay Municipal Boroughs Act 1925 which prescribed a reduced period of Limitation for suit in respect of an act done in pursuance of that Act Chagla J. (as his Lordship then was) speaking for the Full Bench pointed out that the said section ought to be strictly construed and that a suit to enforce the rights of a private individual under a contract entered into with the municipality, which the municipality was not under any statutory obligation to enter into, cannot fall within the ambit of that section. The following observations of Sir John Beaumont in Vishwanath Sadashiv Natu Vs. The Municipal Corporation of The City of Bombay, were quoted with approval:-

"ONE has to see whether the act complained of was done pursuant to the direct requirements of the Act, or was done under some contract which the Corporation entered into under the powers conferred by the Act but which it was not compelled to enter into."

(29) Yet another decision of the" Bombay High Court in S. V. Mundlik v. Borough Municipality of Jalgaon (AIR 1944 Bombay 97) that section 206 did not apply when the suit was based on a contract, was also followed.

(30) The facts in *Athimannil Muhammad v. Malabar District Board* (AIR 1935 Madras 213), which was dissented from in the Bombay Full Bench case, are seen to be different; reference was made in the Madras case to the interpretation by the Judicial Committee of section 80 of the CPC as comparable to the relevant provision of the Madras Local Boards Act. It was also observed in the Madras case that the question would depend on the circumstances of each case.

(31) Our attention has also been invited to another Full Bench decision of the Allahabad High Court in *Lucknow Nagar Mahapalika Vs. Sardar Karamjeet Singh and Others*, where section 97 of the U.P. Town Improvement Act 1919 was considered. Under the said Act the period of limitation was only six months as against the three years permissible under the Limitation Act. The majority held that the reduced limitation of six months was intended to apply only to cases arising out of an act or acts performed by the Trust or its employees particularly mentioned or provided in the statute itself.

(32) Since the second defendant was not authorised to collect what was not legally due under the lease deed the collection of the excess amount was not an act falling within the scope of the Delhi Development Act and there could not be any reduction of any period of limitation in respect of it. Consequently, the period of limitation of three years which was available to the plaintiff under the Limitation Act to bring a suit for recovering the amount recovered from him in excess of what was legally due under the said lease deed could not be reduced by section 53B(2). The expression employed in section 53B(1), "in respect of any act done or purporting to have been done in pursuance of the Act or any rules or regulations made there under", does not warrant the contention put forward by Mr. Keshav Dayal that the act in the present case, namely, demanding and recovering an amount in excess of what was due under the lease deed was something done in pursuance of this Act. The said provision being one which restricts the larger period of limitation allowed by the Limitation Act has to be strictly construed. Hence we find no merit in the plea. of limitation.

(33) In the result the decree and judgment of the learned single Judge are set aside and the plaintiff's suit is decreed, granting to him all the reliefs prayed for, with costs throughout.