

(1991) 03 DEL CK 0048

In the Delhi High Court

Case No : Civil Writ Petition No. 349 of 1973

Gopichand Shivhare and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 13-03-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1991 Delhi 226 : (1991) 44 DLT 475 : (1991) 1 DRJ 295 Supp

Hon'ble Judges : Milap Chand Jain, J;Arun Kumar, J

Bench : Division Bench

Advocate : R.P. Oberoi, Hemant Kumar, S.K. Mahajan and Gulab Chandra, for the Appellant;

Judgement

Arun Kumar, J.

(1) By this writ petition the petitioners have sought a declaration that the lease deed dated 23rd August 1923 does not cover their bungalow No. 65, Taj Road, Agra Cantonment and have prayed for quashing the notice dated 16th September 1970 whereby the lease with respect of the said bungalow was terminated and the petitioners were directed to deliver up to the Central Government the land comprised in the said demise together with all erections and which may be standing thereon payment of compensation for such erections and buildings only and a sum of Rs. 9084.00 was offered as compensation for the authorised erections standing on the land. The petitioners also sought a direction to the respondents to mutate in the name of the petitioners bungalow No. 65, Taj Road, Agra Cantt. showing them as the landlords/owners of the said bungalow and the land comprising there under.

(2) The case of the petitioners as set out in the writ petition is that they are absolute owners of bungalow No. 65 standing on survey No. 477 admeasuring 1.719 acres situated in Agra Cantt. According to the petitioners the original bungalow was in existence for over 100 years and no records are available to show that for putting up the bungalow any grant of the land was made by the

Government to the predecessors in title of the petitioners. It may be mentioned here that the petitioners had purchased bungalow No. 65 under a Sale Deed dated December 1962 from its previous owner. On this basis the petitioners claim that they are the sole and absolute owners of the said bungalow including the land underneath and respondents have no right to resume the land and ask the petitioners to hand over possession thereof including that of the erections existing there on.

(3) The case of the respondents is that the land covered by bungalow No. 65 is part of a bigger piece of land, and the entire piece of land was subject matter of 33 years lease granted by the Secretary of State for India in favor of the erstwhile lessee. The said lease expired in 1956 and was not renewed thereafter. The petitioners are claiming title to the bungalow in question from its previous title holders who have always acknowledged the existence of the lease and it is a case of holding over of the tenancy after the expiry of the lease. Therefore, the respondents claim that they are entitled to terminate the lease and rename possession of the land including the authorised erections thereon after paying compensation for the same.

(4) The respondents have also raised a plea that the present writ petition raises disputed questions of fact and Therefore the writ petition is not maintainable under Art. 226 of the Constitution of India. This submission of the respondents appears to have substance as we find that certain facts are required to be determining for purposes of final decision of the controversy between the parties. However, there is an important aspect of the case which persuades us to proceed to decide the petition on merits. This writ petition was filed in the year, 1973 and has remained pending in this Court for nearly 18 years now. At this stage if we were to drive the petitioners back to seek their remedies under the normal laws in Civil Courts, it will be unjust and harsh. Besides the laws of limitation may come in the way of the petitioners, if they were to seek such remedies now. Therefore, we have proceeded to deal with the petition on merits.

(5) The bungalow forming subject matter of the present petition has some history which requires to be stated at the outset. Agra Cantonment appears to have been established some time in the year 1805. The boundaries of the cantonment were defined in or about the year 1811. The petitioners claim that the bungalow No. 65 is in existence for more than 100 years in the Agra .Cantt. From a copy of the Lease Deed dated 23rd August 1923, placed on record by the petitioners as Annexure P-2, it appears that earlier this bungalow was known as bungalow bearing No. 15, Taj Road, Agra and comprised an area of 1,26,198, sq. ft. which comes to more than three acres. The said bungalow was owned by one Mrs, Garmanaly, who sold it to M/s. Lutchman Brothers. In or about the year 1923, M/s.Lutchman Brothers wanted to construct another bungalow in the compound of bungalow No. 65 and submitted building plans for the sanction of the competent authority. M/s.Lutchman Bros. were advised to submit an application under Chapter Xxi of the Cantonment Code 1912 duly accompany"

ing the plans in order to regularise the grant vide Cantonment Magistrate's letter No. 853/L27, dated 4-4-1923; Consequently, on 29th May 1923 M/s., Lutchman Bros. submitted an application for lease of the land measuring 1,26,195 sq. ft. The lease applied for was sanctioned by the Competent Authority on 3rd July 1923. A lease for the said bungalow for 33 years commencing from 3rd July 1923 was executed on 23rd August 1923 and was registered on 29th October 1923. M/s. Lutchman Bros. constructed a new bungalow and thus they became owners of two bungalows standing on the plot which was the subject matter of the Lease Deed dated 23rd August 1923 for an area of 26,195 sq. ft. That is how, the two bungalows came to be numbered as bungalow No. 65 and bungalow NO.65-A. Subsequently, M/s Lutchman Bros. sold bungalow No.65 which is subject matter of the present petition to one Maj.G.Thoy vide sale deed dated 19th June 1928. Maj. They, in turn, sold bungalow No. 65 Mr. J.T. Brady vide sale deed dated 23rd May 1931. On the death of Mr. J.T. Brady, the bungalow was mutated in the name of his widow Mrs. Helan Brady, by virtue of will of her husband in her favor regarding which a probate had been issued by the District Judge, Agra. In fact Mrs. Brady appears to have applied for renewal of the lease on 4th July 1956, i.e. immediately after the terms of the original lease expired. However, as the Cantonment Authorities were considering certain general policy matters at this behalf and the decision to renew the lease could not be taken and the lease was not renewed. In the year 1961 Mrs. Brady wanted to sell the bungalow No. 65 to the petitioners and sought permission of the Competent Authority of the Cantonment in this behalf. A letter dated 2nd October 1961 was written by the petitioners as proposed transferees showing knowledge on their part of the existence of lease with respect to the said bungalow in which the petitioners also expressed the willingness to accept the land on lease. The petitioners also assured the authorities the whatever decision that would be taken by them regarding the general policy for renewal of such leases, would be acceptable to them. The same fact was inserted by the petitioners on 27th October 1961. However, before permission could be granted for sale of the bungalow to the petitioners, the G.O.C., U.P. area exercised a veto on the sale of the bungalow. Ultimately, the Military Authorities agreed to withdraw the veto and the petitioners were informed about this on 5th December 1962. The petitioners went through the Sale Deed dated 31-12-1962 without waiting for the permission of the respondents. It is under this background that the petitioners purchased the bungalow No. 65, Taj Road, Agra Cantt. It is worth mentioning here that w.e.f. 25th April 1963, the said bungalow was requisitioned by the Government under defense of India Regulations and the Govt. is in possession thereof, the District Judge, Agra vide his order dated 16-12-1966 fixed an annual rent of the bungalow as Rs. 7,200.00 per annum.

(6) The sole question for determination in this writ petition thus is, whether bungalow No. 65, Taj Road, Agra Cantt. is under lease with the petitioners or it is the absolute property of the petitioners and the Govt. has no right or claim whatsoever to it. From the Lease Deed dated 23rd August 1923 which is

Annexure P-2 to the writ petition, it is clear that the said lease was with respect to an area of 1,26,198 sq. ft, and the bungalow bore the number 15, Taj Road, Agra Cantt. at that time. Admittedly, the said area works out to more than three acres. Mention of the bungalow number as 15 in the Lease Deed is of no significance. The number seems to have been changed to 65 later on.

(7) As already stated, M/s. Lutchman Bros. applied for constructing a new bungalow on the plot comprising under the said Lease Deed for which permission was granted and a new bungalow sprang up in pursuance thereof. Independent survey numbers for the situs of both these bungalows were allotted subsequently at the time of preparation of the General Land Register thereafter referred to as the GLR) of Agra Cantt. during the years 1928-30. Thus the numbers 65 and 65-A came to be allotted to the said two bungalows. The copies of GLR placed on record show that under bungalow No. 65 an area of 1.719 acres is mentioned while under bungalow No. 65-A, an area of 1.594 acres" mentioned. The total of both works out to a little over three acres which is admittedly the total land comprised under the Lease Deed dated 23rd August 1923. The GLR for bungalow No. 65 (Survey No. 477) also contained a remark that there is no lease renewable for two bungalows S.Y. Nos. 477 and 478.

(8) Counsel for the petitioners has raised the following contentions in support of his case :

1. There was no requirement of law for execution of a lease in respect of lands in which building already existed and occupied. 2. Was there a lease executed in respect of bungalow-No. 65 comprising an area of 1.719 acres? If so, what were the terms and conditions thereof ? 3. Has the Government exercised its powers in accordance with terms of the lease ? 4. Has the compensation payable been assessed in just and fair manner ?

(9) Regarding his first contention, the learned counsel for the petitioner has submitted that the Lease Deed on which the Govt. relies is executed in form C. Various forms for dealing with different types of lands falling within the Military Cantonment have been prescribed in the Military Lands Manual According to the counsel, form C in which the lease in the present case has been executed, pertains to open lands. In this case a bungalow was already in existence since much before the execution of the Lease Deed and Therefore this Lease-Deed in question was not valid. This argument based on mere form in which the lease deed ought to have been executed, has no substance particularly in view of the fact that the then owner M/s. Lutchman Bros. had applied for grant of lease with respect to the bungalow in question which was sanctioned by the Competent Authority as per the request resulting in execution of the Lease Deed on 23rd August 1923. Since then none of the lessees has challenged the existence of the lease nor have they ever challenged its validity on this ground On the contrary Mrs. Helan Brady, from whom the petitioners have purchased the bungalow, specifically asked for renewal of the lease vide her application dated 4th July 1956, immediately after the period under the original lease expired. The

predecessors-in-interest of the petitioners have always been acknowledging the existence of the lease. In fact the petitioners themselves acknowledged the existence of lease with respect to the property which will by were going to purchase and showed their willingness to accept the land on lease vide their letter dated 2nd October 1961. The petitioners also assured the respondents that the general policy to be decided by them for renewal of leases will be acceptable to them. This fact was reasserted by the petitioners widow their latter dated 27th October 1961. In fact Mrs. Brady had again acknowledged-on 1-12-1961 that the land was held by her on rent free lease granted by the respondents. The recitals in the sale deed dated 31st December 1962 executed by Mrs. Brady in favor of the petitioners make reference to the entries in the G.L.R. (which showed that the land was under lease by the Govt) and the petitioners purchased the said property subject to the same. It is further stated that the respondents were not giving permission for the Sale Deed in question for the reason that the factum of existence of lease was not being clearly stated in said document. Ultimately the petitioners went through the sale deed without permission of the respondent. The petitioners cannot escape from the letters referred to hereinbefore in which they acknowledged the existence of lease with respect to the said bungalow and accepted to be bound by the same. Moreover, the petitioners cannot claim a better title to the property than what their predecessors-in-interest had. As already noticed the predecessors-in-interest of the petitioner always acknowledged the existence of the lease and showed their willingness to be bound by it. Therefore, the arguments of the petitioner based on the lease deed being not in the correct form is neither here nor there.

(10) The application dated 4-7-1956 for renewal of lease moved by Mrs. Brady is Annx. R.-5. The said application pertains specifically to bungalow No. 65, i.e., the bungalow forming subject matter of the present petition and Mrs. Brady has stated therein "I am prepared to abide by such conditions regarding disposal of the land as the Military Estate Officer may lay down.....". It further states that it is a case of renewal of old Cantonment Code Lease. The area mentioned is 1.719 acres.

(11) The letter dated 2-10-1961 of petitioner No. I seeking permission for sale and purchase of bungalow No. 65 states "the landlady has mentioned the nature of land as free hold whereas I learnt that according to C.L.A. the nature of land of the house in question is lease land (lease without rent). If so, as purchaser of the said bungalow I will (be) willing to accept the land as lease without rent as recorded in the G.L.R. and in this connection I also give an assurance that the general policy re : terms of renewal of the lease will be acceptable to me".

(12) This letter clearly shows the knowledge of existence of lease with respect to the bungalow on the part of the petitioners and also their assurance to the respondents to be bound by the renewal of lease. It is also significant to note from this letter that the petitioners have not challenged the entries in the G.L.R. On the contrary, the same have been on accepted as correct and copies thereof

have been sought for. In the face of these documents, the contention of the petitioner is wholly untenable. In the face of admitted existence of lease, not only by the petitioners, but also by their predecessors-in-interest it becomes wholly irrelevant as to whether there was requirement of law for execution of lease in respect of lands in which buildings already existed.

(13) Coming to second contention of counsel for the petitioner as to whether a lease deed was executed in respect of an area measuring 1.719 acres and if so, what are its terms, the answer is that the lease deed Ex. P-2 filed on record by the petitioner himself shows that it covers an area of more than three acres which is the total area under bungalow Nos. 65 and 65A. It is not a case of bifurcation of the said lease nor there was any requirement in execution of a fresh lease deed. The lease deed dated 23rd August 1923 (Annexure P-2) came to be executed in the background of the permission sought by M/s. Lutchman Bros for constructing a new bungalow on the same plot which meant that there came into existence two bungalows on the same plot which later on came to be numbered as bungalow No. 65 and bungalow No. 65 A. The area under bungalow No. 65A is 1.594 acres and the total of the two comes to nearly the same as given in the Lease Deed dated 23rd August 1923. Therefore, the terms and conditions of the lease deed with respect to bungalow No. 65 are the same as contained in Annexure P-2 which is one lease governing both the bungalows.

(14) A half hearted argument has been advanced by counsel for the petitioners that M/s. Lutchman Bros. were coerced to execute the lease deed Annex- are P-2. M/s. Lutchman Bros. never challenged the lease deed much less on the ground of coercion. None of the subsequent title holders ever advanced such an argument and Therefore, there is no substance in the same.

(15) Counsel for the petitioner has build up the argument regarding wrongful exercise of powers under the lease on the basis that the lease stood expired in 1956 and the power to resume could have been exercised only during the continuance of the lease. In other words the argument is on the expiry of the lease by efflux of time the power to resume could not be exercised because the lease was not in operation and the Govt. could not fall back on its terms. This argument is totally misconceived. A reference to S. 116 of the Transfer of Property Act will show that on expiry of the term of the lease the lessee was a lessee holding over and the Lesser was entitled to terminate the lease. The lease could always be terminated. A contrary view would mean that the lease becomes perpetual and the hence will always remain a lessee in possession, which could never be so.

(16) Secondly, it is submitted by counsel for the petitioners that since no permission for sale was granted by the respondents so far as the sale in their favor is concerned, the respondents cannot exercise any powers qua them. This argument again is totally misconceived. Firstly the argument is not open to the petitioners who filed their letters referred to hereinbefore and offered to be bound by the lease. Secondly, the petitioners have only stepped into the shoes of

Mrs. Brady. They claim their title to the bungalow through her. Therefore, they do not get a better right, title or interest in the land than what their vendor, i.e. Mrs. Brady had. We, Therefore, reject this argument.

(17) Yet another argument which has been advanced on behalf of the petitioners is that the impugned notice dated 16 9-1970 terminating the lease and resuming the land has been issued in the name of the President of India who is a much higher and superior authority than the authority who could have issued such an order and, Therefore, the order is bad This argument is only to be stated to be rejected. The President of India is in fact the Lesser and he can resume the land.

(18) Counsel for the petitioners has also submitted before 08 that the purpose of resumption of lease in this case is not germane to the objects of the Cantonment Authorities in administering cantonment lands. The argument, is based on a letter placed on record suggesting that the land is being resumed for purposes of construction of a hotel. The object of resumption is not for us to go into. The lease does not make reference to this nor this question is relevant as per the terms and conditions of the lease. Moreover, a mere letter suggesting this does not mean that the land is being resumed for construction of a hotel. There is no material on record which may invite us to enter into such an inquiry. Therefore, this argument is turned down.

(19) This leaves us with the question of determination of compensation and reasonableness of compensation offered by the respondents to the petitioners for the authorised erections standing on the land. In this connection it has to be stated that the petitioners had challenged the notice dated 16.9.1970 by way of a writ petition filed in the Allahabad High Court in October 1970. The said writ petition was withdrawn. The computation of compensation offered by the respondents to the petitioners" is admittedly behind their back and is thus arbitrary. While we uphold the power of the respondents to resume the. land being a land under lease with the petitioners, we fell that the compensation offered is fixed arbitrarily without giving opportunity to the petitioner before his back The respondents are directed to proceed with the assessment of compensation in accordance with law and after following the principle of natural justice.

(20) The petition is disposed of in these terms. The parties are left to bear their own costs.