

**(2017) 05 MP CK 0078**  
**In the Madhya Pradesh High Court**  
**Case No : 13193 of 2016**

Jagdish Kushwah

APPELLANT

Vs

State of M.P.

RESPONDENT

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**Date of Decision :** 11-05-2017

**Acts Referred:**

[Transfer of Property Act, 1882](#), [Section 116](#) - Effect of holding over  
[Companies Act, 1956](#), [Section 3](#), [Section 2\(e\)\(2\)](#) - (1) In these articles-

**Citation :** (2017) 05 MP CK 0078

**Hon'ble Judges :** Ms.Vandana Kasrekar

**Bench :** Single Bench

**Advocate :** V.P. Singh, Ashok Lalwani

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## Judgement

1. The petitioner has filed the present petition, under Article 227 of the Constitution of India, challenging the order dated 05.01.2016 (Annexure-P/1) passed by respondent No. 2 as well as the order dated 26.07.2016 (Annexure P/2) passed by the District Judge, Bhopal.

2. The respondent-company is a Central Government undertaking the respondents had executed an agreement for rent in respect of a Shop No. 16 situated at J.P. Market, E-Sector, Barkheda, BHEL Bhopal for operating a business of General Store to the petitioner for a period from 01.04.2003 to 31.03.2011. The petitioner has regularly paid the rent. The respondents have issued a show cause notice to the petitioner on 24.10.2014 thereby directing the petitioner to deposit the rent/licence fees, failing which the licence issued in favour of the petitioner would be cancelled. A similar notice was issued to the petitioner on 19.12.2014. In the meantime, respondent No. 1 had submitted an application under Sections 5 & 7 of the Public Premises (Eviction of Unauthorized Occupants) Act 1971 (hereinafter in short referred to as "the Act") before respondent No. 2. After hearing both the parties and considering the evidence produced on record, respondent No. 2 has passed an order dated 05.01.2016 thereby directing the

petitioner to evict the shop within a period of 15 days and handover the vacant possession of the same to respondent No. 1. Being aggrieved by that order, the petitioner had filed a Misc. Civil Appeal No. 10/2016 under Section 9 of the Act before the Court of District Judge, Bhopal. The District Judge, Bhopal vide order dated 26.07.2016 has affirmed the order passed by respondent No. 2 and dismissed the appeal preferred by the petitioner. Being aggrieved by that order, the petitioner has filed the present petition.

3. Learned counsel appearing on behalf of the petitioner submits that the order of eviction passed by the Courts below is illegal and without jurisdiction. He submits that the provisions of Act are applicable in the residential area while in the case of non-residential area, the provisions of M.P. Accommodation Control Act would be applicable. He further submits that even after the termination of licence, respondent-company has accepted the rent deposited by the petitioner, meaning thereby the validity of licence continued even after its expiry. The petitioner is still in possession of the shop. It has further been submitted that the respondents had not mentioned any violation of the terms of the agreement in the said show cause notice. He further submits that the inspection report which is submitted on 24.10.2014, the petitioner is running a office in the said premises instead of general store in a shop is a fake and fictitious report and it does not bears the signature of the petitioner. It has further been submitted that the impugned order has been passed without issuing any show cause notice or giving opportunity of hearing to the petitioner.

4. The respondents have filed their reply and submits that the respondent-company is a Central Government Company executed an agreement for issuing licence of land and rented the disputed shop to the petitioner for operation of general store for the period of 01.04.2003 to 31.03.2011. The period of licence has already been expired. On inspection by the respondents on 27.10.2014, it was found that there was no business of general store being done and instead of that there was an office run by one Mr. Manoj Jadon. Thus, the petitioner has committed various breach of agreement during the tenure of the licence. The petitioner is also irregular for payment of licence fees. A show cause notice was issued to the petitioner on 29.10.2014 and, thereafter, eviction proceedings were initiated before the Estate Officer, BHEL, who passed the order on 05.01.2016. Against the said order, the petitioner has preferred an appeal and the District Judge, Bhopal has dismissed the said appeal vide order dated 26.07.2016. Learned counsel for the respondents further argues that the petitioner was irregular for payment of licence fees and some other arrears which was outstanding against the petitioner. He further submits that mere payment of outstanding amount does not create any right to the petitioner after order of eviction passed by Estate Officer and District Court, Bhopal. He further submits that the period of licence granted in favour of the petitioner has already been expired. He further relied on the judgments passed by the Apex Court in the case of Bhawanji Lakhamshi and others Vs. Himatlal Jamnadas Dani and others, reported in AIR 1972 Supreme Court 819 and Caverry Baptist Church Vs. Yegalla

Vevekananda, reported in AIR 2003 NOC 64 (Andhra Pradesh).

5. I have heard learned counsel for the parties and perused the record as well as the order passed by the Courts below. So far as the first objection raised by the petitioner regarding the provisions of eviction Act would not be applicable in the present case is concerned, the Section 2 (e) (2) of the Act reads as under:- "(e) "public premises" means-

(2) any premises belonging to, or taken on lease by, or on behalf of,-

(i) any company as defined in section 3 of the Companies Act, 1956, in which not less than fifty-one per cent of the paid up share capital is held by the Central Government or any company which is a subsidiary (within the meaning of that "Act") of the first-mentioned company;

(ii) any corporation (not being a company as defined in section 3 of the Companies Act, 1956 or a local authority) established by or under a Central Act and owned or controlled by the Central Government;

(iii) any University established or incorporated by any Central Act.

(iv) any Institute incorporated by the Institutes of Technology Act, 1961;

(v) any Board of Trustees constituted under the Major Port Trusts Act, 1963;

(vi) the Bhakra Management Board constituted under section 79 of the Punjab Reorganisation Act, 1966, and that Board as and when re-named as the Bhakra-Beas Management Board under sub-section (6) of section 80 of that Act;

(vii) any State Government or the Government of any Union Territory situated in the National Capital Territory of Delhi or in any other Union Territory;

(viii) any Cantonment Board constituted under the Cantonments Act, 1924;"

Thus, as per the said definition, "premises means" a premises which is owned by the company having a 50% share of the Central Government. However, the said definitions does not show that it would be applicable only to the residential premises and not to the non-residential premises. Thus, the provisions of the Act would be applicable in the case of the petitioner.

6. The Second contention of the learned counsel for the petitioner is that the respondents have accepted the rent deposited by the petitioner, therefore, they have waived their right of the eviction is concerned, the Apex Court in the case of Bhawanji Lakhamshi and others (supra) in para 9 has held as under:- "9. The act of holding over after the expiration of the term does not create a tenancy of any kind. If a tenant remains in possession after the determination of the lease, the common law rule is that he is a tenant on sufferance. A distinction should be drawn between a tenant continuing in possession after the determination of the term with the consent of the landlord and a tenant doing so without his consent. The former is a tenant at sufferance in English Law and the latter a tenant holding over or a tenant at will. In view of the concluding words of section 116 of

the Transfer of Property Act, a lessee holding over is in a better position than a tenant at will. The assent of the landlord to the continuance of possession after the determination of the tenancy will create a new tenancy. What the section contemplated is that on one side there should be an offer of taking a new lease evidenced by the lessee or sub-lessee remaining in possession of the property after his term was over and on the other side there must be a definite consent to the continuance of possession by the landlord expressed by acceptance of rent or otherwise....."

As per the said judgment mere acceptance of the rent does not create any tenancy in favour of the tenant there must be a definite consent to the continuance of possession by the landlord expressed by acceptance of rent or otherwise.

7. Similarly, Andhra Pradesh High Court in the case of Caverry Baptist Church (supra) has held as under:- "(A) Transfer of property Act (4 of 1882), Ss. 106, 107- Lease- Notice to quit- Validity- Period of lease not specified- Lease shall be deemed to be a lease from month to month terminable at instance of either lessor or lessee- 15 days notice expiring with month of tenancy is more than sufficient to terminate the lease.

(b) Transfer of Property Act (4 of 1882), S. 106- Lease- Notice to quit- Waiver- What amounts to- Acceptance of rent by lessor after termination of lease- No intention on part of either of parties to continue lease - Acceptance of rent would not amount to waiver of notice."

As per the said judgment acceptance of rent by the lessor after termination of lease would not amount to waiver of notice.

8. Thus, in the present case although the respondents have accepted the rent from the petitioner after termination of the lease it does not amount to waiver of the notice. Thus, in view of aforesaid, I do not find any reason to entertain in the said writ petition.

9. Accordingly, the writ petition stands dismissed with no order as to costs.