(1969) 04 P&H CK 0035

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 375 of 1962

Kahan Chand and others APPELLANT

Vs

The Municipal Committee RESPONDENT

Date of Decision : 25-04-1969

Acts Referred:
Punjab Municipal Act, 1911 — Section 232

Citation : (1969) RCR(Rent) 485

Hon'ble Judges : Ratijit Singh Sarkaria, J

Bench : Single Bench

Advocate : Bhagirath Dass, B.K. Jhingan and Mr. S.K. Hirarji, for the Appellant; Roop Chand, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Sarkaria, J.—This regular second appeal by the defendants is directed against the judgment and decree, dated 22nd February, 1962, of the Senior Subordinate Judge, exercising enhanced appellate powers, Amritsar. It arises out of the following circumstances.

2. Some land adjoining the fasil situated between Hall Gate and Sikander Gate, Amritsar, was leased out by the Municipal Committee (plaintiff) in 1887 for a period of 20 years on a monthly rent of Rs. 5/-by means of a lease-deed to the defendants. The lease was subsequently renewed from time to time. The last renewal of the lease was made per Exhibit P. 27, dated 8th June, 1946, for a period of 11 months and 28 days. Under its terms, Rs. 5/- as rent was payable monthly. The lessees, on the expiry of the aforesaid lease, failed to surrender possession to the landlord after removing the structure and buildings at their own expense. They also sublet, in contravention of the terms of the agreement of lease, a portion of the premises. Notices for ejectment were served on the defendants several times, the last of which was served on 26th February, I960, but the defendants refused to comply with the same They also defaulted to pay rent for the period, 1st April, 1949 to 31st March," 1960.

3. On the preceding facts, the plaintiff Municipal Committee instituted the suit for ejectment of the defendants from the premises in dispute and also for the recovery of Rs. 180/-as arrears of rent. The suit was resisted by defendants 1, 3, 4 and 7, who in their joint written statement said that the lease-deed was not admissible in evidence, because it was neither properly stamped nor registered. They further denied the terms and conditions of the lease-deed and averred that no relationship of landlord and tenant was created by that document, which did not bear the seal of the Committee. They denied having committed any breach of the terms of any agreement whatsoever. In reply to paragraph 4 of the plaint they stated :

No valid notice of ejectment has been served. It is denied that the lease had terminated or could be terminated by the plaintiff by delivery of the alleged notice.

They further pleaded that the lease-deed referred to in paragraph 2 of the plaint had been put an end to and superseded by a subsequent agreement duly entered into between the parties to this suit. It was admitted that originally in the year 1887 the Municipal Committee had leased out a vacant site along the city wall commencing from Hall Gate to Hathi Gate for 20 years to firm Devi Sahai-Chamba Mal for constructing a building thereon for the purpose of setting up carpet factory business. This lease was renewed from time to time. Later on, the portion of the land and the building adjoining the city wall, starting from Sadiq Gate to Hathi Gate was delivered back to the Nazul. The Municipal Committee required the said building, constructed by the lessees, for its own use, and consequently started negotiations with the lessees, who proposed that agreed valuers be appointed by the Committee and the lessees for evaluating the buildings on the site from Hall Gate to Sadiq Gate. This proposal of the lessees was accepted by the Committee per its resolution No. 2107, dated 28th June, 1951. Mr. K. C. Joshi, appointed by the lessees evaluated the buildings at Rs. 40,000/-, while the Municipal Committee was of the opinion that Rs. 30,000/- would be fair compensation for the buildings Eventually the parties agreed that the compensation to be paid for the buildings would be Rs. 36,000/-. It was also agreed that immediate possession of the carpet factory building with fasil and between Sikandar Gate and Sadiq Gate be handed over to the Municipal Committee and the possession of the remaining portion be handed over after three months time on payment of Rs. 36,000/- as compensation for the entire building. This agreement was duly signed by the then Executive Officer and the representatives of the lessees, namely Parshotam Dass and Jugal Kishore, on 13th October, 1952 In arriving at this agreement, Shri Sarup Narain, Chairman of the Finance Sub-Committee, Shri P. C. Bhandari, Executive Officer, and Shri P. D. Jawa, Municipal Engineer, had acted on behalf of the Municipal Committee, while Parshotam Dass, Shiv Kumar, Jugal Kishore and Shri K. C. Joshi participated on behalf of the lessees. This agreement was confirmed by the Municipal Committee per its resolution No. 1461, dated 9th January, 1953. In pursuance of the aforesaid agreement and the resolution, the Executive Officer called upon the lessees by his order, dated 4th July, 1953, to band over possession of the block from Sikandar Gate to Sadiq Gate and he further stated that the possession of the remaining block from Hall Gate to Sikandar Gate be also delivered on receipt of Rs. 36,000/-, being compensation agreed to by the Committee. In compliance with that requisition of the Executive Officer, the lessees handed over complete possession of the block of buildings and other structures standing thereon between Sikandar Gate and Sadiq Gate to the Committee. The lessees were at all material times ready and willing to deliver possession of the remaining block of the property to the Committee, but the latter failed to pay the amount of compensation agreed upon. The Municipal Committee. Amritsar, through their legal advisor, intimated on 22nd June, 1956, that the aforesaid resolution No 1461, deted 9th January, 1953, had been superseded by the Deputy Commissioner u/s 232 of the Punjab Municipal Act, 1911 (hereinafter referred to as the Act), and further called upon the lessees to deliver possession of the remaining block without payment of any compensation. It was further alleged that the Deputy Commissioner had no jurisdiction or power to suspend or supersede the aforesaid resolution, which had been acted upon by the Municipal Committee. It was added that the Committee was estopped by its own acts, conduct and acquiescence from churning eviction of the defendants without payment of Rs. 36,000/-as compensation. In its replication the plaintiff Municipal Committee denied that any formal and lawful agreement was executed by the then Executive Officer in accordance with the provisions of section 6 of the Executive Officers Act, 1931. It further averred that the aforesaid arrangement was null and void and ineffective, because the Deputy Commissioner had validly superseded that resolution, No. 1461, dated 9th January, 1953, u/s 232 of the Act, which order was further confirmed by the Governor u/s 235 of the Act It was also stated that the site between Sikandar Gate and Sadiq Gate formed the subject-matter of a separate lease-deed and had nothing to do with the lease-deed in suit Consequently, the delivery of possession of that site has no effect on the present suit Moreover, there was practically no valuable construction on that site. In accordance with the terms of the lease-deed relating to the site now in dispute, the defendants are, at the most, entitled to remove malba (building material) from the site, but cannot claim any compensation for that. It was further denied that the defendants were ever ready and willing to deliver possession of the site in dispute. It was added that the defendants had no mind to push forward the alleged arrangement which was prolonged for their default for three years till it was superseded by the Deputy Commissioner. It was further pleaded that since the plaintiff Committee never entered into any valid and binding agreement regarding the site in suit, the alleged arrangement did not put an end to the lease-deed in suit, particularly when the alleged arrangement was, according to the defendants'' own admission, ''without prejudice to the rights of the parties.

4. The parties ultimately went to trial on the following issues:

1. What were the terms of the tenancy in question ?

2. Whether the tenancy has been validly terminated.

3. Whether the defendants have committed breach of contract. If so, its effect ?

4. Whether there was any subsequent agreement, dated 13th October, 1952, in which the plaintiff agreed to pay compensation amounting to Rs. 36,000/- to the defendants. If so, its effect ?

5. Whether the resolution covering the matter of compensation, referred to in the previous issue, was superseded by the Deputy Commissioner u/s 232 of the Municipal Act; and was that order confirmed by the Governor u/s 235 of the said Act. If so, its effect ?

6. Whether the defendants are estopped from claiming compensation by their conduct.

7. Whether the relationship of landlord and tenant had come to an end by virtue of the alleged agreement on 13th October, 1952. If so, its effect ?

8. Whether the defendants are entitled to any compensation even if the alleged agreement is not proved. If so, to what compensation are they entitled ?

9. Whether the order of the Deputy Commissioner is ultra vires.

10. Whether the resolutions, dated 28th June, 1951, and 9th January, 19. 3 have been acted upon. If so, its effect ?

11. Whether the plaintiff is estopped by actor conduct from filing the suit

12. Whether the suit is barred by Act 3 of 1949.

13. Whether Act 3 of 1949 is applicable to the premises in dispute.

14. Whether the defendants have become permanent tenants. If so, its effect ?

15. Relief.

15A. Whether the suit is time-barred.

5. All the material issues were decided by the trial Judge in favour of the plaintiff. In the result, the suit was decreed with regard to the relief of ejectment and the recovery of Rs. 180/- (as rent) with costs. Aggrieved by that decree the defendants preferred an appeal to the Senior Subordinate Judge, exercising enhanced appellate powers, Amritsar, who has dismissed the same, affirming the decree of the trial Court.

6. Before me the concurrent findings of the Courts below on issues 2 4,5,8,9 and 10 are being questioned. The first contention of the learned counsel for the appellants is that the tenancy subsisting between the parties was a year to year tenancy, and no six months notice, as required by section 106 of the Transfer of Property Act, was served on the lessees but only a fifteen days notice expiring on 31st March, 1960, was served. Great emphasis has been laid on the fact that

originally, in 1887, and also in 1946(P.27) the site had been leased out for setting up a carpet factory, i.e. for manufacturing purposes. In support of his contention, counsel has referred to Zahoor Ahmad Abdul Sattar v. State of Uttar Pradesh A I R 1965 All 326. Ambar Ali Barbhuiya v. Anjab Ali AIR 1049 Assam 87, Ram Kumar Das v. Jagdish Chandra Deo AIR 1962 SC 23, Bastacolla Colliery Co. Ltd. v. Bandhu Beldar AIR 196 Pat 344 and the recent Full Bench judgment of this Court in Bhaiya Ram v. Mahavir Par shad (1968) 70 PLR 1011. The trial Court has found that the tenancy stood determined on 23rd January, 1947 in accordance with the terms of the lease deed, Exhibit P 27, but the defendants having subsequently continued in the possession of the premises and hiving paid the rent, became tenants by holding over u/s 116 of the transfer of Property Act and that the nature of the tenancy got converted into a monthly tenancy. It was further held that the tenants had paid the rent for the portion in dispute for the period, 27th January, 1947 to 31st March, 1949, as evidenced by the extract from the Committee Demand Register, Exhibit P.W.6/2, by means of cheque No.226573, dated 13st November, 1948. There was also the evidence of Harbans Lal Clerk, Municipal Committee, Amritsar, that over and above the amount paid by this cheque (Rs.211/-), a sum of annas five was also paid vide receipt No 23/2o72b. dated 13th November, 1948 In view of this evidence the trial Court observed-

That unmistakably indicates of at by paying this rent, amounting to Rs. 211/5/-, the defendants cleared the arrears of rent up to 31st March, 1949 and the monthly tenancy henceforward started from the first of every calendar month.

In this view of the matter it was further held that notice, Exhibit D. 15, expiring with the mid night of the 31st of March, 1960, fully met the requirements of section 106 of the Transfer of Property Act. This finding of the trial Court, has been affirmed by the first appellate Court. It was argued before the Court below, also, as has been canvassed before me, that the tenancy created was not a month-to-month tenancy but a year-to-year tenancy. This contention was repelled by that Court with the observation that even the tenancy created by lease-deed, Exhibit P. 27, was for less then a year and that the mode in which rent was paid also showed that it was a tenancy from month to month and not from year to year. Before me the argument was reiterated with added emphasis that it is the purpose for which the premises are leased out that primarily determines whether the lease was from year to year or from month to month.

7. I find a good deal of force in the contention of the learned counsel for the appellants. It is the case of the plaintiff- Committee itself that the site in dispute had been leased out "exclusively for the purpose of working thereon their carpet factory" by the defendants In the written statement also, it is said "that originally the site in dispute was leased out to the defendants or their predecessors-in-interest for installing thereon a factory for the manufacture of carpets. This lease was renewed from time to time." The last lease deed, which had the effect of renewing the original lease, is Exhibit P. 27, dated June 8, 1946. Term No. 10 of

this lease laid down that the lease shall commence from 20 th January, 1946 and automatically determine on 23rd January, 1947. Term No. 3 expressly provided that the lessees shall use the said premises and the land exclusively for the purpose of working thereon their carpet factory and for no other purpose whatsoever and no building or works shall be erected without the approval or sanction of the lessor. Thus there was no dispute about the fact that the lease was one for "manufacturing purposes'''' wit in the meaning of section 106 of the Transfer of Property Act, the relevant part of which reads as follows :

In the absence of a contract or local law or usage to the contrary, a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months'' notice expiring with the end of a year of the tenancy; and a lease of immoveable property for any other purpose shall be deemed, to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days'' notice expiring with the end of a month of the tenancy.

It has been held by a Full Bench of this Court in Bhaiya Ram''s case (supra) that the principles of section 106 of the Transfer of Property Act nave to be invoked u/s 6 of the Punjab Laws Act and are accordingly deemed to be requirements of law in the absence of any statutory provision or contract to the contrary. The finding of the Courts below is correct in as much as they have held that the contractual tenancy between the parties had determined on the expiry of the lease deed, Exhibit P. 27, on 23rd January, 1947, and thereafter the renewal of that lease would be inferred only by the application of section 116 of the Transfer of Property Act, which reads as below :

If a lessee or under lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106.

The crucial words are those that have been underlined. Up to this point, viz., that the renewal of the lease will be inferred from the circumstances of the lessor accepting the rent from the lessees and assenting to their continuing in possession, the concurrent finding of the Courts below is unassailable; but with regard to the character of the lease as to whether it was a monthly tenancy or a year to year tenancy, the conclusion drawn by the Courts below appears to be wrong, because the underlined words of section 116, quoted above, show that it is the purpose for which the property is leased, which, in the absence of an agreement to the contrary, is the decisive test for determining the yearly or the monthly character of the tenancy. The last contract of lease, Exhibit P. 27, admittedly expired long before the institution of this suit. There was no subsisting "agreement or contract to the contrary" within the meaning of sections

106 and 116 of the Transfer of Property Act. The lease being admittedly for manufacturing purposes, has to be deemed, in view of section 116 read with section 106 of the Transfer of Property Act, to be a lease from year to year, notwithstanding the fact that under the expired agreement of lease a monthly rate of rent was fixed and the term of the lease was technically, though not in substance, for less than a year.

8. In the view I take, I am fortified by a Division Bench judgment of the Allahabad High Court in Zahoor Ahmad Abdul Sattar Vs. State of Uttar Pradesh and Another, In that case, the appellant was granted a lease of land for industrial purposes from 1st March, 1947, by the Government for one year at an annual rent of Rs. 100/-. The lease was renewed the next year also. After the expiry of the lease for the years 1948 49, the appellant continued to be in possession of the land and agreed to abide by the terms to be fixed by the Government, and under those terms the appellant was required to pay Rs. 1,000/-as rent for the occupation of the land till 15th July, 1950. Thereafter also the appellant continued to be in possession of the leased land with the consent of the Government, but did not give any understanding that he would be prepared to pay any rent the Government might think it fit to charge from him. The Government demanded higher rent, but the appellant refused. It was held that since the lessee remained in possession of the leased property after the determination of the lease on 15th July, 1950, there being no agreement to the contrary, the lease being for industrial purposes it must be deemed to have been renewed from year to year u/s 106, read with section 116, of the Transfer of Property Act. It is true that in that case it was a term of the expired agreement of lease that rent would be payable annually, while in the present case under the expired lease, Exhibit P 27, rent was payable monthly. But in principle this will not make any difference, because in view of section 116, read with section 106, of the Transfer of Property Act it is the purpose for which the property is leased, that determines the monthly or the yearly character of the renewed lease. The words "in the absence of an agreement to the contrary" occurring in section 116 of the Transfer of Property Act obviously refer to a subsisting agreement and not an agreement which is no longer effective and operative. Incidentally, it may be noted that after the expiry of the lease, Exhibit P. 27, rent was not paid on a monthly basis but in a lump-sum by means of a cheque vide Exhibit P. W 6/2", dated 13th November, 1948 for the period 27th January, 1947 to 31st March, 1949; that is to say, the term in the expired lease casting a liability on the lessees to pay the rent monthly, was not acted upon after the expiry of that lease. For all the reasons aforesaid, I would, reversing the finding of the Courts below, hold that the renewed lease being for manufacturing purposes, was a year to year lease, with the only difference that the same rent which was payable in twelve equated monthly instalments under the expired lease, after its expiry, became payable annually in a lump-sum. In order to terminate such a lease, therefore, it was essential for the lessor, in view of section 106 of the Transfer of property Act the principles of which have been held to be applicable in the Punjab

to give six months'' notice expiring with the end of a year of the tenancy, which year in the present case would be deemed to commence from the 1st of February, and to end with the 31st of January of the following year. Such a notice was admittedly not given in the present case. I have, therefore, no hesitation in holding that the lease was not terminated by any valid notice in compliance with the provisions of section 106. It is not necessary to overburden this judgment by discussing all the cases cited by the counsel for the appellants, because the principle which has to be applied is quite apparent from the language of sections 116 and 106 of the Transfer of Property Act.

9. The next question to be determined is, whether the renewed lease between the parties had been superseded by any subsequent lawful agreement arrived at between the plaintiff-Committee and the defendants. To substantiate this, defendant-appellants had brought on the record. Exhibit D. 6, a document, dated 13th October, 1962. In the first place, as rightly observed by the trial Court, this document does not even bear the semblance of a contract; at best, it is a record of the proceedings of the final meeting between some representatives of the parties, by which some amount of compensation was settled by them. The matter was in a purely exploratory stage and the arrangement had been agreed upon "without prejudice" to the rights of the parties. Secondly, the powers of the Executive Officer to make a valid contract on behalf of the Committee are circumscribed by the provisions of section 6 of the Punjab Municipal (Executive Officer) Act, 1931, the material sub-sections of which read as follows :

(2) No contract affecting immovable property or involving a sum exceeding such sum as the committee may fix shall be made by the Executive Officer unless it has been sanctioned by the committee.

(4) Every contract made by the Executive officer on behalf of the committee shall be entered into in such manner and form as would bind him if it were made on his own behalf and may in like manner and form be varied or discharged :

Provided that every contract involving a sum exceeding one hundred rupees or affecting immoveable property shall be in writing and shall be sealed with the common seal of the committee.

(5) The common seal of the committee shall remain in the custody of the executive Officer and shall not be affixed to any contract or other instrument except in the presence of the Executive Officer who shall sign the contract in token that the same was sealed in his presence

(6) No contract executed otherwise than as provided in this section shall be binding on the committee :

Provided that * * *.

A perusal of Exhibit D. 6 would show that this document is bereft of all the formalities enjoined by the salutary provisions of section 6 quoted above. These provisions are obviously mandatory in nature and have to be complied with strictly before a contract made by the Executive Officer can be valid and binding on the Committee. Thirdly, the order, Exhibit P. 20, of the Deputy Commissioner, and the order, Exhibit P 21, of the Governor, cannot be said to be nullities. Fourthly, as rightly observed by the lower appellate Court, in terms of resolution No. 1461, dated 9th January, 1953, the defendants had to deliver possession of the entire block of buildings, including the one in dispute, within three months, if not from 13th October, 1952, the date of the document, Exhibit D. 6, from 9th January, l953 the date of resolution No. 1461, before claiming compensation. The fact that possession had to be delivered of the entire property before invoking the clause relating to compensation, has been conceded by Kahan Chand defendant as D. W. 6. It is otherwise apparent from the letter, Exhibit D. 8, dated 1st July, 1952, and also from the documents, Exhibits D. 3 and D. 6. The Courts below have thus correctly held that the resolution in question (Exhibit D. 3) and also the document, Exhibit D. 6, had not been acted upon. The defendants failed to carry out their part of the arrangements in utter disregard of the period of three months envisaged in the arrangement for delivery of possession. They deliberately evaded delivery of possession of the remaining property, including the one in dispute, on one excuse or the other.

10. It is also contended on behalf of the appellants that even if the documents. Exhibits D. 3 and D. 6, do not constitute a valid agreement between the parties, then also on the principle of equitable estoppel, the Committee is not entitled to eject the defendants before paying them compensation for the buildings erected on the demised land by the lessees at their own expense. In this connection reference has been made to Zahoor Ahmad Abdul Sattar Vs. State of Uttar Pradesh and Another, I do not think that the principle laid down by their Lordships of the Supreme Court in the aforesaid case can be availed of by the defendant-appellants, who intentionally failed to deliver possession of the demised premises in pursuance of the arrangement incorporated in the documents, Exhibit D 3 and D. 6. There is no equity in their favour. They cannot be allowed to take advantage of their own wrong.

11. It has been feebly contended on behalf of the appellants that the three months'' time fixed in the arrangement, vide Exhibits D. 3 and D. 6, for delivery of possession, was not the essence of the contract. The argument is devoid of force. As observed already, there was no valid and completed contract between the parties.

12. It is then contended on behalf of the appellants that the order of the Deputy Commissioner Exhibit P. 20, suspending the execution of resolution No. 1461, dated 9th January. 1953, was invalid inasmuch as the resolution in question had already been acted upon and in pursuance thereof possession of a part of the demised premises had been delivered by the lessees to the Committee. In support of this contention reliance has been placed on Anant Ram v. Small Town Committee, Pandri AIR 1937 Lah 84, Administrator, Lahore Municipality v. Jagan Nath AIR 1939 Lah 581, and Mohammad Shufi Sialkot Municipality AIR 1940 Lah.

451. As already noticed, the resolution had not been acted upon and consequently the ratio of these cases does not apply to the present case. It will bear repetition to say that this resolution did not constitute a valid agreement, the enforcement of which could be compelled by the defendants in any Court of law. The orders, Exhibit P. 20, of the Deputy Commissioner, and Exhibit P. 21 of the Governor have stood unchallenged all these years. The lessees never brought any legal action to get these orders set aside. They cannot, therefore, use that suspended resolution now as a shield against the suit of the Committee, on the ground that this resolution had been illegally suspended by the Deputy Commissioner.

13. In the light of what has been said above, I would affirm the findings of the Courts below on issues 4, 5, 9 and 10.

14. No other point has been argued before me in this appeal.

15. In view of my finding on issue No. 2, in reversal of the conclusion of the Courts below, that the renewed tenancy between the parties (inferred under sections 106 and 116 of the Transfer of Property Act), would be one from year to year and that consequently it was essential for the plaintiff-Committee to give six months'' notice to the defendants for terminating that tenancy, I would allow this appeal and dismiss the plaintiff''s suit, leaving the parties to bear their own costs throughout.

