(1963) 09 P&H CK 0011

In the Punjab And Haryana At Chandigarh

Case No : Second Appeal From Order No. 23-D of 1962

Messrs. Anand Stores APPELLANT

Vs

Shrimati Prabhat Sharma RESPONDENT

Date of Decision : 06-09-1963

Acts Referred:
Delhi Rent Control Act, 1958 — Section 9

Citation : (1963) 09 P&H CK 0011

Hon'ble Judges : Khanna, J

Bench : Single Bench

Advocate : R.S. Narula, S.S. Chadha and H.L. Datt, for the Appellant; C.B. Aggarwal and L.R. Gupta, for the Respondent

Final Decision : Allowed

Judgement

Khanna, J.—The questions as to whether the buildings constructed on lease-hold plots in New Delhi belong to the Government or to the persons who construct them and whether the provisions of the Delhi Rent Control Act apply to those buildings arise for determination in these four second appeals Nos. 22-D, 23-D, 24-D and 25-D of 1962 which are directed against the orders of the Rent Control Tribunal Delhi reversing on appeal the orders of the Controllers. This judgment would dispose of all the four appeals.

2. The brief facts of this case are that each of the appellants is a tenant of shop situate in Sunder Nagar, New Delhi, under the respondent in that appeal, Appeal No. 22-D relates to shop No. 21 and the agreed rent of that shop is Rs. 200/- per mensem. Appeal No. 23-D relates to shop No. 5 and its agreed rent is Rs. 215/- per mensem. Appeal No. 24-D relates to shop No. 25 and its agreed rent is Rs. 250/- per mensem. Appeal No. 25-D relates to shop No. 26 and its agreed rent is Rs. 220/- per mensem. The above-mentioned shops were admittedly constructed in the year 1953 and 1954. The tenancy of the appellants of Shops in appeals Nos. 22-D and 25-D commenced on 1st of September, 1953, in appeal No. 23-D on 1st of December, 1953 and in appeal No. 24-D on 1st of November, 1953. The

appellants filed applications before the Controller u/s 9 of the Delhi Rent Control Act (Act No. 59 of 1958), (hereinafter referred to as the Act), praying for fixation of standard rent of the aforesaid shops on the allegation that the agreed rent was penal and excessive. The applications were resisted by the respondents inter alia on the plea that the premises in dispute belonged to the Government and so according to section 3 of the Act the applications were not maintainable. The Controllers held that the premises in dispute were not proved to belong to the Government and as such the applications for fixation of standard rent were maintainable. The respondents filed appeals against the orders of the Controllers and it was urged on their behalf that the premises in dispute belonged to the Government and as such the provisions of the Act did not apply to the premises. This contention was accepted by the learned Tribunal. The Tribunal, accordingly, accepted the appeals and dismissed the applications of the tenant-appellants for fixation of the standard rent. The tenants have consequently approached this Court in second appeal.

3. In order to appreciate the contention of the parties it would be useful to reproduce the provisions of section 3 of the Act as it stood before the recent amendment made by Act 4 of 1963. The section then read as under:-

3. Act not to apply to certain premises,-

Nothing in this Act shall apply-----

(a) to any premises belonging to the Government; or

(b) to any tenancy or other like relationship created by a grant from the Government in respect of the premises taken on lease, or requisitioned, by the Government.

The present cases admittedly do not fall under clause (b) of the above-sub-section but the stand of the Landlord-respondents is that they are covered by clause (a) because, according to the respondents, the premises in dispute belonged to the Government. As against that it is urged on behalf of the appellants that the premises in dispute do not belong to the Government. In this connection I find that the word ''premises'' has been defined in clause (i) of section 2 of the Act and the definition leads as under:-

(i) "Premises" means any building or part of a building which is, or is intended to be, let separately for use as residence of for commercial use or for any other purpose and includes-

(i) the garden, grounds, and out-houses, if any, appertaining to such building or part of the building;

(ii) any furniture supplied by the landlord for use in such building or part of the building;

but does not include a room in a hotel or lodging house;

The above definition makes it clear that the ''premises'' means a building or part of a building and that a plot of land without a building thereon does not answer to the description of the premises. The premises in dispute in the present cases were constructed on plots of land which had been leased out by the Government. In connection with the said lease of plots of land Agreements of lease were executed between the landlord-respondents and the President of India. It was also provided in the Agreements that on construction of the buildings on the aforesaid plots of land perpetual lease-deeds, the draft of which was enclosed with the Agreements, would be executed by the landlord-respondents. Such a lease deed has been executed by the respondent in appeal No. 23-D of 1962 but not in the other three appeals so far. It was provided in clause II of the Agreements that the respondents would erect and complete at their expense on the aforesaid plots of land within 24 calendar months buildings with new and sound materials to the satisfaction of the Chief Commissioner of such description and design as would be approved in writing by the Chief Commissioner. The respondents were not to make alterations or additions in the buildings without the previous approval of the Chief Commissioner. Clauses IX, X and XIV of the Agreements were to the following effect:

IX. The said intended Lessee shall not prior to obtaining a Lease from the President under Clause XIII hereof without the consent of the Chief Commissioner signified by writing directly or indirectly assign, transfer or otherwise part with any interest he may have in the piece of land the subject hereof or in the building or materials for the time being thereon or create any sub-interest therein nor shall he underlet the said land or any part thereof;

Provided that in the event of sanction being granted by the Chief Commissioner, Delhi, the Lessor shall be entitled to claim and recover a portion of the unearned increase (i. e. the difference between the premium already paid and current market value) in the value of land, at the time of transfer (whether such transfer is an entire site or only of a part thereof), the amount to be recovered being 30 per cent, of the unearned increase.

X. The Lessor shall have a pre-emptive right to purchase the property built on the site after deducting 50 per cent, of the unearned increase as aforesaid.

XIV. Upon the production by the said intended Lessee of a certificate which must be dated and signed by the Chief Commissioner certifying in accordance with the provisions of Clause II hereof and provided the other conditions of this Agreement have been duly observed, and in the event of any recoveries having been made in accordance with the provisions of this Agreement out of the said security so deposited as aforesaid, upon payment by the said intended Lessee of such sum as is required to make up the full sum payable by the said intended Lessee by way of premium as hereinbefore mentioned, the President will grant or cause to be granted to the said intended Lessee and the said intended Lessee shall accept a Lease of the building to be erected as aforesaid and of the said piece of land hereinbefore described in perpetuity from the day of at the yearly rent of or such other sum as may thereafter be assessed under the covenants and conditions contained in the printed form of Lease attached hereto.'' The rent is payable in advance on the fifteenth day of January and, July in each year. The first of such payments to be made on the Clause XV of the Agreement provided that the lease to be executed by the respondents would be in accordance with the printed form of lease attached to the agreements.

4. The opening words of the draft of the Perpetual Lease, which was enclosed with the agreements, were as follows:

This indenture made this day of One thousand nine hundred and Between the President of India (hereinafter called the Lessor) of the one part, and (hereinafter called the Lessee) of the other part. Whereas under the instructions of the Government of India relating to the disposal of building sites in the New Capital of Delhi the Chief Commissioner of Delhi has agreed on behalf of the Lessor to demise the plot of Nazul land hereinafter described to the Lessee in the manner hereinafter appearing.

Mr. Aggarwala, learned counsel for the respondents, has referred to the various clauses of the Agreements and the lease and has contended that the aforesaid clauses go to show that the buildings which are the subject matter of the premises in dispute belong to the Government. Reliance in this connection is placed upon case Bhatia Co-operative Housing Society Ltd. Vs. D.C. Patel, , the relevant part of the head-note of which reads as under:-

A plot of land belonging to the Board of Trustees for the improvement of City of Bombay was put to auction on certain terms and conditions for the purpose of granting a building lease. One S who was the highest bidder signed the memorandum of agreement incorporating the conditions upon which the auction was held. By clause 7 of these conditions, S agreed, within the time specified therein to build and complete at his own cost of not less than Rs. 50,000 a building of particular specification. Clause 18 of the conditions provided that immediately after the completion of the building within the time specified the Trustees shall grant to S or his nominee a lease of the said plot with buildings thereon for the term of 999 years from the date of the auction at an yearly rent calculated in accordance with the accepted bidding for the plot. The Trustees, pursuant to the said agreement and in consideration of the monies which had been expended in the erection of the buildings and of the rent and the covenants thereinafter reserved and contained (see para 3 of the judgment) demised unto the lessee all that piece of land together with the buildings erected thereon to hold the same for 999 years. In 1948 the successor-in-interest of S brought a suit in the City Civil Court for ejectment against the defendant who was a sub-tenant of one of the blocks in the demised premises, after giving a notice to quit. The sub-tenant claimed protection under Bombay Act 57 of 1947 and that u/s 28 of that Act the Court had no jurisdiction to entertain the suit;

Held in the facts and circumstances, the demised premises including the building belonged to the Board which was a local authority and therefore were outside the operation of the Act in view of section 4(1). The fact that the lessee incurred expenses in putting up the building was precisely the consideration for the lessor granting him a lease for 999 years not only of the building but of the land as well at what may be a cheap rent which the lessor may not have otherwise agreed to do. By the agreement the building became part of the land and the property of the lessor and the lessee took a lease on that footing. The lessee or a person claiming title through him could not now be heard to say that the building did not belong to the lessor. Forfeiture does not, for the first time, give title to the lessor. On forfeiture he reenters upon what has all along been his own property. The interest of the lessor in the demised premises could not possibly be described as a contingent interest which would become vested on the expiry or sooner determination of the lease. The City Civil Court had, therefore, jurisdiction to entertain the suit.

It may be stated that the language of section 4 of the Bombay Rents, Hotel and Lodging House Rates Control Act (47 of 1947) on which reliance had been placed in the above authority, was, before an amendment was introduced in it subsequent to the above cited authority, similar to that of section 3 of the Delhi Rent Control Act.

5. I have given the matter my earnest consideration and am of the view that the buildings, which are subject matter of the present cases, cannot be said to belong to the Government and the facts of the above cited authority are distinguishable. Clause X of the agreements and clause 2 of the Lease deed make it clear that the Government would have a pre-emptive right to purchase properties built on the sites which had been leased out to the respondents, in case the respondent-landlords intend to assign or transfer the aforesaid premises and apply for the permission of the Chief Commissioner for that purpose. In case the aforesaid buildings were actually the property of the Government the question of the Government having a pre-emptive right to purchase the aforesaid buildings would never arise. A pre-emptive right to purchase a property necessarily implies that the property belongs to another because one does not by pre-emption acquire right to purchase property which already belongs to him. Mr. Aggarwala has referred to clause II of the Agreements in which it is stated that the building materials brought on the plot of land would be the property of the President. This fact would not, however, help the respondents much because the aforesaid clause itself makes a distinction between a building and the material brought for the construction of the building. Had it been the intention of the parties to the Agreements that the buildings would also belong to the President or the Government, there could be no difficulty in so stating it in the Agreements. The fact that it was stated in the Agreements that the materials shall. be deemed to be the property of the President but it was not so stated about the buildings, would go to show that the intention was not to make the buildings to be the property of the President.

6. Great stress has been laid upon the language of clause XIV of the Agreements, reproduced above, according to which the President would grant to the respondents and the respondents would accept a lease of the buildings to be erected as aforesaid and of the piece of land in perpetuity. It is urged that the above clause would go to show that the lease was to comprise not only the plots of land but also the buildings erected thereon. In this respect I find that, though clause XIV of the Agreements provided for the execution of a lease deed about the building also, in the draft of the lease-deed, which was enclosed with the Agreement and which was executed by the respondent in appeal No. 23-D of 1962 and which is to be executed by the respondents in each of the remaining three appeals, the demised property consists of the plots of land and not of the building thereon. Mr. Aggarwala, however, contends that even though the demised premises consists of the plots of land, the land would also include the buildings standing thereon. In this respect I find that there are clear indications in the lease-deed which go to show that the buildings on the demised plots were deemed to be something quite distinct from the plots of land on which they were constructed. Reference in this connection.may be made to sub-clauses (2), (5), (9) and (12) of clause 2 of the lease-deed which make separate mention of the demised plots and the buildings constructed thereon. So far as the above cited case of Messrs. Bhatia Co-operative Society Limited1 is concerned, I find that it is clearly distinguishable. Apart from the fact that the lease in the cited case was for 999 years, while in the present case it is in perpetuity, perusal of paragraph 3 of the aforesaid judgment makes it clear that in that case the demised property, which had been leased out by the trustees of the Improvement Trust, consisted not merely of, the land but also of the building thereon. There was also a condition that the person from whom the building had been leased out would keep it insured against fire in the name of the lessor and the lessee and to rebuild or reinstate and repair the building if destroyed or damaged by fire. In the present cases, however, the lease-deed in favour of the respondents comprised, as stated above, only the plots of land and not the buildings and there was also no provision for insurance in the joint names of the lessor and the lessee. Further unlike the present case, there was no provision in the cited case about a pre-emptive right for the lessor to purchase the property built on the site. These facts, in my opinion, make the above-mentioned authority distinguishable.

7. Reference has also been made by Mr. Aggarwala to clause XIX of the Agreement and sub-clause (12) of clause 2 of the draft lease-deed wherein it is stated that in case the respondents commit any breach of the agreement the Chief Commissioner or any officer in his employ on his behalf would be entitled to enter into the land and the buildings and retain possession of the same. It is further provided that on the determination of the lease the respondents would peaceably yield up the said demised premises and the buildings to the President. Mr. Aggarwala infers from the above clauses that the respondents are not the owners of the buildings. In my opinion this contention is not well-founded. The

mere fact that a right of entry is given in the event of forfeiture and the determination of the lease would not go to show that even during the continuance of the lease the respondents become divested of the ownership of the buildings. I may in this context refer to case K.A. Dhairyawan and Others Vs. J.R. Thakur and Others, the head-note of which reads, as under:

The lessor granted a lease of a parcel of land to the lessees for 21 years at a rent of Rs. 50 per month. Under the terms of the lease the lessees were to construct a double storeyed building on the land at a cost of not less than Rs. 10,000. The construction had to be to the satisfaction of the lessors'' engineers, and the building had to be insured for at least Rs. 12,000 in the joint names of the lessors and the lessees with an insurance firm approved by the lessors. In case of damage or destruction the building was to be repaired out of the money received from the insurance company. On the termination of the lease either at the end of 21 years or earlier, the lessees were to surrender and yield up the demised premises including the building with its fixtures and appurtenances to the lessors without any compensation for the same. After the expiry of 21 years the lessors filed a suit for a declaration that they were entitled to the building, and were entitled to claim possession of the same and to recover the rents and profits thereof. The lessees pleaded that they were also lessees of the building and were protected from eviction therefrom by the provisions of the Bombay Rants, Hotel and Lodging House Control Act, l947 and that the covenant for delivery of possession of the building could not be enforced as the lease in respect of the land could not be terminated on account of the protection given by the Act.

Held, that upon a proper construction of the lease there was a demise only of the land and not of the building and consequently the provisions of the Act did not apply to the contract for delivery of possession of the building. The ownership in the building was with the lessees and in which the lessors had no right while the lease subsisted. There was no absolute rule of law in India that whatever was affixed or built on the soil became part of it, and was subject to the same rights of property as the soil itself.

The fact that the lease-deed specified in the present case only the plot of land and not the building as the demised property even though the deed is to be executed after the completion of the building, in my opinion, clearly indicates that the building does not become the property of the Government but remains the property of the person who constructs it except in certain eventualities with which we are not concerned in the present cases.

8. Mr. Aggarwala has referred to case J.H. Irani v. T.S.Pl.P. Chidambaran Chettiar AIR 1953 Mad 650, and has relied upon the following observation on page 654 of that authority:

The letting, in the present case, of a piece of land apart from the buildings belonging to the lessor was not a letting of a vacant land at the time it was let to the first defendant.

The above observation, as is clear from it, was made on the facts of that case and was not intended to lay down some general rule of law. As such the respondents cannot derive much benefit from it.

9. Mr. Aggarwala has also argued that the position of the respondents in the three appeals in whose favour the formal lease-deeds have not so far been executed is that of licensees of the plots of land and not of lessees. It is, however, conceded that no such plea was taken either before the Controllers or before the Tribunal. The question of law and fact. In the circumstances, I am not prepared to entertain this plea for the first time in second appeal.

10. As a result of the above, I hold that the buildings in dispute cannot be said to belong to the Government and the finding of the learned Tribunal in this respect is not well-founded. The appellants, in the circumstances, were entitled to file application for fixation of standard rent of the premises in dispute.

11. Assuming for the sake of argument that the buildings in dispute belong to the Government and not to the respondents, the applications, in my opinion, would still be maintainable in view of the amendment made by the Delhi Rent Control (Amendment) Act, No. 4 of 1963. Section 2 of the amending Act reads as under:

2. To section 3 of the Delhi Rent Control Act, 1958, the following proviso shall be added and shall be deemed always to have been added, namely :

Provided that where any premises belonging to Government have been or are lawfully let by any person by virtue of an agreement with the Government or otherwise, then, notwithstanding any judgment, decree or order of any court or other authority, the provisions of this Act shall apply to such tenancy.

The Statements of Objects and Reasons, which were published in the Gazette of India, Extraordinary, dated January 21, 1963 at the time of the introduction of the Bill which ultimately became Act No. 4 of 1963, were to the following effect:

Under section 3 of the Delhi Rent Control Act, 1958, the provisions of the Act are not applicable to "premises belonging to the Government". The Rent Control Tribunal, Delhi, gave a decision in certain rent control appeals that by virtue of the provision contained in section 3, the Act has no application to "premises built on Government leasehold land" because such premises should be considered as "premises belonging to the Government." This decision would have the effect of depriving a large number of tenants in Delhi of the benefits of the Delhi Rent Control Act, 1958, regarding the fixation of standard rent and protection against eviction. It is proposed to remove this hardship caused to the tenants by suitably amending section 3 retrospectively. The Bill seeks to achieve this object.

Although the above Statements of Objects and Reasons have to be ignored in interpreting the provisions of the amending Act they furnish, as observed by the

Supreme Court in The Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudholkar and Others, , valuable historical material in ascertaining the reasons which induced the legislature to enact the statute. It would, thus, appear that Act No. 4 of 1963 was enacted by the legislature to set at naught the decision of the learned Tribunal that the provisions of the Delhi Rent Control Act did not apply to premises built on Government lease-hold land. It is further plain from the language of section 2 of the amending Act that the amendment was intended to have a retrospective effect.

12. Mr. Aggarwala, however, urges that the amendment would only apply in the case of those premises which are lawfully let by any person. It is contended that the respondents did not lawfully let out the premises in dispute to the appellants. Attention in this connection has been invited to the provisions of section 16 of the Act, according to which premises shall be deemed to have been lawfully sublet if they were sublet before the 9th day of June, 1962. As.against that Mr. Narula has argued that the respondents are estopped from questioning the validity of tenancy created in favour of the appellants. It is also urged that section 16 deals with lawful sub-letting while the proviso added to section 3 deals with lawful letting and not lawful subletting. According further to Mr. Narula the provisions of section 16 of the Act about lawful subletting have only a bearing on the question as to whether a sub-tenant can become a tenant in cases mentioned in section 18 of the Act and the aforesaid provision cannot be invoked for deciding the question as to whether the premises have been lawfully let in terms of the new proviso to section 3 of the Act.

13. The argument of Mr. Aggarwala on the point of lawful letting, in my opinion, can be disposed of on the short ground that the respondents are estopped from questioning the legality of the tenancy created by them in favour of the appellants. The appellants were admittedly introduced in the premises in dispute by the respondents as their tenants and it is not open to the respondents to take up the plea that they were not competent to let out these premises to the appellants and the tenancy created in favour of the appellants is not lawful. There is, in my opinion, an implied representation by a landlord when he lets out premises to another person that he has a subsisting interest in the aforesaid premises and that he can let them out, and it does not lie in the mouth of the landlord after the tenant has occupied the premises, to urge against him that he (the landlord) was not legally competent to let out the premises. As observed by a Division Bench of the Bombay High Court in Jeka Dula Vs. Bai Jivi, , it is clear law that a grantor or a lessor cannot be allowed to dispute his own title with either the grantee or the lessee. Reference may also be made in this context to observation on page 16 of Woodfall on Landlord and Tenant (Twenty-sixth Edition) to the following effect:

A lessor by deed is clearly estopped by the lease from denying that he had any estate in the land at the time the lease was executed by him, or that he had the right to dispose of the possession during the term thereby expressed to be granted, and a sub-lease by deed has a similar effect, and the law is the same in this respect, whether the lease be in writing under hand, or by word of mouth.

14. It is, however, argued by Mr. Aggarwala that the plea of estoppel cannot be raised against the respondents in this case because there can be no estoppel against statute or on a point affecting the jurisdiction of a Tribunal. In this respect I find that the doctrine of estoppel is being invoked not against the statute or on a point of jurisdiction but just to assess the weight of the argument that there was no lawful tenancy created by the respondents in favour of the appellants. There is, in my opinion, no legal bar in invoking the doctrine of estoppel for this limited purpose.

15. Mr. Aggarwala has also referred to the fact that subsequent to the decision of the Supreme Court in case Messrs. Bhatia Co-operative Housing Society Limited v. D.C. Patel1, an amendment was made in section 4 of the Bombay Rents, Hotel and Lodging House Rates Control Act, so as to make the provisions of that Act applicable to buildings constructed on sites taken on lease from Government and local bodies. It is urged that as the language of the amendment made in section 3 of the Delhi Rent Control Act is different from that of the amendment made in section 4 of the Bombay Act, the Court should infer that the amendment made in section 3 of the Delhi Act was with a different object. In my opinion this contention is not well-founded. Different legislatures can and often do use different languages to meet the same situation and the mere fact that the language of the Delhi Rent Control (Amendment) Act No. 4 of 1963 is different from that of the amendment made in the Bombay Act, would not go to show that the object of the Delhi Act was different.

16. I would, therefore, accept these appeals, set aside the orders of the learned Tribunal and remand the cases to the Controllers for decision in accordance with law.

17. Considering the facts of the case; I leave the parties to bear their own costs of this Court and the Tribunal. The costs of the proceedings before the Controllers shall abide the event.

