

(1995) 07 MP CK 0015
In the Madhya Pradesh High Court
Case No : F.A. No. 16 of 1978

Nagar Palika Nigam, Gwalior

APPELLANT

Vs

Rajeshwar Dayal

RESPONDENT

Date of Decision : 03-07-1995

Acts Referred:

Transfer of Property Act, 1882 — Section 106

Citation : (1996) MPLJ 97

Hon'ble Judges : T.S. Doabia, J

Bench : Single Bench

Advocate : R.C. Shukla and Smt. Mrinal Amresh, for the Appellant; P.L. Dubey and P.V. Sharma, for the Respondent

Final Decision : Allowed

Judgement

T.S. Doabia, J.—This appeal deals with a litigation which was initiated more than 4 decades back. In the year 1955, Nagar Palika Nigam, Gwalior filed a suit with a view to recover possession of the premises which were let out to one Rajeshwar Dayal s/o Lala Wazir Dayal. The premises are also known as Regal Talkies. This litigation met with failure on account of a finding having been recorded that there was non-compliance of the technical provisions of Section 106 of the Transfer of Property Act, 1882 (hereinafter referred to as the Act'). Another technical flaw which came to the rescue of the Defendant/ Respondent was the conclusion that the suit was not filed through a duly authorised person. After recording above and other conclusions, not only the suit for eviction was dismissed but the Appellant-Nigam was non-suited with regard to the relief regarding recovery of damages. Having failed in the trial Court the Nigam has preferred this first appeal.

2. The facts which are relevant for the purpose of this appeal be noticed as under:

There are premises in the town hall, Gwalior. It was fitted with furniture and

electric fittings. This was let out to Respondent/ Defendant Rajeshwar Dayal in pursuance of a registered rent-deed executed on 1-8-1947. This rent deed has been exhibited as Ex. P/1. The premises were let out for displaying cinematographic films. The period of lease was three years. This was to commence on 1st August, 1947 and was to come to an end on 31st July, 1950. It is admitted case that the Defendant-Respondent continued to remain in occupation of the hall even after the expiry of the period fixed in the lease-deed Ex. P/1. The Nigam has stated that a resolution was passed on 6th February, 1952. In this resolution, an offer was made to the Defendant-Respondent for renewal of the deed for a further period of three years beginning from 6th February, 1952. This renewal was proposed on a monthly rent of Rs. 2,000/-. It is the case of the Appellant that the Defendant-Respondent accepted the offer. He sent a communication to the Nigam on 28th February, 1952 and undated and unregistered rent note Ex. P/2 was executed. Some of the spaces meant for filling up the dates which would have indicated the period of lease remained blank. The Defendant-Respondent did pay to the Plaintiff-Nigam rent at the rate of Rs. 2,000/- per month. On the expiry of the period fixed in the unregistered rent-note Ex.P/2 the Nigam served a written notice calling upon the Defendant-Respondent to deliver the possession of the premises on the expiry of the midnight of 5th February, 1955. This notice was sent on 10th September, 1954. Copy of this is Ex. P/7. A further communication was addressed by the Nigam to the Defendant. This is Ex. P/9. This is dated 20th February, 1955. This was in continuation of the earlier notice dated 10th September, 1954. By this again the Defendant was called upon to hand over the vacant possession to the Nigam. The further fact which is apparent from the record is that on 21st March, 1955 the Manager of the Defendant deposited a sum of Rs. 4,000/- in the Municipal Office. This amount was accompanied by a letter dated 31st March, 1955. Copy of this has been placed on record as Ex. P/21. This amount was accepted by an employee of the Nigam and it stands deposited in the Municipal fund. The relevant entry in the ledger has been placed on the record as Ex. P/3. On the basis of this an argument was raised by the Defendant-Respondent that even if there is a notice issued u/s 106 of the Act, that notice should be deemed to have been waived on account of the acceptance of the rent. This aspect of the matter would be dealt with when the argument with regard to waiver of the notice is considered.

3. As there was failure to hand over the possession, a suit for recovery of possession was instituted on 16th September, 1955. This was filed for the return of the furniture, electric fitting and for the recovery of the possession of premises described in Ex. P-1. A prayer was also made for a money decree for a sum of Rs. 18177.08 annas as mesne profit and Rs. 1751.86 by way of interest Rs. 3305.00 represents the amount which would be damages for use of occupation. It was represented that the Appellant Nigam had received a proposal from the prospective tenants by way of tenders, the highest tender being @ Rs. 3305/-. The above is the factual position which can be spelled out from the plaint as filed

by the Nigam.

4. The Defendant-Respondent contested the claim of the Nigam. A written statement was filed. It was pleaded that the suit has not been properly filed. A plea was also taken that the notice which was served was not in terms of Section 106 of the Act. The argument advanced was that the notice did not terminate with the last date of the English calendar month. It was also pleaded that the notice, if any given, stood waived, as the Nigam had accepted a sum of Rs. 4,000/- from the Defendant on 31st March, 1955. It be seen that the Defendant-Respondent did not give any specific reply to the averment of the Plaintiff-Nigam with regard to despatch of the letter by the Nigam on 28th February, 1952 and the offer which was contained in the resolution dated 6th February, 1952. It may further be seen that the Defendant claimed that he had spent some amount on the improvement of the premises. According to him, the electric fittings which were initially run on D.C. current were converted so that they could be run on A.C. current. On this and some other small items amount valuing Rs. 8,600/- were claimed.

5. The matter was put to trial and the findings which have been recorded by the Court below may now be noticed in brief. These are as under:

- (a) that lease-deed Ex.P/1 was executed;
- (b) that the unregistered rent-note executed by the Defendant-Respondent in the year 1952 is inadmissible-in-evidence;
- (c) that the Defendant did not return to the Nigam any article received by him from the Nigam. These articles stand mentioned in the list Ex. P/22.
- (d) that the Respondent was not entitled to return of the goods;
- (e) that the rent-note of 1952 was unregistered. The tenancy from 6th February, 1952 to 5th February, 1955 was not established;
- (f) that it was not possible to give any finding with regard to commencement and determination of the tenancy in the absence of letter dated 13th February, 1952;
- (g) that the tenancy from month to month came into existence;
- (h) that with a view to terminate the tenancy it was incumbent upon the Nigam to serve a valid notice u/s 106 of the Act and that such notice was not served;
- (i) that the Defendant was bound to return the furniture and other fittings in the premises;
- (j) that the notice dated 10th September, 1954 was not material and this could not be made the basis for filing the suit;
- (k) that the payment regarding Rs. 4,000/- by the Defendant to the Nigam on 31st March, 1955 was of no consequence because the notice allegedly given in September, 1954 seeking to bring an end to the tenancy in February, 1955 did

not have effect to terminating the tenancy;

(l) that the notice dated 23rd June, 1955 (Ex. P/24) was duly served on the Defendant;

(m) that the provisions of Section 106 of the Act came into play, as the tenancy w.e.f. 31st July, 1950 onwards became a month to month tenancy. This was supposed to be terminated on a day coinciding with the last day of the English calendar month.

(n) that the notice given by the Revenue Officer of the Nigam was not a valid notice;

(o) that the payment made by the Plaintiff with the Punjab National Bank after 5th August, 1955 would not give rise to a fresh tenancy. The Nigam was not entitled to any interest;

(p) that as the tenancy was not determined properly, the Nigam was not entitled to any mesne profit or damages or rent pendente lite;

(q) that the suit instituted by the Commissioner and the Administrator was not properly filed;

(r) that the Defendant had failed to prove that he had spent a sum of Rs. 8,600/- in changing the electric fitting in cinema hall and he was not entitled to recovery of the same;

Recording these findings the suit was dismissed with costs.

6. When this appeal was taken up for hearing by Division Bench of this Court on 24th April, 1985, it was found necessary to determine as to whether the lease which came to an end on 31st July, 1950 was renewed for a further period of three years or not. With a view to have a finding on this, an order was passed in terms of Order 41, Rule 25 of the Code of Civil Procedure, 1908. A report was sought. Para 19 of the order passed by Division Bench of this Court on 24th April, 1985 be noticed as under:

Now, there are no issues on the Defendant's pleadings that the lease had been renewed in his favour for 3 years from 1-8-1950 to 31-7-1953; and then from 1-8-1953 onwards for a period of 3 years. In order to arrive at a finding as to the nature of the tenancy covering the period from 1-8-1950 to the date of the institution of the suit it will be necessary to have findings on these two points (set out in the first sentence of this paragraph) because the findings are essential to the right decision of the suit upon merits. It is, therefore, ordered under Order 41, Rule 25 CPC that the trial Court shall record findings on two points mentioned above. The case shall go back to the trial Court for fixing a date for receiving evidence of the parties on these two points. It shall then hear arguments and record its findings on these 2 points and return the record with the findings to this Court by 24-10-1985. The parties are directed through their counsel to appear before the trial Court, namely, the Court to be determined by

the District Judge, Gwalior as the successor Court of the Additional Judge to the Court of the District Judge, Gwalior as on 31-10-1977, on 28-6-1985. A copy of this order along with the records will be sent to the District Judge, Gwalior for information and necessary action.

7. A finding has since been recorded by the trial Court. It has been concluded that a lease did come into existence w.e.f. 1st August, 1950 to 1st August, 1953.

8. In this appeal the questions which need to be decided and on which the arguments have been addressed by both the sides are as under:

(i) Whether the suit, out of which this appeal has arisen was properly filed or not, i.e., whether the Administrator or Commissioner of the Nigam was competent to file the suit?

(ii) Whether the tenancy was validly terminated in terms of Section 106 of the Act? And, whether such a notice was required to be given at all in this case or not?

(iii) Whether in case a finding is recorded that notice was validly served then the acceptance of the rent by the Nigam on 31st March, 1955 would amount to waiver of the notice?

(iv) Whether the suit could be dismissed in its entirety even if it is held that notice u/s 106 of the Act was not given, meaning thereby whether the claim for rent would also be negated?

8A. First of all, the question with regard to proper filing of the suit be considered. The relevant issue in this regard is issue No. 13. The finding recorded is that the Administrator and the Commissioner were not competent to file the suit in question.

I have heard the learned Counsel for the parties.

9. The question as to whether the suit was properly filed or not would have to be determined by taking note of the provisions of the Madhya Bharat Municipalities Act, 1954 (hereinafter referred to as the "Municipalities Act"). The Nigam in question stood incorporated in terms of Section 8 of the Municipalities Act. Thus, the Nigam would have power to sue and be sued in its corporate name. The question arises as to who is competent to sue on behalf of the Nigam. When an elected body is in existence then of course a resolution of the elected body of the Nigam has to be there, but this was a case where the elected body was not in existence and the affairs of the Nigam were being looked after by the then Administrator. This was being done in terms of Section 208 of the Municipalities Act of 1954. Before further going into the matter it would be apt to take notice of the provisions of Sections 8 and 208 of the Municipalities Act of 1954. These read as under:-

8. Constitution and incorporation of municipalities. - In every municipality there shall be a municipal council and every such council shall be a body corporate by

the name of the Municipal Council of the place by reference to which the municipality is known and shall have perpetual succession and a common seal and may sue and be sued in its corporate name.

208. Power of Government to dissolve or supersede municipality in case of incompetency, default or abuse of power - (1) If, in the opinion of the Government a municipality is not competent to perform, or persistently makes default in the performance of, the duties imposed on it by or under this Act, or otherwise by law, exceeds or abuses its powers, the Government may, after giving the municipality an opportunity to render an explanation, by an order published, with the reasons therefor, in the Gazette declare the municipality to be incompetent(sic) or in default, or to have exceeded or abused its powers, as the case may be, and may dissolve such municipality or supersede it for a period to be specified in the order; provided such period shall not exceed two years or the remaining term of the municipality, whichever is greater.

(2) When the municipality is so dissolved or superseded, the following consequences shall ensue:-

(a) all councillors of the municipality shall, in the case of supersession as from the date of the order of supersession and in the case of dissolution as from the date specified in the order of dissolution vacate their offices as such councillors;

(b) all powers and duties of the municipality under this Act shall during the period of dissolution or supersession, be exercised by such person or a committee of persons as the Government from time to time appoints in this behalf:

Provided that the committee of persons appointed under this clause may not be removed for reasons mentioned in Sub-section (1) without giving it an opportunity to render an explanation;

10. There can be no dispute with the proposition that the Will of a corporate body has necessarily to be expressed by way of a resolution. The observations made by the Supreme Court in the case of *The Vice-chancellor, Utkal University and Others Vs. S.K. Ghosh and Others*, , be noticed in this regard. The relevant observations are as under:-

An incorporated body like an University is a legal entity it has neither a living mind nor voice. It can only express its will in a formal way by a formal resolution and so can only act in its corporate capacity by resolutions properly considered, carried and duly recorded in the manner laid down by its constitution.

11. Thus, requirement to have a resolution before initiating legal proceedings is a must when an elected body is in existence but there is no requirement in law that this resolution has to be passed when the Nigam is under supersession. Such was the view expressed by the Federal Court in the case reported as *Administrator, Lahore Municipality v. Daulat Ram Kapur*, AIR 1942 FC 14. The Federal Court was interpreting provisions of Sections 18 and 238 of the Punjab

Municipal Act, 1911. These are equivalent to Sections 8 and 208 of the Municipalities Act. While dealing with the technical objection as to the maintainability of the litigation at the instance of the Administrator, it was held that the proceedings taken by the Administrator are valid proceedings. The relevant observations be noticed as under:-

The provisions of Section 18, Punjab Municipal Act, relating to the corporate character of the Committee and the manner of suing must be read subject to the provisions of Section 238(2) which lays down the consequence of a supersession. It may be (as held in 29 Mad. 539) that a supersession has not the effects of a dissolution and that when another committee is constituted in the place of the superseded committee, it is a revival of the old corporation and not the creation of a new one. But during the period when the order of supersession is in force, the statute makes it clear that all the members of the committee vacate their seats and that all the powers and duties of the committee are to be exercised and performed by the Administrator. It seems to us that we should be carrying the legal fiction to a needless length if we insisted that even in this state of facts, proceedings must be taken only in the name of the dormant corporation. It has not been disputed that the person competent to take proceedings is the Administrator; and even if the true view should be that he should take proceedings in the name of the committee, the defect is one purely of a formal character which can be cured by amendment.

12. Thus, the conclusion arrived at by the trial Court that the suit was not initiated by way of a valid resolution is without any force and the finding on issue No. 13 is reversed.

13. The question with regard to the scope and ambit of Section 106 of the Act be now considered. There are two situations which can be visualised or are contemplated when scope of Section 106 of the Act is under consideration. Filing of suit for recovery of possession when lease is still in force may be on different footing as compared to a situation when lease has come to an end. In this case, the lease was created vide Ex. P/1 w.e.f. 1st August, 1947 and came to an end on 31st July, 1950. As noticed above, this is Ex. P/1. Thereafter, there is no registered lease-deed and unregistered deed cannot be looked into. Such was the view expressed by this Court when a preliminary issue in this very litigation with regard to this very subject was considered in a revision petition. This revision petition bears No. 33/1960. It was decided on 21-1-1961. It was held that unregistered deed cannot be looked into. As a matter of fact, this is the view expressed in number of later cases. Some of these are as under:

(i) Sri 5 Sita Maharani and Others Vs. Chhedi Mahto and Others, , (ii) Budh Ram Vs. Ralla Ram deceased through Lrs, , (iii) Sanyasi Raju v. Kandula Kamappadu, AIR 1960 AP 85 , (iv) Ram Nath Mandal and Others Vs. Jojan Mandal and Others, , Full Bench.

14. No doubt a report was called from the trial Court in pursuance of an order

passed by the Division Bench of this Court on 24th April, 1985 and a finding has been recorded that there was in existence a lease w.e.f. 1st August, 1950 to 1st August, 1953, yet I am of the view that only deed which can be looked into is Ex. P/1. With regard to the findings recorded by the trial Court regarding the aforementioned lease deed, the matter would be discussed in the latter portion of this judgment.

15. The fact remains that a tenancy came into existence in pursuance of a registered lease is deed. This came to an end. Thereafter the Defendant acquired a status, which status in law has been described as akin to statutory tenancy or as a tenant holding over.

What is a statutory tenant or what is statutory tenancy?

A statutory tenancy is a mere status of irremovability. It commences after the contractual tenancy has come to an end in any manner provided by law. This term is borrowed from the English Rent Acts. This may be a convenient expression for referring to a tenant whose tenancy has been terminated and who would be liable to be evicted but for the protecting statute, dealing with Rent Restriction. The expression "statutory tenancy" was used in England in several judgments under the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, to refer to a tenant protected under the Act, but the term got currency from the marginal note to Section 15 of the Rent and Mortgage Interest (Restrictions) Act, 1926. That section which provided inter alia that a tenant who by virtue of that Act retained possession of any dwelling house to which the Act applied, so long as he retained possession, must observe and would be entitled to the benefit of all the terms and conditions of the original contract of tenancy which were consistent with the provisions of the Act carried the description in the margin "condition of statutory tenancy". Since then the term has been used in England to describe a tenant protected under the subsequent statutes until Section 49(1) of the Housing Repairs and Rent Act, 1954 for the first time defined "statutory tenant" and "statutory tenancy". "Statutory tenant" was defined as a tenant "who retains possession by virtue of the Rent Acts and not as being entitled to a tenancy, and "it was added "statutory tenancy" shall be construed accordingly." This definition of "statutory tenancy" has been incorporated in the Rent Acts of 1957 and 1965. In England "statutory tenancy" does not appear to have had any clear and fixed incidents; the concept was developed over the years from the provisions of the successive Rent Restrictions Acts which did not contain a clear indication as to the character of such tenancy. That a statutory tenant is entitled to the benefit of the terms and condition of the original contract of tenancy so far as they were consistent with the provisions of the statute did not, as Scrutton L.J. observed in *Roe v. Russall*, (1928) 21 KB 117 "help very much when one came to the practical facts of life"; according to him "citizens are entitled to complain that their legislators did not add their minds to the probable events that might happen in cases of statutory tenancy, and consider how the legal interest they were granting was affected by those

probable events." He added.... It is pretty evident that the Legislature never considered as a whole the effect on the statutory tenancy of such ordinary incident as death, bankruptcy, voluntary assignment, either inter vivos or by Will a total or partial sub-letting; but from time to time put into one of the series of Acts, a provision as to one of the incidents without considering how it fitted in with the general nature of the tenancy which those incidents might affect." On the provisions which gave no clear and comprehensive idea of the nature of a statutory tenancy, the courts in England had been slowly "trying to frame a consistent theory". Scrutton L.J. in *Haskins v. Lewis*, (1931) 2 KB 1 "making bricks with very insufficient statutory straw". Scrutton L.J. in *Keeves v. Dean*, (1923) 93 LJKB 204 at page 207. Evershed M. R. in *Boyver v. Warbay*, (1953) 2 QB 204 said: "The character of the statutory tenancy, I have already said, is a very special one. It has earned many epithets, including "monstrum horrendum", and perhaps it has never been fully thought out by Parliaments. Courts in England have held that a statutory tenant has no estate or property in the premises he occupies because he retains possession by virtue of the Rent Acts and not on being said that he has only a personal right to remain in occupation, the statutory right of irremovability", and nothing more.

The Supreme Court in the case of *Damadilal and Others Vs. Parashram and Others*, said:-

We find it difficult to appreciate how in this country we can proceed on the basis that a tenant whose contractual tenancy has determined but who is protected against eviction by the statute, has no right of property but only a personal right to remain in occupation, without ascertaining what his rights are under the statute.

This under the ordinary law a statutory tenant is a tenant who continues in possession. He possesses a right of irremovability and nothing more.

16. In the present case, the tenancy came to an end vide Ex. P/1. Thereafter there was no lease deed in his favour. The lease-deed which is said to be in his favour is unregistered one. It is an incomplete document the period from which it was to commence and the period for which this tenancy was there was not mentioned there. It being an unregistered deed cannot be looked into. Therefore, the question as to whether any notice u/s 106 of the Act was required to be given or not be now examined. A Division Bench of the Allahabad High Court in the case of *L. Narayan Dass Vs. Mt. Taravali*, , had observed that when the period of lease is fixed by a contract and it comes to an end, then the tenant is not entitled to a notice u/s 106 after the expiry of the period. The relevant observations made at page 758 be noticed as under:-

On the termination of the lease, the position of the lessee was that of a tenant-at-sufferance as being one who came in by right and held over without right. Such a person can be ejected without notice.

17. The same view would be found in a case reported as *Pooran Chand Vs.*

Motilal and Others, .

Subba Rao, J. (Late Chief Justice of India) observed as under:- (Para 5)

It is, therefore, manifest that the lease was for a period of one year and that it is not a monthly tenancy. As the term fixed under the deed had expired, the Appellant was not entitled to any statutory notice u/s 106 of the Transfer of Property Act, 1882.

18. Again the matter was considered in the case of Firm Sardarilal Vishwanath and Others Vs. Pritam Singh, . The lease in the above case came to an end by efflux of time. The tenant continued in possession and became a so called statutory tenant. The argument put before the Supreme Court was that a notice u/s 106 of the Act was necessary. This argument was rejected. The observations made are as under:-

Having examined the matter on authority and precedent it must be frankly confessed that no other conclusion is possible on the first principle. Lease of urban immovable property represents a contract between the lessor and the lessee. If the contract is to be put to an end it has to be terminated by a notice to quit as envisaged u/s 106 of the Transfer of Property Act. But it is equally clear as provided by Section 111 of the Transfer of Property Act that the lease of immovable property determines by various modes therein prescribed. Now, if the lease of immovable property determines in any one of the modes prescribed u/s 111, the contract of lease comes to an end, and the landlord can exercise his right of re-entry. This right of re-entry is further restricted and fettered by the provisions of the Rent Restriction Act. Nonetheless the contract of lease had expired and the tenant lessee continues in possession under the protective wing of the Rent Restriction Act until the lessee loses protection. But there is no question of terminating the contract because the contract comes to an end once the lease determines in any one of the modes prescribed u/s 111, There is, therefore, no question of giving a notice to quit to such a lessee who continued in possession i.e. after the contract came to an end.

Again in Smt. Shanti Devi v. Amal Kumar Banerjee, AIR 1981 SC 1550, the same view was expressed. It was observed as under:

The Courts below have apparently been misled by the averments in paragraph 3 of the plaint that because the Defendant could not fulfil the condition regarding obtaining of a licence, the grant made by the indenture of lease did not and could not take effect as also that in paragraph 7 that the tenancy of lease was from month to month. The parties could not by their pleadings alter the intrinsic character of the lease or bring about a change of the rights and obligations flowing therefrom. The lease was a lease for a definite term and, therefore, expired by efflux of time by reason of Section 111(a) of the Transfer of Property Act. That being so, the service of a notice u/s 106 of the Transfer of Property Act was not necessary.

19. Thus, where a tenancy has come to an end by efflux of time then requirement of giving notice u/s 106 of the Act is not there. Such a notice is required to be given only if the tenancy is still in existence. In the present case, the tenancy came to an end on 31st July, 1950, thereafter status of the tenant was that of statutory tenant and it was not necessary to again terminate the tenancy by giving a fresh notice.

20. In view of the conclusion arrived at the question of waiver of notice or its issuance by a person, who was not competent to issue the same, becomes meaningless. It may, however, be observed that the question of waiver of notice would arrive only when there is express acceptance of rent by the landlord, i.e., the Nigam/Appellant. Deposit of some amount with an employee of the Nigam, which is later on credited in the Municipal fund, would be of no consequence. The concept of acceptance of rent and waiver was considered in case of AIR 1949 124 (Federal Court) . It was held thus:

On the determination of a lease, it is the duty of the lessee to deliver up possession of the demised premises to the lessor. If the lessee or a sub-lessee under him continues in possession even after the determination of the lease, the landlord obviously has the right to eject him forthwith; but if he does not, and there is neither assent or dissent on his part of the continuance of occupation of such persons, the latter becomes in the language of English law a tenant at sufferance who had no lawful title to the land but holds it merely through the laches of the landlord. If now the landlord accepts rent from such person or otherwise expresses assent to the continuance of his possession a new tenancy comes into existence as is contemplated by Section 116, Transfer of Property Act, and unless there is an agreement to the contrary, such tenancy would be regarded as one from year to year or from month to month in accordance with the provisions of Section 106 of the Act.

In cases of tenancies relating to dwelling house to which the Rent Restriction Acts apply, it was observed by their Lordships of the Federal Court thus:

in cases of tenancies relating to dwelling house to which the Rent Restriction Acts apply, the tenant may enjoy a statutory immunity from eviction even after the lease has expired. The landlord cannot eject him except on specific grounds mentioned in the Acts themselves. In such circumstances, acceptance of rent by the landlord from a statutory tenant whose lease has already expired could not be regarded as evidence of a new agreement of tenancy and it would not be open to such a tenant to urge, by way of defence, in a suit for ejectment brought against him under the provisions of Rent Restriction Act that by acceptance of a rent a fresh tenancy was created which had to be determined by a fresh notice to quit.

The aforesaid decision was followed by the Apex Court in Ganga Dutt Murarka Vs. Kartik Chandra Das and Others, and it was held thus:

The High Court was in our judgment right in holding that by merely accepting

rent from the Appellant and by failing to take action against him, the Appellant did not acquire the rights of a tenant holding over. It is true that in the notice dated October 10, 1950, the Appellant is described as a "monthly tenant" but that is not indicative of conduct justifying an inference that a fresh contractual tenancy had come into existence. Within the meaning of West Bengal Premises Rent Control Act, 1950, the Appellant was a "tenant" and by calling the Appellant a tenant the Respondent did not evince an intention to treat him as a contractual tenant. The use of the adjective "monthly" also was not indicative of contractual relation. The tenancy of the Appellant was determined by efflux of time and subsequent occupation by him was not in pursuance of any contract express or implied, but was by virtue of the protection given by the successive statutes. This occupation did not confer any right upon the Appellant and was not required to be determined by a notice prescribed by Section 106 of the Transfer of Property Act.

21. After an order was passed by this Court on 24th April, 1985, a further finding has been recorded by the trial Court on 31st January, 1994 holding that a lease for a period of three years came into existence w.e.f. 1st August, 1950 to 1st August, 1953. This finding has been recorded after appreciating the contents of unregistered lease-deed. This document could not be looked into. Merely because some resolution was passed by the Nigam or some letter was addressed to the Nigam, which was not followed by execution of any deed would not lead to the conclusion that some lease had come into existence. The method and manner in which the contracts are to be entered into, has been indicated in the Municipalities Act. Section 54 is relevant. In this regard, a reference may be made to a decision given by the Supreme Court in the case of Dr. H.S. Rikhy and Others Vs. The New Delhi Municipal Committee, . Their Lordships of the Supreme Court have categorically held that unless and until the method and manner indicated in the Act is followed no lease can be said to have come into existence. It was categorically held that no relationship of landlord and tenant would come into existence. The relevant observations are as under:-

Now in order that the transfer of the property in question should be binding on the Committee, it was essential that it should have been made by an instrument in writing, executed by the President or the Vice-President and at least two other members of the Committee, and the execution by them should have been attested by the Secretary. If these conditions are not fulfilled, the contract of transfer shall not be binding on the Committee. But it has been contended on behalf of the Appellants that the non-compliance with the provisions aforesaid of Section 47, quoted above, would not render the contract of transfer of property void but only voidable. In other words, where the actings of the parties have given effect to the transactions, as in the instant cases, by delivery of possession of the property by the Committee and payment of rent by the Appellants, the absence of formalities would not render the transactions of no legal effect but it has to be noted that it was not contended on behalf of the Appellants that the provisions of Section 47(3) of the Municipal Act are not mandatory and are

merely directory. Such an argument was not and could not have been advanced because it is settled law that the provisions of a statute in those peremptory terms could not but be construed as mandatory.

Thus there could be no transfer of interest in favour of Respondent Defendant by a deed which was not registered and executed in accordance with the provision of Municipal Act.

22. It would be apt to deal with the finding recorded by the trial Court after the report was called from it in terms of Order 41, Rule 25, Civil Procedure Code. It may be seen that the deed in question was an unregistered lease deed and in view of the decision given by the Supreme Court referred to in para 13 of this judgment an unregistered lease cannot be looked into. If this be position then the question of recording of finding that a fresh tenancy came into existence is not sustainable. The status of the Defendant was that of statutory tenant. The finding recorded by the trial Court when the case was remanded to it under Order 41, Rule 25, CPC on 31-1-1994 is accordingly reversed.

23. In view of the above discussion, I am of the view that:

(i) that the suit filed by the Administrator of the Nigam was a suit which was properly filed:

(ii) a tenancy was created w.e.f. 1st August, 1947 to 31st July 1950 vide Ex. P/1;

(iii) tenancy created vide Ex. P/1. came to an end by efflux of time;

(iv) the Defendant-Respondent acquired the status of a tenant holding over or a statutory tenant;

(v) the unregistered lease deed regarding which finding has been recorded by the trial Court under Order 41, Rule 25, CPC Code, is of no consequence and the finding recorded that another tenancy came into existence is accordingly reversed; This is because:-

(a) The deed is unregistered and cannot be looked into in view of provisions contained in Sections 17 and 49 of the Indian Registration Act, 1908.

(b) No contract can come into existence unless there was a duly executed contract in terms of Municipalities Act.

(vi) There is no necessity to give any notice u/s 106 of the Act.

(vii) The question of waiver of notice would not arise under the circumstances. In any case, there being no express consent given by the landlord, it could not be said that the right to seek eviction was in any manner waived;

(viii) some deposit of amount with Municipal fund would not bind the corporation.

24. In view of the above conclusions the Appellant would necessarily be entitled to a decree for possession. However, a question arises as to whether a claim for

damages is sustainable or not. It is not in dispute that the Defendant has continued in possession even after the expiry of the tenancy. The case of the Nigam is that they had invited tenders and the highest tender was for Rs. 3,305/-.

This assertion of the Plaintiff-Nigam had not been refuted. Therefore, the Plaintiff-Nigam would be entitled to mense profits or damages which are calculated at the aforementioned figures. The Appellant would be entitled to simple interest. The rate of interest would be 12%. This appeal is accordingly allowed. The suit shall stand decreed with costs. Costs of this Court and also of Court below would have to be borne by the Defendant Respondent.

25. Even though the matter stands concluded with the aforementioned findings, two matters still are required to be gone into. It be seen that on 6-1-1969 an order was passed by the District Judge, Gwalior. By this order the Defendant was directed to deposit every month a sum of Rs. 2,000/- in the Punjab National Bank. The Defendant was restrained from withdrawing the amount from the rent account. The relevant portion of the order passed on 6-1-1969 reads as under:-

In this view of the matter, the application is partly accepted. The Defendant is directed to continue to deposit the sum of Rs. 2,000/- per month, in Punjab Bank (iieg.) as rent; as per previous order. He is, however, restrained from withdrawing any amount from the rent account with Punjab Bank till the disposal of the present suit.

There is nothing on the record that any permission was given by the District Judge to withdraw this amount. The withdrawal by the Defendant without there being any order of the Court would prima facie amount to breach of the order of the Court passed on 6-1-1969. This act of the Defendant would prima facie constitute civil contempt. A valid order passed by the District Judge has been violated. As such, a notice would issue to Defendant Respondent to asking him to show cause as to why proceedings for having violated an order passed by District Judge, Gwalior i.e. for having committed contempt be not initiated against him.

26. Another matter which again arises out of the above order is that and requires to be considered is that when appeal was taken up for hearing on 8-12-1994, a notice was issued to the Manager of the Punjab, National Bank asking him to give information and report regarding the method and manner in which the withdrawal of amount deposited with it was permitted. A notice was served on the Manager of the Punjab National Bank. He refused to appear on the ground that the name of the Branch had not been given. Another order was passed on 12-12-1994. This order reads as under:-

This Court passed an order on 8th of December, 1994, This was to the following effect:

It is represented that the Defendant did deposit the amount in terms of the aforesaid order with the Punjab National Bank but without there being any order

from the Court this was withdrawn. Under what authority, the Punjab National Bank had allowed the amount to be withdrawn is not known. Let a notice be issued to the Manager incharge of Punjab National Bank for 12th of December, 1994.

Summons were sent but there is failure to appear. On the back of the summons, it has been mentioned that the name of the Branch has not been mentioned. The summons were sent to the main branch located at Naya Bazar. Let fresh summons be sent for 14th of December, 1994 in the name of Punjab National Bank, Naya Bazar, Lashkar, Gwalior. Copy of the order be also sent along with the summons.

In spite of the fact that summons were served the manager failed to appear. As such a notice for initiating civil contempt proceedings would also issue to the Manager of the Punjab National Bank, who was duly served on 15-12-1994. He would explain as to why he failed to appear in pursuance of the notice issued by this Court. He would also explain the circumstances under which the amount was released to the Defendant Respondent.

27. Another matter regarding which the attention of the Nigam is required to be drawn is that this litigation could have been avoided had matter been properly appreciated. The corporation's immovable property is covered by the definition of public premises. The Nigam could have taken proceedings under Lok Parisar Adhiniyam 1974 or similar enactment in existence. Earlier the view of the Supreme Court was that in the face of a remedy being available in the civil Court, it is not possible to take resort to summary remedy. But in Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Others, it has been categorically held by the Supreme Court that the Municipal authorities can take proceedings under the Special Acts. Had the Nigam proceeded under the above Act, then this long drain litigation could have been avoided. In any case, the Nigam may take notice of the above provisions and safeguard its interest with regard to the properties, which have been let out to the tenants.

28. The appeal is accordingly allowed. The suit is decreed with costs. Appellant would be entitled to simple interest. Interest would be at the rate of 12%. The Defendant would bear the costs of litigation of this Court as also of the trial Court.