

(2005) 05 GUJ CK 0002

In the Gujarat High Court

Case No : Company Application No 187 of 2004 in Company Petition No 66 of 1988

Pravinbhai

APPELLANT

Vs

O.L. of Shree Ambica Mills Ltd.

RESPONDENT

Date of Decision : 06-05-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 05 GUJ CK 0002

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : Ashok L. Shah, Sudhir M. Mehta and A.B. Munshi, for the Appellant; Official Liquidator for respondent No. 1, S.N. Soparkar, Sr Counsel and Swati Soparkar for respondent no. 2, Pranav G. Desai, for respondent No. 5, Singhi and Co. for respondent No. 7 and D.S. Vasavada, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Puj, J.—The applicants have taken out this Judges' Summons seeking direction to the Official Liquidator to take over vacant possession of land bearing Survey Nos. 482 & 483 situated at Jetalpur Road, Baroda from the respondent No. 2 i.e. Bheruji Estate and to hand over the said possession of the land to the applicants. The applicants have also prayed for the directions to the respondent Nos. 1 & 2 not to transfer, alienate, encumber or dispose of the land in question and also for the direction to the respondent No. 1 not to execute the Sale Deed in favour of respondent No. 2 in respect of the land in question. The applicants have further prayed for the direction to the respondent Nos. 1 and 2 to pay to the applicants leasehold rent in respect of the land in question at the rate of Rs. 218 per year along with interest on unpaid amount from 15.07.1988 till this date and to pay mesne profit / compensation for wrongfully withholding possession of the said land from the date of the order till the date of handing over of the vacant possession thereof to the applicants.

2. An affidavit is filed by Shri Pravinbhai Jasbhai Patel in support of the Judges' Summons. Mr. Ashok L. Shah, learned advocate appearing with Mr. Sudhir M. Mehta and Mr. A.B. Munshi, learned advocates for the applicants has submitted that pursuant to an agreement of lease executed on 14.08.1942 between the father of the applicants, late Shri Jasbhai Jivabhai Patel through his mother Smt. Chanchanbai widow of Jivabhai Maturbhai and late Shri Motibhai Kalidas Patel on the one hand and Shri Jagdish Mills [now known as Shree Ambica Mills Limited (In Liquidation)] on the other hand. The father of the applicant had given on rent a Plot of land admeasuring 5.11 bigha and comprised in Survey Nos. 482 & 483 situated at Jetalpur Road, Baroda for a period of 51 years on a yearly rent of Rs. 218/-. He has further submitted that the Company has not paid rent since 15.07.1988 and as per the terms and conditions of the Lease Deed, more particularly, condition No. 2, 6% interest is chargeable on late payment of rent. The applicants have received the last rent for a period of 15.07.1985 to 14.07.1988 and the rent receipt dated 09.02.1989 is produced on record. As per condition No. 1, the property was leased for a period of 51 years starting from 14.08.1942 and expiring on 13.08.1992. He has further submitted that after the expiry of the said period, the Lease Deed was not renewed and hence, as per Condition No. 11, the lessee should hand over the possession of the leasehold land after the completion of the period of lease i.e. 51 years. Mr. Shah has further submitted that the applicants have addressed a letter to the Mills Company on 15.06.1992 requesting them to hand over the property in question to the applicants since the period of lease deed was already over. However, there was no response from the Mills Company and possession was not handed over. Since the respondent No. 1 has not acted as per the terms of the lease deed, the applicants are entitled to take back the physical possession of the said property from the respondents. The Company has already been wound up and the O.L. was put in-charge of the assets of the Company and since the Company was not carrying on any business and since the respondent No. 1 was not carrying on any business of the Company, the property in question was not required by the respondent No. 1 for beneficial winding up of the Company and hence, the respondent No. 1 has no right to alienate, encumber or transfer the said property and he is bound to surrender the same to the applicants. It has come to the knowledge of the applicants that the respondent No. 1 has already disposed off the assets of the Company as a liquidator thereof and the possession was already handed over to the respondent No. 2 being the auction purchaser of the land in question and the sale in favour of the respondent No. 2 has already been confirmed by this Court. However, the said order has been passed without hearing the applicants and hence, after cancelling the said sale in favour of respondent No. 2, the respondent No. 1 may be directed to take back the possession from the respondent No. 2 and to hand over the same to the applicants.

3. In support of his submissions, Mr. Shah has referred to the relevant clauses of the Lease Deed dated 24.08.1942 and submitted that the combined reading of

Clause 1, 9 & 11 makes it amply clear that the respondent No. 1 has no right to retain the possession of the land after expiry of the period of 51 years and that period was already over on 13.08.1992. In support of his submission, he relied on the decision of the Hon"ble Supreme Court in the case of Ravindra Ishwardas Sethna and Another Vs. Official Liquidator, High Court, Bombay and Another, wherein it is held that the statutory tenancy confers the right to be in possession but if the tenant does not any more require use of the premises, the provisions of the Rent Act and especially Sections 13 & 15 completely prohibit giving the possession of the premises on licence or on sub-lease. The Court has further observed that where the liquidator of the Company, on its being wound up, took the possession of the premises of the Company and subsequently by the order of the High Court entered into a caretakers" agreement with "X", and gave possession of the premises to him on compensation and on terms and conditions set out in the agreement, though the business of the Company came to a standstill, the moment it was ordered to be wound up, and it was not the Liquidators" case that he was carrying on business of the Company with the permission of the Court u/s 457, the High Court could not authorize the liquidator to enter into such an agreement and therefore the order of the High Court was liable to be set aside as it was wholly impermissible under the Rent Act. The possession of the premises was ordered to be handed over to the landlord. Based on this decision, Mr. Shah has submitted that in the present case also, the premises in question was not required by the O.L. and he has no authority to transfer the said land to the respondent No. 2. Since correct facts were not pointed out by the respondent No. 1 before this Court, the sale was erroneously confirmed. He has, therefore, submitted that the land in question sold to the respondent No. 2 must be taken back from him and the possession thereof should be handed over to the applicants.

4. The Official Liquidator has filed his report on 12.10.2004. He has submitted that the Company has gone into liquidation on 17.01.1997 and thereafter he was appointed as the Liquidator of the Company. He has further submitted that with regard to Baroda unit of the Company in liquidation, the said Company has sold the assets of the Company to one M/s. Sunil Mills Ltd. way back in the year 1989. However, since the said transaction was fraudulent, in light of the undertaking filed before the Hon"ble Supreme Court by the said Company, this Court directed the O.L. to take possession of the assets of the Company also. Pursuant to this direction, the O.L. has taken possession of the assets of Baroda Unit. He has, therefore, submitted that writing of letter to the Company for handing over possession seems to be fallacious, since during contemporary time i.e. 19.06.1992, it was M/s. Sunil Mills and not Ambica Mills Ltd. in possession of the land in question.

5. The O.L. has further submitted that from the perusal of the receipt produced by the applicants along with the affidavit filed in support of the Judges" Summons, it appears that the said receipt has been issued by the Company towards payment of rent for the period from 14.07.1985 to 14.07.1988 i.e. for

three years. The Company has taken on rent the land, which belonged to the applicants and, therefore, the applicants and not the Company should have issued the receipt which is produced by the applicant along with the Judges' Summons. He has, therefore, submitted that the genuineness and bonafide of the receipt appears to be doubtful.

6. The O.L. has further submitted that he had issued advertisement for sale of assets and properties of the said Company's Baroda Unit including land on two earlier occasions. Upon issuance of advertisement in largely circulated Newspapers both in Gujarati and English daily of Baroda editions, the applicants have not even casually approached his office to enquire as to whether the land which is claimed to have been owned by the applicants was also put on sale by the Official Liquidator. The applicants have never approached the office of the Official Liquidator for collecting rent of the leased premises or for getting back the possession of the land in question. After more than seven years, the applicants have preferred the present application at the time when the land was put to sale. He has, therefore, submitted that the present application appears to be motivated for obvious / oblique reasons. He has finally submitted that the present application seems to be an after-thought and the applicants have chosen this particular time to file this application for getting back possession of the land only after the sale was concluded by the office of the Official Liquidator and was confirmed by this Court way back in the month of December, 2003.

7. Mr. S.N. Soparkar, learned Senior Counsel appearing with Mrs. Swati Soparkar, learned advocate for respondent No. 2 has submitted that the issue raised by the applicants in the present application is squarely covered by the decision of this Court in the case of *LEGAL HEIRS OF DECEASED FAKIR CHAND AMBARAM PATEL V/S. O.L. OF AMRUTA MILLS LIMITED AND OTHERS* 2002 (3) G.L.H. 367 wherein it is held that on overall reading of the Lease Deeds which have come on record, it is apparent that the terms of the lease are mostly permanent or in perpetuity, or for long fixed periods or at least till life time of the Company. The position therefore which emerges is that the contract which was entered into by the lessors with the Company subsists. Once that is so, the position in law is settled that the tenant, viz. the Companies herein, would be entitled to seek protection under the contract dehors the provisions of the Rent Act. In none of the cases, was it contended or pointed out that there is any breach of express condition which would entitle the landlord to invoke forfeiture. Even if nonpayment of rent for a particular period could be treated as a breach of one of the conditions the terms of the lease deeds do not envisage forfeiture. For the sake of argument, in a given case, even if it is to be found that nonpayment of rent would entitle the landlord to seek determination of the lease it would be open to the Court to relieve from forfeiture by issuing appropriate directions. However, all these aspects will have to be taken into consideration, in each individual case, after the landlord applicant is able to establish not only nonpayment of rent, but entitlement of forfeiture and further that he has served a notice for such forfeiture. After considering the various judgments including the one which was

relied on by Mr. Shah i.e. Ravindra Ishwardas Sethna and Another Vs. Official Liquidator, High Court, Bombay and Another, the Court has summarised inter alia that (i) Leasehold interest is an intangible asset, which is valuable in nature though the valuation may differ from case to case depending upon the unexpired period of lease. (ii) Such an asset is transferable subject to the same terms and conditions as may be stipulated in the lease deed. (iii) Once there is a contract which has not been determined, the relationship of the parties to the contract continues to subsist till the period for which the contract is in existence subject to an express condition to the contrary. (iv) There is a distinction between the point of time when an order of winding up is made and at the point of time when an order of dissolution is made, the company continues to exist between the two termini. (v) A condition in the lease deed permitting a lessee to give back the possession as and when the lessee chooses to do so cannot be converted into an obligation entitling the lessor to seek possession. (vi) A condition in the lease deed by way of requirement to pay rent, per se, does not create an onerous covenant, once readiness and willingness is shown by the lessee, or on its behalf, to discharge such obligation.

8. Based on the aforesaid judgment, Mr. Soparkar has submitted that though the Lease Deed in question is for a specific period of 51 years, Clause 9 specifically permits the parties to get the said Lease Deed renewed. It says that after the expiry of the period of 51 years, two representatives of both the sides and Sarpanch in all 5 persons will decide the reasonable rent and thereafter so long as this revised rent is paid by the lessee to the lessor, the lessor will not determine the lease nor the lessor will give the said property on lease to any other person. Even Clause 14 empowers the lessee to transfer, mortgage, gift or sell the leasehold property to any other persons and the lessor or his heirs and successors will be bound by the same. Mr. Soparkar has, therefore, submitted that the Lease Deed has to be read as a whole and the reading of Lease Deed as a whole clearly indicates that the lease in question is the lease for the perpetual period. Only the mode is prescribed in Clause 9 as to the renewal of the lease and if that mode or the procedure has not been followed, it would not alter the character of the Lease Deed. In support of this submission, he relied on the decision of the House of Lords in the case of SUDBROOK TRADING ESTATE LIMITED V/S. EGGLETON AND OTHERS 1982 (3) ALL E R 1 wherein while allowing the appeal, the Court observed that where the machinery of which the value of property was to be ascertained was subsidiary and non-essential to the main part of an agreement for the sale and purchase of the property at a fair and reasonable price, the Court could, if the machinery for ascertaining the value broke down, substitute other machinery to ascertain the price in order to ensure that the agreement was carried out. Since the contract between the parties provided that the price was to be determined by valuers, it necessarily followed that the contract was a contract for sale at a fair and reasonable price assessed by applying objective standards, and on the exercise of the option clauses a complete contract for the sale and purchase of the freehold reversion was

constituted; it was unrealistic to treat the machinery provided by the option clauses for ascertaining the price as an essential term of the contract when it merely consisted of provision for the appointment of valuers and an umpire, none of whom was named or identified. The only reason the machinery had not been implemented was the lessors' own breach of contract in refusing to appoint their valuer. It followed that, since such machinery was not essential, there was no reason why the Court should not substitute its own machinery. The Court has further observed that Where an agreement which would otherwise be unenforceable for want of certainty or finality in an essential stipulation had been partly performed so that the intervention of the Court was necessary in aid of a grant that had already taken effect, the Court would strain to supply the want of certainty even to the extent of providing a substitute machinery. It followed that, since the option was one term of the lease which had been in force for several years when the option under the contract was exercised, the resulting agreement was not entirely separate from the partly performed contract of lease. The Court has lastly observed that Where the valuation provisions related to a subsidiary part of a wider contract which was itself valid and enforceable, the Court would take steps to prevent the wider contract being rendered unenforceable by a failure of the machinery for the subsidiary part. Since the mode of valuation provided for was not the very essence and substance of the contract, the Court could accordingly substitute machinery to prevent the contract being rendered unenforceable, and in the circumstances the appropriate means to enforce the contract would be to order an inquiry into the fair value of the reversions.

9. Mr. Soparkar has further submitted that the above decision of the House of Lords is followed by the Hon''ble Supreme Court in the case of SMT. CLAUDE-LILA PARULEKAR V/S. SAKAL PAPERS PVT. LTD. AND OTHERS 124 COMPCAS 685 wherein it is quoted with approval that a Clause in the lease gave the lessee an option to purchase the reversion in fee simple at a price to be agreed by two Valuers, one to be nominated by the lessors and the other by the lessees, and in default agreement, by an umpire to be appointed by the Valuers, a minimum purchase price being specified in the clause. When the lessee sought to exercise the option in December 1979, the lessors claimed that the option clauses were void for uncertainty and refused to appoint a Valuer. The lessors also contended that the options were unenforceable as there was no contract of sale since the purchase price had not been fixed. It was held that since the contract between the parties provided that the price was to be determined by Valuers, it necessarily followed that the contract was a contract for sale at a fair and reasonable price assessed by applying objective standards, and "on the exercise of the option clauses a complete contract for the sale and purchase of the freehold reversion was constituted."

10. Based on the aforesaid two decisions, Mr. Soparkar has strongly urged that the lease in question is the perpetual lease and the only question which is to be decided now is to determine the fair and reasonable rent for the land in question which is given on lease by the applicants' predecessors to the Company in

liquidation and hence, there is no question of claiming back the possession of the properties in question.

11. Mr. D.S. Vasavada, learned advocate appearing for the T.L.A. has supported the stand taken by the respondent No. 2 and has further submitted that the applicants have no right to claim possession of the properties in question. The decision relied upon by the applicant in the case of Ravindra Ishwardas Sethna and Another Vs. Official Liquidator, High Court, Bombay and Another, has no application to the facts of the present case and while applying the ratio of a particular judgment, one has to look to the facts of the case on hand. In this connection, he relied on the observations made by the Hon"ble Supreme Court in the case of Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, wherein it is held that the Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of Courts are not to be construed as statutes. To interpret words, phrase and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

12. Mr. Vasavada has further submitted that though the period of lease expired in 1992, the applicants have filed the present application in 2004 i.e. after about 12 years. Such a belated application should not be entertained by this Court. In this connection, he relied on the decision of the Hon"ble Supreme Court in the case of Haryana State Coop. Land Development Bank Vs. Neelam, wherein it is held that it is trite that the Courts and Tribunals having plenary jurisdiction have discretionary power to grant an appropriate relief to the parties. The aim and object of the Industrial Disputes Act may be to impart social justice to the workman but the same by itself would not mean that irrespective of his conduct a workman would automatically be entitled to relief. The procedural laws like estoppel, waiver and acquiescence are equally applicable to the industrial proceedings. A person in certain situation may even be held to be bound by the doctrine of Acceptance Sub-silentio. ... The conduct of the appellant in approaching the Labour Court after more than seven years had, therefore, been considered to be a relevant factor by the Labour Court for refusing to grant any relief to her. Such a consideration on the part of the Labour Court cannot be said to be an irrelevant one. The Labour Court in the aforementioned situation cannot be said to have exercised its discretionary jurisdiction injudiciously, arbitrarily and capriciously warranting interference at the hands of the High Court in exercise of its discretionary jurisdiction under Article 226 of the Constitution. Mr.

Vasavada has, therefore, submitted that this Court should not interfere or entertain the present application which is filed after the lapse of about 12 years.

13. Mr. Pranav G. Desai, learned advocate appearing for Andhra Bank and Mrs. Poonam Mathur, learned advocate appearing for Singhi & Co. for ICICI Bank Limited have supported the stand taken by Mr. Soparkar as well as Mr. Vasavada and submitted that the present applicants do not deserve any relief in this application.

14. Mr. Ashok L. Shah, learned advocate appearing for the applicants, in rejoinder, has submitted that the reliance placed by Mr. Soparkar on the decision of House of Lords as well as the decision of the Hon"ble Supreme Court have no bearing looking to the facts of the present case. He has further submitted that in the case before the House of Lords, the clause in the Contract was enforced within the period of limitation. Lease Deed was dated 23.03.1949 and it was to expire on 24.12.1977. The lessee sought to exercise the options in December, 1979 i.e. within two years from the expiry of the lease period. In the present case, the Lease Deed expired on 13.08.1992 and Clause 9 of the Lease Deed was never enforced by the lessee. This Clause cannot be enforced now on the basis of decision of House of Lords as such exercise would be within the period of limitation. The lease agreement between the parties is a contract and such contract or its terms can be enforced within the period of three years from the date of expiry of the Contract. Since Clause 9 of the lease deed has never come into play, the Clause 11 of the Lease Deed can straightway be invoked by the applicants and the respondents are bound to hand over the possession of the properties in question to the applicants. Mr. Shah has further submitted that delay cannot be attributed to the applicants as the notice was already issued by the applicants on 15.06.1992 claiming back the possession of the properties in question on the ground of determination of the lease. The respondent has not acted in pursuant to the said notice and hence, the applicants are justified to claim the possession back. The genuineness of the letter dated 15.06.1992 cannot be doubted as the letter was issued by the applicants' advocate and the acknowledgment receipt is also shown to the Court and zerox copy thereof is placed on record. With regard to the doubt raised on the rent receipt produced by the applicants, Mr. Shah has submitted that simply because it is on the letter head of the company in liquidation, it cannot be said that the said receipt is not genuine. It was the normal practice adopted by the company to obtain the receipt of the lessor on such letter heads. The reliance placed by Mr. Soparkar on the decision of this Court in the case of *LEGAL HEIRS OF DECEASED FAKIR CHAND AMBARAM PATEL V/S. O.L. OF AMRUTA MILLS LIMITED AND OTHERS* 2002 (3) G.L.H. 367 is also uncalled for as it was the case of perpetual lease whereas in the present case, lease is of a specific period of 51 years and by no stretch of imagination, the said lease can be converted into a perpetual lease. On the contrary, the applicants' case is squarely covered by the later decision of this Court in the case of *VISVESVARAYA INDUSTRIAL RESEARCH AND DEVELOPMENT CENTRE V/S. OFFICIAL LIQUIDATOR, RUSTOM MILLS AND IND. LTD.* [2004] 50

SCL 594 (GUJ) wherein it is held that the Official Liquidator being custodia legis of the assets of the Company could not have assigned or transferred the leasehold right of the Company in the demised premises except in accordance with the terms of the lease agreement. The terms of the lease agreement clearly prohibited transfer or assignment of the leasehold right except with the express permission of the centre in writing. He has further submitted that after the lease period expired and since there was no renewal of the lease period, the lease deed does not permit the respondent Company to transfer or assign leasehold right to any one. He has, therefore, submitted that the present case is more similar to the case of VISVESVARAYA INDUSTRIAL RESEARCH AND DEVELOPMENT CENTRE rather than to the case of LEGAL HEIRS OF DECEASED FAKIR CHAND AMBARAM PATEL. He has further submitted that no delay can be attributed to the applicants as the applicants have immediately issued the notice for claiming back the possession of the properties in question. Simply because no legal action was taken by the applicants would not come in the way of the applicants to move the present application and it cannot be treated as a belated application or it is barred by period of limitation. He has, therefore, submitted that the application should be allowed in toto and the respondents be directed to hand over the vacant and peaceful possession of the land in question to the applicants.

15. After having heard learned advocates appearing for the respective parties and after having gone through the application, affidavit filed in support of the Judges' Summons and the report filed by the Official Liquidator as well as after having considered the authorities cited before the Court, the Court is of the view that the issue raised in the present application clearly rests on the interpretation of the relevant Clauses of Lease Deed dated 14.08.1942. The question that arose before the Court for its consideration is as to whether the Lease Deed in question is a lease for perpetual period or it is for a specific period of 51 years. The another question which arose before this Court's consideration is as to whether after the expiry of period of 51 years, the applicants are entitled to claim the possession of the leased properties despite the fact that option is given to the parties in clause 9 of the Lease Deed which has not been exercised. The Court is also concerned to decide as to whether Clause 9 grants to lessee a right of perpetual lease and whether it merely prescribes a mode or procedure for determination of the fair and reasonable rent after the lease period is over. Lastly, the Court is also concerned to decide as to whether the failure on the part of the lessee i.e. company in liquidation to get the lease period renewed would render itself unable to retain the possession and the Court is also concerned to decide as to whether despite issuance of notice, the failure on the part of the lessor i.e. the applicants to take any legal action would disentitle them to prefer this application claiming the possession of the premises in question from the respondents. These issues are required to be considered in light of the relevant clauses of the Lease Deed and the authorities cited before the Court.

16. There is no dispute about the fact that the lease is for the period of 51 years

and it is clearly stated in Clause 1 of the Lease Deed. The Lease Deed also prescribes the rent to be paid by the lessee to the lessor at the rate of Rs. 218/- per year and failure to make the payment of this lease rent would empower the lessor to claim interest at the rate of 6% p.a. on late payment of rent. Clause 9 makes it clear that after the expiry of period of 51 years, the lessor and lessee through their representatives each and the Sarpanch can redetermine the fair and reasonable rent and once this is done, the lessees are entitled to retain the possession of the land in question till they regularly make the payment of the lease rent to the lessors. Clause 11 stipulates that on determination of the lease, the lessee should demolish the construction at their cost and after making the land as cultivable, the possession thereof should be handed over to the lessor. Clause 14, however, makes it clear that whatever rights are given to the lessees under the Lease Deed, the said rights include right to transfer, mortgage, gift or sell the properties to any one and the same would be binding to the legal heirs and successors of the lessees and it would be binding to all. From the conjoint reading of these four clauses, it appears to the Court that the intention of the parties was not to give the properties on lease only for a period of 51 years but it was for indefinite period. It is true that the period of 51 years is prescribed in the Lease Deed. However, the said period was renewable and for that purpose, mode and procedure was prescribed for redetermination of the fair and reasonable rent. If that has not been done after the expiry of the lease period, this would not convert the lease of perpetual nature into a lease of temporary period as was observed by the House of Lords in the case of SUDBROOK TRADING ESTATE LIMITED V/S. EGGLETON AND OTHERS 1982 (3) ALL E R 1 and as approved by the Hon"ble Supreme Court in the case of SMT. CLAUDE-LILA PARULEKAR V/S. SAKAL PAPERS PVT. LTD. AND OTHERS 124 COMP CAS 685. This would lead to the next question i.e. enforceability of the contract. An attempt is made to distinguish these judgments on the ground that in the case before the House of Lords, the contract was sought to be enforced within the period of limitation whereas it has not been done so in the present case. However, the conduct of the parties itself proves that the lease was allowed to be continued even after the expiry of period of lease. Even if it is assumed that the applicants have issued the notice in 1992, the same has not been sought to be implemented. No legal action has been taken by the applicants claiming back the possession after issuance of the said notice. Doctrine of acceptance sub-silentio can certainly be presumed. A serious doubt is raised about the issuance of such notice as it has been produced for the first time along with the present application. The acknowledgment was subsequently produced when demanded. The said acknowledgment raises further doubt and suspicion as there is no postal stamp on the said acknowledgment nor the year is mentioned by the Registering authority. Even otherwise, the period between 1992 to 2004 has not been explained at all as to why no action has been taken by the applicants. The O.L. has clearly stated in his report that prior to the sale in question, advertisements appeared in the Newspaper twice. However, the applicants have never raised any objection nor approached to his office. In such a situation, the Court is very

reluctant to exercise its discretion in favour of the applicants when the claim is inordinately delayed one. The question of limitation raised by the applicants would equally apply to the applicants too as they have also not enforced the agreement within the period of limitation. Since the Court takes the view that the Lease Deed in question is the lease of perpetual nature, and leasehold right is an asset which can certainly be transferred by the O.L. in favour of the respondent No. 2 and since this action has already been taken, there is no justifiable reason to set aside the said action and to take back the possession of the properties from the respondent No. 2 and to give the same to the present applicants.

17. Considering the overall view of the matter and keeping in mind the various decisions cited before the Court, the Court does not see any justification in granting the main relief claimed by the applicants in the present Judges' Summons. The applicants are at the most entitled to the revision of rent and for that purpose, the Court hereby directs the O.L. to ascertain the factual position and to pay the rent from 1988 to 1992 at the rate of Rs. 218/- per year with 6% interest thereon and thereafter the applicants should make their claim before the O.L. for revision of the rent on the basis of the relevant materials and documents which will be considered by the O.L. and if necessary, he will place his report before the Court for finalisation of the same. Once this exercise is undertaken and the rent is redetermined, the O.L. is directed to make the payment from 1992 onwards to the date of sale to the applicants and thereafter, it is the liability of the respondent No. 2 who has purchased the land in question.

18. With the aforesaid directions and observations, the present application is accordingly disposed of without any order as to costs.

19. As soon as the judgment is pronounced, Mr. Ashok L. Shah, learned advocate appearing for the applicant prays for the stay against the implementation of this judgment. There is no stay granted by this Court during the pendency of this application and even otherwise, the applicant has prayed for the alternative relief which has been granted by this Court with certain directions. In this view of the fact, there is no merit in the request and hence, it is rejected.