
(1972) 11 DEL CK 0003
In the Delhi High Court
Case No : Second Appeal No. 25 of 1971

Saran Dass

APPELLANT

Vs

Lipton (India) Limited

RESPONDENT

Date of Decision : 16-11-1972

Acts Referred:

Citation : (1973) ILR Delhi 883

Hon'ble Judges : V.S. Deshpande, J

Bench : Single Bench

Advocate : H.R. Dhawan and Narinder Singh, for the Appellant;

Judgement

V.S. Deshpande, J.

(1) The premises were let out by the appellant landlord to the respondent tenant in 1954 for the purpose of a godown in which the tea manufactured by the respondent company is stored. In 1963 a lease deed was executed for and on behalf of the President of India in favor of the appellant landlord of the land on which the premises were situated. Condition No. 1(vi) of the lease deed is as follows:-

" NOT without the written consent of the Chief Commissioner, Delhi, to carry on or permit to be carried on, on the said land and buildings erected thereon during the said lease any trade or business whatsoever or use the same or permit the same to be used for any purpose other than of a single storeyed buildings consisting of one or two residential flats in all, with a barsati on top, as may be approved for the locality or as provided in the building already erected on the said land".

(2) The use of the premises for the purpose of a godown by the tenant continued even after the execution of the lease by the landlord in favor of the Government. By notice dated 10-11-1963, the Government informed the landlord that it had come to their notice that the premises were being used for a commercial purpose in contravention of condition No. 1(vi) of the lease deed. The Government,

Therefore, called upon the landlord to get the breach of the condition regularised within 15 days failing which the Chief Commissioner would be requested to exercise the right of re-entry into the premises as provided in clause II of the lease deed. The landlord thereupon gave a notice dated 20-7-1968 to the tenant requiring it to stop the user of the premises as a godown and also terminating the tenancy. As the user of the premises for a godown continued notwithstanding the said notice by the landlord to the tenant, the petition for eviction under clause (k) of the proviso to section 14(1) of the Delhi Rent Control Act, 1958 was filed by the landlord against the tenant. The tenant defended the petition on the ground that the landlord had himself let out the premises to the tenant for the purpose of a storage godown. The depot or godown was neither a commercial establishment or a shop. The landlord could not, Therefore, vacate the tenant.

(3) The Controller held that the requirements of clause (k) of the proviso to section 14(1) were satisfied. He further held that the question whether the premises were used as a shop or commercial establishment was not relevant for construing clause (k). He, Therefore, ordered the eviction of the tenant.

(4) The decision of the Controller was, however, reversed by the Rent Control Tribunal on the ground that the premises having been let out by the landlord expressly for the purpose of a tea godown, the landlord could not evict the tenant from the premises. The learned Tribunal does not seem to have applied its mind to the construction of the language of clause (k) of the proviso to section 14(1) of the Delhi Rent Control Act, 1958.

(5) In the second appeal by the landlord, the substantial questions of law for decision may be stated as follows:-

(1) Whether clause (k) of the proviso to section 14(1) was attracted to the facts of the present case;

(2) If so, to what relief is the landlord entitled?

(6) Clause (k) of the proviso to section 14(1) of the Delhi Rent Control Act, 1958 reads as follows:-

"14. Protection of Tenant against eviction.- (1) Notwithstanding anything to the contrary contained in any other law or contract no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favor of the landlord against a tenant: Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of the premises on one or more of the following grounds only, namely (k) that the tenant has, notwithstanding previous notice, used or dealt with the premises in a manner contrary to any condition imposed on the landlord by the Government or the Delhi Development Authority or the Municipal Corporation of Delhi while giving him a lease of the land on which the premises are situate".

THE requirements of clause (k) may be analysed as follows:- (1) The user of the premises by the tenant should be contrary to a condition imposed on the landlord

by the Government. (2) Such user must continue even after a notice to discontinue the same is given by the landlord. (3) The condition which is contravened by the user of the tenant should be one which is imposed on the landlord by the Government "while giving him a lease of the land on which the premises are situate".

(7) Let us examine if these requirements are satisfied in the present case. The tenancy was given to the tenant by the landlord in 1954. It is not definitely known whether in 1954 also the terms of any lease held by the landlord from the Government prohibited the user of the premises for the purpose of a , The Rent Control Tribunal has imagined that there must have been such a prohibition after drawing an adverse inference against the landlord for the nonproduction of the document on which the land had been leased t" him by the Government. We may, Therefore, examine two hypotheses:-

(A)In 1954 there was no prohibition by the Government against the user of the premises for a non-residential purpose; and

(B)There was such a prohibition even in 1954.

Under the first hypothesis, the user of the premises by the tenant till 1963 when the prohibition was first imposed on the landlord by the Government was unobjectionable. Learned counsel for the tenant respondent argues that clause (k) would apply only if the condition prohibiting a particular user of the premises is imposed on the landlord by the Government in the very first lease granted to the landlord by the Government. For, ordinarily no landlord would construct premises on land unless he has already obtained a lease of it from the superior landlord. While in practice this may be generally so, there is no rule of law to that effect. Premises may be constructed on a piece of land by a grantee from the Government even though the lease has not been granted in his favor. Further, it is not uncommon that leases are given for a limited period and are succeeded by fresh leases after the expiry of that period. Therefore, even if the prohibition was not contained in the first grant or lease it could be contained in the next grant or lease. The question for consideration is whether the language of clause (k) would be attracted even if the prohibition is contained in a lease which was given after the tenancy between the landlord and the present tenant commenced. As I read the language of clause (k), it is applicable not only when the prohibition was contained in the original lease or grant but also contained in a subsequent lease or grant. All that is necessary is that the user of the premises contrary to the condition should continue after the prohibition is imposed and the condition should be imposed by the Government while granting the lease of the land to the landlord. On the first hypothesis, Therefore, the requirements of clause (k) are satisfied.

(8) On the second hypothesis, the prohibition was already there in 1954 as held by the Tribunal. If so, there can be no doubt that the requirements of clause (k) would be attracted inasmuch as the user of the premises by the tenant was

contrary to the condition right from the inception.

(9) There is no dispute that the landlord gave notice to the tenant asking it to discontinue the user of the premises as a godown.

(10) The learned counsel for the tenant then contended that the premises were not being used contrary to the condition. The condition is that the premises should not be used either for trade or business or for any purpose other than that of two residential flats. Learned counsel contends that the storage of tea in a godown does not amount to carrying on a trade or business. I am unable to agree. the godown. Nevertheless the premises must be said to be used for the purpose of trade or "business which consists of the whole process of manufacturing the tea, stocking it in a godown and ultimately selling it to customers. The words "trade or business" are used in a wide sense in condition No. I(vi) of the lease. The respondent company certainly carries on business. The storing of tea in the premises is a part of their trade or business. The learned counsel for the respondent relied on *Ram Chander Baru Ram Vs. The State*, . But the Controller rightly held that the question whether the premises were used as a shop or establishment within the meaning of a statute such as "Punjab Shops and Commercial Establishments Act, 1958" or statutes in other States which are *pari materia* to the same was irrelevant for the purpose of the present case. For the contravention of the lease it was not necessary that the premises should be used as a shop or commercial establishment within the meaning of the said statutes. I am of the view, Therefore, that keeping of a tea godown in the premises amounted to carrying on trade or business therein.

(11) Alternatively, the premises were not to be used for any purpose other than that of one or two residential flats. The expression "residential flats" is not used in the architectural sense to denote the design of the premises. On the contrary, it was used to denote the purpose for which the premises are to be used. It is not disputed that the premises are not being used for the purposes or residence. Even if the premises are, Therefore, constructed as a residential flat, the condition would be contravened if they are not used as such. By the use of the premises for the purpose of a godown, the condition is contravened inasmuch as it is being used for a purpose other than the purpose of residence.

(12) The lease was executed by the landlord in favor of the Government in 1963. Before that, the Master Plan for the planned development of Delhi had already come into force from 1st September 1962 under the Delhi Development Act. 1957. The document of lease is a cyclostyled one showing that the terms and conditions of these leases were standardised by the Government. The Government is not a private person. The conditions imposed by the Government are apparently, Therefore, in pursuance of a public policy. The policy regarding the user of land in Delhi in the various use zones was already formulated in the Master Plan for Delhi. As this plan came into force with the sanction of the Government it would not be unreasonable to presume that any lease granted by the Government after the promulgation of the Master Plan would be in

accordance with the Master Plan. The condition that the premises to be built on the land were not to be used for a purpose other than that of a residential flat was, Therefore, apparently imposed in pursuance of a public policy. That being the case, it was not open to the landlord and the tenant to enter into an agreement to contravene the said public policy. Ordinarily, a landlord who lets out the premises to the tenant for a certain purpose would be estopped from complaining against the user of the premises by the tenant for the same purpose. But this is not a matter of contract between the landlord and the tenant alone. In fact, clause (k) has been enacted to serve the purpose of the Government and not of the landlord at all. It was because the Government is not a party to the contract between the landlord and the tenant that the statutory remedy had to be provided by clause (k). The landlord acting under clause (k) is not acting to serve any interest of his. His interest is, on the contrary, the same as that of the tenant. For, the landlord has already agreed for the user of the premises by the tenant and would like to continue the lease because he is getting rent. But such an agreement between the landlord and the tenant is irrelevant inasmuch as it is the interest of the Government which is to be safeguarded under clause(k). In *Ram Rattan Bhanot v. Faqir Chand*, ILR(1972) 1 Delhi 408, a Division Bench of this Court has fully considered the question and come to the conclusion that in such a case, the landlord is not estopped from evicting the tenant. I, Therefore, hold that the landlord is entitled to evict the tenant under clause (k) of the proviso to section 14(1).

(13) Under sub-section (11) of section 14, the tenant is given time of three months to comply with the condition contained in clause 1(vi) of the lease. If the tenant complies with the said condition then it shall not be evicted from the premises. In clause Iii of the lease deed the permission of the Chief Commissioner is necessary before the lease of the landlord is forfeited or re-entry is effected on the land by the Government. If the breach of the condition consisting in the user of the premises for a non-residential purpose is capable of being remedied and the landlord fails within reasonable time to remedy the same and the Government exercises the right of forfeiture or re-entry, the Chief Commissioner has discretion to relieve the landlord against forfeiture on such terms and conditions as he thinks proper. Conceivably, such terms and conditions may include acceptance of compensation by the Government from the landlord. I shall say nothing about it as that part of the lease is still to come into operation and it is not necessary to decide in the present case, any action which the Government may take against the landlord under that part of the lease. But subsection (11) of section 14 contemplates payment of compensation by the tenant to the authority (the Government in the present case) which may be fixed by the Controller. In *Ram Rattan Bhanot's* case it was held that insofar as the user was contrary to the Master Plan, it would be contrary to section 14 of the Delhi Development Act, 1957. The said Act did not provide for payment of compensation to continue the user contrary to section 14. If the Controller were to fix compensation payable by the tenant to the Government, the provisions of

section 14 of the Delhi Development Act, 1957 would be contravened. In the present case, however, there is neither any pleading nor any evidence that the premises are situated in an use zone which is declared to be exclusively residential by the Master Plan. Nor has the Master Plan been produced before me to show that the premises are situated in a residential use zone. The question, Therefore, whether the Controller should fix any compensation for payment by the tenant to the Government is left open in the present case. It may be decided by the Controller if and when the occasion arises in accordance with the law laid down in Ram Rattan Bhanot's case.

(14) The appeal is, Therefore, accepted. The order of the Rent Control Tribunal is set aside and the Controller is directed either to pass an order for eviction against the tenant or an order for payment of compensation to the Government by him under sub-section (11) of section 14 of the Delhi Rent Control Act, 1958 if the tenant does not desist from user of the premises for non-residential purpose within three months from today. In the circumstances, costs of this appeal shall be borne by the parties as incurred.

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