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**(1992) 09 OHC CK 0024**  
**In the Orissa High Court**  
**Case No : O.J.C. No. 1215 of 1986**

Shankarlal Verma and Others

APPELLANT

Vs

Smt. Uma Sahu and Others

RESPONDENT

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**Date of Decision :** 25-09-1992

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

**Citation :** (1993) 75 CLT 621 : (1993) 1 OLR 187

**Hon'ble Judges :** S.K. Mohanty, J;L. Rath, J

**Bench :** Division Bench

**Advocate :** M.N. Das and H.N. Das, for the Appellant; S.P. Mishra, S. Latif, A.K. Mishra and A.R. Das (for opp. party No. 1), Additional Government Advocate (for opp. parties 2 and 3) and R.K. Nayak, (for opp. party No. 4), for the Respondent

**Final Decision :** Dismissed

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## Judgement

S.K. Mohanty, J.—Petitioners and opposite parties are heirs of one Satyanarayan Verma and Krushna Chandra Sahoo respectively. Krushna Chandra initiated eviction proceeding bearing No. 82 of 19,76 against Satyanarayan from a shop room in Balu Bazar in the city of Cuttack u/s 7 of the Orissa House Rent Control Act, 1967 on the ground of wilful default in payment of rent and bona fide requirement of the same by Krushna Chandra. The House Rent Controller allowed the prayer for eviction on the ground of bona fide requirement only. In appeal the Chief Judicial Magistrate, Cuttack confirmed the order of conviction on both the grounds. Being dissatisfied the heirs of Satyanarayan have invoked the writ jurisdiction of this Court to quash the order of eviction.

2. The shop room in question stands on 2 .decimals of Khasmahal land which forms part of Ac. 1,825 decimals of lease-hold area of deity Binod Bihari Thakur taken lease from the Khasmahal authorities by Registered lease deed dated 25-2-1952. The lease was to enure till 31-3-1973 with a right of renewal thereafter by one or more leases at intervals of 30 years. Krushna Chandra as a sub-lessee under the deity Binod Bihari Thakur came into possession of the shop

room which bears holding No. 135 in Ward No. 9 of Cuttack Municipality and inducted Satya Narayan Verma as a tenant in the year 1954. Satya Narayan was possessing the shop room since then paying rent. In the eviction proceeding Krushna Chandra alleged that Satya Narayan had not paid rent since 1970 in spite of repeated demands and had thereby wilfully defaulted. The other ground of bona fide requirement was to employ three major sons of Krushna Chandra in business. The House Bent Controller did not accept the case of wilful default, but allowed the prayer for eviction on the ground of bona fide requirement. The Learned Appellate Court confirmed the finding of the trial Court on the point of bona fide requirement and accepted the case of Krushna Chandra that Satyanarayan was an wilful defaulter.

3. Impugned orders are attacked before us on the sole ground that the term of lease in favour of deity Binod Bihari having expired, the property belonged to the State Government and therefore, the eviction proceeding at the instance of Krushna Chandra the sub-lessee could not be maintained. Indisputably, a sub-lessee cannot have better right than the lessee. In the facts of the case therefore, the moot question for determination is whether the lease in favour of the deity Binod Bihari stood determined after 31-3-1973. For deciding this question, it is first necessary to know the incidents of a Khasmahal lease.

4. Law is well-settled that Interest of a lessee in a Khasmahal land is both hereditary and transferable. His rights are similar to those of owner of a private land. His interest is regulated by the terms of lease between him and the Khasmahal authorities and the parties to the lease are governed by the provisions of the Transfer of Property Act. It has been so stated in *Janab Jahada Begum Sahib v. State of Orissa* : 23 (1962)CLT 209 and in *Republic of India v. Prafulla Kumar Samal* : ILR 1976 CS 1392.

5. Now the relevant term of the lease deed dated 25-2-1952 annexed as Annexure-1 to the writ application may be examined. In the opening words it is stated that on the application of the lessee, the lessor agreed to lease out the land from the date of execution of the lease till 31st March, 1973, the lease being renewable thereafter in accordance with the conditions mentioned in the deed.

Clause 15 of Annexure-1 specifically conferred a right of renewal on the lessee. It provides that on expiry of the term of lease, the lessee shall, if he has duly observed all the conditions of lease, be entitled to renewal by one or more leases at intervals of 30 years. In other words, in the matter of renewal option lay with the lessee and not with the Khasmahal authorities. Such authorities cannot deny the right of renewal to the lessee if he opts in favour of taking renewal.

Clause 12 contains a provision relating to determination of lease. It provides that if before expiry of lease, the Government desired resumption of the demised land for public purpose and the Collector gave notice to the lessee to this effect, the lease shall be deemed to have been determined on the expiry of the term of

notice. Clause 16 provides that for breach of certain conditions the lessee may re-enter upon the demised premises and may determine the lease and upon notice to quit and deliver up possession of the land, the lessee shall do so forthwith. Thus only on happening of above two events the lease could be determined. The deed does not provide anywhere that upon expiry of the term, the lease shall stand determined. In fact there could not be such a provision because of the specific clause relating to renewal.

6. The document of lease does not provide that the lessee has to apply for renewal of the lease before expiry of the term. Consequently even if the renewal is prayed for after expiry of the term the lessee cannot deny renewal with retrospective effect. If the lessee being entitled to renewal refuses to apply for renewal, then the only course open to the Khasmahal authorities to resume with consent of the lessee and take possession. If the lessee does not consent resumption and does not give back possession, the only course open to the Khasmahal authorities to take possession is through process of the Civil Court as provided in Rule 20 of Chapter 1 of the Bihar and Orissa Government Estates Manual, 1919.

7. Now the facts of the case may be examined in the light of above position of law. It is not the case of the petitioner that after expiry of the term of lease, deity Binod Bihari has not prayed for renewal or has refused to take renewal for a further period or has consented to part with possession in favour of the Khasmahal authorities. Therefore, it cannot be said that merely because the term of lease has expired the lessee does not have subsisting title over the land in question. Lease of immovable property is transfer of right to enjoy such property. The Khasmahal authorities had transferred this right in favour of the deity of course for a specific period. Even after expiry of the specific period, the lessee's right to renewal subsisted and the right to possession continued till evicted through process of Civil Court in case he has refused to take renewal for a further period. It is not disputed that Krushna Chandra as sub-lessee had the right to transfer actual possession of the shop room in question to the ancestor of petitioners on monthly rent. In the facts of the case, therefore, it cannot be said that the relationship of landlord and tenant between the parties did not subsist after expiry of the term of the Khasmahal lease.

8. Before concluding we may briefly refer some of the decisions cited by the learned counsel for the petitioners in support of the stand that a tenant can resist eviction by raising a plea that his landlord's title has been extinguished subsequent to the commencement of his tenancy. There can be no quarrel over this proposition of law. The facts of those cases are entirely different from the facts before us as will be apparent from following discussions.

In *Krupasinghu Routra and Another Vs. Purna Chandra Misra and Others*, plaintiff's prayer for eviction of defendant No. 1 was resisted by the latter on the ground that he had acquired paramount title to the suit house by purchase under Registered sale deed and the question of paramount title was specifically put in

issue. This Court directed re-hearing of the matter and decision of the issue with the observation that tenant can resist eviction raising a plea that his landlord's title has come to an end or has been extinguished subsequent to commencement of tenancy.

In *Smt. Shanti Devi v. Amal Kumar Banerjea* ; AIR 1981 SC 1550, a cinema theatre was demised for a term of four years with option on the part of the lessee with a covenant of two renewals of three years each. The agreement of lease provided that at the expiration of the renewed term, if any, the lease shall peaceably and quietly deliver possession of the cinema theatre to the lessor. The suit for ejectment was brought after completion of 10 years. In this background it was held that there being no plea of holding over, the matter falls to be governed by Section 111(a) of the Transfer of Property Act and the period of lease having expired by the date of suit, the relationship of landlord and tenant had ceased and the defendant had become a trespasser.

In *M. Hamid Ahmed v. Guhamani Behera* : 35 (1969) CLT 580 the suit was for realisation of arrear house rent in respect of a house standing on Khasmahal land. Before institution of the suit, the lease had been resumed. In such facts it was held that the title of the plaintiff extinguished by resumption subsequent to the commencement of the tenancy and therefore, the plaintiff's suit for recovery of rent must fail.

In *Sri Vidya Sagar Vs. Smt. Sudesh Kumari and Others*, , decree obtained prior to enforcement of U. P. Zamindari Abolition and Land Reforms Act was held to be incapable of execution for obtaining possession after enforcement of the Act.

9. In the light of the discussions in the foregoing paragraphs.. the irresistible conclusion is that despite expiry of the term of lease in favour of the deity, Krishna Chandra continued to be the landlord in respect of the shop room and his prayer for eviction of Satya Narayana was maintainable. Thus, the writ application is devoid of any merit and the same is therefore dismissed. There shall be no order as to costs.

L. Rath, J.

10. I agree.