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(1995) 07 DEL CK 0049

In the Delhi High Court

Case No : Regular First Appeal No. 557 of 1989

Shyam Kishore — APPELLANT

Vs

Union of India and Others — RESPONDENT

Date of Decision : 01-07-1995

Acts Referred:
Constitution of India, 1950 — Article 299
Delhi Rent Control Act, 1958 — Section 14(1)
Penal Code, 1860 (IPC) — Section 105
Transfer of Property Act, 1882 — Section 105

Citation : (1995) 3 AD 338 : (1995) 59 DLT 416 : (1995) RLR 480

Hon'ble Judges : R.C. Lahoti, J;Manmohan Sarin, J

Bench : Division Bench

Advocate : R.K. Anand, S.K. Kalia, Arun Birbal and D.K. Sharma, for the Appellant;

Judgement

R.C. Lahoti, J.

(1) plaintiffs have come up in appeal feeling aggrieved by the judgment and decree dated 4.8.1989 of the Addl District Judge Delhi directing a suit for recovery of mesne profits and possession over Flat No. 303, Ii Floor, Rohit House, Tolstoy Marg, New Delhi to be dismissed.

(2) Undisputedly, the suit property is owned by the plaintiffs. In the beginning'' of July, 1993, then the Regional Iron and Steel Controller, approached the plaintiff No. I for securing on lease the flat in suit for the use of the office of defendant No. 2. Rent at the rate of Rs. 2.60 per sq ft plus 10 paise per sq feet for lift service charges was agreed upon. Keys of the flat were handed over to defendant No. 2 on 3.7.93. Thereafter rent was paid to the plaintiff from month to month. Last such payment was made for the month of March, 1987. However, no written deed of lease was executed between the plaintiffs and the Union of India.

(3) According to the plaintiffs, no deed of lease having been executed between

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the parties in accordance with and in conformity with Article 299 of the Constitution of India there is no deed of lease valid and enforceable existing between the parties and hence there is no relationship of landlord and tenant created. The appellants are, Therefore, entitled to recovery of possession and mesne profits for use and occupation of the premises by the defendants, the same having been demanded by legal notice served before the institution of the suit.

(4) According to the defendants, the suit for recovery of possession and mesne profits is not maintainable inasmuch as landlord tenant relationship exists between the parties and only remedy of the appellant was to sue for recovery of possession and mesne profits by having recourse to landlord-tenant relationship only. Three factors arc relied on by the defendants in support of landlord-tenant relationship existing between the parties. Firstly, there was payment and acceptance of rent spread over a length of time which impliedly created landlord-tenant relationship. Secondly, the defendant No. 2 was acting in discharge of his official duties for and on behalf of defendant No. I while securing the suit premises on rent. Only a formal document of lease deed in the prescribed form had remained to be executed. A proforma thereof was sent to the plaintiff for being returned duly signed by them but the plaintiffs malafidely failed to execute the same. An ex post fac to sanction was granted by the President of India vide order dated 4.9.93 which validates the creation of tenancy between the parties. Thirdly, prior to the institution of the suit the plaintiff had filed a petition u/s 14(1)(a) of the Delhi Rent Control Act and that petition was dismissed after giving benefit u/s 14(2) of the Act to the defendant.

(5) The Trial Court has held landlord-tenant relationship between the parties having been brought into being and hence dismissed the suit.

(6) Having heard the learned Counsel for the parties we are of the opinion that the appeal deserves to be allowed and the judgment and decree passed by the Trial Court deserve to be set aside.

(7) Article 299(1) of the Constitution of India provides that all contracts made in the exercise of executive power of the Union shall be expressed to be made by the President and shall be executed on behalf of the President by such person and in such manner as he may direct or authorise. The leading authorities on the point are the The State of Bihar Vs. Karam Chand Thapar and Brothers Ltd., , Seth Bikhraj Jaipuria Vs. Union of India (UOI), ; State of West Bengal Vs. B.K. Mondal and Sons, , K.P. Chaudhary v .State of M.P., (verify the name of the party) Air 1967 Sc 202 and Mulamchand Vs. State of Madhya Pradesh, . All these authorities have been noticed in The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others, . Their Lordships have held -

"THE provisions of Article 299 of the Constitution which are mandatory in character require that a contract made in the exercise of the executive power of the Union or of a State must satisfy three conditions, viz., (i) it must be

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expressed to be made by the President or by the Governor of the State as the case may be; (ii) it must be executed on behalf of the President or the Governor, as the case may be and (iii) its execution must be by such person and in such manner as the President or Governor may direct or authorise. Failure to comply with these conditions nullifies the contract and renders it void and unenforceable. There is no question of estoppel or ratification in a case where there is contravention of the provisions of Art. 299(1) of the Constitution."

(8) In K.P. Chaudhry''s case (supra) their Lordships have ruled out the relationship being worked out on assumption of implied contract when the contract was in violation of the mandatory provisions of Art. 299(1) of the Constitution. In Mulamchand''s case (supra) Their Lordships have held that there was no question of estoppel or ratification in a case where there was transgression of the provisions of Art. 299(1) because the provision were not enacted for the sake of mere form but they have been enacted for safeguarding the Govt. against unauthorised contracts on the ground of public policy and so the formalities cannot be waived or dispensed with.

(9) There are at least three cases available wherein the above said principles have been applied by the Courts for judging whether the landlord-tenant relationship could be spelled out between the parties from the correspondence, payment and acceptance of rent or other incidental circumstances if the same was not brought into existence by a contract in conformity with Art. 299(1).

(10) In Dr. H.S. Rikhy and Others Vs. The New Delhi Municipal Committee, , the appellant was inducted into the premises as a tenant by the Ndmc but there was no contract in writing between the parties in conformity with Section 47 of the Punjab Municipal Act, 1911. Section 47 provided for an instrument in writing executed by the President or Vice President and at least two other Members of the Committee, and the execution by them to be attested by the Secretary. If these conditions arc not fulfill led the con tract shall not be binding on the Committee. Their Lordships held the provisions of Section 47 to be mandatory and not merely directory and observed :-

"WHERE the statute thus makes it obligatory that there should be a contract in writing and duly executed by the persons authorised by the Act to do so, the absence of such a contract cannot be cured by the mere receipt of rent from the occupiers of the shops owned by the Municipality. There being thus no relationship of landlord and tenant between the Municipal Committee and the occupiers of shops in Municipal Market, the occupiers having been allotted shops on the acceptance of their tenders the Delhi and Ajmer Rent Control Act, 1952, does not apply and the application of the said occupier u/s 8 of the Rent Control Act for the fixation of the standard rent is incompetent."

(11) Their Lordships have further held in the above case that the use of the term rent in receipts passed by the Municipality to the occupier of the shops could not preclude the landlord from pleading that there was no relationship of landlord

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and tenant between the parties. The question depended upon whether or not there was a relationship of landlord and tenant in the sense of transfer of interest by the landlord in favor of the tenant which transfer could not take place in the absence of a contract in confirmity with Art. 299(1) of the Constitution.

(12) The above said decision was followed by the Delhi High Court in Rupinder Singh v. 1101, Suit No. 180/83 decided on 20.4.87. It was held that issuan,ce of rent receipts by the plaintiff was not decisive of the question as to whether the relationship of landlord and tenant had come into existence or not. It was further held: " A valid agreement between the Government and another party can only be if the terms of Article 299 have been complied with. In the absence of compliance of Article 299 the relationship of landlord and tenant did not come into existence, notwithstanding what was paid to the plaintiff was termed as rent."

(13) In Rawat Hardeo Singh Vs. State of Rajasthan, suit was filed for ejectment and recovery of arrears of rent based on landlord and tenant relationship which was admitted in the written statement. However, the contract of tenancy was held to be void on account of non-compliance with the provisions of Art 299 of the Constitution. It was held that the landlord-tenant relationship between the parties could not be given effect to but the plaintiff was entitled to restitution of the possession of the property in dispute on account of the absence of a valid contract between the parties creating the relationship of landlord-tenant whereunder the defendant had secured possession of the premises.

(14) The so-called ex post facto sanction dated 1.9.1994 is not available on record. The defendant has not adduced any evidence and certainly not placed on record the letter dated 4.9.93 so as to uphold the plea of ex post facto sanction. We need not go into the question whether the ex post facto sanction could have validated an agreement which was in violation of Article 299(1).

(15) The institution of proceedings u/s 14(1)((b) of Delhi Rent Control Act also does not carry the defendant anywhere inasmuch as the same were dismissed though by giving benefit of Section 14(2) of the Delhi Rent Control Act to the defendant. We are positively of the opinion that the proceedings were totally misconceived as there was no relationship of landlord and tenant legally brought into being between the parties.

(16) The only question that remains to be examined is whether a contract of tenancy could be spelt out between the parties from the correspondence which had taken place between them. A draft of lease deed was sent to the plaintiff by Mr M.C. Tandon, the then Regional Iron & Steel Controller. The draft lease deed was returned by the plaintiff as they wanted a variation of the terms of the lease. The fact remains that it was not signed by the parties.

(17) A contract could be spelt out by correspondence between the parties though one of the parties is State, but the correspondence has also to satisfy the requirement of Article 299(1).

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(18) In State of Punjab and Others Vs. Om Parkash Baldev Krishan, , a tender of the contract was accepted by the Executive Engineer and letter of acceptance was signed by the Executive Engineer but it was not in the name of the Governor. It was held :

"IT could not be said that there was a valid contract in conformity with Art. 299(1) of the Constitution."

"THE plea that once authority of the Executive Engineer to accept the tender on behalf of Governor was established and it was made clear from the evidence that the authorities have acted on that basis, then it must be presumed that the contract had been entered into in accordance with the provisions of Art. 299 of the Constitution would not be tenable."

(19) In Dulichand Agarwal Vs. State of M.P. and others, , the Division Bench was faced with a case of contract by correspondence and its validity when one of the contracting party was the State. Chief Justice G.P. Singh, speaking for the Bench held:-

"ARTICLE 299(1) of the Constitution lays down that to comply with the requirements the contract (1) must be expressed to be made by the President or the Governor, as the case may, (2) it must be executed, and (3) it must be executed by such person and in such manner as the President or the Governor as the case may be, direct or authorise. It is not necessary that there should be a deed or a formal contract. But even when a contract comes into existence by correspondence or by acceptance of tender, the aforesaid three conditions have to be satisfied. Therefore, a tender made in pursuance of an invitation issued by or on behalf of the Governor and acceptance in writing of the tender made in the name of the Governor and executed on his behalf by a person authorised may be sufficient to constitute a valid contract. But a contract by correspondence or by acceptance of tender which is not expressed to be made by the Governor and which is not executed by a person authorised by him cannot meet the requirements of Article 299." Where the contract was accepted by Divisional Forest Officer, and it was not shown that he was competent to accept, the bid in the name of the Governor, no valid contract came into existence."

(20) The defendant has brought absolutely no material on record enabling the Court to infer and hold that any of the two defendants was authorised by the President to enter into the correspondence. None of the letters by the defendants expresses itself to have been written by any of the two defendants on behalf of the President.

(21) For the foregoing reasons it is held that no landlord-tenant relationship came into being between the parties. Finding to the contrary recorded by the Trial Court is based on ignorance of the rigour of the mandatory provisions Art. 299(1) of the Constitution and hence is liable to be set aside.

(22) The learned Counsel for the defendants has placed reliance on Davecos

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Garments Factory and Another Vs. State of Rajasthan, , to submit that if a Government officer signs the agreement without staling that the agreement was executed on behalf of the Governor, it was sufficient compliance with the requirement of Section 299(1). It is submitted by him that defendant Nos. 2 and 3 had no personal interest in the tenancy and all the acts which they were doing were on behalf of the Uoi, for its benefit and so in the correspondence which they were entering into in their official capacity even if on behalf of the President'' was not mentioned while the authority to enter into the contract was established, the correspondence spells out a valid and binding contract.

(23) The decision is clearly distinguishable. There the contract was accepted by Inspector-General of Police, Rajasthan, Jaipur. Vide para 4 Their Lordships have noticed that it was common ground that the agreement was expressed to be made by the Governor of the State of Rajasthan who was to be called the Governor and that the Inspector-General of Police had been duly authorised to execute the same on his behalf. The sole objection taken was to the form of execution inasmuch as it was not stated in so many words that Igp had signed the agreement on behalf of the Governor. It is clear that such is not the case it hand. Reliance on the decision in Davecos Gannents Factories case is misconceived.

(24) Inasmuch as there is no relationship of landlord and tenant between the parties, the defendant cannot resist the plaintiff''s prayer for recovery of vacant possession over the suit premises. The plaintiff is entitled to the relief of vacant possession.

(25) The learned Counsel for the appellants submitted that in addition to the decree for recovery of possession, the appellants are entitled to the relief of future mesne profit from date of institution of the suit though such a relief has not been specifically asked for. A perusal of the plaint shows that the appellants have asked for a decree for mesne profits up to the date of the suit only. The suit is for possession of the property. Order 20 Rule 12 CPC provides as under :

"12(1)Where a suit is for the recovery of possession of immovable property and for rent for mesne profits, the Court may pass a decree- (a) for the possession of the property; [(b) for the rents which have accrued on the property during the period prior to the institution of the suit or directing an inquiry as to such rent; (ba) for the mesne profits or directing an inquiry as to such mesne profits;] (c) directing an inquiry as to rent or mesne profits from the institution of the suit until- (i) the delivery of possession to the decree holder (ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court, or (iii) the expiration of three years from the date of the decree, whichever event first occurs. It is well settled with the pronouncement of the Supreme Court in Bhagwati Prasad Vs. Shri Chandramaul, , and R.S. Madanappa and Others Vs. Chandramma and Another, that mesne profits prior to the date of the suit cannot be awarded to a successful party unless a claim was made but as regards mesne profits subsequent to the date of the suit, i.e. future mesne

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profits, the decision is governed by Order 20 Rule 12 CPC. The Trial Court has not recorded any finding on the quantum of the mesne profits to which the appellants would have been entitled in the event of the suit being decreed. It will Therefore be appropriate to leave the amount of mesne profits to be determined by holding an enquiry under Order 20 Rule 12 CPC.

(26) For the foregoing reasons the appeal is allowed. The judgment and decree of the Trial Court are set aside. The suit filed by the plaintiffs is decreed in the following terms:

(1)The defendant shall deliver vacant possession of Flat No. 303,3rd floor Rohit House, Tolstoy Marg, New Delhi to the plaintiffs-appellants. (2) The plaintiff shall be entitled to the mesne profits for use and occupation by the defendants of the suit premises w.e.f. 1.4.1987 till the date of delivery of possession or till expiration of three years from the date of decree whichever is earlier. "The Trial Court shall hold an enquiry into the amount of mesne profits which the defendants are liable to pay to the plaintiffs-appellants. (3) plaintiffs shall be entitled to costs incurred in both the Courts from the defendants. (4) The defendants are allowed time till 31.12.1995 for vacating the premises and the decree for recovery of possession shall not be available for execution till 31.12.1995. Let a decree be drawn accordingly.

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