
(1961) 03 PAT CK 0003

In the Patna High Court

Case No : Misc. Judicial Case No. 282 of 1959 with A.F.A.D. No. 1018 of 1958

Smt. Jugal Kishori Devi and Others

APPELLANT

Vs

Ashok Mills and Foundries and Others

RESPONDENT

Date of Decision : 14-03-1961

Acts Referred:

Transfer of Property Act, 1882 — Section 105

Citation : AIR 1961 Patna 330

Hon'ble Judges : V. Ramaswami, C.J;N.L. Untwalia, J

Bench : Division Bench

Advocate : P.R. Das and A.N. Chatterji, in M.J.C. No. 282 of 1959 and S.N. Datta, Ram Nandan Sahai Sinha and Brij Kishore Prasad, in S.A. No. 1018 of 1958, for the Appellant; A.G., Government Advocate and Govt. Pleader and Ramnandan Sahai Sinha and Ramnandan Singh and Ram Nandan Prasad, No. 1 in M.J.C. No. 282 of 1959 and P.R. Das and A.N. Chatterji, In S.A. No. 1018 of 1958, for the Respondent

Judgement

1. In Miscellaneous Judicial Case No. 282 of 1959 respondent No. 1 took a registered lease from Sri Guru Prasad Singh of certain property comprising holding No. 30 of Ward No. 7 of the Dinapur Nizamat Municipality on the 16th of January, 1948, for a period of thirty years. On the 16th of May, 1953, Guru Prasad Singh made a gift of the property to the Petitioners and notice of the gift was sent to respondent No. 1. Subsequently, in the year 1956, respondent No. 1 made an application for fixation of fair rent u/s 5 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, Bihar Act III of 1947.

On the 24th of January, 1957, the Controller dismissed the application on the ground that the lease was governed not by the Provisions of Bihar Act III of 1947, but by the Transfer of Property Act, Respondent No. 1 took the matter in appeal to the Collector, and the appeal was dismissed on the 4th of December, 1958. Respondent No. 1 took the matter in revision to the Commissioner who reversed the decision of the Collector and held that the lease was governed by Bihar Act III of 1947, and the matter was remanded to the Controller for fixation

of fair rent. The order of the Commissioner is dated the 4th of March, 1959. Against this order the petitioners have moved the High Court for grant of a writ in the nature of certiorari under Article 226 of the Constitution.

2. With regard to the same lease the Petitioners instituted a Money Suit, namely Suit No. 79 of 1956, against respondent No. 1 for recovery of arrears of rent. The suit was contested by the respondent on the ground that no fair rent had been fixed. But the learned Subordinate Judge overruled the contention of the defendants and held that the case was not governed by Bihar Act III of 1947, but by the Transfer of Property Act. In this view the Subordinate Judge granted a decree to the plaintiffs for arrears of rent. An appeal against the decree was dismissed by the Additional District Judge of Patna. The defendants to the suit have presented Second Appeal No. 1018 of 1958, against the decision of the Additional District Judge of Patna.

3. In Miscellaneous Judicial Case No, 282 of 1959 and Second Appeal No. 1018 of 1958, therefore, the same question of law arises for determination, namely, whether the lease executed by Guru Prasad Singh in favour of respondent No. 1, dated the 16th of January, 1948, is governed by the provisions of Bihar Act III of 1947 or whether the lease is governed by the provisions of the Transfer of Property Act.

4. It is necessary at this stage to set out the relevant provisions of Bihar Act III of 1947. The Act is entitled :--

"An act to regulate the letting of buildings and the rent of such buildings and to prevent unreasonable eviction of tenants therefrom in the Province of Bihar."

The preamble of this Act states as follows:-

"Whereas it is expedient to regulate the letting of buildings, to control the rent of such buildings and to prevent unreasonable eviction of tenants therefrom in the Province of Bihar;

It is hereby enacted as follows:-

x x x x x"

Section 2 (aa) of the Act defines the expression "building" to mean --

"any building or hut or part of a building or hut, let or to be let separately for residential or non-residential purposes, and includes --

(i) the garden, grounds and out-houses, if any, appurtenant to such building or hut or Part of such building or hut; and

(ii) any furniture supplied by the landlord for use in such building or hut or part of a building or hut."

The provisions of the lease dated the 16th of January, 1948, which is the subject-matter of a controversy in the present case, are set out in Annexure A to the

application at Page 10 of the paperbook. Paragraph 1 of the lease states that --

"In consideration of the rent hereinafter reserved and the covenants on the part of the Lessees hereinafter contained in the document the lessor hereby demises to the Lessees for the Purpose of building factory and other buildings and using the same for lessees" own business only all that land described in the Schedule hereto together with all buildings standing thereon and all easements and appurtenances whatsoever being or any way appertaining thereto to hold the said premises to the Lessees from the 1st day of March, 1948, for the term of thirty years Paying therefore the monthly rent as follows:

During the year ending with February of 1949 at the rate of Rs. 110/- per month.

During the years ending with February of 1950 and 1951 at the rate of Rs. 115/- per month.

During the years ending with February of 1952 to 1955 at the rate of Rs. 125/- Per month.

During the years ending with February of 1956 to 1958, at the rate of Rs. 145/- per month.

During the years ending with February of 1959 to 1968 at the rate of Rs. 156/- per month."

During the years ending with February of 1969 to 1978 at the rate of Rs. 168/- per month."

Paragraph 2 (b) of the lease gives

"right to the lessee to erect upon the demised premises in substantial and workmanlike manner factory and other houses with necessary outhouses, boundary walls, drains, garages etc. as the lessees may think fit."

Paragraph 2 (e) stipulates that the lessees at the

"expiration of the said term or sooner thereof peacefully and quietly surrender to the lessor the said land and other buildings now existing thereon after removing any constructions or erections made by them thereon unless the lessor shall express his willingness to purchase the same at a valuation to be made by mutual consent."

The Schedule to the lease describes the Property leased and states as follows:-

"All that pieces and parcels of land bearing Holding No. 30 in ward No. 7 in Mahal No. 1 of Dinapore Nizamat Municipal area in the town of Dinapore, Thana Sub-registry and Sub-division Dinapore in the District of Patna except portions out of the same specifically mentioned below, the whole holding being now assessed by Dinapore Nizamat Municipality to holding tax of Rs. 2-12-6 (Rupees two twelve annas and six pies) only per quarter and situated under Touzi No. 5401, Thana No. 21.

Khata no. Plot no. Acre Decimal Remarks

343 462 0 31 whole

337 403 0 14 whole

349 404 0 9 Part only of the plot.

Unnumbered Unnumbered. 0 12? Part plot only and unsurveyed.

Total 0 66?

Except the portion of the above leased out to Patna Electric Supply Co. Ltd. 0 5?

Area now leased out. 0 61 i e. Sixtyone decimals only."

On perusal of the lease it is manifest that the total area of the land demised was 16 kathas and 19 1/2 dhurs and out of this area the buildings occupy a portion of 3 kathas and 17 dhurs. It should be noticed that the object of the lease was to enable the lessee to construct factory and other houses with necessary outhouses, boundary walls, drains, garages, etc. for the purpose of carrying on their industrial business. The question that arises for determination in the present case is whether the subject-matter of the lease is a "building" within the meaning of Section 2 (aa) of the Bihar Act III of 1947.

On behalf of respondent No. 1 it is submitted that the subject-matter of the lease includes also certain buildings occupying an area of 3 kathas and 17 dhurs out of the total area demised. It was contended, therefore, that the lease would fall within the ambit of Bihar Act III of 1947 and the provisions of that Act will govern the lease in the Present case. We are unable to accept this argument as correct. It is true that the subject-matter of the lease includes certain buildings occupying 3 kathas and 17 dhurs out of the total area of 16 kathas 19 1/2 dhurs.

But, as we have already stated, the object of the lease was to enable the lessee to erect upon the vacant land factory and other houses with necessary outhouses, boundary walls, drains; garages, etc. in order to carry on his industrial business. The problem presented for determination in this case is a problem of classification. The proper legal test to be applied in a case of this description is, --what is the true nature and character of the lease? In other words, the question is whether the true subject-matter of the lease is "a building" as defined in Section 2 (aa) of Bihar Act III of 1947 or whether the true subject-matter of the lease is a vacant land on which the lessee is empowered to erect buildings for industrial business?

It is manifest that if the lease in this case is of the latter description, the Provisions of Bihar Act III of 1947 will not apply. On a Proper construction of the lease dated the 16th of January, 1948, we are satisfied that the subject-matter of the lease in its true nature and character is not a "building" as defined in Section 2 (aa) of Bihar Act III of 1947, but it is a vacant land for the Purpose of erecting buildings for industrial use and so the lease is governed not by the

provisions of Bihar Act III of 1947, but by the more general provisions of the Transfer of Property Act.

This view is borne out by the decision of the Madras High Court in *S. Raja Ghetty and Others Vs. Jagannathadas Govindas and Others*, in which the question at issue was whether the lease of the land and building together with talkie equipments, machinery and other articles is a lease of a building within the definition of Section 2 of Madras Buildings (Lease and Rent Control) Act of 1946. It was held by a Division Bench of the Madras High Court consisting of Rajamannar, C.J. and Krishnaswami Naydu, J., in that case that the lease was not governed by the provisions of Madras Act XV of 1946, but by the provisions of the Transfer of Property Act. The matter is put by the learned Chief Justice as follows at page 287 of the report:-

"We have come to the conclusion that the lessors application in this case is not maintainable on other grounds as well. In our opinion the lease in question is not governed by the provisions of Madras Act XV (15 of 1946). That Act regulates only the letting of residential and non-residential buildings. In Section 2 building has been defined as to include the garden, grounds and outhouses appurtenant to the building and furniture supplied by the landlord for use in such building. In the case before us, there is no lease of a mere building or a building with compound and furniture of the sort covered by the definition. The lease is of land and building together with fixtures, fittings, cinematographic talkie equipments, machinery and other articles."

The same view was expressed by a Division Bench of the Travancore-Cochin High Court in *T.K. Sivarajan v. Official Receiver, Quilon District Court* AIR 1953 Trav-Co 205. The question at issue in that case was whether the lease of a garden land together with certain buildings and structures thereon fell within the definition of "building" in Section 2 (1) of the Travancore-Cochin Buildings (Lease and Rent Control) Order, 1950, which stated as follows:-

"2. (I) "building" means any building or hut or part of a building or hut, let or to be let separately for residential or non-residential purposes, and includes --

(a) the garden, ground and out-houses, if any, appurtenant to such building, hut or part of such building or hut and let or to be let with such building or hut,

(b) any furniture supplied by the landlord for use in such building or hut or Part of a building or hut, but does not include a room in a hotel or boarding house."

It was held by the learned Judges of the Travancore-Cochin High Court that the lease did not constitute lease of a building within the meaning of Section 2 (1) of the Control Order, and it was not a case of a lease of a building with certain land appurtenant to it, but it was a converse case, namely, lease of a garden land together with buildings and huts standing thereon. At page 208 of the report the learned Judges have stated as follows:-

"As per this definition the primary and the essential test to be satisfied is that

there should be a letting out of a building or hut or part of the same, separately for residential or non-residential purposes. If there has been such a separate letting out of a building or hut or part of the same for residential or non-residential Purposes, then the garden, grounds and out-houses, if any, appurtenant to such building or hut would also be deemed to be included in the lease or rental arrangement. But it is obvious that the converse Position cannot hold good i.e., if there has been a leasing out of a garden land together with the buildings or huts standing thereon, the transaction cannot be said to amount to letting out of the buildings or huts separately for residential or non-residential purposes. In such a case the buildings and huts will only form part of the leasehold which consists mainly of the garden land.

It is clear from a perusal of the lease deed involved in the present case that there has not been letting out of any building or hut separately for residential or non-residential purposes. On the other hand, "it is expressly stated in the document which itself is styled as a lease deed, that what is leased out is the garden land 35 cents in extent together with all the buildings, sheds etc., standing thereon. Such being the nature of the lease arrangement entered into by the present appellant, there is no basis for contending that it comes within the scope of the Buildings (Lease and Rent Control) Order. In this view also the objection raised by the lessee that the Court has no jurisdiction to order his eviction from the property is unsustainable. The lower Court was right in overruling that objection."

The learned Advocate-General appearing on behalf of the respondent relied on a decision of the Madras High Court in J.H. Irani v. Chidambaran Chettiar AIR 1953 Mad 650. But the principle of that decision has no relevance to the Present case. It was held by the Madras High Court upon a Construction of the lease Exhibit P-9 in the context of the previous lease Exhibit P-2 and the attendant circumstances established in that case that the subject-matter of the lease was not merely vacant land, but it was vacant land upon which there was superstructure of the Gaiety Talkie House and by a fiction of law the vacant land must be treated as Part of the building within the definition of Section 2(1) of the Madras Buildings (Lease and Rent Control) Act, (Madras Act 15 of 1946). In the course of the judgment Satyanarayana Rao, J., at page 655 of the report observed that what was leased under Exhibit P-9 was the entire property with its compound walls and buildings of the lessor shown in the plaint plan, Exhibit P-1, together with the site upon which the super-structure was erected and which gave continuous support to the building and the other vacant space round it. It was further observed that the object of the lease was to run a cinema business in the buildings then in existence together with the other buildings used as booking office, office room, garages, latrines and so on. The matter was put by Satyanarayana Rao, J., at Page 655 of the report as follows:--

"It was therefore held that the ordinary and natural meaning of the word "building" included the fabric and the ground on which it stood and there-fore

the exemption of the building extended as well to the site on which it stood. This decision, in my opinion, is very helpful to the respondent. Obviously, the letting of the land was for the purpose of carrying on cinema business and it was well known to the parties that the structure of the theatre owned by the first defendant was already there and what was being granted in substance and in effect under the lease was the right to continue the structure on the land as a building, as without the land the structure cannot stand. Taking all the facts into consideration, what was leased under Ex. P-9 was the entire property with its compound walls and with the buildings of the lessor shown in the plaint plan, Ex. P-1, together with the site on which the super-structure was erected and which gave continuous support to the building and the other vacant space round it. This undoubtedly is part of the building known as the Gaiety Theatre. So, the lessor leased not only his building but also part of the building of the Gaiety Theatre under the document. What was leased therefore was not merely a vacant land, the small shed in the east of the site belonging to the lessor being only an insignificant portion to be left out of consideration altogether, as contended on behalf of the appellant. The object of the lease was to run the cinema business in the buildings then in existence together with the other buildings used as booking office, office rooms, garages, latrines and so on. It is impossible therefore to escape the conclusion that what was let to the first defendant under Ex. P-9 was a "building". As pointed out by the learned Judge in his findings already extracted, the nature of the structures in the suit premises and the manner in which the entire premises were being let out and used for a number of years undoubtedly indicate that it was a building that was leased to the defendant."

It is manifest that the principle of this decision has no application to the present case where the material facts are entirely different. For the reasons we have already given, we are of opinion that the present case is governed by the decision of the Madras High Court in *S. Raja Ghetty and Others Vs. Jagannathadas Govindas and Others*, and the decision of the Travancore-Cochin High Court in AIR 1953 Trav-Co 205, and it must be held that the lease dated the 16th of January, 1948 executed in favour of respondent No. 1 is not governed by the provisions of Bihar Act III of 1947 and the view taken by the Commissioner of Patna Division in his order dated the 4th January, 1959, is erroneous and must be quashed by grant of a writ in the nature of certiorari under Article 226 of the Constitution.

5. For these reasons we order that a writ in nature of certiorari should be issued under Article 226 of the Constitution quashing the order of the Commissioner of Patna Division dated the 4th of January, 1959. We accordingly allow Miscellaneous Judicial Case No. 282 of 1959 with costs. Hearing fee, Rs. 100/-.

6. For the same reasons we hold that Second Appeal No. 1018 of 1958, must be dismissed. There will be no order as to costs in the Second Appeal.