
(2017) 11 BOM CK 0015

In the Bombay High Court

Case No : 2481 of 2016 IN SUIT NO 1172 of 2005

The Deputy Salt Commissioner (IN THE MATTER BETWEEN) APPELLANT
Vikas Kamalakar Walawalkar, & Anr.

Vs

The Deputy Salt Commissioner, & Ors. RESPONDENT

Date of Decision : 09-11-2017

Acts Referred:

Citation : (2017) 11 BOM CK 0015

Hon'ble Judges : R.D. Dhanuka

Bench : SINGLE BENCH

Advocate : D.D. Madon, Mustafa Doctor, Aditya Mehta, Kunal Dwarkadas, Anirudh Hariani, Anil Singh, S.R. Rajguru, A.R. Varma, Aditya Thakkar, S.Y. Sirsikar

Final Decision : Allowed

Judgement

1. By consent of parties, both the proceedings were heard together and are being disposed of by a common order.
2. Notice of Motion No.2481 of 2016 is filed by the applicants (original defendant nos.1 and 2) inter-alia praying for dismissal of Suit No.1172 of 2005 on the ground that the suit has become infructuous on expiry of lease on 14th October, 2016 and also prays for recovery of possession in respect of the property from the defendant no.1 on expiry of lease on 14th October, 2016.
3. Chamber Summons No.1801 of 2016 is filed by the applicant (original plaintiff) inter-alia praying for amendment to the plaint in terms of the schedule of amendment appended to the chamber summons.
4. Mr.Singh, learned Additional Solicitor General (ASG) appearing for the applicant in Notice of Motion No.2481 of 2016 invited my attention to the averments made in the plaint and also to the prayers. He submits that the lease granted in favour of the predecessor in title of the plaintiff and the Supplemental Deed of Lease granted exclusively in favour of the plaintiff are both terminated

on 1st April, 2005. It is submitted that the plaintiff has mainly applied for a declaration that the termination of lease vide order dated 1st April, 2005 is illegal, bad and contrary to law and prays for setting aside the said order. He submits that even otherwise the period of lease of the suit property has already expired on 14th October, 2016 during the pendency of the suit. The learned ASG invited my attention to various clauses of the lease deed dated 22nd December, 1921 and more particularly clause (VI) (2) of the lease deed and would submit that it was the discretion of the plaintiff to renew or not the lease deed and on what conditions and that also on the condition that the applicant would deem fit.

5. Learned ASG also invited my attention to the provisions of the Supplemental Deed of Lease dated 27th July, 1994 to which the plaintiff was a party and more particularly to a clause at page 82 of the plaint. He submits that the said clause clearly provides that the period of lease will be upto 14th October, 2016 when the existing lease expired. It is submitted that there is no provision for renewal of the lease period under the Supplemental Deed of Lease to which the plaintiff was a party. He however, fairly invited my attention to clause 5 of the Supplemental Deed of Lease which provides that the covenants and conditions contained in three indentures of Lease all dated the 22nd December, 1921 recited shall continue to operate, save as altered or amended by the Supplemental Deed of Lease.

6. It is submitted by the learned ASG that since there is no renewal clause, the suit has become infructuous and thus the suit is liable to be dismissed on that ground alone.

7. Insofar as prayer clause (b) of the notice of motion is concerned, the learned ASG, on instructions, states that prayer clause (b) inter-alia praying for possession of the suit property from the plaintiff is not pressed and his clients would file a separate proceeding praying for seeking possession of the suit property. The statement is accepted.

8. Learned ASG placed reliance on the judgment of the Supreme Court in case of Naveen Chand & Anr. vs. Nagarjuna Travels & Hotels Pvt. Ltd., (2002) AIR SC 2870 and more particularly paragraph 12 thereof in support of his submission that since the terms and conditions of the original lease period are different and it was at the discretion of his clients, the original plaintiff is not entitled to seek any renewal. He submits that since the renewal cannot be granted to the plaintiff on expiry of the original lease period, the suit has become infructuous and thus the suit deserves to be dismissed at this stage without any further trial in the matter. Learned ASG also placed reliance on the judgment of the Madhya Pradesh High Court in case of Hitkarini Sabha vs. Corporation of the City of Jabalpur & Anr. AIR 1961 MP 324 and in particular paragraph 18 in support of his submission that since there was no clause contemplated in the Supplemental Deed of Lease for renewal of lease period, the suit deserves to be dismissed on expiry of the lease period.

9. Mr.Madon, learned senior counsel for the original plaintiff on the other hand invited my attention to the prayers in the plaint and more particularly prayer clause (c) and would submit that the plaintiff has already prayed for declaration that on expiry of the current term of lease on 14th October, 2016, the plaintiff is entitled to renewal and/or extension for a period of 99 years on the same terms and conditions, including the term for further renewal. He invited my attention to the stand taken by the applicants in the written statement and in particular paragraph 58 contending that the plaintiff's prayer for declaration requiring renewal of the lease deed after 2016 is premature. He submits that the stand taken by the applicants clearly indicates that the right of renewal of lease period is not disputed by the applicants in the written statement.

10. It is submitted that in any event in view of clause 5 of the Supplemental Deed of Lease, the provision of renewal which was admittedly provided in the original deed of lease was not altered in the Supplemental Deed of Lease thus will have to be read with the Supplemental Deed of Lease. Learned senior counsel invited my attention to the prima-facie observations made by a learned single Judge of this Court in the notice of motion filed by the original plaintiff and more particularly to paragraph 16. He also invited my attention to the order passed by the Division Bench of this Court in Notice of No.2441 of 2006 in Appeal No.534 of 2006 on 1st September, 2006. He submits that though the appeal filed by the applicants is admitted by this Court, the Division Bench of this Court has ordered that during the pendency of the appeal, the plaintiff shall continue to use the subject land for the purpose for which the lease was granted and no other purpose nor any third party right shall be created in the subject matter of the land. He submits that the notice of motion thus filed by the applicants inter-alia praying for dismissal of the suit at this stage is in the teeth of the order dated 1st September, 2006 passed by the Division Bench of this Court.

11. It is submitted that during the pendency of the suit, the original period of lease expired. It is submitted that under the renewal clause, the plaintiff had applied for renewal of the lease for a period of 99 years on the same terms and conditions which is illegally rejected by the applicants.

12. Learned senior counsel distinguished the judgment of the Supreme Court in case of Naveen Chand & Anr. (supra) and also the judgment of the Madhya Pradesh High Court in case of Hitkarini Sabha (supra) on the ground that in this case, the renewal clause is clearly provided in the original lease deed which provision has to be read with the provisions of the Supplemental Deed of Lease and also with the stand taken by the applicants in their written statement. He submits that the judgment of the Supreme Court in case of Naveen Chand & Anr. (supra) was arising out of the final decree passed by the Civil court and not during the pendency of the suit.

13. Insofar as the chamber summons is concerned, Mr.Madon, learned senior counsel for the applicant (original plaintiff) invited once again my attention to the prayers in the plaint and would submit that in view of the expiry of the lease

period provided in the original deed of lease and in view of the plaintiff having applied for renewal of the lease which application is rejected by the applicants in the notice of motion, the applicant is entitled to seek amendment in the plaint inter-alia praying for setting aside the decision of the applicants in the notice of motion and for seeking a renewal of the lease. He submits that insofar as prayer clause (c) (ii), which is sought to be inserted in the plaint is concerned, the plaintiff is challenging the order and notification dated 9th October, 2013 referred in the letter dated 11th July, 2016 addressed by the Deputy Secretary on the ground that the said policy is totally bad and illegal being contrary to the principles laid down by the Supreme Court in case of Delhi Development Authority & Anr. vs. Joint Action Committee, Allottee of SFS Flats & Ors. (2008) 2 SCC 672 and more particularly paragraphs 64 to 66. In support of this submission that the nature of amendment sought by the applicant in the chamber summons would not alter the basic structure of the suit and since the prayer for renewal would be in furtherance of the prayer challenging the termination of the lease, the issue of renewal can be considered by the Court in the same suit. He submits that the trial has not commenced. Affidavit in lieu of examination in chief though filed by the witness in Court, has not been taken on record. In support of this submission, learned senior counsel placed reliance on the judgment of the Supreme Court in case of Rajesh Kumar Aggarwal & Ors. vs. K.K. Modi & Ors. (2006) 4 SCC 385 and in particular paragraphs 14 to 17. He submits that the reliefs which are subject matter of the proposed amendment can be granted by this Court in the same suit and the plaintiff is not required to file a separate suit.

14. Learned senior counsel invited my attention to the order dated 18th October, 2011 passed by Shri Justice S.J. Kathawalla settling the issues and more particularly issue (b) in support of his submission and submits that this Court has already framed the issue as to whether the plaintiff is entitled to renewal / extension of lease for a like term of 99 years on the same terms and conditions or not as per the provisions of the Supplemental Deed of Lease read with deed of lease.

15. Mr.Singh, learned ASG on the other hand would submit that in the plaint the basic issue arises is whether the plaintiff had committed any breach of the terms and conditions of the deed of lease, whereas in the application for amendment, the plaintiff seeks to pray whether the decision of the applicants in the notice of motion refusing to grant renewal of the lease is illegal or not. He submits that if amendment is allowed by this Court, the cause of action in the original suit will be changed in its entirety and thus the amendment cannot be granted by this Court.

16. Insofar as the notice of motion filed by the applicants (original defendant nos.1 and 2) is concerned, a perusal of the prayers in the plaint clearly indicates that the plaintiff had challenged the order of termination issued by the applicants in the plaint. It is not in dispute that the period of lease provided in the

Supplemental Deed of Lease would have expired on 14th October, 2016. The plaintiff has not only challenged the order of termination issued by the applicants in the notice of motion but has also applied for a declaration that on expiry of the lease period on 14th October, 2016, the plaintiff is entitled to renew and/or extension for like term of 99 years, including on the term for further renewal. It is not in dispute that the applicants in the notice of motion has taken a stand in the written statement that the prayer for renewal in terms of clause (c) is premature. The stand of the applicants in the notice of motion thus prima-facie indicates that they have not disputed that there is no clause of renewal in the Supplemental Deed of Lease.

17. Mr.Singh, learned ASG has not disputed that this Court in the interim order passed in the notice of motion filed by the plaintiff has granted an injunction against the applicants in respect of the suit property. This Court has also made a prima-facie observation that the plaintiff has been able to make out a strong prima-facie case. Balance of convenience is in favour of the plaintiff. It is however, observed that it is an admitted position that the physical possession of the lands are with the plaintiff. It is however, observed by a learned single Judge of this Court in the said order that the plaintiff is using the land for manufacturing of salt and thus is in possession of the land and deserves to be protected. A perusal of the order dated 1st September, 2016 passed by the Division Bench of this Court in the appeal filed by the applicants in the notice of motion clearly indicates that a mandatory order is passed by the Division Bench of this Court that during the pendency of the appeal, the plaintiff shall continue to use the subject matter of the lease which was granted and for no other purpose and shall not create any third party right and/or interest in the said land during the pendency of the appeal.

18. Insofar as the submission of the learned ASG that there is no provision for renewal of the lease in the Supplemental Deed of Lease is concerned, in my prima-facie view the provisions of the deed of lease and more particularly the provision for renewal of the lease recorded in the original deed of lease will have to be read with the provisions of the Supplemental Deed of Lease. Clause 5 of the Supplemental Deed of Lease clearly records that all the provisions of the original deed of lease except the provisions which are not altered in the Supplemental Deed of Lease shall be read as the provision in the Supplemental Deed of Lease.

19. Be that as it may, whether the plaintiff is entitled to seek any renewal of the lease or not will have to be considered by this Court after the evidence is laid by both the parties and after interpreting the provisions of the original lease deed read with the Supplemental Deed of Lease. In my view, merely because the original period of lease has expired during the pendency of the suit, the suit has not become infructuous.

20. A perusal of the prayers in the plaint indicates that the plaintiff has not only challenged the termination of the lease deed but has also applied for a

declaration insofar as the issue of renewal is concerned.

21. Since the learned ASG has not pressed prayer clause (b) of the notice of motion, I need not consider the said prayer in this order.

22. Insofar as the judgment of the Supreme Court in case of Naveen Chand & Anr. (supra) relied by the learned ASG is concerned, a perusal of the said judgment clearly indicates that the said appeal was arising out of the order passed by the High Court, which was arising out of the final decree passed by the Civil Court, Hyderabad. In paragraph 8 of the said judgment, the Supreme Court has clearly held that on careful perusal of evidence adduced by the plaintiff together with the documents, the trial Court had opined that the plaintiff was entitled for various reliefs. Paragraph 12 of the said judgment clearly indicates that the view taken by the Supreme Court is that since the renewal clause was not clear and specific regarding terms of renewal, the Court has to ascertain the intention of the parties from the materials on record. It is not in dispute that oral as well as documentary evidence in the suit is yet to be laid by the parties. The judgment of the Supreme Court in case of Naveen Chand & Anr. (supra) thus would support the case of the plaintiff and not the case of the applicants in the notice of motion and is clearly distinguishable.

23. Insofar as the judgment of the Madhya Pradesh High Court in case of Hitkarini Sabha (supra) relied upon by the learned ASG is concerned, there was no clause for renewal in the lease period in that matter. The said proceedings were under the provisions of the Land Acquisition act. The facts before the Madhya Pradesh High Court in that case were totally different and are clearly distinguishable.

24. Insofar as the chamber summons is concerned, I am inclined to accept the submission made by Mr. Madon, learned senior counsel for the original plaintiff that in view of the dispute whether the original lease deed along with Supplemental Deed of Lease were illegally terminated by the applicant in the notice of motion or not and in view of the existing prayer in the plaint that after expiry of the original lease period on 14th October, 2016, the plaintiff will be entitled to renewal of the lease for a period of 99 years on the same terms and conditions with further renewal clause and in view of the defendant no.1 and 2 stating in the written statement that the said prayer was premature, the plaintiff is entitled to seek amendment to the plaint.

25. In my view, even for the purpose of deciding the issue raised in prayer clause (c) to the plaint whether the plaintiff is entitled to the said renewal or not upon getting the declaration from this Court, the termination of the lease deed is illegal, the plaintiff is also entitled to bring on record the subsequent events. The application for renewal of lease is admittedly rejected by the defendant nos.1 and 2. The prayer for renewal of lease is in furtherance of prayer clause (c) which has to be read with prayer clauses (a) and (b) of the plaint. In my view, if this amendment is allowed as prayed, there will be no change in the basic structure

of the plaint.

26. In my view Mr.Madon, learned senior counsel for the plaintiff is right in placing reliance on the judgment of the Supreme Court in case of Rajesh Kumar Aggarwal & Ors. (supra). The Supreme Court has categorically held that if an amendment should be necessary for the purpose of determining the real question in controversy between the parties, the amendment has to be permitted by the Court. It is further held that if cause of action arises during the pendency of the suit , the proposed amendment ought to have been granted because the basic structure of the suit has not changed and there was merely change in the reliefs claimed. The Supreme Court has held that if the reliefs which are subject matter of the amendment can be granted in the same suit, such amendment has to be granted. In my view, the propositions laid down by the Supreme Court in case of Rajesh Kumar Aggarwal & Ors. (supra) squarely applies to the facts of this case. I am respectfully bound by the said judgment.

27. Insofar as reliance placed on the judgment of the Supreme Court in case of Delhi Development Authority & Anr. (supra) by Mr.Madon, learned senior counsel for the plaintiff in support of his submission that prayer clause (c-ii) sought to be inserted in the plaint thereby challenging the policy framed by the Government is concerned, this Court need not go into the merits of the case at this stage whether such policy framed by the Government is illegal or not. Since the defendant nos.1 and 2 have proposed to take an action based on such policy, in my view, the plaintiff deserves to be allowed that amendment also.

28. I therefore, pass the following order :- a). Prayer clause (a) of the Notice of Motion No.2481 of 2016 is dismissed. Insofar as prayer clause (b) is concerned, since the said prayer clause (b) is not pressed, this Court need not deal with the said prayer.

b). Chamber Summons No.1801 of 2016 is allowed in terms of prayer clause (a). The amendment to be carried out within two weeks from today. The amended copy of the plaint shall be served upon the defendants" advocate within one week from carrying out amendment.

c). Hearing of the suit is expedited.

d). The defendants are at liberty to file additional written statement within six weeks from today and a copy thereof shall be served upon the plaintiff"s advocate simultaneously.

29. At this stage, Mr.Rajguru, learned counsel for the applicants in the notice of motion seeks stay of the order passed today permitting the amendment in Chamber Summons No.1801 of 2016, which is vehemently opposed by the learned senior counsel for the plaintiff. The application for stay is rejected. If the appeal of the applicants in the notice of motion is allowed by the Division Bench of this Court, the plaintiff can be directed to strike off the amendment.