

(2003) 09 DEL CK 0072

In the Delhi High Court

Case No : Regular Second Appeal No. 67 of 1985

The Leprosy Mission

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 03-09-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2003) 7 AD 666 : (2003) 107 DLT 328 : (2003) 71 DRJ 108

Hon'ble Judges : R.S. Sodhi, J

Bench : Single Bench

Advocate : S.C. Nigam, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Sodhi, J.—R.S.A. 67/85 is directed against the judgment and order dated 29.1.1985 of the Additional District Judge in E.C.A. No. 44 of 1982 which appeal was filed against dismissal of the plaintiff-appellant's suit for permanent injunction against the defendant-respondents for claiming or recovering annual ground rent in excess of Rs.885/- per annum. The learned appellate court concurred with the findings of the trial court and dismissed the appeal.

2. Brief facts of the case, as noted by the appellate court, are -

"that the lease was granted in respect of certain land on 8/12/1960 by the UOI in favor of Shri Dr. C.L. Katial. The plaintiff purchased the property from the said Dr. C.L. Katial, who conveyed the same to the plaintiff after getting due permission from the L&DO Office acting for and on behalf of the defendant vide a duly registered deed of conveyance dated 4/7/1973. Dr. C.L. Katial in the year 1973 wanted to sell the property and consequently applied to the L&DO for grant of sale permission for transferring in favor of the present appellant/applicant. It appears that vide letter dated 13/6/1973 Ex.Mark-A, Deputy Land & Development Officer informed Dr. C.L. Katial that the Lesser would consider the application for permission only after compliance with the following terms and conditions :

- i) Payment of unearthed increase of Rs.1,62,634/-.
- ii) Payment of revised ground rent @ Rs.14,275/- P.A. From 8/9/72 to 14/7/73 i.e. Rs. 12,209/-.
- iii) Original ground rent at Rs.885/- P.A.

Rs. 751.64

Rs. 11,457.36 p.

In reply to this letter Dr. C.L. Katial vide letter dated 30/6/1973 Ex.D1 deposited the pay order for a sum of Rs.1,74,081.36 p. and requested that the challan be passed for depositing the amount in the Reserve Bank of India and to grant permission to sell in favor of Mission to Lappers Corporation in India. On 2/7/1973, he further informed vide E.D-2 that the said amount has been deposited by challan and requested that sale permission be granted on that very day. Letter of sale permission has not been got exhibited by the parties, however, it is mentioned in the deed of conveyance that the letter of sale permission was one of the documents which might have been delivered to Mr. V.P. Dass as mentioned in the conveyance deed Ex.P-6.

The plaintiff/appellant claims that the conveyance of the property in favor of the plaintiff has been duly recognised by carrying out the mutation in their favor vide letter dated 8/8/1973. As such the defendant/respondent stood bound by the terms and covenants of the lease including the terms relating to payment of the annual ground rent and permissible revision thereof. As per the terms of the lease deed, the plaintiff remitted the ground rent of Rs.885/- for the year 1974-75. The defendant/respondent returned the cheque and claimed ground rent on arbitrary and unwarranted rate of rent of Rs.14,375/- p.a. On the ground that ground rent was revised and that was one of the terms put to the former owner for grant of permission for transfer of contravention of clause 6 of the lease deed. The unilateral condition imposed upon the former lessee of the land and not forming part of the lease could not be enforced upon the plaintiff/appellant and the same could not abrogate, modify, substitute or rescind the agreed terms and conditions incorporated and duly executed and registered deed of lease. In absence of due execution and registration, the alleged conditions could not be treated as supplementary lease. The plaintiff/appellant was given to believe that the L&DO has filed a petition for revision of the ground rent in terms of clause 6 and the arbitrary demand made during the pendency of such proceedings is vocative of the principles of natural justice and is barred by the rule of estoppel. None of the clauses or covenants contained in the lease empowers the defendant/respondent to impose terms for payment and enhance ground rent notwithstanding clause 6 of the lease for granting sale permission. The unilateral and unwarranted action is vocative of Article 19(1) of the Constitution of India. They also amounted to nuisance to the violation of Article 14 of the Constitution of India as the plaintiff/appellant has been singled out despite service of notice U/S 80 CPC dated 14th October, 1974. The defendant/

respondent failed to withdraw the alleged demand of Rs.14,375/- and proposed to go ahead with the threatened action of re-entry and hence the suit.

The contention of the Union of India, respondent is that the suit for injunction is not maintainable. The plaintiff is estopped from filing the suit as they purchased the property from Dr. C.L. Katial the original lessee under the terms of the sale permission which was accepted by him and the plaintiff had stepped into the shoes of the original lessee and they were also otherwise bound by the condition of the sale permission. The permission to sell was granted on the terms and conditions including the payment of the revised ground rent @ Rs.14,375/- which was to be revised under clause 6 of the lease deed on or after 1966. After the mutation of the premises the present lessee is bound by the terms and conditions of the lease deed as well as any other condition. It has been accepted by the lessee before transfer of the premises in favor of the present lessee. The plaintiffs were estopped from alleging it as they purchased the property subject to the sale permission which was also within their knowledge. The procedure under clause 6 was not to be followed where the lessee agreed to enhancement of ground rent in case of promise or agreement, such procedure became redundant.

The trial proceeded on the following issues :

- i) Whether the suit for injunction as framed is not maintainable? OPD.
- ii) Whether the plaintiff is estopped from filing the present suit as alleged in para B of the preliminary objections? OPD.
- iii) Whether Dr. C.L. Katial has accepted the enhancement of the ground rent of the premises in dispute? If so its effect.
- iv) Whether the plaintiff is not liable to pay the ground rent at the rate of Rs. 14,375/- p.a.? OPD.
- v) Whether the defendant cannot alter or change or enhance the ground rent as per the terms of the lease deed and is against the clause 6 of the lease agreement?
- vi) Whether the terms of the registered sale deed, agreement cannot be modified, appeased or substituted, reassigned without subsequent registered deed? OPD.
- vii) Whether the plaintiff is entitled to the injunction as prayed for? OPP.
- viii) Relief.

The Ld. Sub Judge decided all the issues against the plaintiff and dismissed the suit."

3. It was contended before me by learned counsel for the appellant that there could be no estoppel against statute. The legal agreement entered into as per Article 299 of the Constitution of India is bound to be respected and, Therefore,

the Union of India could not increase ground rent.

4. Nobody appeared on behalf of the Union of India.

5. I have gone through the judgment under challenge. I am of the view that the appellants, who are the beneficiaries of permission obtained by their predecessor-in-interest on terms and conditions, cannot challenge those terms and conditions as their title is based on the permission for sale granted by the Union of India.

6. The predecessor-in-interest having obtained permission on agreed terms, one being to enhance the ground rent, it is not open to challenge by the appellants.

7. In any event of the matter, the relief of the nature sought for is an equitable one. The predecessor-in-interest of the appellants, having obtained permission for sale on terms and conditions, equities are not in favor of the appellants who cannot be granted the equitable relief as prayed for. Dr. C.L. Katiyal, having bound himself by the promise made, his successor-in-interest could not repudiate the same. Two courts having concurrently returned a finding on facts and law, the same are not open to review in regular second appeal u/s 100 of the Code of Civil Procedure. R.S.A. 67/1985 is dismissed. No order as to costs.