

(2020) 01 DEL CK 0077

In the Delhi High Court

Case No : Civil Miscellaneous (Main) No.293 Of 2008

Union Of India

APPELLANT

Vs

Sir Sobha Singh & Sons P.Ltd

RESPONDENT

Date of Decision : 08-01-2020

Acts Referred:

Constitution Of india, 1950 — Article 226
Government Grants Act, 1895 — Section 2, 3
Transfer Of Property Act, 1882 — Section 14, 116

Citation : (2020) 01 DEL CK 0077

Hon'ble Judges : Prateek Jalan, J

Bench : Single Bench

Advocate : Akshay Makhija, Roshni Namboodiry, Vikas Bhadauria, Kriti Awasthi, Ankit Tyagi, P. S. Bindra, Bhuvneshwar Tyagi

Final Decision : Dismissed

Judgement

Prateek Jalan, J

1. This petition under Article 227 of the Constitution of India, filed by the Union of India [hereinafter referred to as "UOI"] arises out of eviction proceedings instituted by the respondent herein against the UOI. The UOI has challenged the order of the Rent Control Tribunal [hereinafter referred to as "the Tribunal"] dated 01.09.2007 in RCA No. 157/2006. By the impugned order, the Tribunal dismissed the UOI's appeal against the orders of the learned Additional Rent Controller [hereinafter referred to as "ARC"] dated 14.02.2005 and 08.07.2004, allowing Eviction Suit No. 68/98/91, filed by the respondent.

Facts

2. Vide a perpetual lease deed dated 16.04.1945, the Governor General in Council (lessor) leased land measuring approximately 7.58 acres, situated on North and South Sujan Singh Park, New Delhi, to Hon'ble Sardar Bahadur Sir Sobha Singh and Sons Private Limited (lessee), with an obligation upon the

lessee to construct blocks of residential flats, on the terms and conditions stated in the perpetual lease deed. It is undisputed that the UOI and the respondents herein are the successors-in-interest to these parties.

3. By virtue of Clause 2(9) of the perpetual lease deed, the parties had agreed that a certain number of flats, as constructed under the terms of the perpetual lease deed, would be leased to the UOI for accommodation of its officials at a fair rent. For the purpose of the present proceedings, two clauses of the perpetual lease deed are relevant: -

"(8) So long as the war continues and for one year from the date the Central Government declares it as having ended, the Labour Department of the Government of India shall have the right to use the whole of the buildings or any part thereof paying a rental assessed by that Department on the basis of the capital cost.

(9) Even after the conclusion of the period mentioned at (8) above, the Central Government shall be entitled to require that a certain number of the flats, not exceeding 50% of the total, shall be leased to officials named by them, at a fair rent as assessed by or under the orders of the Central Government."

4. The eviction proceedings were instituted by the respondent on the basis that, despite the respondent sending a notice dated 14.01.1991 to the UOI, the UOI failed to pay rent for the flats in their possession. It was submitted that the UOI stopped paying rent after 31.03.1989, and even after the respondent's notice for payment of arrears of rent, the UOI failed to make the payment.

5. At the time of filing the eviction suit, it was stated that, as per Clause 2(9) of the perpetual lease deed, 14 flats were in possession of the UOI, through its officials. The impugned order records that, at the appellate stage, it was submitted that out of the 84 flats constructed by the respondent, the UOI was in possession of 13 flats, in addition to 41 servant quarters and 26 garages. (It is undisputed that one flat was released by the UOI.)

6. The learned ARC recorded the evidence and, vide an order dated 08.07.2004, found that the UOI had in fact failed to make payment of arrears of rent, despite a notice sent by the respondent in 1991. It was held that the UOI is liable to make such payment to the respondent, and an order of eviction dated 14.02.2005 was passed, in respect of 5 single bed room flats, 9 double bed room flats, 39 servant quarters and 25 garages situated on North and South Sujana Singh Park, Municipal No. III PR-1 to 556 and 560 to 573, New Delhi, as shown in the site plans exhibited as Ex. A-4 to A-77, in the proceedings.

7. The Tribunal, by an order dated 08.08.2005, initially dismissed the UOI's appeal on the ground of delay in filing and this Court, vide an order dated 25.10.2005 in CM(M) 2597/2005, declined to interfere with the decision of the Tribunal. However, by an order dated 16.10.2006 in Civil Appeal No. 4511/2006, the Supreme Court condoned the UOI's delay in filing of the appeal, subject to

payment of costs to the respondent, and remitted the matter back to the Tribunal for a fresh decision on merits.

8. The impugned order of the Tribunal dated 01.09.2007 was passed pursuant to the aforesaid order of the Supreme Court. The Tribunal held that the suit property was covered by the provisions of the Delhi Rent Control Act, 1958 [hereinafter referred to as "DRCA"] and the relationship of landlord and tenant was established. Having found that the UOI failed to pay rent for the premises in question, despite the issuance of notice by the respondent dated 14.02.1991, the Tribunal affirmed the order of the ARC. However, the Tribunal suspended the execution of the order for a period of six months on the condition that the UOI pays the arrears of rent recoverable with interest, and costs. The operative portion of the impugned order of the Tribunal is reproduced below: -

"36. In view of the aforesaid, I do not find any infirmity in the order passed by the trial court as are dated 08.7.2004 or the dated 14.5.2005. Thus, the appeal filed by the appellant in respect of both these orders is dismissed. However, the respondent shall not execute the order of eviction for a period of six months if the appellant complies with the following conditions:-

i) The appellant pays the arrears of rent legally recoverable in terms of the notice of demand Ex.PW4/6 till the date of eviction order i.e. 14.5.2005 along with interest @ 15% per annum to the respondent as also the arrears of rent/damages which have further accrued from the date of eviction order till date @ 2400/- per month and also keep on paying the same every month till the possession is handed over.

ii) The appellant shall also pay cost of Rs.1,00,000/-to the respondent."

Question Raised

9. In the present petition, the UOI has raised a question as to whether the DRCA is applicable to the present case, in view of the provisions of Section 3 of the Government Grants Act, 1895 [hereinafter referred to as "GGA"]. This submission was recorded in an order dated 07.03.2008, while issuing notice on the petition, and the execution of the impugned order was stayed. This is the only question that has been argued by Mr. Akshay Makhija, learned Central Government Standing Counsel on behalf of the UOI, and Mr. P.S. Bindra, learned counsel for the respondent.

Government Grants Act, 1895 - Relevant Provisions

10. Sections 2 and 3 of the GGA, upon the interpretation of which the case turns, are reproduced below: -

"2. Transfer of Property Act, 1882 , not to apply to Government grants.- Nothing in the Transfer of Property Act, 1882, contained shall apply or be deemed ever to have applied to any grant or other transfer of land or of any interest therein heretofore made or hereafter to be made [by or on behalf of the [Government]]

to, or in favour of any person whomsoever; but every such grant and transfer shall be construed and take effect as if the said Act had not been passed.

3. Government grants to take effect according to their tenor.- All provisions, restrictions, conditions and limitations over contained in any such grant or transfer as aforesaid shall be valid and take effect according to their tenor, any rule of law, statute or enactment of the Legislature to the contrary notwithstanding."

Submissions

11. Relying upon Section 3 of the GGA, Mr. Makhija submitted that the provisions of the perpetual lease deed in question regarding use of a certain number of flats by the officials of the UOI would take effect notwithstanding the provisions of the DRCA, which renders a tenant liable to eviction for non-payment of rent. He submitted that the only consequence of non-payment of rent in such a situation is that the landlord may recover arrears as that right flows from the grant itself, but the landlord cannot be permitted to recover possession of the suit premises on grounds which do not find place in the lease deed. Mr. Makhija relied upon four judgments of the Supreme Court in support of his contention: *The State of U.P vs. Zahoor Ahmad & Anr.* (1973) 2 SCC 547, *Express Newspapers Pvt. Ltd. & Ors. vs. Union of India & Ors.* (1986) 1 SCC 133, *Hajee S.V.M. Mohamed Jamaludeen Bros. & Co. vs. Govt. of T.N.* (1997) 3 SCC 466 and *Azim Ahmad Kazmi & Ors. vs. State of U.P & Anr.* (2012) 7 SCC 278.

12. Mr. Bindra, on the other hand, argued that the effect of the GGA is to overcome the stipulations contained in the Transfer of Property Act, 1882 [hereinafter referred to as "TPA"] and not to render all other legislations inapplicable to a Government grant. Mr. Bindra cited the judgment of a four Judge Bench of the Supreme Court in *Collector of Bombay vs. Nusserwanji Rattanji Mistri & Ors.* AIR 1955 SC 298, and submitted that the subsequent judgments did not consider this judgment of a larger Bench. He further argued that *Zahoor Ahmad* (supra) does not turn on an interpretation of the GGA, and the observations of the Court are therefore in the nature of obiter dicta. Mr. Bindra also drew my attention to the judgment of the Privy Council in *Thakur Jagannath Baksh Singh vs. The United Provinces* AIR 1946 PC 127 and of a Coordinate Bench of this Court in *Edward Keventers (Successors) Pvt. Ltd. vs. Union of India (UOI)* AIR 1983 Del 376, which according to him support the respondent's construction of the GGA.

13. Mr. Makhija in rejoinder submitted that the judgments in *Collector of Bombay* (supra) and *Thakur Jagannath Baksh Singh* (supra) are distinguishable as they were rendered in the context of challenges to subsequent legislative enactment, which deprive a grantee of rights under a Government grant. According to him, these judgments do not lay down a general proposition that Section 3 of the GGA is required to be read restrictively.

Analysis

A. Interpretation Of Clause 2(9) Of The Perpetual Lease Deed

14. A plain reading of Section 3 of the GGA requires, at the outset, an examination as to whether the grant in the present case is inconsistent with any rule of law, statute or enactment. The GGA, interpreted in the manner urged by Mr. Makhija, accords primacy to the terms of the grant in such a situation.

15. Clause 2(9) of the perpetual lease deed, upon which the UOI's case is based, entitles the Central Government to require that 50% of the flats be leased to its officials, at a fair rent as assessed by or under the orders of UOI. Doubtless, the terms of the grant thus deprive the respondent of its ordinary contractual liberty to refuse to enter into a lease with the UOI. It is also clear that the respondent is bound to accept the lease at the rent fixed in accordance with Clause 2(9). However, the question here is whether the entitlement of the UOI is absolute, in the sense that it would even survive the failure of the UOI to pay the stipulated rent. There is no express stipulation to this effect, and I do not find any indication in the terms of the grant to support such a reading. In fact, to the contrary, the payment of rent is implicit in the clause itself. There is nothing in the terms of the perpetual lease deed to suggest that the grantee would not be entitled to avail of its ordinary remedies as a landlord in the event the UOI failed to comply with the condition of payment of rent.

16. To the extent that the absence of an express provision in this respect gives rise to any ambiguity in ascertaining the consequences of non-payment, the benefit of the doubt must be given to the respondent. The judgments of this Court mandate the interpretation of any ambiguity in a Government grant against the government (grantor) and in favour of the grantee. In *Bal Sahyog vs. Union of India & Anr* (2003) 107 DLT 373, this Court relied on the judgment of the Supreme Court in *Sahebzada Mohammad Kamgarh Shah vs. Jagdish Chandra Deo Dhabal Deb & Ors.* AIR 1960 SC 953 (in paragraphs 11 & 12) to hold that the construction of a grant would be in terms of the intention of the parties as revealed by the words used in their strict grammatical sense. However, any doubt as to construction must be resolved adversely to the grantor in accordance with the rule of *contra proferentem*. It was noticed that the English rule that Crown grants are to be construed strictly and in favour of the Crown has not been adopted in our law, as held by the Supreme Court in *Delhi Development Authority vs. Durga Chand Kaushish* (1973) 2 SCC 825 (in paragraph 30). Consistent with this approach, in the absence of an express provision to the contrary, the respondent cannot be deprived of its ordinary statutory remedies.

17. In view of the above interpretation, I find that Mr. Makhija's reliance upon Clause 2(9) of the perpetual lease deed in question, to imply a wholesale exclusion of the DRCA, is unwarranted.

B. Interpretation of Government Grants Act, 1895.

18. I turn now to the interpretation of Section 3 of the GGA in order to ascertain its effect on the dispute in the present case.

19. The earliest decision of the Supreme Court cited by the parties, in which these provisions of the GGA have been interpreted, is *Collector of Bombay (supra)*, rendered by a four Judge Bench. The Court was concerned with the applicability of the Bombay City Land Revenue Act-II of 1876 to lands known as "Foras lands". Certain rights in respect of these lands had been settled upon occupants under the Foras Act, 1851. The Court was considering the question of whether the sale deed executed by the Crown, which did not contain any provision regarding assessment of land revenue, would prevail over the Land Revenue Act. It was held as follows:-

"15. ...The contention is that as the grant is of a freehold estate without any reservation it must, to take effect according to its tenor, be construed as granting exemption from assessment to revenue. But that will be extending the bounds of Section 3 beyond its contents. The object of the Act as declared in the preamble is to remove certain doubts "as to the extent and operation of the Transfer of Property Act, 1882, and, as to the power of the Crown to impose limitations and restrictions upon grants and other transfers of land made by it or under its authority". Section 2 enacts that the provisions of the Transfer of Property Act do not apply to Crown grants. Then follows Section 3 with a positive declaration that "all provisions, restrictions, conditions and limitations over" shall take effect according to their tenor. Reading the enactment as a whole, the scope of Section 3 is that it saves "provisions, restrictions, conditions and limitations over" which would be bad under the provisions of the Transfer of Property Act, such as conditions in restraint of alienations or enjoyment repugnant to the nature of the estate, limitations offending the rule against perpetuities and the like. But no question arises here as to the validity of any provision, restriction, condition, or limitation over, contained in Exhibit A on the ground that it is in contravention of any of the provisions of the Transfer of Property Act, and there is accordingly nothing on which Section 3 could take effect.

16. It is argued by the learned Attorney-General that this limitation on the scope of the Act applies in terms only to Section 2, and that Section 3 goes much further, and is general and unqualified in its operation. The scope of Section 3 came up for consideration before the Privy Council in *Thakur Jagannath Baksh Singh v. United Provinces* [1946 FLJ 88] . After setting out that section, Lord Wright observed:

"These general words cannot be read in their apparent generality. The whole Act was intended to settle doubts which had arisen as to the effect of the Transfer of Property Act, 1882, and must be read with reference to the general context...."

In this view, Section 3 must also be construed in the light of the preamble, and so construed, it cannot, for the reasons already given, have any bearing on the rights of the parties. Moreover, that section only enacts that "all provisions, restrictions, conditions and limitations over" shall take effect according to their tenor, and what is relied on is not any provision, restriction, condition or limitation over, in Exhibit A which according to its tenor entitles the respondents

to hold the lands rent-free, but the absolute character of the interest conveyed under Exhibit A. Therefore, Section 3 does not in terms apply."

[Emphasis supplied]

20. Mr. Bindra also placed the Privy Council judgment in Thakur Jagannath Baksh Singh (*supra*), which was followed by the Supreme Court in the above judgment. The Privy Council restricted the operation of Section 3 of the GGA in the following terms: -

"24. These general words cannot be read in their apparent generality. The whole Act was intended to settle doubts which had arisen as to the effect of the Transfer of Property Act, 1882, and must be read with reference to the general context and could not be construed to extend to the relations between a sanad holder and his tenants. Still less could they be construed to limit the statutory competence of the Provincial Legislature under the Constitution Act."

21. These judgments, as argued by Mr. Bindra, clearly hold that Section 3 of the GGA, like Section 2, affects only the operation of the TPA. The consequence for the present case would be that the rights and remedies of the parties under the DRCA remain unaffected and the contention of the UOI to the contrary must fail.

22. However, Mr. Makhija has cited several later decisions of the Supreme Court which offer a much wider construction of Section 3 of the GGA. The following five judgments are relevant in this context: -

a. In Zahoor Ahmad (*supra*), although the Court (sitting in a Bench of two learned Judges) found that the grant in question was not a Government grant within the meaning of the GGA, it analysed, in the alternative, the effect of the GGA upon the grant in question and observed: -

"13. The lease in the present case was for the purpose of erecting a temporary rice mill and for no other purpose. The mere fact that the State is the lessor will not by itself make it a Government grant within the meaning of the Government Grants Act. There is no evidence in the present case in the character of the land or in the making of the lease or in the content of the lease to support the plea on behalf of the State that it was a grant within the meaning of the Government Grants Act.

xxxx xxxx xxxx

15. In the present case the High Court correctly found on the facts that the respondent after the determination of the lease held over. Even if the Government Grants Act applied Section 116 of the Transfer of Property Act was not rendered inapplicable. The effect of Section 2 of the Government Grants Act is that in the construction of an instrument governed by the Government Grants Act the court shall construe such grant irrespective of the provisions of the Transfer of Property Act. It does not mean that all the provisions of the Transfer of Property Act are inapplicable. To illustrate, in the case of a grant under the

Government Grants Act, Section 14 of the Transfer of Property Act will not apply because Section 14 which provides what is known as the rule against perpetuity will not apply by reason of the provisions in the Government Grants Act. The grant shall be construed to take effect as if the Transfer of Property Act does not apply.

16. Section 3 of the Government Grants Act declares the unfettered discretion of the Government to impose such conditions and limitations as it thinks fit, no matter what the general law of the land be. The meaning of Sections 2 and 3 of the Government Grants Act is that the scope of that Act is not limited to affecting the provisions of the Transfer of Property Act only. The Government has unfettered discretion to impose any conditions, limitations, or restrictions in its grants, and the rights, privileges and obligations of the grantee would be regulated according to the terms of the grant, notwithstanding any provisions of any statutory or common law."

[Emphasis supplied]

b. Each of the three learned Judges in *Express Newspapers (supra)* delivered separate but concurring judgments. The lead judgment of A.P.Sen, J., deals with the scope of Sections 2 and 3 of the GGA, and in paragraphs 77 to 78 holds that the overriding effect of Section 3 makes "it amply clear that a grant of property by the Government partakes of the nature of law since it overrides even legal provisions which are contrary to the tenor of the document."

c. In *Hajee S.V.M. Mohamed Jamaludeen Bros (supra)*, a two judge Bench of the Supreme Court held as follows: -

"10. The combined effect of the above two sections of the Grants Act is that terms of any grant or terms of any transfer of land made by a Government would stand insulated from the tentacles of any statutory law. Section 3 places the terms of such grant beyond the reach of any restrictive provision contained in any enacted law or even the equitable principles of justice, equity and good conscience adumbrated by common law if such principles are inconsistent with such terms. The two provisions are so framed as to confer unfettered discretion on the Government to enforce any condition or limitation or restriction in all types of grants made by the Government to any person. In other words, the rights, privileges and obligations of any grantee of the Government would be completely regulated by the terms of the grant, even if such terms are inconsistent with the provisions of any other law."

[This judgment has been followed by a Division Bench of this Court in *Municipal Corporation of Delhi & Ors. vs. Damyanti Sahni & Ors.* AIR 2000 Del 432]

d. In *Azim Ahmad Kazmi (supra)*, which is also a decision of two learned Judges, the Court was concerned with a lease executed by the State of U.P in favour of the appellant, which was cancelled by the State. One of the questions formulated by the Court was whether the State Government could dispossess the lessees in

accordance with the GGA without resorting to other procedure established by any other law. The Supreme Court relied upon its judgment in Zahoor Ahmad (supra) to hold that resumption of the land under the lease deed could take place under the special procedure provided therein.

e. In *Union Of India & Anr. vs. Dinshaw Shapoorji Anklesari & Ors.* (2014) 14 SCC 204, a three Judge Bench noticed the judgment in *Azim Ahmad Kazmi* (supra) and held (in paragraph 41) that the government has unfettered discretion under Section 3 of GGA to impose any condition, limitation or restriction in its grants and the rights, privileges and obligations of the grantee would be regulated according to the terms of the grant itself, although they may be inconsistent with the provisions of any statute or common law.

23. There is thus a four-Judge decision of the Supreme Court which, following the Privy Council, took a narrow view of Section 3, and five more recent decisions in which a somewhat contrary view has been expressed. In the latter line of authority, the decision in *Collector of Bombay* (supra) has not been referred to. The resolution of the conflicting authorities suggested by Mr. Makhija- by reading the judgment in *Collector of Bombay* (supra) and *Thakur Jagannath Baksh Singh* (supra) as limited to cases where a grant was fully or partially withdrawn by subsequent legislation - does not appeal to me. The judgments do not admit of such narrow interpretation. The ratio of these judgments is that Section 3 must be construed in the light of the preamble of the GGA, and therefore restricts only the rights and liabilities of the parties under the TPA. This cannot be limited to a particular factual context.

24. In these circumstances, the doctrine of precedent dictates that the view of the larger Bench must ordinarily prevail. For this purpose, reference may be made to the Constitution Bench judgments of the Supreme Court in *Central Board of Dawoodi Bohra Community & Anr. vs. State Of Maharashtra & Anr* (2005) 2 SCC 673 (paragraphs 5,12) and *National Insurance Company Limited vs. Pranay Sethi & Ors.* (2017) 16 SCC 680 (paragraphs 15 to 28). This was also the view taken by a Coordinate Bench of this Court in *Edward Keventers* (supra), cited by Mr. Bindra. The judgment of the Supreme Court in *Collector of Bombay* (supra), and *Zahoor Ahmad* (supra), and that of the Privy Council in *Thakur Jagannath Baksh Singh* (supra) were considered by this Court, and it was held that all decisions which are contrary to *Thakur Jagannath Baksh Singh* (supra) are of no moment. However, I do not propose to analyse the decision in *Edward Keventers* (supra) in any detail, as that judgment has subsequently been held to be inapplicable in view of the subsequent judgment of the Supreme Court in *Hajee S.V.M. Mohamed* (supra). (Please see *Jor Bagh Association (Regd.) & Ors. vs. Union of India & Ors.* AIR 2004 Del 389.)

25. For the purposes of the present case, suffice it to say that on either interpretation of the GGA, the respondent's invocation of the DRCA cannot be held to be incompetent. The narrow view of Section 3, enunciated in *Collector of Bombay* (supra) restricts its applicability only to the TPA and no question

therefore arises of resolving a conflict between the DRCA and the terms of the grant. However, the consequence of the above interpretation of Clause 2(9) is that, even on an expansive construction of Section 3 of the GGA, in accordance with the later judgments of the Supreme Court, the present proceedings instituted by the respondent under the DRCA were not barred by any provision, restriction, condition or limitation contained in the perpetual lease deed dated 16.04.1945.

Conclusion

26. In view of the above, I am unable to accept the contentions advanced on behalf of the UOI and the petition is accordingly dismissed. However, the execution of the impugned order dated 01.09.2007 is stayed until 31.12.2020, subject to the UOI complying with the conditions contained in paragraph 36 thereof. The payment of arrears in terms of paragraph 36(i) of the impugned order shall be made within two months from today. There will be no orders as to costs.