Hitkarini Sabha, Jabalpur

Vs

The Corporation of The City of Jabalpur and Others

Civil Appeals Nos. 702 and 703 of 1967

(K. S. Hegde, A. N. Grover JJ)

03.05.1972

JUDGMENT

GROVER, J. -

1. The appeals which have been brought by certificates from a common judgment of the Madhya Pradesh High Court arise out of certain acquisition proceedings.

2. The facts may be stated. Plots Nos. 670, 671 and 735 situate in Madan Mahal Extension area, Jabalpur were acquired by the State Government under the Land Acquisition Act, 1894, hereinafter called the 'Act', for constructing the Home Science College. In the present appeals we are concerned mainly with Plot No. 670. On August 31, 1940, a deed of lease had been executed on behalf of the Municipal Corporation granting a lease free of premium to the Hitkarini Sabha, Jabalpur, which is the appellant before us. The lease was in respect of 10 acres of land comprising Plot No. 670 and another strip of land measuring 0.621 acres as described in the deed and delineated in the plan annexed thereto. The period of the lease was 30 years and the purpose for which the land was to be used was for locating and running the Hitkarini City College. Amongst other terms and conditions the appellant was to pay a yearly rent of Rs. 5/- for 10 acres and Re. 1/- for the other strip of land besides paying and discharging all rates and taxes, etc. The appellant, on the expiry of the lease, was entitled to have the same renewed on such terms and conditions as might be agreed between the parties. The appellant and built a college hostel on the aforesaid land and had also used the attached ground as playground for students.

3. The Collector of Jabalpur, by his award, dated July 18, 1955, dealt with the claims filed by the appellant and the Municipal Corporation and after disposing of certain preliminary objections he assessed the compensation for the lands in all the three plots at As. /8/- per sq.ft. According to the Collector the appellant was not merely a lessee or tenant-at-will as contended by the Corporation but was a lessee for the term mentioned in the lease-deed, dated August 31, 1940, the lease having been made for a specific purpose, i.e. for locating and running a City College. As regards Plot No. 670 the apportionment was made between the appellant and the Corporation.

4. The appellant and the Corporation were dissatisfied with the award of the Collector. Applications for reference were made under Section 18(1) of the Act. The Additional District Judge held that the price should be 10 As. per sq.ft. and that the appellant and the Municipal Corporation were entitled to equal compensation for plot No. 670. The Corporation and the appellant filed appeals to the High Court. The decision of the Additional District Judge fixing the price of the land at As. 10/- per sq.ft. was affirmed. As regards the dispute regarding apportionment the High Court held, following a decision of a Division Bench of the same court in Dagdulal v. Municipal Committee, Burhar (1960

MPLJ 627.), that the lease deed having been executed by the Administrator during the time when the Corporation stood superseded was ineffective to convey the leasehold interest to the appellant. However, the appellant had been paying rent at the stipulated rate which had been accepted for a long time by the Corporation. It amounted, therefore, to the creation of a tenancy by necessary implication and the relationship of landlord and tenant came into existence. On the character of tenancy, whether it should be deemed to be from year to year or whether it should be on the terms contained in the lease-deed, the High Court held that the tenancy continued on the terms contained in the lease deed. The High Court then proceeded to say :

> "The lease deed in this case was executed on August 31, 1940, and was for a period of thirty years. It was, therefore, to remain in force for 15 years more after the date of acquisition. There is a renewal clause which has been already quoted above. The lessee is entitled for renewal 'on such terms and conditions as may be agreed to between the parties'. It appears to us that the clause is uncertain and vague and does not form a valid contract for renewal of the lease. Normally in a covenant for renewal there is an express agreement that the lease would be continued on the same terms and conditions subject to a reservation that the rent may be enhanced under certain circumstances. In the instant case, all the terms and conditions have been left to the agreement of parties which may not take place at all. Although a renewal is contemplated, no terms on which it can be granted have been fixed between the parties. Under Section 29 of the Indian Contract Act such a contract cannot be enforced. It has been held in Ramaswami v. Rajagopala, (ILR 11 Mad 200) that a lease whereby a tenant agreed to pay whatever rent the landlord might fix was void for uncertainty."

The apportionment was made on actuarial basis between the appellant and the Corporation in the ratio of 1038 : 962.

5. Before us two matters have been sought to be raised. One relates to the quantum of compensation awarded by the learned Additional District Judge and the other to the apportionment between the appellant and the Corporation. We shall first deal with apportionment. It has been argued that since the High Court had held that the tenancy continued on the terms contained in the lease deed benefit should have been given of the renewal clause also. The High Court had taken the view that clause was uncertain and vague and did not form a valid contract for the renewal of the lease. Our attention has been invited to a judgment of the Mysore High Court in H. V. Rajan v. C. N. Gopal and others (AIR 1961 Mys 29.). There the relevant portion of the renewal clause was "lessee shall have the option of five years but subject only to such terms and conditions as may be mutually agreed upon". It was observed that ordinarily the renewal clause in a lease deed was an important term of the agreement and the courts would be reluctant to ignore that clause on the ground that it was vague unless on a reasonable construction no meaning could be attached to it. An agreement to renew the lease, without more, must be deemed to be an agreement to renew as per the original terms. Even if the renewal provided was dependent on the agreement between the parties the clause merely provided for an agreement on reasonable terms. If the parties could not agree as to these terms the courts could step in.

6. In our judgment it is altogether unnecessary to decide the true scope and effect of the renewal clause contained in the deed executed on August 31, 1940. At the time the lease was executed there used to be a Municipal Committee in Jabalpur. Apparently it became a Corporation later. The Committee was superseded sometimes prior to August 31, 1940 and T. Chhatra Singh, Officer-in-

Charge of the Committee, Jabalpur as also Secretary of the Municipal Committee had signed the lease on behalf of that Committee. In the decision of the Madhya Pradesh High Court in Dagdulal's case (supra), the view had been expressed that so long as the Municipal Committee was not reconstituted the ownership of the property stood transferred by operation of law to the State Government and therefore the Administrator had no power whatsoever to sell the property which had vested in the Government. The Additional District Judge had observed that the lease deed had been executed in pursuance of a resolution which had already been passed by the Municipal Committee. The High Court, however, found on the evidence produced before the Additional District Judge that the final resolution passed by the Municipal Committee was only for the grant of a licence and not a lease to the appellant. The deed of lease, therefore, was held to be ineffective for conveying any lease-hold interest to it. But still the High Court held that the tenancy was to last for a period of thirty years.

7. We are wholly unable to comprehend how any lease could be spelt out of the deed, dated August 31, 1940, for a period of 30 years containing the renewal clause which has already been mentioned. If the officer who executed the lease deed had no power to lease out the property in question the grant of the lease was wholly null and void. It is true that by acceptance of the rent from the appellant the relationship of landlord and tenant came into existence between the parties but Mr. Chagla for the appellant has not been able to show how a lease for a period of 30 years together with a renewal clause could be held to have been created or to have come into existence. It may be mentioned that we are not concerned with the period of 30 years which has already been taken into consideration by the High Court because no appeal had been filed on that point by the Corporation. The only matter which requires determination is whether the High Court, while deciding the question of apportionment, should have given due effect to the renewal clause. In our opinion the High Court could not have done so. If the so called deed of lease, dated August 31, 1940, was wholly ineffective and void for the purpose of demising the land for a period of 30 years one could only look at the provisions of the Transfer of Property Act for determining the term for which the tenancy came into existence. Under Section 106 of that Act the tenancy, in the present case, could be only from month to month because the immovable property had not been lease out for agricultural or manufacturing purpose in which case the lease would have been from year to year. We are therefore unable to accede to the contention that the renewal clause in the lease deed, dated August 31, 1940, was effective and should have been taken into consideration while making the apportionment between the appellant and the Corporation.

8. The next question relating to quantum can be disposed of shortly. The sole criticism of Mr. Chagla is that the potential value of the plot in question was not taken into consideration. It is true, as pointed out in Raja Vyrigherla Narayana Gajapatiraju v. The Revenue Divisional Officer Vizagapatam (66 IA 104.), that where the land to be valued possessed some unusual or unique features as regards its position or its potentialities the court determining the market-value will have to ascertain as best as it can from the materials before it what a willing vendor might reasonably expect to obtain from a willing purchaser for the land in that particular position and with those particular potentialities. It has been urged that Plot No. 670 had a special situation or position in view of its size, locality, nearness to business centre and the Madan Mahal Station. But the value which was fixed by the Additional District Judge and the High Court was fixed by reference to sales of plots of comparable nature. The following portion of the Judgment of the High Court shows how the matter was dealt with :

> "We may observe that the two witnesses relied upon by the appellants purchased small plots at the rate of Re. 1/- per sq.ft. As the map of the Wright Town Madan

> Mahal Extension area produced by the Corporation before us shows, these plots are in a fully developed lay-out having roads and drains round about. We had asked the Corporation to calculate how much area out of the acquired sites would be required to be left open for roads and drains and they have calculated that about 70,000 sq.ft. would have to be left open for this purpose. Obviously, therefore, it is only the remaining plot which would have value as building sites. Besides leaving so much area open, costs will have to be incurred in developing the roads and drains for which the Corporation has estimated the cost to be Rs. 8,500/-. Considering all these factors and also calculating the built-up area in the lay-outs surrounding the acquired land, we find that it is only eighty per cent. of the land which can be sold as building site.
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> On these calculations if the average price of the plots sold in the locality is taken to be As. /12/- per sq.ft. the overall price of the acquired land without roads and drains would work out to a little less than /9/- per sq.ft. To put the matter in a difference way, the value of /10/- per sq.ft. found by the Additional Judge would work out to a little over /12/- per sq.ft., if only the area which could be built upon is considered saleable as building site. We, therefore, find that the price at /10/- per sq.ft. allowed by the Additional District Judge is not unreasonable; if anything it errs on the generous side".

9. We have no manner of doubt that the High Court had taken all the factors into consideration while assessing the value.

10. In the result the appeals fail and are dismissed. There will be no order as to costs.

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