

Badrilal

Vs

Municipal Corporation of Indore

Civil Appeal No. 1243 of 1967

(C. A. Vaidialingam, I. D. Dua, A. Alagiriswami JJ)

06.12.1972

JUDGMENT

ALAGIRISWAMI, J. -

1. This is an appeal by special leave against the judgment of the High Court of Madhya Pradesh in Second Appeal No. 475 of 1962 on the files of that Court.

2. The appellant became a lessee of a plot of land measuring 10,375 sq. feet (72 1/2 Chasmas) situate at 28, Parsi Mohalla Street No. 5, Sanyogitaganj, Indore belonging to the Municipal Corporation for a period of 10 years in 1919. This lease was renewed from time to time and the last of such renewals was in the year 1939 for a period of 10 years. The lease expired on September 30, 1949. On May 24, 1949 the respondent, Municipal Corporation of Indore, issued a notice to the appellant directing him to vacate the land, on September 30, 1949. Thereupon he applied to the Municipal Commissioner either to grant him a lease for 99 years and if it was not possible to renew it at least for a period of 10 years. On December 19, 1949, the Municipal Council passed a resolution to the following effect :

"Opinion of the Lease Committee is accepted. The land, situated in Parsimohalla, Sanyogitaganj, be given to applicant Badrilal Bholaram only in case he is ready to deposit Rs. 16,212 of the lease rent and upset price as per Schedule rate in accordance with letter No. 3239, dated October 26, 1949, sent to him by the Municipal Commissioner otherwise the said land be taken back into possession."

On December 31, 1949, the Municipal Commissioner wrote Ex. P-20 to the appellant informing him that the land would be given to him on long lease on condition that he paid an upset price of Rs. 16,212 and an annual lease rent at Rs. 9/- per Chasma. He was further informed that if he accepted the said condition he should deposit the upset price within 15 days and submit an application giving his consent, and that otherwise steps would be taken to take back possession of the land. The appellant wrote (Ex. P-19 on January 9, 1950) that the upset price and rent claimed by the Municipal Council was too much and requested that the rent and upset price be modified and during the pendency of his petition proceedings before the Commissioner be stayed. He then seem to have filed a petition for revision before the Minister incharge of municipalities and this was dismissed on September 7, 1952. Almost four years, later on May 14, 1956 he wrote Ex. D-2 to the Commissioner requesting that an amount of Rs. 8,212 may be accepted and he may be permitted to pay the balance in annual instalments Rs. 1,000 each. On June 20, 1956, the appellant was informed by the Commissioner by letter Ex. D-3 that he should deposit the sum of Rs. 8,212 within two days and thereafter the balance would be realised in instalments. The appellant not having paid the

amount the Municipal Commissioner again wrote on July 30, 1956 giving him two days time to deposit the amount of Rs. 8,212. On February 20, 1957, the Commissioner again wrote to the appellant directing him to deposit the whole of Rs. 16,212 within two days telling him that on his failure to do so steps would be taken for evicting him from the land.

3. The suit out of which appeal arises was filed on September 16, 1957. The appellant filed his written statement on January 20, 1958 and the issues were framed, on March 24, 1958. At this stage the defendant wrote Ex. D-4 on March 17, 1959, in the following terms :

"I beg to say that it has been approved by you to give me the plot of land at H.N. 85 Parsimohalla on permanent lease of 99 years after having received the upset price from me. I agree to pay whatever lease rent found due against me up to March 31, 1951, besides reasonable costs of the suit and I have deposited today vide cheque number E/2/104221, dated March 17, 1959, in the Indore Bank, Sanyogitaganj and I undertake to pay in cash any amount found due against me at the time of execution of the lease deed."

The Commissioner wrote Ex. D-5 to the defendant on April 23, 1959 asking him to deposit the upset price of Rs. 16,212 rent according to the new rates after deducting a sum of Rs. 824-6-0 already paid by the appellant up to March 31, 1954, as also the court expenses. Along with his letter, dated March 17, 1959, the appellant had apparently sent a cheque for Rs. 16,601.93. The balance not having been paid, as demanded in the letter Ex. D-5, the Commissioner wrote again on May 28, 1959 and sent a further reminder on August 19, 1959, giving the appellant four days' time for paying the balance which was actually paid only on September 22, 1959. The Municipal Council passed a resolution on May 31, 1960, refusing to grant the lease to the appellant and directing the Municipal Commissioner to take back possession of the land.

4. Curiously the appellant somehow pleaded that he was a permanent lessee of the land but that claim obviously could not be and was not seriously pressed before this Court by Mr. Gupte, learned counsel appearing for him. The Trial Court surprisingly held that he became a permanent tenant, the Trial Court as well as the 1st Appellate Court held that the appellant was a tenant holding over. Both of them decided in favour of the appellant. The High Court observes at one place that the appellant's position after September 30, 1949 was that of a lessee holding over and not that of a trespasser, but there is no discussion as to why it considers that the appellant was a lessee holding over. We shall later point out that the appellant cannot be deemed to be a lessee holding over. The High Court also held that there was no compromise of the suit by any person authorised to do so on behalf of the Corporation. It also held that there was no acceptance of rent with the sanction of the Council. As a consequence it allowed the appeal and decreed the plaintiff's suit.

5. Before this Court, Shri Gupte appearing for the appellant did not contend that there was a compromise of the suit. His contention on the other hand was that a concluded contract emerged when the appellant paid a sum of Rs. 5,697.93 on September 22, 1959, pursuant to the letter of the Commissioner and therefore the suit could not continue. He also argued that the appellant would be entitled to the benefit of the provisions of Section 53-A of the Transfer of Property Act, and that in any case he was a tenant holding over and would be entitled to the benefit of the provisions of Sections 106 and 116 of the Transfer of Property Act.

6. We may straightaway say that we find ourselves unable to agree with the contention that there was a concluded contract between the Municipal Council and the appellant on September 22, 1959.

There is no dispute that in this case the Commissioner cannot enter into a contract by himself and can do so only if it is sanctioned by the Municipal Corporation under Section 80 of the Madhya Pradesh Municipal Corporation Act. The resolution of the Corporation, dated December 9, 1949, was specific that the land would be given to the appellant if he deposited the upset price and rent in accordance with the letter, dated October 26, 1949, sent by the Municipal Commissioner to the appellant and otherwise the land should be taken back into possession. That letter is not on record. Apparently, it was on the same terms as Ex. P-20, dated December 31, 1949. It could not be otherwise. The appellant did not comply with the terms of that letter. He went on to make a counter offer by Ex. P-19, dated January 9, 1950. He appealed to the Minister and having failed there, he waited nearly seven years after the Corporation's resolution to pay a part of the amount and pay the balance in instalments. This was accepted by the Municipal Commissioner on June 20, 1956. But we must make it clear that the Municipal Commissioner had no power in view of the resolution of the Corporation to accept the appellant's offer. He was given a specific mandate and was not authorised to enter into negotiations with the appellant regarding the lease. The amount was not paid in spite of two further letters and the suit was filed on September 16, 1957. The Municipal Commissioner had no power to go on accepting the offer from the appellant more than 15 days after his letter to him on December 31, 1949; nor could he accept any terms other than those mentioned in the Corporation's resolution either within those 15 days or later. Even the offer made by the Corporation's resolution came to an end with the filing of the suit which was a clear and unequivocal revocation of the resolution. Thereafter the Corporation cannot be deemed to keep open its offer of the year 1949. Nor was it open to the Commissioner either to make any offer to the appellant or to accept any offer from the appellant in respect of the land except with the sanction of the Municipal Council. The appellant's offer made, on March 17, 1959, a year and a half after the suit was filed, was a new offer and it was rejected by the only authority competent to accept it i.e., the Corporation, on March 31, 1960. The correspondence carried on by the Commissioner with the appellant was wholly beyond his powers.

7. The offer made by the appellant in 1959 cannot have anything to do with the resolution passed by the Municipal Council in 1949. The offer was of a different set of terms and included an offer to pay the costs of the suit and that also had in fact been deposited by the appellant at the instance of the Commissioner. That indicates the new situation that had come into existence and establishes beyond doubt that this was a fresh offer. We therefore hold that no contract came into existence between the parties, on September 22, 1959.

8. It was then urged by Mr. Gupte that the appellant having deposited the rent up to March 31, 1954 and the Municipal Commissioner having accepted it he should be deemed to be a tenant holding over. Leaving aside for the moment the contention put forward on behalf of the Corporation that this payment was made behind its back, it has to be noted that the payment was at the rate prevailing before September 30, 1949 and on that date the Corporation having passed a resolution specifying a new rate of rent of Rs. 9/- per Chasma the payment at the old rate by the appellant and its acceptance by the Municipal Commissioner was not an acceptance of rent as such and in clear recognition of the tenancy right of the appellant. It cannot amount to the Corporation consenting to the appellant continuing as a tenant by paying the old rates of rent. There is thus no question of the appellant being a tenant holding over. But a person who was lawfully in occupation does not become a trespasser, even if he does not become a tenant holding over but is a tenant by sufferance. The position at law was explained in *Kai Khushroo Bezonjee Capadia v. Bai Jerbai Hirjibhoy Warden & Another* (1949-50 FCR 262 at 270 : AIR 1949 FC 124 : 1949 FLJ 168.), as follows :

"On the determination of a lease, it is the duty of the lessee to deliver up possession

of the demised premises to the lessor. If the lessee or a sub-lessee under him continues in possession even after the determination of the lease, the landlord undoubtedly has the right to eject him forthwith; but if he does not, and there is neither assent nor dissent on his part to the continuance of occupation of such person, the latter becomes in the language of English law a tenant on sufferance who has no lawful title to the land but holds it merely through the laches of the landlord. If now the landlord accepts rent from such person or otherwise expresses assent to the continuance of his possession, a new tenancy comes into existence as is contemplated by Section 116, Transfer of Property Act, and unless there is an agreement to the contrary, such tenancy would be regarded as one from year to year or from month to month in accordance with the provisions of Section 116 of the Act."

At page 272 it was pointed out :

"It can scarcely be disputed that the asset of the landlord which is founded on acceptance of rent must be acceptance of rent as such and in clear recognition of the tenancy right asserted by the person who pays it."

9. The same position was explained in a recent decision of this Court to which one of us was a party in *Bhawanji Lakhamashi v. Himatlal Jamnadas Dani* ((1972) 1 SCC 388.). At Page 391 it was observed :

"The act of holding over after the expiration of the term does not create a tenancy of any kind. If a tenant remains in possession after the determination of the lease, the common law rule is that he is a tenant on sufferance. A distinction should be drawn between a tenant continuing in possession after the determination of the term with the consent of the landlord and a tenant doing so without his consent. The former is a tenant at sufferance in English Law and the latter a tenant holding over or a tenant at will. In view of the concluding words of Section 116 of the Transfer of Property Act, a lessee holding over is in a better position than a tenant at will. The assent of the landlord to the continuance of possession after the determination of the tenancy will create a new tenancy. What the section contemplates is that on the one side there should be an offer of taking a new lease evidenced by the lessee or sub-lessee remaining in possession of the property after his term was over and on the other side there must be a definite consent to the continuance of possession by the landlord expressed by acceptance of rent or otherwise. In *Kai Khushroo Bezonjee Capadia v. Bai Jerbai Hirjibhoy Warden and Another* case (supra) the Federal Court had occasion to consider the question of the nature of the tenancy created under Section 116 of the Transfer of Property Act and Mukherjea, J., speaking for the majority said that the tenancy which is created by the "holding over" of a lessee or under-lessee is a new tenancy in law even though many of the terms of the old lease might be continued in it, by implication; and that to bring a new tenancy into existence, there must be a bilateral act. It was further held that the assent of the landlord which is founded on acceptance of rent must be acceptance of rent as such and in clear recognition of the tenancy right asserted by the person who pays it."

10. The appellant being merely a tenant by sufferance there is no need for any notice before he could be evicted. Thus the judgment of the High Court is correct, in so far as it held the appellant was liable to be evicted.

11. The appeal is dismissed with costs. The petition for reception of additional evidence is also dismissed.

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