

Hajee S.

Vs

M. Mohamed Jamaludeen Bros & Co.

Vs

Govt. of T.N.

Civil Appeal No. 8547 of 1983

(M. M. Punchhi, K. T. Thomas JJ)

24.02.1997

JUDGMENT

THOMAS, J.

Can the Government unilaterally rescind a contract if the terms thereof so provide ? A Single Judge of the Madras High Court has held that any such term in the agreement is null and void being repugnant to the essence of the contract. Upon such a finding the learned Single Judge granted a decree in favour of the appellant for a sum of nearly Rupees thirty six lakhs with future interest. But a Division Bench of the same High Court, before which the Government appealed, reversed the decree and dismissed the suit of the appellant mainly on the strength of the provisions of the Government Grants Act, 1895 (for short "the Grants Act"). The appellant has preferred this appeal after obtaining a certificate from the High Court under Article 134-A of the Constitution of India.

2. The facts, bereft of elaborate but necessary for this appeal, are the following :

Pursuant to acceptance of the offer made by the appellant, being the highest bid, agreements were executed between the Government of Tamil Nadu and the appellant as per which right to collect "chank shells" from four different coastal sites situated in four different district in Tamil Nadu was granted to the appellant for a period of three years. The appellant deposited with the Government the required amount as security deposit in terms of the agreements and spent some good amount for execution of the fishing work at four different sites. Fishing operations commenced on 2-2-1971 but they did not continue for long as differences arose between the Government and the appellant. On 2-6-1971 the Government sent a communication to the appellant, the operative portion of which reads thus :

"In pursuance of the orders contained in GO cited as per clause 7 of the agreement, the lease of the above area is hereby cancelled and the lease is terminated with effect from 20-6-1971.

The proportionate lease amount for the unexpired portion of the lease period and the security deposit remitted by you in respect of the above fishery will be refunded to you shortly."

3. Clause 7 of the agreement, which is referred to in the said communication, reads thus :

"The lease shall also be liable to be terminated at any time by the lessor or any officer of the Department acting for and on his behalf without assigning any reasons therefor."

The Government after issuing the communication returned a sum of Rs. 78,402 to the appellant which comprises part of the paid of the rent paid in advance and also the security deposit made by the appellant at the first instance. The appellant received the said amount under protest.

4. In the suit filed by the appellant claiming damages for the aforesaid action of the Government, he contended, inter alia, that (i) the agreement had actually created a lease of land and (ii) the clause empowering the lessor to terminate the lease is void and unenforceable being repugnant to the core of the contract itself. The appellant contended that as termination of the contract was made without affording an opportunity to him to be heard the action of the Government is bad being in violation of the principles of natural justice. The appellant claimed damages to the tune of Rs. 36,44,705 being the loss suffered by him including interest till the date of the suit.

5. The Government contended that the agreement has created only a licence which was revocable at the will of the grantor. The Government defended the action of revoking the contract as necessitated in the larger public interest and relied on the aforesaid clause 7 of the agreement as the source of power to revoke the contract. It was alternatively contended that the appellant did not suffer any loss.

6. The learned Single Judge found that the transaction was only a licence coupled with interest and hence it was irrevocable. Regarding clause 7 of the agreement the learned Single Judge accepted the stand of the appellant that it was unenforceable and found that the appellant is entitled to the entire damages claimed by him. The suit was hence decreed in terms of the plaint.

7. When a letters patent appeal was preferred by the Government a Division Bench of the Madras High Court set aside decree and dismissed the suit holding that clause 7 of the agreement is valid and enforceable in view of the provisions in the Grants Act and hence the appellant is not entitled to claim damages for the action resorted to by the Government.

8. If clause 7 of the agreement is valid it is binding on both the parties to the contract and the corollary is that the Government had the power to revoke it unilaterally and hence termination of the contract is not liable to be questioned by the other party. As the Division Bench upheld the validity of clause 7 only on account of its protection as per the Grants Act we are mainly called upon to decide whether the impugned clause in the agreement has the said protection.

9. Section 2 of the Grants Act insulates all grants and all transfers of land or any interest therein made by the Government from the checks of the provisions of Transfer of Property Act. Section 3 of the Grants Act protects the terms of such grant from the provisions of any other law. We extract the above two provisions hereunder :

"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."

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 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.

11. The above legal position was recognised by the courts in India before the Constitution of India came into being. (*Surja Kanta Ray Choudhury v. Secy. of the State* [AIR 1938 Cal 229 : 42 CWN 239] and *Raza Husain Khan v. Saiyid Mohd.* [AIR 1938 Oudh 175 : ILR 14 Luck 22]). The position continued to be so even after the Constitution came into force (*State of U.P. v. Zahoor Ahmad* [(1973) 2 SCC 547 : (1974) 1 SCR 344]).

12. An attempt was made to show that the transaction evidenced by the agreement was not a grant but a lease of land. Though it is not now open to the appellant to raise such a contention (in view of the clear finding of the learned Single Judge that it was not a lease but only a licence coupled with interest, which finding was not challenged by the appellant before the Division Bench) assuming that it was a lease of land, still the appellant cannot succeed because lease made by the Government is also covered by the protection envisaged in Sections 2 and 3 of the Act.

13. Alternatively it was argued that a licence coupled with interest created by the instrument is not a grant and hence the provisions of the Grants Act cannot apply.

14. It is true that the word "grant" is not defined in the Grants Act but it is quite evident that the word has been used in the Act in its etymological sense and, therefore, it should get its widest import. In *Black's Law Dictionary*, the word "grant" is shown to have the meanings (i) to bestow; to confer upon someone other than the person or entity which makes the grant; (ii) to give or present as a right or privilege. (5th Edn., p. 629)

15. The definition of licence in Section 52 of the Indian Easements Act denotes that it is the grant of a right made by the grantor. Section 53 and Section 54 of the said Act also refer unequivocally to the grant of licence. Thus without a "grant" in the general sense no licence can be created.

16. In *Mohsin Ali v. State of M.P.* [(1975) 2 SCC 122] this Court said that : (SCC p. 126, para 15)

"In the widest sense 'grant' may comprehend everything that is granted or passed from one to another by deed. But commonly, the term is applied to rights created or transferred by the Crown, e.g., grants of pensions, patent, charters, franchise (see *Earl Jowitt's Dictionary of English Law*)."

17. The word "grant" used in the Grants Act could, therefore, envelop within it everything granted

by the Government to any person. Thus the licence which the appellant obtained by virtue of the agreement would undoubtedly fall within the ambit of "grant" envisaged in the Grants Act.

18. The result is that the appellant cannot bypass clause 7 of the instrument under which he obtained the right to collect "chank shells". The said clause adequately empowers the Government to unilaterally terminate the arrangement or revoke the grant without assigning any reason whatsoever. The said clause is valid and could be enforced by the Government at any time and hence the action of the Government in rescinding the contract was valid. The appellant is not, therefore, is not therefore, entitled to damages.

19. We, therefore, dismiss this appeal without any order as to costs.