SUPREME COURT OF INDIA

Neeraj Kapoor

Vs.

Ranbir Singh Dahiya

C.A.Nos.4939-40 of 2001

(Syed Shah Mohammed Quadri and S.N. Phukan JJ.)

31.07.2001

ORDER

Syed Shah Mohammed Quadri, J.

1. Delay is condoned. Leave is granted.

2. The appellant before us challenges the order passed by a Division Bench of the High Court of Punjab and Haryana dismissing C.W.P. No. 248/1997 on August 27, 1997 and the order dismissing Review Application No. 359/1997, filed in the said writ petition, on September 7, 1999.

3. A narration of relevant facts would be necessary to appreciate the controversy in these appeals. The subject matter of the dispute is an extent of 36 sq.yards of land comprising Shop No. 14, Near Button Factory, Subhash Chowk, Sonepat (under the Municipal Committee, Sonepat, an A-class Municipality) hereinafter referred to as "the demised land" which was given on lease by the Municipal Committee under Haryana Municipalities Management of Municipal Properties and State Properties Rule, 1976 to one Prem Kumar Sardana. It appears with the permission of the Municipality the said Sardana raised construction, Shop No. 14 (ground floor and first floor). In 1971, he leased out the ground floor in favour of one Janak Raj Kapoor who started a printing press therein as the sub-lessee. He died on January 20, 1989 leaving behind him a wife and a son, the present appellant who has been running ;the press therein. The first respondent was inducted into the possession of the first floor as a sub-lessee by the said Sardana in 1980. Thus both the appellant and the first respondent are sub-lessees of the demised land.

4. The Government of Haryana had taken a policy decision to eliminate the middle-man, namely the lessor of the Municipalities and grant direct leases in favour of the sub-lessees. One such policy was issued in 1984 (hereinafter referred to as "the 1984 Policy") which was for a limited period and was replaced by the policy contained in the letter of the Commissioner and Secretary to Government of Haryana, Local Bodies Administration Deptt. dated May 2, 1991 (hereinafter referred to as "the 991 Policy"). The first respondent applied

to the Chief Executive Officer, Municipality, Sonepat for transfer of the plot of land in his favour on September 9, 1991. Though the application does not disclose that it was made in pursuance of the 1991 policy of the Government, it is obvious that it was the benefit under that policy, which was sought by the first respondent. In regard to the claim of the appellant on November 19, 1992, the wife of the said late Janak Raj Kapoor also made an application to the Administrator, Municipality, Sonepat requesting him to transfer lease in favour of the appellant (her son) under policy no. 8/56/81-2K2 of 16.4.16.4.1984. It is a common ground t6hat as on that date the 1984 policy was not in operation. The policy of the Government which was in operation was 1991 policy (May 2, 1991) referred to above, therefore, in our view that application should be treated as an application to give effect to the 1991 policy. While so, the Municipal Committee granted lease of the whole land in favour of the respondent No. 1 on July 12, 1992. Eventually the appellant filed an appeal against the said order before the Deputy Commissioner, who by order dated July 4, 1997 cancelled the transfer of lease of the demised land in favour of the first respondent under Section 246 of the Haryana Municipal Act, 1973 and directed that the transfer be effected in favour of the appropriate person. That order of the Deputy Commissioner was assailed by the first respondent before the Commissioner who by his order dated October 9, 1996 set aside the said order of the Deputy Commissioner. The appellant filed Civil Writ Petitioner No. 248/1997 challenging the said order of the Commissioner but the writ petition was dismissed on August 27, 19976. He sought review of the order of the High Court dated August 27, 1997 in Review Application No. 359/1997 which was dismissed on September 7, 1999. It is against those two orders that the present appeals have been filed by the appellant, by special leave.

5. Mr. Dhruv Mehta, learned counsel for the appellant, contends that the appellant's father during his life time and thereafter the appellant has been running a printing press on the demised land from 1971, long before the first respondent came into the picture but his application was not considered on the ground that it contains reference to 1984 policy. However, the application of the first respondent was allowed granting lease of the demised land in his favour ignoring the fact that the appellant has been in possession of the ground floor of that land. Mr. B.S. Mor, learned counsel for the first respondent, strenuously argued that the appellant not having applied for under 1991 policy cannot challenge the grant of lease in favour of the first respondent and that he had purchased Malba of the building from the said Sardana.

6. We have already pointed out above that in the application of the first respondent there is no reference to any policy under which the transfer of lease of the demised land was sought by him. It is true that there is a reference to 1984 policy in the application of the appellant though on the date of the application it was 1991 policy that was in force. In this situation the first respondent not having himself referred to the relevant policy in his application cannot make a grievance of the fact that the appellant did not refer to the correct date of the policy. The authorities gave effect to that objection which, in our view, is hardly relevant and makes no difference because on the relevant date of the consideration of the application it was 1991 policy alone that was in force and the appellant applied within the time specified in 1991 policy. That apart the first respondent is not the sole sub-lessee of the entire extent of the

demised land. The fact that he purchased Malba from the lessor-Sardana, would make no difference to this position. Therefore, under 1991 policy the lease of the demised land could not have been transferred in his favour. In our view, both the appellant as well as the first respondent stand in the same position and are joint sub-lessees of the demised land. On these facts the appropriate course for the Municipal Committee is to accept both of them as joint lessees and grant joint lease in their favour. We accordingly, modify the impugned order. It goes without saying that the Municipal Committee shall have to take follow-up action pursuant to this order.

7. Mr. B.S. Mor submits that rights of the first respondent to the Malba may be left open. We make it clear that we have expressed no opinion on that point and that it would be open to the first respondent to seek appropriate relief in regard to the Malba.

8. The appeals are allowed in the above terms. There shall be no order as to costs.