

SUPREME COURT OF INDIA

Azim Ahmad Kazmi

Vs.

State of U.P

C.A.No.2006 of 2003

(G.S.Singhvi and Sudhansu Jyoti Mukhopadhaya, JJ.)

16.07.2012

JUDGMENT

Sudhansu Jyoti Mukhopadhaya, J.

1. These appeals have been preferred against the judgment dated 7.12.2001 passed by the Division Bench of the High Court of Judicature at Allahabad whereby the writ petition preferred by lessee - Azim Ahmad Kazmi and Ors. (Hereinafter referred to as “the appellants”) was dismissed with certain observations.

2. A lease-deed of the demised premises was executed by the respondent- State in favour of the appellants on 19th March, 1996 followed by a renewal of lease dated 17th July, 1998. The State Government vide order dated 15th December, 2000 cancelled the lease deed and proceeded to resume the demised premises which was informed to the appellants by the District Magistrate, Allahabad on 11th January, 2001. The objection preferred by the appellants was rejected on 24th August, 2001. The appellants preferred a writ petition against the order dated 15th December, 2000 passed by the State Government, the notice dated 11th January, 2001 and the order dated 24th August, 2001 passed by the District Magistrate, Allahabad which was dismissed but with the observation that the State Government is not entitled to take forcible possession though it may take possession of the demised premises in accordance with the procedure established by law. The appellants are aggrieved against the dismissal of the writ petition whereby the order of cancellation of lease deed was affirmed, whereas the State Government is aggrieved against the last portion of the order where under it was mentioned that the State Government is not entitled to take forcible possession though it may take possession in accordance with the procedure established by law.

3. The dispute relates to Plot No. 59, Civil Station, Allahabad having an area of 1 acre and 4272 sq. yards (9112 sq. yards or 7618 sq. meters). Initially, a lease of aforesaid plot was granted in favour of one Thomas Crowby for a period of 50 years on 11th January, 1868 by

the then Secretary of State for India in Council and it was signed by the Commissioner of Allahabad Division. A fresh lease was executed in favour of his successor for another period of 50 years on 12.4.1923 which was to operate from 1.1.1918. With the permission of the Collector, Allahabad, the successors of the lessee transferred their lease hold rights in favour of one Purshottam Das in the year 1945. According to appellants on 31st October, 1958, the legal representative of said Purshottam Das transferred the lease-hold rights in favour of appellant no. 7-Smt. Shakira Khatoon Kazmi, appellant no. 6- Smt. Sabira Khatoon Kazmi and their mother-Smt. Maimoona Khatoon Kazmi. The appellant no. 1- Azim Ahmad Kazmi, appellant no. 5- Omar Ahmad Kazmi, appellant no. 2- Shamim Ahmad Kazmi, appellant no. 3- Alim Ahmad Kazmi and appellant no. 4- Maaz Ahmad Kazmi are heirs of late Smt. Maimoona Khatoon Kazmi. The lease, which had been granted on 12th April, 1923 expired on 31st December, 1967 but the same was not renewed for a long period. Subsequently, a fresh lease deed was executed on behalf of Governor of Uttar Pradesh in favour of some of the appellants and their ancestors on 19th March, 1996 for a period of 30 years which was to operate with effect from 1.1.1996. This deed contained a clause that the lease deed may be renewed for two successive terms of 30 years each but the total period shall not exceed 90 years including the original term. The period of this deed expired on 31st December, 1997 and on 17th July, 1998 which was renewed for a further period of 30 years w.e.f. 1st January, 1998. Subsequently the State Government passed an order on 15th December, 2000 for cancelling the lease deed and resuming the possession of the plot in question. The District Magistrate, Allahabad, thereafter gave a notice dated 11th January, 2001 to the appellants intimating them that the State Government had passed an order dated 15th December, 2000 cancelling the lease and resuming possession of the plot in question as the same was required for a public purpose. The notice further mentioned that the appellants should remove the structure standing on the plot failing which possession will be taken in accordance with clause 3(c) of the lease deed. The appellants filed an objection against the notice before the District Magistrate on 2.2.2001. They further claimed to have sent an objection to the Chief Minister of Uttar Pradesh on 31.1.2001 praying for revocation of the order of the State Government dated 15.12.2000. The District Magistrate considered the objection and rejected the same by an order dated 24.8.2001. Copies of the aforesaid order along with cheques representing the compensation for the building standing over the plot (cheques for total amount of Rs.10 lakhs) were served upon the appellants. The respondent-State tried to dispossess the lease on 1.9.2001 and their stand was that the possession of open land was taken. It was at that stage when the writ petition was filed and a stay order was passed by High Court on 2nd September, 2001 staying the dispossession of the appellants. The writ petition was subsequently dismissed on merit.

4. Learned counsel appearing for the lessees submitted that the State Government initially made a proposal for acquiring disputed plot for the same purpose in accordance with the Provisions of Land Acquisition Act, 1894. The District Magistrate, Allahabad, wrote a letter to the State Government on 29th October, 1998 that looking to the area of plot, the estimated amount of compensation, including 30% solatium, 12% additional amount and interest, etc. could come to rupees two crores and sixty two lakhs. The said proposal was not accepted by the State Government and was rejected by order dated 17th July, 2000. The State Government took possession of few other Nazul Lands in Allahabad under the Land Acquisition Act, 1894 wherein a good amount of compensation was paid to the lessees. It was contended that if the State Government had taken a recourse of the Provisions of the Land Acquisition Act, 1894 for acquiring the plot in question, the lessees would have got sufficient compensation and not by opting the said mode the lessees have been discriminated against and consequently, the impugned order of the State Government dated 15th December, 2000 is liable to be set aside. In the past, the State Government had not taken any recourse to resume the land in the manner. The State Government had taken over the possession of the land much prior to the completion of period of lease. The order passed by the State Government on 15th December, 2000 for cancellation of lease and a resumption of possession is illegal and not in accordance with the Government Grants Act, 1895.

5. It was next submitted that the public purpose, if any, existed prior to 17th July, 1998 when the lease was renewed and by renewal of the lease the State Government is stopped from pleading that there is a public purpose. By renewal of lease, the lessee legitimately expected that they will remain in occupation for 30 years from 1st January, 1998, the date from which the lease was renewed.

6. Learned counsel appearing on behalf of the respondent-State submitted that the existence of public purpose is not a new development. It was submitted that by letter dated 29th August, 1998, the District Magistrate informed the Special Secretary to the State Government, he had given the estimate for acquiring the property under the Provisions of the Land Acquisition Act, 1894. In the said letter, the reference of earlier letters including letter dated 2nd December, 1997 has been referred. Those letters shows that even before the renewal of the lease deed in favour of the lessees, taking over the possession of property for extension of the Allahabad High Court and office of the Advocate-General, U.P. was seriously considered; it is wrong to suggest that the requirement of the land for public purpose was not in existence when the lease was renewed.

7. It was contended on behalf of the respondent-State that the lease has been cancelled and an order to resumption of possession has been passed as the plot in question is required for extension of the Allahabad High Court as also for extension of the office of Advocate

General, U.P. The plot is situated just in front of the gate of the High Court on the Kanpur Road and, therefore, most suitable and ideal place for the aforesaid purpose. Several courts-room and chambers for the judges have been constructed in the past but there has been no addition of office space with the result that there is hardly any place to keep the records. Even pending files are being kept by having a make shift and temporary arrangement by enclosing the verandas. Similarly, there is an acute shortage of space in the office of Advocate-General. There is no place at all where the State counsel may sit and do the drafting work or for keeping the files. The grounds for passing of the order, namely, extension of the High Court and extension of office of Advocate-General is undoubtedly a public purpose and the same has rightly not been challenged by the learned counsel for the lessees.

8. It was further contended that the State Government having conferred power under Clause 3 (C) of the lease deed, as the plot in question was required for public purpose, it was open to the State Government to take possession of the land in question on expiry of the one month notice.

9. The questions which requires consideration are (i) whether the order passed by the State Government on 15th December, 2000 for cancellation of lease and resumption of possession is legally valid and (i) whether the State Government can dispossess the lessee in accordance with the Government Grants Act, 1895 without resorting to other procedure established by any other law.

10. There is clear recital in the lease deed executed in favour of the appellants by the Government of U.P. on 19th March, 1996 that the same is being done under the Government Grants Act, 1895. Clause 3 (C) of the deed reads as follows:

“3(C) That if the demised premises are at any time required by the lessor for his or for any public purpose he shall have the right to give one month’s clear notice in writing to the lessees to remove any building standing at the time of the demised premises and within two months of the receipt of the notice to take possession thereof on the expiry of that period subject however to the condition that if the lessor is willing to purchase the building on the demised premises, the lessees shall be paid for such building such amount as may be determined by the Secretary to Government of U.P. in the Nagar Awasth Department.”

11. Sections 2 and 3 of the Government Grants Act, 1895, have been amended by U.P. Act 13 of 1960 with a retrospective effect and the substituted Sections reads as follows:

“2. (1) Transfer of Property Act, 1882, not to apply to Government Grants. - Nothing contained in the Transfer of Property Act, 1882, 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 thereafter to be made, by or on behalf of the Government to or in favour of any person whomsoever; and every such grant and transfer shall be construed and take effect as if the said Act had not been passed.

(2) U.P. Tenancy Act, 1939 and Agra Tenancy Act, 1926 not to affect certain leases made by or on behalf of the Government. - Nothing contained in the U.P. Tenancy Act, 1939, or the Agra Tenancy Act, 1926, shall affect or be deemed to have ever affected any rights, created, conferred or granted, whether before or after the date of the passing of the Government Grants (U.P. Amendment), Act, 1960, by leases of land by, or on behalf of, the Government in favour of any person, and every such creation, conferment or; grant shall be construed and take effect, notwithstanding anything to the contrary contained in the U.P. Tenancy Act, 1939 or the Agra Tenancy Act, 1926.

(3) Certain leases made by or on behalf of the Government to take effect according to their tenor. - All provisions, restrictions, conditions and limitations contained in any such creation, conferment or grant referred to in Section 2, shall be valid and take effect according to their tenor; any decree or direction of a Court of law or any rule of law, statute or enactments of the Legislature, to the contrary notwithstanding: Provided that nothing in this Section shall prevent, or be deemed ever to have prevented the effect of any enactment relating to the acquisition of property, land reforms or the imposition of ceiling on agricultural lands.”

12. This Court in the case of *The State of U.P. vs. Zahoor Ahmad*¹ and Another, reported in held as follows:-

“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 Section 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 right, 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.”

13. Clause 3(C) of the lease deed clearly confers power upon the lessor, State of U.P. that if the plot in question is required by the State Government for its own purpose or for any public

purpose, it shall have the right to give one month's notice in writing to the lessees to remove any building standing on the plot and to take possession thereof on the expiry of the two months' from the date of service of notice. There is a further condition in the clause that if the lessor is willing to purchase the building standing on the plot, the lessee shall be paid such amount as may be determined by the Secretary to Government of U.P. in the Nagar Awas Department.

14. The deed of renewal executed at 17th July, 1998 is a very short one and recites that the renewal is being done on the same terms and conditions including the clause for re-entry as is continued in the original lease deed dated 19th March, 1996 and the terms and conditions of the aforesaid deed would be binding upon the parties. The clause of re-entry was not introduced for the first time in the deed executed in 1996 but also contained as one of the clause in lease deed dated 12th April, 1923 wherein it was stipulated that if the Government shall at any time require to re-enter on the demised plot it can do so, on paying the cost of the building that may be on the site and that the lessee shall have no further claim of any sort against the Government. In fact, in the deed executed on 19th March, 1996, the right of re-entry has been fettered by the condition "required by the lessor for his or for any public purpose". As the State Government is resuming the leased property for his or for any public purpose, which under the terms of the grant it has absolute power to do, the order passed by it on 15th December, 2000 is perfectly valid and does not suffer from any illegality.

15. The Division Bench noticed the fact that in paragraph 7 of the Supplementary counter affidavit filed in reply to the amendment application, it is averred that the properties, reference of which has been made in para 23 of the writ petition were in fact acquired at the instance of the Allahabad Development Authority for building of residential and commercial complex and for development of the area and the proceeding for acquisition had commenced on the basis of the proposals received from Allahabad Development Authority. In para 8 of the Supplementary counter affidavit, it is averred that when Nazul plot No. 13, Civil Station, Allahabad, which is situated in Civil Lines Area, was resumed by the State Government for the purpose of construction of a bus station, the same was done in exercise of power vested with it in a similar clause of the lease deed and no proceedings under the Land Acquisition Act had been initiated. The resumption by the State Government in the said case was challenged before the Division Bench of the Allahabad High Court which was dismissed on 16th December, 1999 and the Special Leave Petition No. 4329 of 2000 preferred against the judgment of the High Court was summarily dismissed by this Court on 7th September, 2001. Therefore, the contention of the lessee that it was for the first time in their case that a lease had been cancelled and the plot has been resumed by the State Government under the terms

of the deed is, therefore, not correct and a similar course of action has been taken in the past also. Therefore, the violation of Article 14 cannot be alleged in the present case.

16. The first question is thereby answered in negative, against the appellants and in favour of the respondents.

17. For taking possession, the State Government is required to follow the law, if any, prescribed. In the absence of any specific law, the State Government may take possession by filing a suit. Under the Provisions of the Land Acquisition Act, 1894, if the State Government decides to acquire the property in accordance with the provisions of the said Act, no separate proceedings have to be taken for getting possession of the land. It may even invoke the urgency provisions contained in Section 17 of the said Act and the Collector may take possession of the land immediately after the publication of the notice under Section 9. In such a case, the person in possession of the land acquired would be dispossessed forthwith. However, if the Government proceeds under the terms of the Government Grants Act, 1895 then what procedure is to be followed. Section 3 of Government Grants Act, 1895, stipulates that the lease made by or on behalf of the Government to take effect according to their tenor - All provisions, restrictions, conditions and limitations contained in any such creation, conferment or grant referred to any Section 2, shall be valid and take effect according to their tenor; any decree or direction of a Court of Law or any rule of law, statute or enactments of the Legislature, to the contrary.

18. In the case of *The State of U.P. vs. Zahoor Ahmad and Another* (supra), this Court held that the Section 3 of the Act declares the unfettered discretion of the Government to impose such conditions and limitation as it thinks fit, no matter what the general law of land be. From Clause 3(C) of the deed, it is clear that the State of U.P. while granting lease made it clear that if the demised premises are at any time required by the lessor for his or for any public purpose, he shall have the right to give one month's clear notice to the lessee to remove any building standing at the time of the demised property and within two months' of the receipt of the notice to take possession thereof on the expiry of that period subject to the condition that the lessor is willing to purchase the property on the demised premises, the lessee shall be paid for such amount as may be determined by the Secretary to the Government of U.P. in the Nagar Awaz Department.

19. In the case in hand, the District Magistrate, Allahabad High Court issued a notice on 11th January, 2001 to the appellants intimating that the State Government had passed order on 15th December, 2000 cancelling lease deed and resuming possession of the disputed property as the same was required for public purpose. The appellants sent an application but instead of filing objections before the State Government represented before the Chief Minister of U.P.

on 31st January, 2001 praying for revocation of order dated 15th December, 2000. Objection was filed before the District Magistrate, Allahabad who after consideration of the objection rejected the same by order dated 24th August, 2001 enclosing therein a cheque for rupees ten lakhs towards compensation for the building standing over the plot. The appellants refused to accept the cheques. The respondents thereafter dispossessed the appellants from the part of the land on 1st September, 2001.

20. Under Clause 3(C) of the lease deed, the respondent-State was permitted resumption of the land which required for its own use or for public purpose and after giving one month's clear notice in writing is entitled to remove any building standing at the time on the demised premises and within two months of the receipt of the notice to take possession thereof subject to the condition that if the lessor is willing to purchase the building of the demised premises required to pay the lessee the amount for such building as may be determined by the Secretary to Government of U.P. in the Awas Department. In the case in hand such procedure was followed. Therefore, we are of the view that there is no other procedure or law required to be followed, as a special procedure for resumption of land has been laid down under the lease deed. As a special procedure for resumption of land is prescribed under the lease deed, the High Court was not correct in holding that the State Government cannot dispossess the appellants but can take possession according to the procedure adopted by any other law. The finding of the High Court to such extent is set aside but the rest portion of the judgment affirming the order of the State Government dated 15th December, 2000, the notice dated 11th January, 2001 and an order passed by the District Magistrate dated 24th August, 2001 is upheld. The appeal preferred by appellants Azim Ahmad Kazmi Ors. is dismissed and the appeal preferred by the State of U.P. and Anr. stands disposed of with aforesaid observations. The interim order of stay is vacated. The State Government is allowed to take possession of the demised premises for extension of High Court building etc., as decided. However, the appellants are given three months time to hand over the possession of the land and building to the State and, if so necessary, the State Government will issue a fresh cheque for rupees ten lakhs in favour of the appellants, if earlier cheque has expired and not encashed. If the appellants fail to handover the possession of demised premises or create any third party interest in such case the State Government and the District Magistrate, Allahabad in particular will take forcible possession of the demised premises.

Judgment Referred

1 AIR 1973 SC 2520