

(32) The parties have addressed arguments in respect of question No. 2 also regarding adverse possession. However, since it is held that the defendant/appellant has been in possession of the suit property, therefore, the question of law formulated above becomes redundant.

(33) In view of the above discussion, the appeal is accepted. The judgments and decrees of both the Courts below stand set aside and the suit of the plaintiff stands dismissed. However, in view of peculiar circumstances of the case, the parties are left to bear their own costs.

(34) Decree sheet be prepared and the files of the Courts below be sent back after due compliance.

R.N.R.

Before Ajay Tewari, J.

ZILA PARISHAD, LUDHIANA—*Petitioner*

versus

STATE OF PUNJAB & OTHERS—*Respondents*

C.W.P. No. 479 of 2000

13th August, 2008

Constitution of India, 1950—Art. 226—Transfer of Property Act, 1882—S. 106—Punjab Panchayat Samitis and Zila Parishad (Sale, lease and other alienation of property and public places) Rules, 1964—Petitioner letting out shop to respondent by way of a licence agreement—Ejectment proceedings—Lease period expired—Collector ordering ejectment—Commissioner setting aside proceedings on ground of non-issuance of notice under section 106 of TP Act—Rules of 1964 coming into force whereby premises of Zila Parishad could be let out only by auction for a period of 5 years—Statutory rules superseding covenants of licence agreement—Not lawful for respondent to claim differential treatment on basis of his long stay—After period specified in agreement was over, a fresh interest in property could be created only in accordance with

rules—Petition allowed while granting six months to respondent to vacate premises.

Held, that the private respondent was allotted the site after partition. Thereafter, he erected a Khokha thereon. Subsequently, the petitioner agreed to construct a shop at the site which was handed over to the private respondent by way of a licence agreement. During this period, the rules of 1964 had come into force whereby premises of Zila Parishad could be let out only by auction and that too, for a period of 5 years. By an amendment in 1984, it was stipulated that such person who had originally been inducted on the basis of an auction could retain his possession provided he agreed to a statutory increase 3 months prior to the expiry of the original period. The statutory rules would supersede the covenants of the licence agreement and it would not be lawful for the respondent to claim differential treatment on the basis of his long way.

(Para 12)

Further held, that in view of the provisions of Section 23 of the Contract Act, the respondent cannot be heard to claim that the stipulations in his agreement would have effect notwithstanding the statutory provisions.

(Para 13)

Further held, that the arguments regarding necessity and adequacy of notice have to be rejected in view of the judgments of this Hon'ble Court and Hon'ble Supreme Court. The argument based on the notice of 1997 is also misconceived in view of the statutory limitations on the power of the petitioner to alienate its property. The contention that the rules would not be applicable deserves to be rejected on the ground that after the period specified in the agreement was over, a fresh interest in the property could be created only in accordance with the rules. The stand that the respondent was never called upon to execute fresh agreement also stands nullified in view of the statutory embargo on the unconditional extension of the licence agreement.

(Para 14)

Satinder Khanna, Advocate, *for the petitioners.*

Amit Rawal, Advocate, *for respondent No. 3.*

Sunil Chadha, Advocate, *for private respondents.*

AJAY TEWARI, J.

(1) By the present judgement, the following eleven petitions are being decided since common questions of law arise therein. The dispute centres round the shops owned by the petitioner which were let out and the present dispute relates to the eviction of the occupiers. In CWPs Nos. 212 and 246 of 2000 the ejectment was ordered by the Collector under the Punjab Public Premises (Eviction of Unauthorised Occupants) Act but on appeal, the Commissioner set aside the ejectment. In CWPs Nos. 358, 359, 360 and 361 of 2000, there was an earlier round of litigation in which the ejectment was ordered by the Collector. The Commissioner in appeal had held that the petitioner had not served a valid notice under Section 106 of Transfer of Property Act. Thereafter, fresh proceedings were initiated. Again the Collector allowed the ejectment petition but in appeal the said orders were set aside by the Commissioner. In these four cases, before the appeals were filed by the occupiers, they were dispossessed. However, subsequently, the appeals against these orders were allowed. In CWPs Nos. 475, 476, 477, 478 and 479, ejectment was ordered by the Collector but the appeals were allowed and the cases were remanded back to the Collector for a fresh decision.

(2) Apart from these minor divergences, the central facts are the same and are being taken from CWP 479 of 2000. It is averred that originally, the private respondent was given *Phari* to conduct business. He later constructed a wooden *khokha*. In 1960s, proceedings were initiated for his ejectment as also for the ejectment of other occupants. The said dispute reached the Supreme Court and by judgement dated 16th October, 1969, the said proceedings were quashed in view of the fact that the Punjab Public Premises (Eviction and Rent Recover) Act, 1959 had been declared *ultra vires* the Constitution. During the pendency of that litigation, an agreement was entered into between the petitioner

and respondent No. 3 whereby the shop was given to him as licensee for a period of 5 years. In the years 1976 and 1981, the licence agreement was renewed for a further period of 5 years.

(3) It may be noticed at this stage that under the Punjab Samitis and Zila Parishad Act, 1961 Rules (hereinafter referred to as the Rules 1961) called the Punjab Panchayat Samitis and Zila Parishad (Sale, lease and other alienations of property and public places) Rules, 1964 (hereinafter referred to as the Rules 1964) were promulgated. In these rules, it has been stipulated that lease of Parishad properties could only be made through public auction for a period of 5 years. By an amendment in 1984, it was provided that fresh auction would not be required if a person to whom the property is initially leased out by auction agree 3 months prior to the expiry of lease period, to enhance the lease money by 10% of the amount on existing lease money per year. Coming back to the facts, agreement of 1981 came to an end in 1986. Admittedly, thereafter, the respondent continued in possession of payment of the original amount for a few years when ejection proceedings were initiated.

(4) I have heard Mr. Satinder Khanna, learned counsel for the petitioners who has challenged the orders passed in appeal whereby the orders passed by the Collector have been set aside and Mr. Amit Rawal and Mr. Sunil Chadha, Advocates, for the private respondents.

(5) Mr. Khanna, learned counsel for the petitioner has urged that once the period of lease in favour of private respondents had come to an end, the order of the learned Collector allowing the ejection was perfectly just and valid and that there was no occasion for the Commissioner to hold that merely because the respondents had been installed at the spot since partition, they enjoyed some special status. He further argued that in view of the statutory rules, there was nothing sacrosanct about the licence agreement executed between the petitioner and the private respondents, and, therefore, the Commissioner erred in treating the said agreement as a magna carta.

(6) The arguments of Mr. Rawal appearing for the private respondents, in that group of cases where there had been no earlier

litigation is that the legal relationship between the parties was determined by the lease agreement. He drew my attention to clause 7 of the licence deed which is reproduced below :—

“On the expiry of the period of this licence, the licensee shall have the first preference on renewal of licence to use the said shop/booth for any further period provided the Licensee has confirmed to all the terms, conditions and rules prescribed the rood, during his prior use of the shop/booth.”

He urged that as per clause 11 of the agreement, it was provided that there would be 3% increase in rent after the expiry of another 5 years. Developing the argument further, he stated that as per the 1984 amendment in the Rules, the petitioner was at best entitled to 10% increase in the rate of rent. As per notice Annexure R-3/1 issued in 1997, the petitioner had itself called upon his client to do the following acts :—

- “(a) To execute licence deed in favour of my client ;
- (b) To deposit the arrears of the licence fee at the ratio of 10% with effect 1st September, 1996 to 31st August, 2007;
- (c) To deposit arrear of licence fee with effect from 1st September, 1997 upto date after enhancement of the same by 10% from the previous year licence fee, and
- (d) To desist from changing your business without consent of my client.”

Thus, now the petitioner was estopped from filing the present petition. He lastly urged that since the licence deed does not stipulate invocation of the Public Premises Act, the same cannot be held applicable.

(7) Mr. Chadha, who appears for the private respondents in that set of cases in which there was a previous round of litigation has in addition to the arguments of Mr. Rawal, urged the following points :—

- (1) In the earlier round of litigation, the appellate authority had set aside the proceedings only on the ground that due notice

under Section 106 of the Transfer of Property Act was not served upon the respondents. Thereafter, in the second round, notice under Section 106 was served but that notice provided only 11 days and thus was illegal. In this regard, he relied upon **Dattopant Gopalvarao Devakate versus Vithalrao Marutirao (1)**, wherein the Hon'ble Supreme Court held as follows :—

“The appellant, however, must succeed on the last submission made on his behalf that even so, the notice was invalid. As already stated the notice purported to terminate the tenancy by the 8th December, 1968 treating the month of tenancy as commencing from the 9th day of a month and ending on the 8th day of the month following. The requisite period of 15 days was given but the defect in the notice was that it did not expire with the end of the month of the tenancy. The end of the month of the tenancy was the 9th day and not the 8th day as wrongly held by the High Court affirming the view of the lower appellate Court.”

- (2) After 1986, the respondents were never called upon to execute the fresh lease deed ;
- (3) The amended Rules are not applicable to the respondents ;
- (4) The petitioner having continued to accept rent unconditionally for a period of more than 3 years after the expiry of the agreement in 1986 would imply that the petitioner had executed a fresh agreement with the respondents.

(8) Responding to this argument, Mr. Khanna stated that the case of Dattopant Gopalvarao Devakate (*supra*) related to an area where Transfer of Property Act was applicable as per the Full Bench

(1) AIR 1975 S.C. 1111 (1)

decision of this Court in **Bhaiya Ram Hargo Lal versus Mahavir Parshad Murari Lal Mahajan (2)**, this Court held as follows :—

“For the foregoing reasons, we hold that the judgement of the earlier Division Bench of this Court in Bawa Singh is no longer good law in view of the chain of subsequent Supreme Court judgement already referred to and that the ratio of the judgement of the subsequent Division Bench in 1968-1970 Pun LR 720 (AIR 1969 Punj 26) lays down the correct law. Our answer to Question No. 1 therefore is :—

- (i) An application for ejection of a monthly tenant under Section 13 of the East Punjab Urban Rent. Restriction Act (3 of 1949) cannot succeed without contractual tenancy being first determined by a notice under Section 106 of the Transfer of Property Act;
- (ii) **No notice under Section 106 of the Transfer of Property Act is required to be served as a condition precedent for filing an application for eviction of a mere statutory tenant whose contractual tenancy has already been terminated by an appropriate notice, or whose tenancy has already come to an end by efflux of time or forfeiture or for any other valid reason under any of the clauses of Section 111 of the Transfer of Property Act and in whose favour no new contractual tenancy has thereafter been created; (emphasied supplied)**
- (iii) A fifteen days notice under Section 106 of the Transfer of Property Act is not required to be served even to terminate a contractual monthly tenancy when there is an express stipulation to the contrary in the contract of tenancy or when the service of such notice is rendered unnecessary by any local law or usage. At the same time a notice of a longer period will have to be served to terminate a contractual tenancy where a specific term in the contract so requires;

- (iv) Want of service of notice under Section 106 of the Transfer of Property Act continues to be a good defence despite the enforcement of East Punjab Urban Rent Restriction Act (3 of 1949) in every case in which such a defence would have been valid and available under the general law of the State if the Rent Restriction Act had not been enacted as the Punjab Act has not impliedly repealed or abrogated Sections 106 and 111(h) of the Transfer of Property Act or the principles of those provisions in so far as they have been applied in Punjab as principles of equity, justice and good conscience ;
- (v) Nothing contained in the Rent Restriction Act or this judgement can be deemed to require the service of a notice under Section 106 of the Transfer of Property Act in a case where such a notice would not have been required if the Rent Restriction Act was not in force;
- (vi) The notice required to be served in the Punjab (where the statutory provisions of Section 106 of the Transfer of Property Act do not apply and merely it equitable principles have been applied) has to be a notice to quit or a notice terminating the tenancy and such notice must give reasonable time to quit. Considering the law laid down in various decided cases, fifteen days appear to be the minimum reasonable period of such a notice. In Punjab, however, such a notice need not necessarily terminate strictly with the end of a month of the tenancy. (emphasis added)

Our answer to questions Nos. 2 and 3 is :--

- (i) Plea of want of notice under Section 106 of the transfer of Property Act is not such that cannot be waived by a tenant. A tenant is entitled to waive the objection regarding non-issue of such a notice if he likes. Waiver is, however, a deliberate and conscious act as distinguished from estoppel

which may be created by law. Whether the objection has, in fact, been waived or not in a particular case is a question of fact which has to be decided like any other such question on the direct and circumstantial evidence available in a given case;

- (ii) Objection as to validity of a notice is merely a part of the main objection and to non-issue of the requisite notice and can also be waived by a tenant, if he so likes, e.g., a tenant may accept a shorter notice than that of fifteen days to be sufficient notice. But the mere denial of receipt of notice by a tenant may not, on proof of service of a notice by itself amount to waiver of objection as to the period of the notice not being reasonable.”

He particularly relies upon sub-para (ii) and (vi) of the above noted judgement. As per him, to the same effect was the judgement of the Orissa High Court in **AIR 1956 Orissa 95** as also the decision of the Hon'ble Supreme Court in **Pooran Chand versus Motilal and others (3)**, wherein the Hon'ble Supreme Court held.

“..... It is not necessary in this appeal to express our opinion on the validity of this contention, for we are satisfied that the term of the tenancy had expired by efflux of time, and, therefore, no question of statutory notice would arise. But the learned counsel contends that this point was not raised either in the plaint or in the lower Courts.....”

.....It is , therefore, manifest that the lease was for a period of one year and that it is not a monthly tenancy. As the term fixed under the deed had expired, the appellant was not entitled to any statutory notice under Section 106 of the Transfer of Property Act, 1882.”

(9) He further submitted that in view of this enunciation of law, the earlier decision of the appellate authority regarding the applicability of section 106 of the TPA was not binding on the petitioner. When countered that the said decision would be *res judicata* he relied upon the decision of the Hon'ble Supreme Court in **Inder Singh and another versus The Financial Commissioner, Punjab and others (4)**, wherein the Supreme Court held as follows :—

“Shri Ujagar Singh, learned senior counsel for the appellants contended that the view taken by the High Court is not correct in law. Since the proceedings before the authorities is of summary nature, the doctrine of *res judicata* has no application. The Act does not prescribe any principles of *res judicata* as such. The proceedings before the authorities are of summary nature. It would not be correct to apply the principle of *res judicata*. We find force in the contention. It is not in dispute that the order passed by the authorities is without any elaborate trial like in a suit but in a summary manner. It is well settled law that the doctrine of *res judicata* envisaged in Section 11 of CPC has no application to summary proceedings unless the statute expressly applies to such orders. The authorities are not civil Court nor the petition a plaint. (emphasis laid). No issues are framed nor tried as a civil suit. Under these circumstances, the Division Bench of the High Court was clearly in error to conclude that the earlier proceedings operate as *res judicata*. ”

(10) In any case, he argued that even if Section 106 of the TPA were applicable and notice which was given was only for 11 days, but the proceedings were initiated after the expiry of 15 days. In this connection, he has relied upon judgement of Delhi High Court in **Indraj and others versus The Collector, Delhi and others (5)**, wherein the Delhi High Court has held as follows :—

“Where the proceedings remain pending for more than one year and the petitioner had sufficient time to submit objections,

(4) 1997 (1) PLJ 53

(5) AIR 1975 Delhi 153

the proceedings cannot be said to have been vitiated merely because initially he had less than 10 days time to submit objections.” (emphasis added)

(11) In the end, he urged that limited jurisdiction before the authorities under the Act was to see whether the person in occupation had any existing right and, if not, it was incumbent upon the said authorities to summarily order eviction.

(12) I find myself in agreement with the arguments advanced by Mr. Khanna. The facts which have emerged are that the private respondent was allotted this site after partition. Thereafter, he erected a khokha thereon. Subsequently, the petitioner agreed to construct a shop at the site which was handed over to the private respondent by way of a licence agreement. During this period, the rules of 1964 had come into force whereby premises of Zila Parishad could not be let out only by auction and that too, for a period of 5 years. By an amendment in 1984, it was stipulated that such person who had originally been inducted on the basis of an auction could retain his possession provided he agreed to a statutory increase 3 months prior to the expiry of the original period. In my opinion, the statutory rules would supersede the covenants of the licence agreement and it would not be lawful for the respondent to claim differential treatment on the basis of his long stay. Moreover, reference may be profitably made to Section 23 of the Contract Act which is quoted hereinbelow :—

“23.—*What considerations and objects are lawful, and what not,—*

The consideration or object of an agreement is lawful, unless—it is forbidden by law, or

is of such a nature that, if permitted, it would defeat the provisions of any law; or

is fraudulent; or

involves or implies injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void."

(13) In view of the above provision, the respondent cannot be heard to claim that the stipulations in his agreement would have effect notwithstanding the statutory provisions.

(14) The arguments regarding necessity and adequacy of notice have to be rejected in view of the judgements cited above. The argument based on the notice of 1997 is also misconceived in view of the statutory limitations on the power of the petitioner to alienate its property. The contention that the rules would not be applicable deserves to be rejected on the ground that after the period specified in the agreement was over, a fresh interest in the property could be created only in accordance with the rules. The stand that the respondent was never called upon to execute fresh agreement also stands nullified in view of the statutory embargo on the unconditional extension of the licence agreement.

(15) Thus, looked at from any angle the order of the Commissioner allowing the appeal filed by the private respondent cannot be upheld.

(16) In the result, this petition is allowed, the order of the Commissioner is set aside while that of the Collector ordering the ejection of the private respondent is restored. It is, however, directed that the private respondent is granted 6 months time to vacate the premises. No costs.