

A MADAN LAL

v.

BHAI ANAND SINGH & ORS.

October 12, 1972

[A. N. RAY, D. G. PALEKAR, M. H. BEG AND S. N. DWIVEDI, JJ.]

B *Transfer of Property Act, s. 108(q)—East Punjab Urban Rent Restriction Act 3 of 1949, S.13 (2)—Interpretation of lease—Lessor whether entitled to possession of property on expiry of lease by efflux of time—Rent Controller's jurisdiction to evict lessee—Effect of term in lease deed that lessor was bound to pay to lessee 50% of market value of super-structure built by lessee—Lessee whether entitled to remain in possession during period when market value being determined by arbitrators.*

C The respondents, landlord lessors, had executed a lease on 9-11-1949. Under its terms, the lessors had given some land to the lessees for the building and renting out of a cinema house for a period of twenty years. Clause 6 of the lease laid down that on the expiry of the tenancy the entire structure built by the lessees at their cost would become the property of the lessor who shall then exercise all the rights of ownership, subject to the condition that the lessor shall have to pay 50% of the market value of the structure to the lessees. If there was disagreement about the market value the same would be decided by arbitration. There was provision for sale of the structure in case the lessors failed to pay to the lessees within a fixed period 50% of market value of the structure assessed by arbitration, and that the lessees would have the first charge on the sale proceeds. On the expiry of the lease, the lessors applied under section 13(2) of the East Punjab Urban Rent Restriction Act 3 of 1949, to the Rent Controller, for the eviction of the former tenant and the appellants sub-tenant. During the pendency of this application the lessees applied to the Rent Controller under s. 34 of the Indian Arbitration Act, for the stay of eviction proceedings pending the decision of a dispute between the parties as to who was entitled to possession while the market value was being determined by Arbitrators under clause 6 of the lease. The Rent Controller held, *inter alia*, that the powers of ejection under s.13 of the Act, on specified grounds, could not be curtailed even by some agreement between the parties and dismissed the stay application. The High Court dismissed the lessee's appeal under s. 39 of the Arbitration Act, after interpreting the lease deed and holding that clause 6 of the deed "negatives any right in the lessees to retain possession after the expiry of the lease." In appeal by special leave before this court it was argued on behalf of the appellant that the High Court had not taken into account the fact that the cinema had necessarily to be run by somebody while the market value of the property was being ascertained by resort to arbitration. The respondents, *inter alia*, relied on s. 108 of the Transfer of Property Act which lays down that in the absence of a contract or usage to the contrary, the lessee is, on the determination of the lease, bound to put the lessor into possession of the property. Dismissing the appeal.

H HELD : There is no provision in the lease expressly laying down that the right to obtain possession will be postponed, after the expiry of the term of the lease, until the ascertainment of the market value of the building has taken place. On the other hand the clause relied upon by the respondents not only lays down that the super-structure will become the property of the lessor on the expiry of the period of tenancy, but

goes on to specify that the lessor 'shall' then exercise all the rights of ownership including the right to sell the entire property. It is apparent that the exercise of all rights of ownership according to the terms of the clause, literally interpreted, could take place on the expiry of the tenancy immediately. A

The contention that the lessor's rights were subject to the payment of 50% of the market value of the building could not be accepted. If this had really been the intention of the parties, there was nothing to prevent them from inserting such a term in the deed so as to make that intention explicit. The more natural construction of the clause is that rights of ownership, including the right to take possession of the building, would become vested in the lessor at the expiry of the period of lease, and that 50% of the market value of the building, which was to be paid in any case, became a condition attached to this ownership of the building when it vested in the lessee. In view of s.108(q) of the Transfer of Property Act the burden of proving 'a contract to the contrary' was on the lessee; and, something to indicate an agreement to the contrary should be there on such a matter involving a valuable right, before this burden could be held to have been discharged. [680E] B

The Rent Controller was not, strictly speaking, concerned at all with the question of the ascertainment of the market value. The statutory power vested in the Rent Controller by s.13 of the Act is that of giving or not giving or conditionally giving a direction for the eviction of the tenant when certain statutory requirements are fulfilled. Both sides had proceeded on the assumption that the Rent Controller had jurisdiction in the proceedings before him, to order eviction. The correctness of that assumption had not been challenged by the appellant. [681D] C

The judgment of the High Court must accordingly be upheld. D

*Ethirajulu Naidu v. Ranganathan Shetty and Ors.*, 72 I.A. 72, 73, distinguished. E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 57 of 1972.

Appeal by special leave from the judgment and order dated October 11, 1971 of the Punjab & Haryana High Court in F.A. from Order No. 34 of 1971. F

*M. C. Chagla, S. R. Agarwal and E. C. Agarwala*, for the appellant.

*V. M. Tarkunde, D. N. Mishra, J. B. Dadachanji, O. C. Mathur and Ravinder Narain*, for the respondents. G

The Judgment of the Court was delivered by

BEG, J.—This appeal by Special Leave has arisen in the following circumstances :

The respondents, landlord lessors, had executed a lease on 9-11-1949. Under its terms, the lessors, had given some land to the lessees for the building and renting out of a cinema house for a period of twenty years on a rent of Rs. 300/- per month H

A for the first year, and, thereafter, at Rs. 600/- per month. The period within which the cinema had to be constructed was also specified. Clause 6 of the lease laid down :

B "On the expiry of tenancy or the extended period of tenancy, as aforesaid, the entire structure, built by the lessees at their own cost becomes the property of lessor and shall exercise all the rights of ownership and shall be entitled to sell the entire property, subject to this condition that lessor shall have to pay 50% of the market value of the structure built by the lessees at their expenses. If the lessor and the lessees fail to assess the value of the aforesaid structure by mutual consent, two arbitrators will be appointed, nominated by the lessor and lessees. In case of their difference of opinion an umpire shall be appointed by parties whose award shall be final. In case the lessor fail to pay 50% of the value of the structure so assessed within period of six months of award of the umpire or arbitrators the whole structure shall be sold and out of the sale proceed 50% of the price of the structure so assessed by the umpire or arbitrator shall be paid to the lessees. The lessees shall have the first charge on the sale proceeds.

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E The lease had expired. Therefore, the lessors applied under Section 13(2) of the East Punjab Urban Rent Restriction Act 3 of 1949 (hereinafter referred to as 'the Act') to the Rent Controller, appointed under the Act, for the eviction of the former tenant and the appellant sub-tenant. During the pendency of this application, the lessees applied to the Rent Controller, under Section 34 of the Indian Arbitration Act, for the stay of eviction proceedings pending the decision of a dispute between the parties as to who was entitled to possession while the market value was being determined by Arbitrators under clause 6 set out above. The Rent Controller held, *inter alia*, that the powers of ejection under Section 13 of the Act, on specified grounds, could not be curtailed even by some agreement between the parties and had dismissed the stay application. The High Court of Punjab and Haryana dismissed the lessee's appeal under Section 39 of the Arbitration Act, after interpreting the lease deed and holding that clause 6 of the deed "negatives any right in the lessees to retain possession after he expiry of the lease."

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G It went on to observe :

H "It is specifically provided therein that as soon as the lease expired the lessor would become full owner of the super-structure which she would have the right to sell. The rest of the clause provides the method in which the sum paid to the lessees was to be ascertained

or recovered and that method does not include a right in them to continue to possess either the land or the super-structure. What has been made subject to the payment of the said sum is the exercise by the lessor of her right to sell the property the delivery of possession of which on the expiry of the lease, however, is not stipulated to be postponed till such payment".

The first submission made by Mr. Chagla, learned Counsel for the appellant, is that the High Court had put an erroneous and inequitable interpretation on the deed inasmuch as the Court did not take into account the fact that the Cinema had necessarily to be run by somebody while the market value of the property was being ascertained by resort to arbitration. Hence, it was argued that the lessees' right to continue in possession during what was described as an "interregnum" was implicit. The reply is that no such gap is warranted by the terms of the lease. The respondents also contended that no specific provision for recovery of possession in the lease deed need be inserted as Section 108 of the Transfer of Property Act provides: "In the absence of a contract or local usage to the contrary. . . . . (q) On the determination of the lease, the lessee is bound to put the lessor into possession of the property". The main question before us, therefore, is whether a "contract to the contrary" could be found in the lease deed itself for postponing delivery of possession, after the expiry of the lease, on any ground whatsoever.

It is noticeable that there is no provision in the lease expressly laying down that the right to obtain possession will be postponed, after the expiry of the term of the lease until the ascertainment of the market value of the building has taken place. On the other hand, the clause relied upon by the respondents not only lays down that the super-structure will become the property of the lessor on the expiry of the period of tenancy, but goes on to specify that the lessor "shall" then exercise all the rights of ownership including the right to sell the entire property. It is apparent that the exercise of all rights of ownership, according to the terms of this clause, literally interpreted, could take place on the expiry of the period of tenancy immediately. Learned Council for the appellant, however, lays considerable stress on the subjection of the exercise of these rights of ownership to the liability to pay 50% of the market value of the building. He contends that such a condition necessarily means that, until the market value is actually ascertained and paid, the lessee shall retain possession. If this had really been the intention of the parties, there was nothing to prevent them from inserting such a term in the deed so as to make that intention explicit. It appears to us that the more natural construction of the clause is that rights of ownership, including the right to take possession of the building, would

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A become vested in the lessor at the expiry of the period of the lease, and that 50% of the market value of the building, which was to be paid in any case, became a condition attached to this ownership of the building when it vested in the lessee. The lessor was, in any case, to pay 50% of the market value of the structure, and, in the event of a sale, the payment of this amount became a first charge on the proceeds of sale. It is also significant that it is not mentioned in the deed that a purchaser of the Cinema house, who would presumably prefer to obtain possession so as to be able to run it, could not get possession of it until the market value was ascertained or fifty per cent of it was paid. Possession of a Cinema house after the expiry of a building lease involving the passing of ownership of the building on such expiry is, after all, an important matter. In view of Section 108(q) of the Transfer of Property Act the burden of proving "a contract to the contrary" was on the lessee; and, something to indicate an agreement to the contrary should be there, on such a matter involving a valuable right, before this burden could be held to have been duly discharged.

D The only matter which could be referred to arbitration was a difference between the lessors and the lessees on the market value of the building. The Rent Controller was not, strictly speaking, concerned at all with the question of ascertainment of the market value. The statutory power vested in Rent Controller by Section 13 of the Act is that of giving or not giving or conditionally giving a direction for the eviction of the tenant when certain statutory requirements are fulfilled. There was no objection by any party to the exercise of the jurisdiction of the Controller to order eviction in the circumstances of a case in which the tenancy of premises demised had expired by efflux of time or to the entertainment of an application under Section 34 Arbitration Act. The lessors, by applying under Section 13 of the Act, had themselves invoked the jurisdiction of the Controller. And, the lessees had, by relying on Section 34 of the Arbitration Act, asked for stay of proceedings only until the value of the building was ascertained and paid. Both sides thus proceeded on the assumption that the Rent Controller had jurisdiction, in the proceedings before him, to order eviction. The correctness of that assumption is not challenged by the appellant before us.

G Learned Counsel for the appellant had sought to rely on *Ethirajulu Naidu v. Ranganathan Chetty & Ors.*<sup>(1)</sup> which was also cited before the High Court and the Rent Controller. In that case there was the following specific term in a lease of a limited duration :

H "The lessee shall always and in any event be entitled to be paid the price of the superstructure built on the

(1) 72 Indian Appeals 72, 73.

said plot of land before he surrenders possession of the land either on the expiry of the lease hereby granted or any other future lease or at any time. The price shall be fixed according to the market value of the buildings as at the time of ascertainment and payment".

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The Privy Council had held that this provision meant that possession was to be surrendered only on payment of the price of the building. The deed before us would, as we have already indicated, also have contained a similar provision if that had been the intention of the parties. We find that, in the lease deed under consideration, the condition that the lessor will have to pay 50% of the market value of the building imposes a liability upon the lessor only to pay the stipulated amount in any event. The use of the words "shall have to pay", in clause 6 of the deed before us, could not imply anything more than a future liability to pay. But, the time from which the rights of ownership, including that of actual physical possession, became exercisable was immediately upon the expiry of the tenancy itself and not in future when 50% of the market value was to be ascertained or paid. The case cited by learned Counsel for the appellant, where the terms of the lease were very obviously different, could not advance the leasee's claim.

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We may mention that the High Court had made an observation, in the course of recording its conclusions, which made it appear that what was made subject to the payment of 50% of the market value of the building was only the right of the lessor to sell the property. On a reading the judgment as a whole, it is evident that all that the High Court meant to convey was that the rights of ownership were subjected to a liability incurred by the lessor to pay the stipulated sum in any event. Any further liability to allow the lessee to retain possession until the sum payable was actually ascertained or any other event took place is not to be found here. The ascertainment of the exact amount of the liability undertaken was, in our opinion, a separable matter referable to arbitration. No sufficient ground has been made out for disturbing this interpretation of clause 6 of the deed by the High Court.

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Another question argued by learned Counsel for the appellant was that the Respondents Lessors had themselves placed an interpretation upon the lease deed which ought, even if it does not affect our interpretation of the deed, to be taken into account by the Rent Controller before passing an order of eviction in the pending proceedings. The lessors had stated, in their application under Section 13 of the Act: "The petitioners have undertaken to abide by the terms of the lease agreed to between the parties relating to the compensation payable by them before getting actual possession of the picture house". No commas separate the term

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A relating to liability to pay compensation from the right to get actual possession.

It may be that the application was rather loosely or inaccurately worded. We have not been shown any undertaking given to the Rent Controller, apart from the assertion quoted above from the application under Section 13 of the Act. And, no order of the Controller on any such supposed undertaking has been placed before us. The parties had hotly contested before the Controller as well as the High Court what the exact meaning of the clause under consideration was. It could, therefore, not be either expected or assumed that the application under Section 13 would contain an acceptance of the very interpretation put forward on behalf of the lessees and denied by the lessors. The language of the alleged undertaking was certainly not so clear and unequivocal as to lead to that inescapable inference. Moreover, no argument seems to have been advanced on the strength of this alleged undertaking before either the Controller or the High Court. We, therefore, refrain from deciding the question whether there was any such undertaking before the Controller which, quite apart from the contract embodied in the deed, should affect the discretion of the Controller in passing an eviction order. All we need say here is that the meaning of the term of the lease, interpreted by us also, is not affected by the alleged undertaking.

For the reasons given above, we dismiss this appeal with costs.

G.C.

*Appeal dismissed.*