

HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition (M/S) No. 749 of 2010

Jaipal Singh

... Petitioner

Vs.

State of Uttarakhand through
Chief Secretary Government of Uttarakhand
Dehradun and Others

... Respondents

Advocate: Mr. Arvind Vashisth, Senior Advocate, assisted by Mr. Shubham Saharat, Advocate, for the petitioner
Mr. Yogesh Chandra Tiwari, Standing Counsel, for the State.

Hon'ble Sharad Kumar Sharma, J.

This writ petition has been preferred initially by Mr. Jaipal Singh, who claimed himself to be the successor of late Mr. Rajendra Singh, but upon his death, his heirs have been substituted as petitioner Nos. 1/1 to 1/3.

2. This case engages consideration of a very interesting issue, as to whether with regard to the leases granted under the provisions of the Government Grants Act, the rights over the property thus leased could at all be devolved upon by virtue of personnel right of succession or by virtue of an adoption allegedly claimed to have been made by the principal lessee in favour of Mr. Jaipal Singh?

3. Facts of the case are that a lease under the provisions of Government Grants Act was executed in favour of one Mr. Rajendra Singh in relation to two khasras, being Khasra No. 158/1, having an area of 0.626 hectares and khasra No. 4/6, having an area of 0.190 hectares. As per the provisions contained under Section 3 of the Government Grants Act, and particularly, in the context of its U.P. amendment, the leases which are granted under the

provisions of the Government Grants Act, they are to be exclusively governed as per the tenor of lease in itself and nothing beyond that. Lease exclusively within itself is not a document which grants a right or title which could be given by will, because as per the provisions contained under Sections 105 of Transfer of Property Act, which defines lease, , the liability of the lessee would be exclusively governed under the provisions contained under Section 108 of the Transfer of Property Act, 1882 which are extracted hereunder:-

“105. Lease defined.—A lease of immoveable property is a **transfer of a right to enjoy** such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. Lessor, lessee, premium and rent defined.—The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.

108. Rights and liabilities of lessor and lessee.—In the absence of a contract or local usage to the contrary, the lessor and the lessee of immoveable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased:—

(A) Rights and Liabilities of the Lessor

(a) The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover;

(b) the lessor is bound on the lessee's request to put him in possession of the property;

(c) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without

interruption. The benefit of such contract shall be annexed to and go with the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(B) Rights and Liabilities of the Lessee

(d) If during the continuance of the lease any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease;

(e) if by fire, tempest or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void: Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision;

(f) if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor;

(g) if the lessor neglects to make any payment which he is bound to make, and which, if not made by him, is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor;

(h) the lessee may 1[even after the determination of the lease] remove, at any time 2[whilst he is in possession of the property leased but not afterwards] all things which he has attached to the earth; provided he leaves the property in the state in which he received it;

(i) when a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them;

(j) the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities

attaching to the lease; Nothing in this clause shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee;

(k) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take, of which the lessee is, and the lessor is not, aware, and which materially increases the value of such interest;

(l) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf;

(m) the lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof and give or leave notice of any defect in such condition; and, when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left;

(n) if the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor;

(o) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell 3[or sell] timber, pull down or damage buildings 3[belonging to the lessor, or] work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto;

(p) he must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes;

(q) on the determination of the lease, the lessee is bound to put the lessor into possession of the property.

4. As per the terms of the lease, as executed on 26.12.1985, the issue of concern would be, with regard to clause (5) of the said lease agreement, which is extracted hereunder, which provides for as to how a right and interest over the property thus leased would be managed by the lessee in whose favour the lease has been executed.

“(5) पट्टेदार एतद्वारा पट्टे पद दी गई भूमि का कब्जा न तो हस्तान्तरित करेगा और न ही उसे बेचेगा या उप पट्टे पर देगा या बन्धक रखेगा या दान में देगा या किसी भी प्रकार से हस्तान्तरित करेगा, और उस पर स्वयं या केवल अपने परिवार के सदस्यों द्वारा कृषि करेगा।”

5. There is an absolute restraint that the lessee will not transfer the land, nor would create any third party interest by any document, nor will lease out the property or mortgage the same and even will not gift it. The principal lessee met with the sad demise on 07.02.2004. Late Mr. Jaipal Singh, who was the predecessor of the present petitioners, claimed his right over the property thus leased in 1985 to late Mr. Rajendra Singh, on the ground that late Mr. Jaipal Singh, the predecessor of the present petitioners, was an adopted son of the principal lessee, as such, upon his death, all rights and liabilities flowing from the deed would fall in his favour.

6. At this juncture itself, this Court feels it apt to answer that under law, an unregistered adoption deed has got no sanctity in the eyes of law, because the same has to be mandatorily registered as per the provisions contained under Section 17 (3) of the Registration Act.

7. It has not been the case of the petitioners that the so-called acclaimed adoption deed was ever got registered as per the provisions contained under Section 17(3) of the Registration Act. In that eventuality, it cannot be said that there was valid adoption at all, in favour of late Mr. Jaipal Singh, on whom the right could have devolved by virtue of succession because of his adoption, which is not a valid document under Section 17(3) of Registration Act.

8. The arguments, as extended by the learned counsel for the petitioners is that once the predecessor of the petitioners was an adopted son, apart from the fact, that the right would fall upon him, he also substantiate his rights on the basis of so-called "will" executed in favour of late Mr. Jaipal Singh by late Mr. Rajendra Singh, i.e. the principal lessee and hence, he submits that since based on will too, he stands recorded in the revenue records, hence he will have a right over the property in question for which he has sought substitution in Case No. 51/27 of 2007-08, State Vs. Rajendra Singh.

9. The leases which are granted under the Government Grants Act, since the Act itself has observed that they are since governed by its tenor and particularly, in the context of clause (5), as extracted above, the issue would be that the mode of transfer provided under clause (5) of the lease whether "will" also be inclusive of creation of a right by virtue of a Will though, it is not a mode of transfer prescribed under clause (5) of the Grant dated 26.12.1985.

10. It has been argued by the learned counsel for the petitioner that the "will", which was executed by late Mr.

Rajendra Singh in favour of late Mr. Jaipal Singh, who was succeeded by the present petitioners, once a right is created in his favour by virtue of a Will, the embargo contained under clause (5) of the Grant, will not come into play.

11. This Court is not in agreement with the arguments as extended by the learned counsel for the petitioner, for the reason being, that the provisions contained under Section 3 of the Government Grants Act, exclusively provides that a right of user of the property by the lessee would be exclusively as per the terms of the lease. The right of **“user or its enjoyment”** may not be misconstrued and misunderstood that it was creating a right over the land in favour of a principal lessee, because the right otherwise always stood vested with the State, who has granted the lease.

12. Once there is no valid title as such vested with the principal lessee, the normal analogy would be, that he doesn't acquire an automatic title or ownership over the property and in the absence of there being any valid title and ownership vested with late Mr. Rajendra Singh, at the most, he could have a right to execute will only that the property over which he enjoys his title and not a property which is subject matter of lease under the Government Grants Act which only confers a right of enjoyment, and does not specifically gives inheritable right or title.

13. In the case, as instituted by the Collector, being Case No. 51/27 of 2007-08, State Vs. Rajendra Singh, (later late Mr. Jaipal Singh), had filed his substitution under the

strength of “**adoption**” and under the so-called strength of the “**will**” dated 15.05.2000, executed by late Mr. Rajendra Singh in his favour, the same has been rejected by the impugned order dated 20.04.2010, which is under challenge.

14. The claim of the predecessor of the present petitioners late Mr. Jaipal Singh was based upon the fact that he claimed himself to be adopted son of the principal lessee late Mr. Rajendra Singh in whose favour the lease was granted under the provisions of Government Grants Act. But, so far as the factum of adoption is concerned, apart from the fact that it happens to be in violation of the provisions contained under Section 17(3) of the Registration Act, apart from it, there is no document on record as such to show that there was a valid adoption by execution of any document as such. Even the claim of late Mr. Jaipal Singh as to be an adopted son is based upon the family register which was prepared under the provisions of Panchayat Raj Act, though his claim finds reference in the family register but its source of entry is not shown therein nor does it reflect that late Mr. Jaipal Singh was recorded because of the fact he was ever adopted by late Mr. Rajendra Singh as to be his son.

15. As far as the order of rejection of the impleadment/substitution, sought for by the alleged successor of the principal lessee late Mr. Rajendra Singh i.e. late Mr. Jaipal Singh is concerned, his right or ownership by virtue of adoption or even by virtue of Will cannot be under any condition, better than that of the title or right of the principal lessee whose rights were circumscribed by the

terms and conditions of the lease, which was not granting him a perpetual or inheritable title over the property, because the lease thus executed in his favour on 26.12.1985, was not a perpetual lease granting any inheritable right to the principal lessee late Mr. Rajendra Singh.

16. If it was not a perpetual lease and without any inheritable right being granted and when the lease was itself confined to a right of user or enjoyment of the property thus leased, it couldn't have been validly willed by late Mr. Rajendra Singh in favour late Mr. Jaipal Singh, because will could have been only been executed by a document, in relation to a property over which the testator has got a legally title vested in him.

17. Since late Mr. Rajendra Singh himself was not having an exclusive title over the land and his rights were limited with the right of user under the lease, there couldn't have been a valid Will in favour of the predecessor of the present petitioners.

18. Secondly, because of the fact that, if the rights pressed from the context of the alleged adoption, this Court is of the opinion that as per the provisions contained under sub Section (3) of Section 17 of the Registration Act, 1908, which reads as under:

“(3) Authorities to adopt a son, executed after the 1st day of January, 1872, and not conferred by a will, shall also be registered.”

19. That is why, if the provisions contained under Section 17(3) of the Registration Act, is read in its totality, it provides for that an adopted son after 01.01.1872, will have to be got adoption registered, if it is not so, he is not conferred with a right to Will a property of the predecessor from whom he claims his adoption.

20. Thus, as a consequence of cessation of right of late Mr. Rajendra Singh, who was not succeeded by any his any natural legal successor, the property thus leased out would vest to the State Government i.e. the principal lesser and it cannot be given by virtue of an unregistered adoption or even based on which by virtue of a Will which is restricted under Section 17(3) of the Registration Act.

21. Thus, so far as the right of impleadment sought for by Mr. Jaipal Singh, in Case No. 51/27 of 2007-08, State Vs. Rajendra Singh, on death of late Mr. Rajendra Singh, being the proceedings drawn under the Government Grants Act for re vesting of the land which was self contained in the provisions of lease, late Mr. Rajendra Singh or late Mr. Jaipal Singh, would not be the necessary party and their impleadment/substitution, has rightly been rejected, because there was no legal right created in their favour, which could be reckoned in the eyes of law.

22. Thus, the writ petition fails, and the same is accordingly dismissed.

(Sharad Kumar Sharma, J.)

24.08.2023