

IN THE HIGH COURT OF JUDICATURE AT
HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

C.M.A. Nos.905 AND 908 OF 2014

Between:

M/s Varma Realtors

.. Appellant

and

Habib Alladin & others
Respondents

..

JUDGMENT PRONOUNCED ON : 28-08-2015

HON'BLE SRI JUSTICE : **R. SUBHASH REDDY**
AND
HON'BLE SRI JUSTICE : **A. SHANKAR**
NARAYANA

1. Whether Reporters of Local
Newspapers may be allowed to :
see the Judgments?
2. Whether the copies of judgment
may be Marked to Law Reporters/
Journals? :
3. Whether Their Ladyship/Lordship

wish to see the fair copy of the
Judgment? :

* HON’BLE SRI JUSTICE R. SUBHASH REDDY
AND
HON’BLE SRI JUSTICE A. SHANKAR NARAYANA

+ C.M.A. Nos.905 AND 908 OF 2014

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% Date: 28-08-2015

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M/s Varma Realtors
.. Appellant

v.

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\$ Habib Alladin & others
.. Respondents

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! Counsel for the Appellant : Sri A. Sudarshan Reddy,
Sr.Counsel
for Sri G. Madhusudhan Reddy.

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^ Counsel for Respondent No.1 : Sri J.A. Qureshi,

Counsel for Respondent No.2 : Sri Gaddam Srinivas,

: R-3 to R-16 are not necessary parties

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> HEAD NOTE:

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? CASES REFERRED:

1. AIR 1975 Gujarath 1
2. AIR 2002 SC 797
3. 1981 (1) SCC 597
4. 1996 (2) SCC 216

C/15

**HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
HON'BLE SRI JUSTICE A. SHANKAR
NARAYANA**

C.M.A. Nos.905 AND 908 OF 2014

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COMMON JUDGMENT: (Per Hon'ble Sri Justice A. Shankar Narayana)

Respondent No.16 – Defendant No.16, having got aggrieved by the orders and decrees, dated 23-04-2014, in I.A. Nos.1195 of 2013 and 1194 of 2013 in O.S. No.815 of 2013, respectively, passed by the learned I Additional District Judge, Ranga Reddy District at L.B. Nagar, Hyderabad, preferred the instant Civil Miscellaneous Appeals.

2. I.A. Nos.1194 and 1195 of 2013 were filed by

the respondent No.1 herein, who is petitioner – plaintiff in the said IAs and suit, under Order - XXXIX, Rules 1 and 2 of Code of Civil Procedure, 1908 (for short ‘CPC’) for grant of temporary injunctions, restraining respondent No.16 in I.A. No.1194 of 2013, from alienating, mortgaging or creating any charge of any nature in respect of petition schedule property covered by registered assignment deed No.1652 of 2010, dated 16-06-2008, executed by M/s Voltas Limited, respondent No.1 – defendant No.1/Lessee in favour of respondent No.16, and seeking the relief in the latter I.A. restraining the very same respondent No.16 from making construction of commercial or residential apartment complex on any part of the very same property. The petition schedule properties consist an extent of 26436 square yards in Plot Nos.9, 11 and 12 with the structures existing thereon being part of suit ‘A’ and ‘B’ schedule land, situated in Sanathnagar, Hyderabad bounded on the East – Road; West – Hyderabad-Mumbai Highway; North – Road; and South – Survey No.129/3 and Telephone Exchange, leased out to respondent No.2 – Lessee herein under the lease deed Nos.4 of 1963 and 6 of 1963 (for short ‘lease deeds of 1963’) which was assigned and given possession by respondent No.2 to the appellant herein under the aforesaid assignment deed.

3. The appellant herein - M/s Varma Realtors, is

respondent No.16 – Defendant No.16 before the trial Court, while respondent No.1 - Habib Alladin, is the petitioner – plaintiff and respondent No.2 - M/s Voltas Limited is respondent No.1 – defendant No.1 and respondent Nos.3 to 16 are respondent Nos.2 to 15 – defendant Nos.2 to 15, who are not necessary parties according to the plaintiff.

4. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Court below.

5. Originally one Ahmed Nawaz Alladin alias Ahmed Nawaz Jung was the owner of petition schedule lands. He had two sons, viz., Dost Mohammed Alladin and Noor Mohammed Alladin, respectively. Dost Mohammed Alladin died in the year 1973, leaving behind his two sons and daughter viz., Habib Alladin, who is petitioner - plaintiff, Iqbal Alladin and Mrs. Farida Alladin, who is defendant No.2, respectively, as his legal heirs. Thus, on his death, his divisible half share in the leased out suit 'A' schedule property had devolved upon his heirs, in which, the plaintiff has got 2/10th share. On the death of the other son – Noor Mohammed Alladin, he was survived by his son, daughter and wife – Asif Alladin, Mrs. Nafeesa Massod Ali, who are defendant Nos.6 and 7 and Sultana N.M. Alladin, who died in or around the year 2008. The divisible other half share of Noor Mohammed

Alladin in 'A' schedule property had devolved upon defendant Nos.6 and 7, who are the co-lessors for suit 'A' schedule property along with plaintiff and defendant Nos.2 to 5.

i) Concerning suit 'B' schedule property, which is an extent of Acs.9-19 guntas in Survey Nos.60/3, 60/9 and 129/3, situated at Fatehnagar, now known as Sanathnagar area, Hyderabad, originally was owned by Mrs. Zubeda Alladin, wife of Dost Mohammed Alladin and contiguous to suit 'A' schedule property. Even, Mrs. Noor Banu Alladin, mother of Dost Mohammed Alladin and wife of Ahmed Nawaz Alladin, alias Ahmed Nawaz Jung, owned the land which exists contiguous to suit 'A' and 'B' schedule properties.

ii) Turning to the fact-situation, the suit schedule properties are located adjoining the Industrial Unit of M/s Hyderabad Allwyn Metal Works Limited (for short 'M/s HAMWL'). For its expansion, it had approached Dost Mohammed Alladin and Noor Mohammed Alladin, joint owners of suit 'A' schedule property and Mrs. Zubeda Alladin and Mrs. Noor Banu Alladin, joint owners of suit 'B' schedule property, requesting to lease out 'A' and 'B' schedule properties. It is stated that keeping in view, the then prevailing circumstances and with laudable intent that such expansion would generate employment

opportunities to the locals, suit 'A' and 'B' schedule properties were leased out to M/s HAMWL under lease deed Nos.4 of 1963 and 6 of 1963 (for short 'lease deeds of 1963'), respectively, on 08-01-1963 for a period of (99) years at the rate of Rs.50/- per month per acre. It is also stated that Mrs. Noor Banu Alladin, mother of Dost Mohammed Alladin and Noor Mohammed Alladin, had also executed yet another lease deed No.5 of 1963 on 08-01-1963 concerning her part of the land adjacent to 'A' and 'B' schedule land on the same terms and for the very same purpose of lease, which is otherwise not subject matter herein.

iii) M/s HAMWL was subsequently changed to M/s Hyderabad Allwyn Limited with effect from 30-09-1981. Thereafter, on 04-04-1993, by virtue of the resolution passed by the Board for Industrial and Financial Reconstruction under the provisions of SICA, 1985, M/s Hyderabad Allwyn Limited amalgamated with M/s Voltas Limited, a public limited company, which is respondent No.1 - defendant No.1 before the Court below with effect from 01-04-1994 and, thus, the properties of M/s Hyderabad Allwyn Limited (for short 'M/s HAL') were vested in respondent No.1 including the lease hold rights of suit 'A' and 'B' schedule properties.

iv) The petitioner states that the very object and purpose of the industrial use, for which suit 'A' and 'B'

schedule lands were leased out to M/s HAMWL under lease deeds 1963 was abandoned by respondent No.1 and illegally parted with the possession to the extent of 26436 square yards under assignment deed No.1652 of 2010, dated 16-06-2008 executed in favour of respondent No.16 by illegally conferring the right of mortgage for the said land. It is according to the petitioner, that under the guise of the said assignment deed, respondent No.16 has been clandestinely trying to mortgage and create charge and thereby to encumber it and to create third party interest illegally. In case, respondent No.16 is allowed to do so, it would result into future complications and multiplicity proceedings. Hence, the petitioner sought to injunct the appellant - respondent No.16 either from alienating, mortgaging, creating any charge or altering the physical features of the petition schedule properties, pending disposal of the suit.

6. The appellant - respondent No.16 resisted the reliefs sought for by the petitioner in both the petitions. According to it, the lease deeds of 1963 entitle the lessee to use the land in such a manner as they need and desire and to put the same to such lawful use as the lessee may need and desire during the entire lease period, and even entitles the lessee to make and divide the land into such convenient plots and erect thereon such buildings, structures, house etc., which shall be the absolute

property of the lessee and, still, further providing that the lessee shall be entitled to sub-let the whole or any portion of the said land or structures thereof.

i) It is stated in the counter that even the lease deeds of 1963 contemplate that the lessee shall have option to purchase the land at the rates then prevailing on the date of termination of the lease. Respondent No.16 also states that the assignment deed in its favour has been in accordance with the powers conferred under lease deeds of 1963 and, therefore, the assignment deed, dated 16-06-2008, is legal, valid and binding on the petitioner. Stating that neither *prima facie* case nor balance of convenience exists in favour of the petitioner, sought to dismiss the petitions.

7. The Court below formulated identical points for determination in both petitions.

8. Having examined the lease deeds of 1963 and the assignment deed of 2008 and the contents of the plaint referred to. The Court below observed that respondent No.1, who was not a party to the lease deeds of 1963, has stepped into the shoes of M/s HAMWL, the original lessee, and thereby has become lessee under the lease deeds of 1963. It is, therefore, according to it that respondent No.1 will not derive any better interest than M/s HAMWL and, thus, bound by the

terms of lease deeds of 1963. Incidentally, the Court below has also made an observation in regard to respondent No.1 releasing certain land in favour of respondent Nos.2 to 7 while answering the contentions raised by rival sides.

i) The Court below examined the recitals of lease deeds of 1963, which are almost identical except to the extent of survey numbers and their extents mentioned in the lease deeds of 1963 and extracted sub-clauses (i) to (vii) of clause 4 occurring therein and did not agree with the stand of respondent No.16. On an examination of the said sub-clauses, the Court below, having found that sub-clause (iii) therein was significantly important in appreciating the rival contentions, observed that structures can be raised only in respect of factory or its officers, servants and labourers indicating that the lessee and lessors have specifically restricted the usage of land only for the interest of factory or the officers or the servants. Concerning the assignment deed, on which, respondent No.16 resting its entire case, the Court below observed that M/s Voltas Limited, which has taken over the company M/s HAMWL, has not taken up any industrial activity and appellant herein - respondent No.16, is not part of either M/s HAMWL or M/s Voltas Limited, but it is a real estate firm and the structures that are being raised and proposed to be raised are nothing to do either with

M/s HAMWL or M/s Voltas Limited, and the proposed developmental activities being taken up by respondent No.16 are no-way connected with the factory, its officers or its servants, and thereby the same are totally against the letter and spirit of the terms and conditions of the lease deeds of 1963.

ii) Interpreting sub-clause (iv) of clause 4 and clause 5 of the lease deeds of 1963, the Court below observed that the lessee was not given absolute right and title over 'A' and 'B' schedule properties and the lessee was given right to enjoy the property for a period of 99 years with certain conditions to raise structures for development and expansion of the factory and for construction of quarters for the use of officers and servants etc., and thus, the rights under the lease deeds of 1963 given to the lessee are restricted to the extent of enjoying the leased out properties during the subsistence of lease period.

iii) The Court below then examined the assignment deed in favour of respondent No.16 executed by respondent No.1 - M/s Voltas Limited and found that it relates to an extent of 26436 square yards for a consideration of Rs.24.00 Crores, where-under the leasehold rights of respondent No.1 were assigned in favour of respondent No.16 including existing buildings "as is where is" condition. The Court below then referred to clauses '5'

and '9' of the assignment deed. The Court below having found that clause '5', since speaks that assignor i.e., respondent No.1 has got a clear effectual subsisting and marketable title to the property and the absolute authority to assign the land in the manner it intended, found that the said clause is contrary to the terms of lease deeds of 1963, as marketable title over the petition schedule properties was not conveyed under the lease deeds of 1963. Concerning clause '9', which provides that the assignor will have full liberty to mortgage the property for obtaining financial assistance for the business purpose and objectives, even with a right to sub-lease to third parties, the Court below found that the said clause was also contrary to the terms of the lease deed. The Court below observed that in case respondent No.16 mortgages the property to Financial Institution or Bank, and if it becomes defaulted, then the petition schedule property will be subjected to auction by the banker or financial institution and, thus, certainly, affects the rights of the petitioner. The Court below then referred to clause (B) (j) of Section 108 of the Transfer of Property Act, 1882 (for short 'the Act'), in the context of the stand of respondent No.16 that the said clause vests rise an authority to lessee to transfer the lease-hold property absolutely by way of mortgage or sublease whole or any part of the interest on any property. The Court below observing that lessee can transfer absolutely or mortgage or sublease,

but what can be conveyed by the lessee was only “interest” in the property, thus, indicating that whatever “interest” lessee derives is only to the extent of “enjoyment of such interest” absolutely or can mortgage or create. Thus, the Court below observed that though, Section 108 ((B) (j) of the Act permits the lessee to transfer absolutely or mortgage the lease-hold right, respondent No.1 has given right to respondent No.16 to mortgage the property itself, which is contrary to the lease deeds of 1963 and Section 108 (B) (j) of the Act.

iv) The Court below then referred to the decisions in **Abdulahed Moulvi Abdulsamad and others v. Gulamahmed Gulamnabi Bardoliwala and others**^[1], relied on by the learned counsel for the petitioner and **Raghuram Rao and others v. Eric P. Mathias and others**^[2], relied on by the learned counsel for respondent No.16. The Court below then placed reliance on the decisions of the Hon’ble Supreme Court in **Brijendra Singh v. State of Uttar Pradesh and others**^[3], **State of Orissa and another v. Damodar Das**^[4], referring to one of the clauses of the lease deeds of 1963 that lessee shall not create anything which diminishes the value, observed that if respondent No.16 is allowed to construct commercial or residential complexes under the garb of Assignment Deed, the same will certainly, cause damage

to the property and once construction of commercial or residential complexes are allowed, respondent No.16 would create a third party interest, which will complicate the issue and lead to multiplicity of litigation. By so observing, allowed

I.A. No.1195 of 2013 in part, granting ad-interim injunction restraining respondent No.16 from making construction of commercial or residential apartments complex on any part of the petition schedule property, whereas I.A. No.1194 of 2013 was allowed granting ad-interim injunction restraining respondent No.16 from alienating, mortgaging or creating charge of any nature of the petition schedule property.

9. Aggrieved by the orders granting injunctions, respondent No.16 preferred the instant appeals raising identical grounds in both the appeals, mainly, contending that M/s HAMWL, which was later amalgamated with M/s Voltas Limited, which is respondent No.2 herein, obtained 'A' and 'B' schedule properties on a perpetual lease of 99 years commencing from 01-01-1963 with full rights and entitlement to do such acts, deeds and things as if said lands were belonged to the lessee absolutely, which the Court below has overlooked.

i) It is also stated that the lessee under the lease deeds of 1963 got their right to make and divide the land into plots and erect thereon such buildings, structures,

houses, sheds etc., as lessee may find necessary in its absolute discretion which shall be its absolute property and also right to make additions and alterations to the property in question as they may desire and to sub-let whole or any portion of the land or structures thereon, which the Court below has sidelined.

ii) It is stated that the findings recorded by the Court below that by sub-clause (iii) of clause 4 of the lease deeds of 1963, the lessor and lessee have specifically restricted the usage of land only for the expansion of factory and for construction of quarters for the purpose of officers, servants etc., is totally incorrect and against the letter and spirit of the terms and conditions of lease deeds of 1963.

iii) It is further stated that none of the clauses of assignment deed, dated 16-06-2008, *ultra-vires* the terms of the lease deeds, 1963 and, in fact, clause (xiii) of the assignment deed is specific that the assignor had agreed to assign all its lease-hold rights in the said property on “as is where is” basis to the assignee for the residue of the terms of the lease deeds of 1963 on the terms and conditions contained therein, but somehow, the Court below overlooked the same.

iv) It is further stated that the rights conferred on the lessee under the lease deeds of 1963 to enjoy and deal

with the property were not restricted for the industrial purpose only and the said rights as if it were belonged to them absolutely and, therefore, the Court below went wrong in observing that the clauses in the assignment deed are not in consonance with the terms of the lease deeds of 1963.

v) It is further stated that by virtue of Section 108 of the Act, the lessee has a right to transfer absolutely by way of transfer or sub-lease the whole or any part of his interest in the property, and if any mortgage is created by the appellant herein, it shall be in respect of the interest held by it in the property, which the Court below has also overlooked.

vi) It is still, further stated that the conclusion arrived at by the Court below that the construction of commercial complex and creation of third party interest would diminish the value and would lead to multiplicity of litigation, is not based on proper lines and suffers from appreciation of material on record, as the very assignment deed provides that the assignor has undertaken to abide by the terms of the principal lease deed and the lessee has not parted with or alienated any rights in favour of the appellant – respondent No.16 in violation of terms of the principal lease deeds, and the rights transferred are those that are possessed by the lessee under the principal lease deeds for the remaining period.

vii) Lastly, it is stated that the Court below failed to appreciate that the predecessor-in-title, defendant No.1 in the suit, is a necessary and proper party for effective disposal of the interlocutory applications, but not made as party thereto and was not heard. Therefore, sought to set aside the orders and decrees under challenge in these Civil Miscellaneous Appeals.

10. Heard Sri A. Sudarshan Reddy, learned Senior Counsel assisted by Sri G. Madhusudhan Reddy, learned counsel for the appellant, and Sri J.A. Qureshi, learned counsel for respondent No.1. Sri Gaddam Srinivas, learned counsel made his appearance for respondent No.2. Respondent Nos.3 to 16 are not necessary parties as mentioned in the cause title by the appellant.

11. At the outset, we would like to observe that the divisible interest held by the petitioner is not disputed by the appellant - respondent No.16. Execution of lease deeds of 1963 in favour of M/s HAMWL for a period of 99 years on a monthly rent of Rs.50/- per acre with respective obligations cast on lessor and the lessee therein, are also not in dispute. But, as can be gathered from the stand taken by respondent No.16, in its counter, and the contentions raised interpreting the terms of assignment deed in favour of

respondent No.16 and the terms mentioned in the lease deeds of 1963, respondent No.16 intends to set up absolute right or interest in the property, but not absolute rights to enjoy the property as a sub-lessee. So, the whole controversy revolves around appreciation of the terms of lease deeds of 1963 in favour of respondent No.1's predecessor and the terms of assignment deed of 2008 in favour of respondent No.16 executed by the respondent No.1.

12. We initially intend to advert to the terms of the lease deeds of 1963 for better appreciation of the matters in controversy. Clause (iii) of preamble of the lease deed commenced at page 90 and ended at page 91 of the material papers is of great significance, in gathering the intention of the lessors and lessee from the covenants contained in sub-clauses (i) to (vii) of clause 4 which read thus:

“(iii) AND WHEREAS the aforesaid Lessors have agreed to execute this deed assuring the covenants herein contained and in order to avoid all future troubles and in order that the Lessees shall obtain undisputed rights hereunder as the lease is of far reaching consequences affecting the interest of a Public concern.”

Thus, this clause lays emphasis in protecting the interest of a public concern, that being, the concern of the Lessee – M/s HAMWL, and the terms and conditions mentioned in sub-clauses (ii) to (vii) of clause 4 require appreciation in the light of the said clause. For better appreciation, we

intend to extract the conditions contained in clauses 2 to 7 of the lease deeds of 1963, which are thus:

“2. The Lessees for themselves and their assigns and to the intent that the obligations may continue throughout the term hereby created covenant with the Lessors as follows:

(i) To pay the reserved rent on the days and in the manner aforesaid, less taxes payable as mentioned in clauses 6 hereunder.

(ii) Within such time and at such periods the Lessees shall at their own costs and charges build such structures either permanent or temporary for the beneficial enjoyment of the land as they may choose but the same shall be in accordance with the Government, Municipal and other regulations and rules that may prevail.

(iii) At all time during the said term keep the said land and buildings erected by them in a good and clean state.

(iv) To permit the Lessors or their agent once in every year during the said term in the day time with or without work men or others to enter the said land and view the place to satisfy if the lessees have adhered to the terms hereof.

3. The Lessors hereby covenant with the Lessees that the Lessees is paying the rent hereby reserved and performing the covenants herein before on their part contained shall quietly possess and enjoy the land here by demised for the term here by granted without any unlawful disturbance from or by the Lessors or any persons or persons rightfully claiming under them or adversely to them.

4. The Lessors covenant with the Lessees as follows:

(i) The Lessees shall be entitled to use the said land in

such manner as they need and desire and they shall be entitled to put the said land to such law full use as they may need or desire during the term of this deed i.e., for the entire period of Ninety Nine years.

(ii) The Lessees shall be entitled to level the said land and pull down any erections on the said land to meet their needs from time to time.

(iii) The Lessees shall be entitled to make and divide the said land into such convenient plots and they may desire and erect there on such buildings, structures, houses, sheds, garages, godowns, huts, hutments, either for their factory or for their officers, servants and labourers in such manner as they may desire or for such purposes as they may find necessary in their absolute discretion. Such erection shall be the absolute property of the Lessees.

(iv) In short The Lessees shall be entitles to carry out such acts, deeds and things they shall be entitled to do if the said land were to belong to them absolutely and they shall be entitled to make such use of the said land as they would be entitled to do if it belonged to them absolutely.

(v) The Lessees shall be entitled to setup hoardings and advertisements and make such enclosures as they may desire.

(vi) The Lessees shall be entitled at all time during the term here by created to make such additions and alterations has they may desire on the said land. But all erections made by them shall be at their own expenses.

(vii) The Lessees shall be entitled to sublet the whole or any portion of the said land or structures hereof.”

5. That on the termination of the lease hereby created the lessees shall have the option to purchase the said land at the rates then prevailing. But if the Lessees do not chooses to so purchase they shall be entitled to remove all the structures, erections, machinery and other

property belonging to them and give possession of vacant land to the Lessors subject to usual wear and erosion or the Lessors, if they wish to do so, purchase all such erections and buildings at the then prevailing market rate, with the consent of the Lessors.

6. The Lessees shall promptly pay the land tax and other taxes, if any, appurtenant to the land that may become due and payable from date of the lease and in respect of the leased out land without reference to the Lessors and as and when these have been paid, the same shall be deducted from the rent payable for the corresponding month. Any increase in the land tax and or any other taxes in respect of the leased out land from the date of the lease shall be paid by the Lessees.

7 . The Lessees shall not do anything which will permanently impair the value of the land leased and shall not commit such acts which will, in any way, affect the value of the adjoining lands.”

i) Sub-clause (iv) of clause 2, afore-extracted, would reflect that the supervision or control over the property has been retained by the lessors, as they reserve right to enter the land once in every year during the subsistence of tenancy and view the place to satisfy if the lessees have adhered to the terms mentioned in the subsequent clauses. Thus, the lessors never intended to part with any portion of the property leased out in favour of M/s HAMWL.

ii) Sub-clause (i) of Clause 4 speaks as to the entitlement of the lessees to use the land in such a manner as they need and desire and to put the said land to such lawful use as they may need or desire during the

term of lease. Sub-clause (iii) of clause 4 is of great significance in appreciating the rival contentions, more particularly, the arguments advanced by the learned counsel for the appellant. It provides that the Lessees were authorized to divide and make the land it into convenient plots they may desire and to erect buildings thereon, houses, sheds, garages, godowns, huts, hutments either for their factory or for their officers, servants and labourers in such manner as they may desire or for such purposes as they may find necessary in their absolute discretion, and such erection shall be the absolute property of the lessees. Thus, it provides that only the structures erected shall be the absolute property of the lessees, but the same has to be read in conjunction with clause 5, which provides option to the lessees to purchase the said land at the rates then prevailing and if the lessee does not exercise that option lessee was obligated with the duty of removing all the structures, erections, machinery and other property belonging to them and deliver vacant possession of the land subject to usual wear and erosion, and in case the lessors intend to purchase the erections and buildings, they can do so at the then prevailing market rate with the consent of the lessees. Thus, in unmistakable terms, it can be said that the use of the property leased out there-under was subject to restrictions, but not as absolute rights therein. The learned counsel for the appellant, mainly, rests his

argument on sub-clause (iv) of clause 4, afore extracted, contending that the said sub-clause entitles the lessees to carry out such acts, deeds and things the lessee shall be entitled to do if the said land were belonged to them absolutely and, therefore, in view of the assignment deed in favour of the appellant, it has to be construed that no restriction is imposed in using the said land, more particularly, when read with the first portion of sub-clause (iii) of clause 4, which provides for dividing the land into convenient plots and erect thereon buildings, structures, houses etc. and, therefore, the order granting injunctions injuncting the appellant from using the land as it desires, cannot be sustained.

iii) The words “ such buildings....”, “such manner....” and “such erection...” lay emphasis on making division of the land into such convenient plots for the purposes of buildings, structures etc., only for lessee’s factory or for its officers etc. and the erections alone are to be considered as absolute property of the lessees.

13. Turning to the assignment deed, we intend to extract clause (xiii) of preamble and clauses 5, 9 and 12 contained therein which are thus:

“xiii) The Assignor had agreed to assign all its leasehold rights in the said property on an “as is where is” basis to the Assignee for the residue of the term of the Lease Deeds both dated 8’ January, 1963 on the terms and

conditions contained therein and herein:

x x x x

x x x x

5. The Assignor undertakes and confirms to the Assignee that they alone have leasehold rights in the said property which the Assignor has acquired under the lease deed dated 8th January, 1963 from M/s Khan Saheb Dost Alladin and Noor Mohammed Alladin and under another lease deed dated 8th January 1963 from Smt. Zubedabai A alladin. The Assignor further assures the Assignee that they have got a clear, effectual subsisting and marketable title to the said property and absolute authority to assign the same in the manner aforesaid.

9. The Assignor further confirms that the properties mentioned in the Second Schedule hereto is free from all encumbrances/ liens. Further the Assignee will be having full liberty to mortgage (for obtaining financial assistance for the bonafide business puposes / objectives of the Assignee and/or any of its Associates, sublease, sub let / assign to any third other party(s).

12. The Assignor hereby transfers and assigns unto the Assignee all its rights, title and interest claim and demand, whatsoever in the said property acquired under the lease deeds both dated 8th January, 1963 from M/s Khan Saheb Dost Alladin and Noor Mohammed Alladin and Smt Zubedabai A Alladin and delivers/deliver vacant possession there of save for the portion thereof occupied by TISL to the Assignee to hold the same absolutely for ever free from all encumbrances, together with all water sources privileges, easements, appurtenances or any other things hidden in the earth belonging to or appurtenant thereto subject to the terms and conditions of the said lease deeds both dated 8th January 1963.”

i) Clause (xiii) of the preamble lays emphasis on lease-hold rights derived by the Assignor from its

Predecessor under the lease deeds of 1963, that have been assigned to the appellant, thus, indicating in definite terms nothing more was intended to be assigned to the appellant herein. When clauses 5, 9 and 12 of the terms and conditions of the Assignment Deed, intrinsically examined, they definitely indicate that the Assignor - respondent No.1 exceeded its authority in conferring rights more than what its predecessor derived under the lease deeds of 1963.

ii) Clause 5 of the terms and conditions of the Assignment Deed reflects that the Assignor assured the appellant herein that the assignor got a 'clear effectual subsisting and marketable title' to the said property which was never intended to be expressed under the lease deeds of 1963. Like-wise, in clause 9, afore-extracted, the assignor confers the power on the appellant to mortgage the land for obtaining financial assistance for the benefit of business purposes/objectives of the assignee, sub-lease, sub-let/assign to any third parties, which was not the intention of the lessors under the lease deeds of 1963 executed in favour of the predecessor of the assignor. Thus, as rightly, observed by the Court below, these two clauses have been incorporated contrary to the terms and conditions or the obligations cast on predecessor of the assignor under the lease deeds of 1963. Even in clause 12, the assignor got

mentioned the words “title and interest claim and demand” which even have to be construed as contrary to the terms and conditions of the lease deeds of 1963.

14. Turning to the submission of learned counsel for the appellant that provisions of Section 108 of the Act confers a right on the lessee to transfer absolutely by way of transfer or sublease the whole or any part of his interest in the property, and if any mortgage is created by the appellant, it shall be in respect of the interest held by the appellant over the property is concerned, while interpreting

clause ‘9’ of assignment deed (Ex.P-4), the Court below observed that Section 108 (B) (j) of the Act permits the lessee to transfer absolutely or mortgage the leasehold right, since respondent No.1 has given

a right to respondent No.16 to mortgage the property itself, it is contrary to lease deeds of 1963 and Section 108 (B) (j) of the Act. We have referred to the effect of clauses ‘5’ and ‘9’, in the above. The very words that “the assignor has got a clear effectual subsisting and marketable title” mentioned in clause ‘5’ in the context of right that was held by respondent No.1 are, certainly, not inconsonance with what was intended to transfer under the lease deeds of 1963. Therefore, the act of respondent No.16 in making construction of commercial or residential apartment complexes in any part of the petition schedule properties

is nothing but exceeding the right that was transferred under the lease deeds of 1963 by the lessors in favour of the predecessor of respondent No.1.

Thus, we find that the orders passed by the Court below which are under challenge, since well reasoned and well appreciated, do not suffer from any legal infirmity warranting interference of this Court. Hence, we find no merit in both the appeals.

15. Therefore, both the Civil Miscellaneous Appeals are dismissed confirming the orders passed by the Court below in I.A. Nos.1194 of 2013 and 1195 of 2013 in O.S. No.815 of 2013. We make no order as to costs.

16. As a sequel thereto, miscellaneous applications, if any, pending in these appeals, stand disposed of.

**R. SUBHASH
REDDY, J**

A. SHANKAR NARAYANA, J

August 28, 2015.
Mgr

- [\[1\]](#) . AIR 1975 Gujarat 1
- [\[2\]](#) . AIR 2002 SC 797
- [\[3\]](#) . 1981 (1) SCC 597
- [\[4\]](#) . 1996 (2) SCC 216