

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.3000 of 2014 (O&M)

Date of Order: 10th October, 2017

Yogesh Kumar and others

..Appellants

Versus

Ashok Kumar and others

..Respondents

RSA No.3008 of 2014 (O&M)

Pardeep Kumar

..Appellants

Versus

Ashok Kumar and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Atul Lakhanpal, Sr. Advocate, with
Mr. Munish Jolly, Advocate, and
Mr. P.C.Chaudhary, Advocate,
for the appellant.

Mr. Rakesh Gupta, Advocate,
for the contesting respondents

Mr. Harsh Garg, Advocate,
for respondents no.1, 2 and 4 to 9 (in RSA No.3008 of 2014)
for respondents no. 1 to 9 (in RSA No.3000 of 2014)

Mr. Arvind Bansal, Advocate,
for respondent no.43(in RSA No.3000 of 2014)
for respondent no.45 (in RSA No.3008 of 2014)

ANIL KSHETARPAL, J.

By this common judgment, this Court shall be disposing of

RSA Nos.3000 and 3008 of 2014, as both the appeals arise out of the same

suit filed by the contesting respondents herein.

The following substantial questions of law need determination:-

- (i) Whether a registered lease deed which makes a provision for extension of the term of the lease deed at the discretion of the tenant can be denied the right of extension of the term only because he has not filed a suit for enforcement of term of extension within a period of three years from the date when previous term had come to an end?
- (ii) Whether execution of a fresh lease deed or renewal thereof is necessary for extension of the term particularly when the lease deed does not provide for the same?
- (iii) Whether a piece of land which is largely being used for commercial purposes by raising various commercial buildings as permitted under the lease deed would be governed by the provisions of Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as 'the Act of 1973')?

Detailed facts have been noticed in the judgments passed by the Courts below. However, to complete the narrative, it shall be useful to notice brief facts.

Predecessors of the plaintiffs and proforma defendants entered into a contract i.e. registered lease deed dated 01.03.1947 with respect to land measuring 8 kanals 4 marlas with one Babu Ram Parkash, defendant no.1 for a period of 50 years.

As per the lease deed, Babu Ram Parkash (herein referred to as lessee) was authorized to construct Cinema Hall, shops and other buildings.

Clause 2 of the lease deed reads as under:-

“That after completion of above said period of 50 years, if Babu Ram Parkash Sahib wants to take the above said land on lease for further period of 49 years or less i.e. for a maximum period of 49 years and minimum period as per his wish, we the executants shall be bound and responsible to give the said land to him for that very period. But, for the extended period we shall have the right to receive lease amount as much as Rs.500/- per annum but not more than that. We shall be at liberty to agree for lesser lease amount. After completion of period of 50 years, if Babu Ram Parkash Sahib does not want to take above said land for further period, we the executants shall have no objection in this regard.”

It is not in dispute that Babu Ram Parkash constructed Cinema Hall and other commercial buildings and even sub-let some portion of the property. As per terms of the lease deed, lease deed was come to an end after completion of period of 50 years on 28.02.1997. Lessee in terms of Clause 2 extracted above, sent a communication to the plaintiffs and proforma defendants-landlords, exercising his option for extension of lease for another term of 49 years. The communication was duly received by the landlords. Landlords replied to the aforesaid communication dated 16.03.997. Landlords pleaded that Clause 2 of the lease deed dated 01.03.1947 is illegal and invalid and not binding on the landlords.

Landlords further called upon the lessee to hand over vacant possession of the premises.

It is further not in dispute that out of the area of 8 kanals 4 marlas, subject matter of lease, more than 2 kanals of land has been sold by the landlords to various sub lessees.

Landlord filed a suit for declaration that the plaintiffs and proforma defendants i.e. landlords are joint owners in possession of the rented land and for partition as a consequential relief. Later on the relief of partition was given up. It was pleaded in the plaint that Clause 2 of the lease deed is illegal and invalid as the lease property/rented land is ancestral Joint Hindu Family Property. Hence the said condition is not legally enforceable. In the alternative, it was pleaded that lessee has failed to exercise the option as provided under Clause 2 of the lease deed in accordance with law. Hence, lessee shall be deemed to have waived that condition.

The suit was contested by the defendants. It was pleaded that the lease deed stands extended as the lessee had opted for renewal of the lease deed for a period of 49 years at an actual rent of Rs.500/- per year.

The Courts below have decreed the suit while assigning four reasons:-

- (i) Since lessee did not take any step for enforcement of Clause 2 after denial of the landlords vide communication dated 16.03.1997 within a period of three years, therefore, the term of lessee has not been extended;
- (ii) lessee was required to file a suit for specific performance

of the lease agreement and since it has not been filed within a period of three years, therefore, the possession of the lessee is unauthorized;

- (iii) As per the terms of lease deed, the lease deed was required to be renewed under signatures of lessor and lessee and since it was never executed, therefore, the lease has come to an end;
- (iv) Civil Court has jurisdiction because some part of the property is being used for residential purposes and a plain piece of land was given, therefore, the provision of the 1973 Act would not be applicable.

QUESTION NO.1

“Whether a registered lease deed which makes a provision for extension of the term of the lease deed at the discretion of the tenant can be denied the right of extension of the term only because he has not filed a suit for enforcement of term of extension within a period of three years from the date when previous term had come to an end?”

Clause 2 of the lease deed has been extracted above. Plain reading of the clause would prove that the lessee was given exclusive right to seek extension of the term of lease for a maximum period of 49 years. Agreement did not give any right to the lessor to deny the extension to the Lessee if he has opted for the same. In the present case, the agreement does not provide for execution of any fresh lease deed in writing between the parties. It is admitted position on the record that the lessee did opt for extension as provided under the lease deed. Therefore, in the considered opinion of this Court, no fresh lease deed was required to be executed. Hence, the findings of the Court that since the lessee did not seek

enforcement of Clause 2 by filing a suit within a period of 3 years, therefore, the lease deed has come to an end is clearly not only erroneous but perverse. Once the lease deed which is in the term of a contract in writing between the parties does not provide for execution of a fresh lease deed while extending the term, lessee was not required to file any suit. The moment, the lessee opted for extension, which was his right as per the terms of the lease deed, the term of the lease deed would be deemed to have stand extended.

QUESTION NO.2

Whether execution of a fresh lease deed or renewal thereof is necessary for extension of the term, particularly when the lease deed does not provide for the same?

A bare reading of the lease deed dated 01.03.1947, proves that no fresh lease deed was required to be executed. It was not a case of renewal of contract. As per Clause 2 of the lease deed, option was given to the lessee to seek extension. In the present case, lessee did seek extension. The lease deed which is a contract between the parties did not make a provision for execution of the renewed lease deed. No rights whatever was given to the lessors to deny the extension in such a situation when lessee had opted for the extension in accordance with the terms of the lease deed. Hence, in the considered opinion of this Court, execution of fresh lease deed/renewal of the existing lease deed under the fresh signatures of lessor and lessee was not required.

QUESTION NO.3.

Whether a piece of land which is largely being used for commercial purposes by raising various commercial buildings as permitted under the lease deed would be governed by the provisions of Haryana Urban(Control of Rent and Eviction) Act, 1973

(hereinafter referred to as 'the Act of 1973')?

It is not in dispute that largely the premises is being used for business and trade. Section 2(f) of the 1973 Act, which is applicable in the State of Haryana, reads as under:-

“2. Definitions.- In this Act, unless there is anything repugnant in the subject or context:-

- | | | | |
|-----|--|----|----|
| (a) | XX | XX | XX |
| (b) | XX | XX | XX |
| (c) | XX | XX | XX |
| (d) | XX | XX | XX |
| (e) | XX | XX | XX |
| (f) | "rented land" means any land let separately for the purpose of being used principally for business or trade” | | |

The premises in dispute is situated within the urban area of Kaithal. A reading of the lease deed proves that the premises is situated within the area governed by the Municipal Committee. It is further not in dispute that largely the premises in dispute is being used for business and trade as a Cinema Hall and various shops have been constructed. The lease deed dated 01.03.1947 created a relationship of landlord and tenant between the parties. As per the provision of the 1973 Act, tenants can be evicted from the premises only in accordance with the provisions of the Act especially Section 13. The Act provides for vesting of exclusive jurisdiction with the Rent Controller. Section 13 of the 1973 Act makes provision that a tenant shall not be evicted from the premises except in accordance with the provision of the 1973 Act. Section 13 of the 1973 Act is extracted as under:-

“S.13. EVICTION OF TENANTS.-

(1) A tenant in possession of a building or a rented land shall not be evicted therefrom except in accordance with the provisions of this Section.

2. A landlord who seeks to evict his tenant shall apply to

the Controller, for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is cause against the application, is satisfied-

(i) that the tenant has not paid or tendered the rent due from him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement by the last day of the month next following that for which the rent is payable:

Provided that if the tenant, within a period of fifteen days of the first hearing of the application for ejectment after due service, pays or tenders the arrears of rent and interest, to be calculated by the Controller, at eight per centum per annum on such arrears together with such costs of the application, if any, as may be allowed by the controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid:

Provided further that the landlord shall not be entitled to claim arrears of rent for a period exceeding three years immediately preceding the date of application under the provision of this Act.

(ii) that the tenant has after the commencement of the 1949 Act without the written consent of the landlord,--

(a) transferred his right under the lease or sublet the entire building or rented land or any portion thereof; or

(b) used the building or rented land for a purpose other than that for which it was leased;

(iii) that the tenant has committed or caused to be committed such acts as are likely to impair materially the value or utility of the building or rented land;

(iv) that the tenant has been guilty of such acts and conduct as are a nuisance to the occupants of the same building or buildings in the neighbourhood;

(v) that where the building is situated in a place other than a hill station, the tenant has ceased to occupy the building for a continuous period of four months without reasonable cause;

the Controller may make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controller is not so satisfied he shall make an order rejecting the application:

Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregate.

(3) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession-

(a) in the case of a residential building, if, -

(i) he required it for his own occupation, is not occupying another residential building in the urban area concerned and has not vacated such building without sufficient cause after the commencement of the 1949 Act in the said urban area;

(ii) he requires it for use as an office or consulting room by his son who intends to start practice as lawyer, qualified architect or

chartered accountant or as a "registered practitioner" within the meaning of that expression used in the Punjab Medical Registration Act, 1916, the Punjab Ayurvedic and Unani Practitioners Act, 1963, or the Punjab Homeopathic Practitioners Act, 1965, or for the residence of his son who is married:

Provided that such son is not occupying in the urban area concerned any other building for use as office, consulting room or residence, as the case may be and has not vacated it without sufficient cause after the commencement of the 1949 Act ;

(iii) it was let out to the tenant for use as a residence by reason of his being in the service or employment of the landlord and the tenant has ceased, whether before or after the commencement of this Act, to be in such service or employment:

Provided that where the tenant is a workman who has been discharged or dismissed by the landlord from his service or employment in contravention of the provisions of the Industrial Disputes Act, 1947, he shall not be liable to be evicted until the competent authority under that Act confirms the order of discharge or dismissal made against him by the landlord;

(iv) the tenant has already in his own possession a residential building or subsequently acquires possession of, or erects, such a building reasonably sufficient for his requirement in the urban area concerned;

(v) he is a member of the armed forces of the Union of India and requires it for the occupation of his family and produces a certificate from the prescribed authority referred to in section 7 of the Indian Soldiers (Litigation) Act, 1925 that he is serving under special conditions within the meaning of section 3 of that Act.

Explanation.--For the purposes of this sub-clause "family" means such relations of the landlord as ordinary live with him and are dependent upon him;

(b) in the case of rented land, if he requires it for his own use, is not occupying in the urban area concerned for the purpose of his business any other rented land and has not vacated such rented land without sufficient cause after the commencement of the 1949 Act:

(c) in the case of any building or rented land, if he requires it to carry out any building work at the instance of the State Government or local authority or any improvement trust under some improvement or development scheme or if it has become unsafe or unfit for human habitation:

Provided that where the tenancy is for a specified period agreed upon between the landlord and the tenant, the landlord shall not except, under sub-clause (v) of clause (a) be entitled to apply under this sub-section before the expiry of such period:

Provided further that where the landlord has obtained possession of a residential building or rented land under the provisions of sub-clause (i) or sub-clause (v) of clause (a) or clause (b) he shall not be entitled to apply again under the said provisions for the possession of any other building or rented land of the same class:

Provided further that where a landlord has obtained possession of any building under the provisions of sub-clause (ii) of clause (a) , he shall not be entitled to apply again under the said sub-clause for the possession of any other building for the use or for the residence, as the case may be, of the same son.

[(3-A) In the case of a non-residential building, a landlord who stands retired or discharged from the armed forces of the Union of India or who was a minor son at the time of death of the deceased landlord and requires it for his personal use may within a period of three years from the date of retirement or discharge or attaining the age of eighteen years, as the case may be apply to the Controller for an order directing the tenant to put the landlord in possession:

Provided that where the landlord has obtained possession of a non-residential building under this sub-section, he shall not be entitled to apply again for the possession of any other non-residential building of the same class.]

(4) The Controller shall , if he is satisfied that the claim of the landlord is bona fide make an order directing the

tenant to put the landlord in possession of the building or rented land on such date as may be specified by the Controller and if the Controller is not so satisfied, he shall make an order rejecting the application:

Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregate.

(5) Where an application is made under sub-clause (v) of clause (a) of sub-section (3), it shall be disposed of, as far as may be, within a period of one month and if the claim of the landlord is accepted, the Controller shall make an order directing the tenant to put the landlord in possession of the building on a date to be specified in the order and such date shall not be later than fifteen days from the date of the order.

(6) Where a landlord, who has obtained possession of a building or rented land in pursuance of an order under sub-clause (i) of clause 9a) or clause (b) of sub-section (3), does not himself occupy it or if possession was obtained under sub-clause (v) of clause 9a) of sub-section (3), his family does not occupy the residential building, or if possession was obtained by him on behalf of his son in pursuance of an order under sub-clause (ii) or clause (a) of sub-section (3), his son does not occupy it for the purpose for which possession was obtained, [for a continuous period of twelve months from the date of obtaining possession or if possession was obtained under sub-section 3-A he does not occupy it for his exclusive personal use, for a continuous period of three years] or where a landlord who has obtained possession of a building under clause(c) of sub-section (3) puts that building to any use or lets it out to any tenant other than the tenant evicted from it, the tenant who has been evicted may apply to the Controller for an order directing that the possession of such building or rented land shall be restored to him and the Controller shall make an order accordingly.

(7) Where the Controller is satisfied that any application made by a landlord for the eviction of a tenant is frivolous or vexatious, the Controller may direct that compensation not exceeding five hundred rupees be paid by such landlord to the tenant.”

In these circumstances, in fact the Civil Court had no jurisdiction in such dispute particularly when relationship of landlord and

tenant is not disputed at the time of inception of the tenancy and thereafter for a period of 50 years.

The Act of 1973 gives statutory protection to a tenant/lessee from eviction except on the ground mentioned in Section 13 of the Act of 1973 after a contractual tenancy comes to an end. A tenant can only be evicted on the grounds mentioned in the Act. The Act does not make a provision for eviction of a tenant after a lapse of a period of contractual tenancy.

In view of the discussion made hereinabove, all the three questions framed above, are answered in favour of the appellants. The judgments and decrees passed by the courts below are set aside and the appeals are accepted.

10th October, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No