

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.432 of 2005**

Ashok Tiwari aged about 48 year S/o Taturam Tiwari, R/o Nutan Colony, Sarkanda, Tah. & District Bilaspur (CG)

---- Appellant/Plaintiff

Versus

State of Chhattisgarh through Collector, Bilaspur (CG)

---- Respondent/Defendant

For Appellant/Plaintiff	:	Mr.H.V.Sharma, Advocate
For Respondent/Defendant	:	Mr.Ravi Kumar Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal
Judgment on Board

12.07.2019

1. The substantial question of law involved, formulated and to be answered in the second appeal preferred by the appellant/plaintiff is as under:-

“Whether without canceling the lease deed the possession of plaintiffs can be disturbed by the State ?”

[For the sake of convenience, the parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court].

2. The plaintiff was granted lease of suit land vide Ex.P/1 under the Madhya Pradesh Nagariya Kshetron Ke Bhoomihin Vyakti (Pattadhriti Adhikaron Ka Pradan Kiya Jana) Adhiniyam, 1984 (hereinafter called as “the Act of 1984”) on 17.7.1984 for 30 years. As per plaint allegations, on 13.6.2002 the officers of the State came to the house owned by the plaintiff and started interfering with his peaceful

possession on the pretext of widening of road. It was further pleaded that his lease is upto 16.7.2014, therefore, without following due process of law he cannot be dispossessed and prayed for permanent injunction restraining the defendant from interfering with his peaceful possession.

3. The defendant filed its written statement controverting the allegations made in plaint stating inter-alia that the plaintiff has violated the condition of lease as the suit land was given to him for residential purpose, whereas the plaintiff is using the same for non-residential purpose by constructing two shops for running STD-PCO and grocery shop, as such, by virtue of the provisions contained in Section 3(4) of the Act of 1984, his lease stands automatically revoked and the plaintiff is not entitled for decree of permanent injunction.
4. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 29.9.2003, dismissed the suit holding that the plaintiff has violated the terms and conditions of lease dated 17.7.84 (Ex.P/1) as he is using the suit land for non-residential purpose, which is contrary to the terms and conditions of lease and by virtue of the provisions contained in Section 3(4) of the Act of 1984, his lease stands automatically revoked, which has been affirmed by the first appellate Court. Questioning the judgment and decree of the first appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellant/plaintiff, in which substantial question of law has been framed by this Court, which has been set-out in the opening paragraph of this judgment.

5. Mr.H.V.Sharma, learned counsel for the appellant/plaintiff, would submit that lease granted to the plaintiff vide Ex.P/1 for 30 years was never cancelled and without cancelling lease, possession of the plaintiff cannot be disturbed by the State. Even otherwise, the suit land is deemed to have been settled in his favour by virtue of the provisions contained in Section 3(1) of the Act of 1984, as such, the judgment and decree passed by the trial Court as affirmed by the first appellate Court deserves to be set aside.
6. On the other hand, Mr.Ravi Kumar Bhagat, learned Deputy Government Advocate for the respondent/State, would submit that the plaintiff is chronic defaulter in complying with the terms on which lease was granted. Even otherwise, the suit land is required for public purpose of widening of road, therefore, action was taken, as such, the judgment and decree passed by both the Courts below deserve to be maintained by dismissing the second appeal.
7. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
8. The plaintiff was granted lease of the suit land vide Ex.P/1 under the Act of 1984 on 17.7.1984 for 30 years. The suit land to be used for residential purpose by the appellant was upto 16.7.2014. In the meanwhile, on 13.6.2002 suit was instituted by the plaintiff alleging interference by the State in the name of widening of road. The trial Court after due appreciation has held that the plaintiff is using the suit land in contravention of terms and conditions of lease for non-residential purpose and running STD-PCO & grocery shop by

constructing shops on the suit land, which has been affirmed by the first appellate Court.

9. Admittedly, the suit land was given to the plaintiff on lease for residential purpose as he claimed to be landless person and therefore, he could not have been converted it for non-residential purpose, which the plaintiff has admittedly converted and using it for non-residential purpose and consequence of using it for non-residential purpose is enumerated in Section 3(4) of the Act of 1984 and in that view of the matter, the trial Court as well as the appellate Court has taken the view that lease granted to the plaintiff stands automatically revoked. Even otherwise, lease period to the appellant has already come to an end on 16.7.2014 and no legal right is now subsisting in favour of the plaintiff and the plaintiff is chronic defaulter in complying with the terms of lease, therefore, no land can be settled in his favour by virtue of the provisions contained in Section 3(1) of the Act of 1984. I do not find any illegality or perversity in the judgment and decree passed by the trial Court as affirmed by the first appellate Court. The substantial question of law is answered in favour of the defendant and against the plaintiff.

10. Accordingly, the second appeal deserves to be and is hereby dismissed. The plaintiff shall bear his own cost and cost of the defendant.

11. A decree be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge