

IN THE HIGH COURT OF ORISSA AT CUTTACK

S.A. NO.59 OF 1992

In the matter of an appeal under section 100 of the Code of Civil Procedure has assailed the judgment and decree passed by the learned 2nd Additional District Judge, Bhubaneswar in Title Appeal No.61/21 of 1990/1988 setting aside the judgment and decree passed by the learned Munsif, Bhubaneswar in OS No.178 of 1986.

M/s. Rungta Agency Pvt. Limited* *Appellant

-versus-

State of Orissa* *Respondent
Appeared in this case by Hybrid Arrangement
(virtual/physical mode)

***For Appellants* :::: M/s. G. Mukharjee,**
Senior Advocate,
P.R. Parik, Advocate.

***For Respondents* - M/s. B. Panigrahi,**
Addl. Standing Counsel.

CORAM:

MR. JUSTICE D.DASH

DATE OF HEARING::08.07.2022, DATE OF JUDGMENT::18.07.2022

The Appellant-Company by filing this Appeal under Section-100 of the Code of Civil Procedure 1908 (for short, 'the Code') has assailed the judgment and decree passed by the learned 2nd Additional District Judge, Bhubaneswar in Title Appeal No.61/21 of 1990/1988.

By the same, the Appeal filed by the Respondent-State being the unsuccessful Defendant under section-96 of the Code has been allowed

and thereby the judgment and decree passed by the learned Munsif, Bhubaneswar in OS No.178 of 1986 have been set aside and this Appellant (Plaintiff) have been non-suited.

2. For the sake of convenience, in order to avoid confusion and bring in clarity, the parties hereinafter have been referred to, as they have been arraigned in the Suit.

3. The Plaintiff's case is that on 12.01.1979, the Defendant-State leased out a piece of land extending 210X207.1/2 feet (43, 575 Square feet) situated in Satyanagar in Unit-X under Bhubaneswar Municipal Corporation in their favour on payment of initial premium of Rs.12,500/-. Lease was initially for a period of 15 years with the option for extension of term from time to time upto 90 years. The deed of lease was executed by the Defendant-State on 31.01.1979. It is stated that the Plaintiff had taken lease of the land for using the same for establishment of stockyard and storage godown with required living accommodation for the purpose. Having taken possession of the land, it is said that the Plaintiff made certain developments by put boundary spending a sum of Rs.1,00,000/- or more and used it for the purpose for which it had been leased out. On 31.05.1986, the Defendant served a notice on the Plaintiff in resuming the leasehold land with immediate effect for the purpose of construction of Hospital building over there for

providing health care facility to the general public. Then on 27.06.1986, another notice was served by the Defendant upon the Plaintiff-Company directing therein that the land be vacated within three months thereof. The Plaintiff claims that the said resumption of land by notice as given are not only in opposition to the terms and conditions of the lease deed but in violation of the same. So, the Plaintiff filed the suit with a prayer to declare that the Notice dated 27.06.1986 as illegal with further prayer that there be a declaration that the lease still subsists. A prayer for permanent injunction restraining Defendant from giving effect to the Notice has also been advanced therein.

4. The Defendant-State in the written statement admitted to have executed the lease-deed on 31.01.1979 for a period of 15 years.

It is stated that lease deed contains a condition of Clause-2(xi) that the Lessor (State) may resume land before expiry of the lease for any public purpose. So, it is stated that when the land was required for establishing a Government Hospital, it has been decided to resume the lease in consonance with the aforesaid condition of the deed of lease. It is stated that the actions of the Defendant-State in resuming the lease are all legal and valid. Therefore, it is asserted that the notices sent for the purpose are all legal and valid. It is also stated that till 24.01.1985,

the Plaintiff has not made any construction and subsequent thereto simply has put up compound wall and such construction on the face of the Clause-2(xi) of the deed of lease does not stand on the way of resumption of the land by the Lessor-State in exercise of the power as stated therein.

4. The Trial Court on the above rival pleadings framed six issues. Coming to answer issue no.4 with regard to legality of the resumption of the leasehold by the Lessor (Defendant) by the impugned notice and seeking delivery of vacant possession upon construction of the Clause-2(xi) of the deed of lease and on going through the evidence arrived at a conclusion that notice dated 27.06.1986 has held the same to be not in conformity with the said Clause-2(xi) of the deed of lease. With such finding, the suit stood decreed granting the Plaintiff (Company), the reliefs as prayed for.

5. The State being aggrieved by the said judgment and decree passed by the Trial Court having carried Appeal has been successful in upsetting the judgment and decree passed by the Trial Court. The First Appellate Court sitting over to judge the sustainability of the finding of the Trial Court of issue no.4, upon construction of Clause-2(xi) of the deed of lease, Ext.1 and on going through other clauses contained in the

said lease-deed, Ext.1 as its level has held said finding of the Trial Court to be erroneous.

6. This Appeal has been admitted to answer the following substantial questions of law:-

- (A) Whether the Courts below erred in holding that the notice of resumption of land issued by the Defendant to the Plaintiff was in accordance with Clause-2(xi) of the deed of ease and whether the Courts below erred in accepting the said resumption ignoring evidence available on record to show that after issuance of the said notice, the Defendant has accepted rent for the land from the Plaintiff?
- (B) Whether the suit in the present form is maintainable when the Company was not represented by any of the persons authorized by the Board of Directors?

7. At this stage, it may be stated that the Appellant in this Appeal has filed an application under/Order-41 Rule-27 of the Code numbered as Misc. Case No.267 of 2017 (a) seeking leave of the Court to adduce two documents i.e. record of right of lands under Khata No.421 of mouza Bhubaneswar Sahara, Unit No.X, Satyanagar; and (b) survey report said to have been prepared under Rajib Awas Yojana during the period 2011-12 and 2012-13.

While stating that the Defendant having issued the order on pen and paper, this Plaintiff is in physical possession of the leasehold land; it is further stated that vast area of land owned by the State Government in the vicinity are lying fallow and mostly are under unauthorized encroachment/ forcible occupation by the land grabbers including slum dwellers. The purpose of seeking admission of this document as additional evidence is to show that the ground for resumption, no longer subsists and by passage of time, the said purpose resumption has vanished and in further saying that the Defendant-State can have such activity over other available land in the area.

The Defendants have filed their counter. It is stated that the documents are no way relatable to the cause of action in the present suit and those are neither relevant for the purpose of adjudication of the issues nor are essential to answer the substantial questions of law in finally disposing this Appeal.

In the present Appeal, when this Court is called upon to examine the sustainability of the finding of the First Appellate Court that whether the resumption of land is in consonance with the Clause-2(xi) set forth in the deed of lease, Ext.1; considering the submissions on the point of adduction of additional evidence and by going through the

documents on record, those are not at all found to so essential that in their absence this Court would not be above to answer the substantial questions of law as also those are required to serve any other substantial cause. Therefore, the prayer as advanced in the application giving rise to Misc. Case No.267 of 2017 stands rejected.

8. Learned Counsel for the Appellant submitted that the First Appellate Court has erred both on fact and law in arriving at a conclusion in favour of the resumption of the land leased out to the Plaintiff by the Defendant annulling the finding so recorded in favour of the Plaintiff by the Trial Court. Inviting attention to the Court to the relevant Clause-2(xi) of the deed of lease, Ext.1, he submitted that three months notice being not given to the Plaintiff as mandated under the said clause, the Trial Court has rightly held that said action of the Defendant as to resumption the suit land vide order Ext.C before issuing three months notice to the Plaintiff is illegal.

9. Learned Additional Standing Counsel for the State submitted all in favour of the conclusion arrived at by the First Appellate Court.

10. In order to search out the answer to the substantial question of law as at (A), it is profitable to straightway referred to Clause-2(xi) of

the deed of lease admitted in evidence and marked Ext.1. The said Clause-2(xi) of the deed of lease reads as under:-

“That if the Lessor at any time before the expiry of the lease desires for any public purpose to resume the holding or any part thereof, the Lessee shall vacate it or the part required within three months from the notice in writing given by the Lessor for the purpose in which case and in case of determination of this lease under clause-4(i), the Lessee shall be entitled to reasonable compensation for any building structures either temporary or permanent or other improvements that he may have made with the written consent of the Lessor”.

It may be kept in mind that the above lease of land in question was given by the Defendant to the Plaintiff to carry out the activity thereon as stockyard for keeping of the products of TISCO which had granted the Plaintiff's Company with the agency for the purpose.

Clause-3 of the deed of lease when states that Lessee shall hold and enjoy the demised premises during the term of lease without any lawful interruption by Lessor or any other person; Clause-5 indicates that at the end of initial term of fifteen years, on the request and at the cost of the Lessee, the Lessor may renew the same from time with the total period being capped.

The other Clause-4 of the deed of lease speaks about the determination of the lease and the resumption of land for public purpose finds mention at Clause-2(xi). While indicating that in case of an action of resumption of the leasehold, the Lessee shall be entitled to reasonable compensation, the same is also stated in case of determination. Thus Clause-2(xi) speaks of resumption of the leasehold whereas Clause-4 concerns with determination of the lease. Given a reading to all these above clauses as placed in the entirety, the First Appellate Court has rightly held that both the clauses are not synonymous and that the scope of resumption of land as provided in Clause-(ix) is completely different and distinct from the scope of determination of lease as provided in Clause-4 and independent of one another coming to operate or pressable to serve under different eventuality. It is further noted that Clause -5, gives option to the Lessor to so renew the lease on the request and at the cost of the Lessee. The language is clear that it is optional for either party and has also no such connection with the resumption of the land or determination of the lease.

13. The copy of the notice dated 27.06.1986; Ext.C indicates that the land is required for construction of Government Hospital. Note sheet of the relevant file, Ext.D contains the order in finally approving the

proposal for such construction of the Hospital over the land in question. The desirability whether as per the actual need or requirement and its feasibility etc. of the same is not within domain of the examination of the Court in considering the action of resumption to be sustainable or not. The clause is very much clear that if the Lessor desires for any public purpose to resume the holding or in part thereof, the Lessee shall vacate it or part required within three months from the notice in writing given by the Lessor for the purpose. The Lessee having obligated himself as above is to accordingly act as undertaken. Moreover, construction of boundary wall as claimed by the Plaintiff over the leasehold land to have been made in the given case too is seen to be in breach of the condition contained in Clause-2(iv) of the deed of lease which stipulates that no such permanent construction over the land would be made except as required for watch and ward office room and the Lessee is to erect only semi-permanent structure which could be removed at short notice without much inconvenience to the parties. The payment of reasonable compensation in case of resumption to the Lessee as contained in the clause cannot stand on the way of resumption and delivery of vacant possession of the leasehold by the Lessee to the Lessor in case resumption and that in terms of the deed of lease is not the condition precedent. Thus, the conclusion arrived at by

the First Appellate Court in answering issue no.4 against the case/ claim of the Plaintiff appears to well in order. This provides the answer to the substantial questions of law as at against the Plaintiff.

For the answer as obtained to the substantial questions of law as at (A), the substantial questions of law as at (B) does no more survive to be answered further.

14. In the result, the Appeal stands dismissed with cost.

***(D. Dash),
Judge.***

Narayan

