

In a recent case decided by their Lordships of the Supreme Court in *Messrs Importers & Manufacturers, Ltd. v. Pheroze Framroze Tara-porewala and others* (1), it was held that a decree for possession against a tenant in a suit for ejectment is binding on a person claiming title under or through the tenant and is executable against such person whether or not he was or was not a party to the suit; the non-joinder of such a person does not render the decree any the less binding on him.

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All these cases go to support the contention of the appellants that the Rent Restriction Act is no bar to a decree being passed against the respondents who are tenants of the mortgagee.

The appeal is, therefore, allowed and the decree of the learned District Judge is varied to the extent that the Rent Restriction Act will be no protection to the tenants of the mortgagee against the rights of the mortgagor and the decree for redemption.

We give three months' time to the mortgagor to pay the amount due under the decree.

The parties will bear their own costs throughout,

FALSHAW, J.—I agree.

Falshaw, J.

APPELLATE CIVIL

Before Falshaw and Kapur, JJ.

DEWAN BASHESHAR NATH SARIN,—Defendant-Appellant.

versus

THE DELHI IMPROVEMENT TRUST,—Plaintiff-Respondent.

1953

May, 12th

Civil Regular Second Appeal No. 901 of 1950.

United Provinces Town Improvement Act, 1919 (as extended to Delhi), Sections 3, 54-A, 55, 56, 64(2), 65, 95, 96 and 97—Lease of land by Delhi Improvement Trust, signed by Chairman—Suit for ejectment of the lessee filed by the

Chairman—Whether the Chairman can file the suit—Lease—Termination—Notice terminating the lease followed by a second notice for the termination—Whether second notice amounts to waiver of the first notice.

Held, that the correct interpretation of section 95 of U.P. Town Improvement Act is that if any right of the trust is to be enforced in a court of law or is to be defended in a court of law, the Chairman shall have the power to either institute the necessary legal proceedings or defend them and, if he thinks proper, to withdraw from these proceedings. Therefore, the Chairman has the authority to institute this suit.

Held also, that where a notice to quit has been given, a subsequent notice to quit is of no effect unless it can be inferred from other circumstances that a new tenancy has been created after the expiry of the first notice. That the second notice in this case was in response to the lessee's request for one year's grace which was refused and thereafter fifteen days were given to the lessee to quit, and it did not constitute a new tenancy.

Regular Second Appeal from the decree of Shri S. L. Madhok, Additional District Judge, Delhi, dated the 26th October, 1950, affirming that of Shri Sunder Lal, Sub-Judge 1st Class, Delhi, dated the 15th December, 1949, granting the plaintiff a decree with costs for the ejectment of defendant from the land in dispute and for recovery of Rs. 2,568-1-0 as arrears of rent and damages, the Additional District Judge, allowing three months' time to the defendant to remove his super-structures from the site in question, failing which it shall be removed by the Trust at his cost.

D. K. MAHAJAN, for Appellant.

BISHEN NARAIN, for Respondent.

JUDGMENT

Kapur, J.

KAPUR, J. This is a defendant's appeal against an appellate decree of the First Additional District Judge, Delhi, dated the 28th of October, 1950, confirming the decree of the trial Court whereby the suit of the plaintiff was decreed.

Two leases were entered into between Bashes-har Nath and the Delhi Improvement Trust, one, dated the 21st of August, 1940, and the other, dated the 5th of September, 1941. In both cases the land demised was vacant land which was owned

by Government but was under the management of the Delhi Improvement Trust. The terms of the leases were the same excepting that in the first lease an eighth clause was added. The relevant conditions of the lease were—

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- (1) that the lease was not to be determined until one of the parties thereto gave thirty days' notice in writing to the other to quit ;
- (2) that the lease was determinable at the option of the lessor without any notice if there was default in the payment of the rent or on any breach of the covenants ;
- (3) that at the determination of the lease, no matter how it was brought about, the lessor had the right to enter upon the property leased and take possession of it with all buildings, etc.

In the first lease there was an eighth clause which was not in the second lease and it was as follows :—

“(8) The lessee will vacate the land at one month's notice without fuss if it is wanted at any time for building.”

On behalf of the Delhi Improvement Trust, the leases were signed by the Chairman and on behalf of the lessee by Basheshar Nath.

On the 21st of January, 1946, three months' notice was given by the lessor to the lessee to quit which was to begin with effect from the 1st of February, 1946. On the 22nd of April, 1946, Basheshar Nath asked for a year's period of grace. This was refused on the 13th of May, 1946, and the lessee was asked to quit within fifteen days of the receipt of the notice.

As neither the rent was paid nor did the lessee quit a suit for ejectment and for recovery of Rs. 2,568-1-0 was filed as arrears of rent. Several

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issues were raised but the only ones which are necessary for the purposes of this appeal are 2, 4, 5 and 6. The findings of both the Courts are against the defendant on these points and the defendant has come up in second appeal to this Court.

It is submitted on behalf of the appellant that the Chairman of the Trust had no power to institute the present suit. Reference in this connection was made to the various sections of the United Provinces Town Improvement Act, 1919, as extended to Delhi. Under Section 3 of this Act, the duty of carrying out the provisions of the Act vests in a Board to be called "The Delhi Improvement Trust" and such Board is a body corporate and shall sue and be sued in that name. Section 54-A gives to the Trust the power to hold Government property. Chapter VI of this Act, beginning with section 53 deals with acquisition and disposal of land. Section 56 provides for compulsory acquisition. Section 64(2) provides the method of enforcement of the orders of the Tribunal, the power being given to the Court of Small Causes. Section 65 of this Act, gives the power to the Chairman of the Trust to dispose of land and is as follows:—

" 65. Subject to any rules made by the Chief Commissioner under section 72 of this Act, the Trust may retain or may let on hire, lease, sell, exchange or otherwise dispose of, any land vested in or acquired by it under this Act."

Chapter X of the Act, gives the supplemental provisions. Section 95 deals with powers of Chairman to institute legal proceedings and is as follows :—

" 95.—The Chairman may, subject to the control of the Chief Commissioner :—

- (a) institute, defend or withdraw from legal proceedings under this Act,
- (b) compound any offence against this Act,

(c) admit, compromise or withdraw any claim made under this Act, and

(d) obtain such legal advice and assistance as he may from time to time think it necessary or expedient to obtain, or as he may be desired by the Trust to obtain, for any of the purposes referred to in the foregoing clauses of this section, or for securing the lawful exercise or discharge of any power or duty vested in or imposed upon the Trust or any officer or servant of the Trust."

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Section 96 is an indemnity section and section 97 puts certain restrictions on suits brought against the Trust.

It is on the basis of these sections that it is submitted for the appellant that the Chairman had no power to institute the present suit. Under section 54-A of the Act, property is held by the Trust and under section 65 the Chairman has the power to give the land on lease. Section 95 provides that the Chairman, subject to the control of the Chief Commissioner, can institute, defend or withdraw from legal proceedings under this Act. Mr. Mahajan, emphasises that the power of the Chairman to do these various things is in regard to those proceedings which are under this Act, but he has not shown us what legal proceedings can be under the Act only. Under section 65 the Chairman has the power to give the land on lease. If we read the language of section 95 as Mr. Mahajan would like us to read, it would mean that although under the powers vested in him the Chairman can lease out the land he cannot recover possession of it if the lease is terminated or there is a breach of any covenant. Read in that way, the interpretation of section 95 will become almost absurd which according to the rules of interpretation is to be avoided. What the section really means is that if any right of the Trust is to be enforced in a Court of law or is to be defended in a

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Court of law, the Chairman shall have the power to either institute the necessary legal proceedings or defend them and, if he thinks proper, to withdraw from these proceedings. I am, therefore, of the opinion that the learned Judge has rightly come to the conclusion that the Chairman has the authority to institute this suit.

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It is then submitted by Mr. Mahajan that the first notice should be taken to have been waived because a second notice was given by the Trust. I am unable to agree with this submission also. By giving three months' notice which ended on the 30th of April, 1946, the tenancy was terminated and the letter of the 13th of May, 1946, was not really a notice but it was a reply to the request of the lessee for one year's grace which was refused and fifteen days were given to the lessee to quit. This does not constitute a new tenancy but it was merely a period of grace given to the defendant to remove his fixtures. Mr. Bishan Narain for the plaintiff-respondent has relied on a judgment of the King's Bench Division in *Loewenthal v. Vanhouts* (1), where it was held that where a notice to quit has been given, a subsequent notice to quit is of no effect unless it can be inferred from other circumstances that a new tenancy has been created—after the expiry of the first notice. It was observed by Denning, J., in that case—

“In my opinion, the law is well settled now that, when a forfeiture of a lease is incurred, the lease is voidable and not void, and in those circumstances the giving of a notice to quit may recognise the subsistence of the lease and may, therefore, waive the forfeiture, but in the case where a tenancy is determined by a notice to quit, the position is entirely different.”

I am, therefore, of the opinion that no waiver was proved and the second notice is of no substance to the appellant.

(1) (1947) I.A.E.R. 116

It was then submitted that the eighth clause in the first lease of 1940 is a bar to the present suit because the plaintiff could only sue for ejection if it wanted the land for building. I do not think that the terms of the contract read as a whole are capable of this meaning. According to the first clause of the lease deed, the lease could be terminated by thirty days' notice and according to fourth clause the lessor could without notice put an end to the lease if there was any default in the payment of rent or breach of any covenant. Thereupon the lessor had a right of entry. As I read clause 8 all that it means is that if the land was wanted for any building, the lessee was not to make any "fuss". I do not think that clause 8 is in derogation of the powers which the lessor had under the other clauses of the lease deed. In this view of the matter the observations of Earl Loreburn, L. C., in *Commissioners of Inland Revenue v. Southend-on-Sea Estates Company, Limited* (1), are wholly inapplicable.

On these facts there is no question of estoppel which can be raised against the plaintiff.

I would, therefore, dismiss this appeal with costs throughout.

FALSHAW, J.—I agree.

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(1) 1915 A.C. 428 at p. 431