

Matu Ram v. Kishan Parshad and others, (Mehar Singh, C.J.)

under the pressure of economic or managerial crisis of the moment and not by way of planned policy for laying the foundation or the basis of future economic prosperity. The assessee, in all these cases, had to reach decisions, no doubt, of far-reaching importance as matters of immediate and pressing interest. What we find in the present case is that the assessee company was not faced with any immediate or present danger to be averted, neither any financial problem confronted the Board of Directors for terminating the managing agency agreement nor was any economic difficulty to be surmounted by adopting this course. Plainly the Directors compounded a consolidated claim of the managing agents whose services were terminated apparently without any cause and a sum of Rs. 6,00,000 was paid for this purpose which, undoubtedly, resulted in an enduring benefit, from the economic point of view, for the assessee company. Considering that the agreement which was being terminated was assignable and no managing agents were appointed to succeed in place of Dalmia Jain and Company, there was brought into existence a clear advantage of an enduring nature, an advantage of an enduring nature, an advantage indistinguishable from a material or fixed asset for the assessee company. In this view of the matter we think that the assessee's contention must fail and we will accordingly answer the question in favour of the Revenue and against the assessee. In the circumstances, we make no order as to costs.

R. S. NARULA, J.—I agree.

K.S.K.

APPELLATE CIVIL

Before Mehar Singh, C.J., and Ranjit Singh Sarkaria, J.

MATU RAM,—Appellant.

versus

KISHAN PARSHAD AND OTHERS,—Respondents.

Letters Patent Appeal No. 300 of 1965

March 1 1969.

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—Sections 12(2), 14(2) and 19—Displaced Persons (Compensation and Rehabilitation) Rules (1955)—Rule 102—Lease rights for a term of years—Whether an “encumbrance” as used in sections 12(2) and 14(2).

Held, that while in its ordinary meaning the word 'encumbrances' would cover a lease for a term of years, but as that word is used in sub-section (2) of section 12, and sub-section (2) of section 14 of Displaced Persons (Compensation and Rehabilitation) Act, 1954, it does not do so because of the express power reserved to the Managing Officer under sub-section (1) of section 19 and rule 102 of Displaced Persons (Compensation and Rehabilitation) Rules, 1955, made under that Act, to deal with a lease of an evacuee property even existing prior to the coming into force of Administration of Evacuee Property, Act, 1950. Section 19(1) of the Compensation Act and rule 102 of the Rules provide clear intention of Parliament to keep alive leases enabling the Managing Officer to administer the same and thus taking the same out of the purview of sections 12(2) and 14(2) of the Compensation Act. This appears to have been done in the wake of clause (d) of rule 102 under which a lease can be cancelled, amended or varied by a Managing Officer for any sufficient reason to be recorded in writing. In that manner an encumbrance in the shape of a lease which could not be got rid of otherwise can be put an end to.

(Para 9)

Letters Patent Appeal under Section 10 of the Letters Patent from the judgment of the Hon'ble Mr. Justice R. S. Narula, dated the 24th day of August, 1965, in R.S.A. 1016/64.

H. L. SIBAL, SENIOR ADVOCATE, AND MUNISHWAR PURI, ADVOCATE, WITH HIM, for the Appellant.

G. P. JAIN, G. C. GARG, DR. A. S. ANAND AND S. P. JAIN, ADVOCATES, for the Respondents.

JUDGMENT

MEHAR SINGH, C.J.—In this appeal under clause 10 of the Letters Patent from the judgment and decree, dated August 24, 1965, of a learned Single Judge, the facts are no longer a matter of controversy.

(2) An urban plot of land was taken on lease by defendant Sham Lal, father of Kishan Parshad, respondent, from Ali Bakhsh for a period of twenty-five years under a lease deed, Exhibit D. 22, of June 24, 1928. On the death of Ali Bakhsh, his heirs executed a fresh lease deed, Exhibit D. 21, on December 9, 1929, for the remaining period of twenty-four years in favour of Sham Lal. Later Jamal Khan and others became owners of two-third share in the land, and on January 17, 1947, they executed another lease deed, Exhibit D. 8, as respects their share, in favour of Sham Lal. The earlier lease deed, Exhibit D. 21, of December 9, 1929, being for a period of twenty-four years, was to expire on June 23, 1953, reckoning the original period of twenty-five years as in the lease deed, Exhibit D. 22, of June 24, 1928. So the lease deed executed by Jamal Khan and

others of their two-third share in the plot on January 17, 1947, Exhibit D. 8, was made operative from June 24, 1953, and for a period ending June 23, 1973. It has been said that as the period given in the lease deed, Exhibit D. 22, of June 24, 1928, as later on confirmed by the heirs of Ali Bakhsh by the lease deed, Exhibit D. 21, of December 9, 1929, had not expired by January 17, 1947, there was no occasion for Jamal Khan and others to execute a lease deed *qua* their two-third share of the plot much before the expiry of that lease and making the new lease operative from June 24, 1953, for another period of twenty years up to June 23, 1973, but it was open to Jamal Khan and others to further lease their share of the plot from a future date from which the earlier lease was to expire and there is nothing in law which renders that lease not a valid lease.

(3) Sometime about August 1947, Jamal Khan and others became evacuees in consequence of partition of the country. The defendant was accepted as a lessee of the entire plot by the Custodian of Evacuee Property. In the Administration of Evacuee Property Act, 1950 (Act 31 of 1950), there is section 12 giving power to the Custodian to vary or cancel leases or allotments of evacuee property and by the Administration of Evacuee Property (Amendment) Act, 1953 (Act 11 of 1953), this power was extended to allotments or leases even made before the commencement of this particular Act. The Custodian has been given power under section 12 of this Act to cancel a lease of the type as in the present case on breaches specified in the proviso to sub-section (1) of section 12 of that Act. Apparently the defendant, Sham Lal, committed no breach which attracted the provisions of section 12 and so the Custodian did not either vary or cancel the lease of the plot in question in his favour.

(4) The Displaced Persons (Compensation and Rehabilitation) Act, 1954 (Act 44 of 1954), hereinafter referred as 'the Compensation Act', came into force on October 9, 1954. Sub-section (1) of section 12 of this Act says that if the Central Government is of the opinion to acquire any evacuee property for a public purpose, it may do so at any time by publishing in the Official Gazette a notification to the effect that it has decided to acquire such property in pursuance of this section, and sub-section (2) then reads—"on the publication of a notification under sub-section (1), the right, title and interest of any evacuee in the evacuee property specified in the notification shall, on and from the beginning of the date on which the notification is so published be extinguished and the evacuee property shall vest

absolutely in the Central Government free from all encumbrances". A notification acquiring the plot in question by the Central Government was issued sometime about October, 1955, the effect of which was that the right, title and interest of the evacuees in the plot in question has come to vest absolutely in the Central Government free from all encumbrances. The Managing Officer came to administer this property under the provisions of the Compensation Act and even to him the defendant, Sham Lal, continued to pay the rent for the lease, the last receipt, Exhibit D. 2, being, dated June 14, 1961, for the period ending September 15, 1960.

(5) On February 20, 1960, Matu Ram, plaintiff, made an application, Exhibit P. 3, to the Assistant Custodian of Evacuee Property at Rohtak seeking cancellation of the lease in favour of the defendant, Sham Lal, under section 12 of Act 31 of 1950. In the application, in substance, what the plaintiff alleged was that one-third of the plot in question was not at all under any lease, but though there subsisted a lease of the remaining two-third share in favour of the defendant, Sham Lal, the same was liable to be cancelled. There was no cancellation of the lease.

(6) On May 14, 1960, the entire plot was sold by public auction and purchased by the plaintiff, who, on August 24, 1960, sought amendment of the sale certificate so as to confine his purchase to one-third share of the plot only, but ultimately as appears from the order of July 4, 1961, of the Chief Settlement Commissioner, Exhibit P. 7, he failed, and the direction was that 'the sale certificate for the whole property should be issued to the petitioner (plaintiff) without further delay'.

(7) After having thus failed to obtain relief from the authorities under the Compensation Act, the plaintiff on March 7, 1962, filed a suit giving rise to this appeal for possession of the entire plot against Sham Lal, defendant and others, as purchaser thereof at a public auction held by the authorities under the provisions of the Compensation Act, the trial court decreed his suit on April 30, 1963, and on August 11, 1964, the Senior Subordinate Judge of Rohtak dismissed the appeal filed by the defendant, Sham Lal, against that decree. Sham Lal defendant, having died during the pendency of the appeal before the Senior Subordinate Judge, his legal representatives were brought on the record. The decision in the two Courts below proceeded on the basis that on the acquisition of the plot under section

12 of the Compensation Act, it vested in the Central Government free from all encumbrances which included the lease rights in it with this defendant. Kishan Parshad respondent, son of Sham Lal defendant, then came in second appeal to this court and a learned Single Judge has by his judgment and decree, under appeal, reversed the concurrent decrees of the Courts below broadly following the dictum in *M. Ratanchand Chordia v. Kasim Khaleeli* (1), in which the learned Judges held that "the word 'encumbrances' in the Displaced Persons (Compensation and Rehabilitation) Act does not include the right of easement. Consequently vesting of a servient heritage in the Central Government as an evacuee property under the Act would not result in the extinguishment of easementary right of the dominant owner. Although in its widest sense the word 'encumbrances' must necessarily include a right of easement such as a right of way, in the context of the object and purposes of the Displaced Persons (Compensation and Rehabilitation) Act, the 'encumbrances' referred to in section 12 of the Act would only mean those encumbrances in respect of which the holder would be in a position to assert his rights as against the sale proceeds of the property or as against the compensation amount payable by the Government to the evacuee. It is in this limited sense that the word should be understood in the Act, as otherwise, it would lead to anomalous results entailing loss of valuable property-rights to persons without payment of any compensation."

(8) It is apparent that on a proper notification having been issued under section 12(2) of the Compensation Act, what vests in the Central Government is the right, title and interest of any evacuee in the evacuee property specified in the notification. It does not affect the right, title and interest of a non-evacuee in the property. It is further clear from section 105 of the Transfer of Property Act, 1882 (Act 4 of 1882), that a lease of immovable property is a transfer of a right to enjoy such property. So the lease in favour of the defendant, Sham Lal, gave him a right in the plot in question to enjoy it. His right in that property is a right with a non-evacuee. The question, however, is whether a lease right in a lease for a term of years is or is not an encumbrance as the word 'encumbrances' is used in sub-section (2) of section 12 of the Compensation Act? In *Salmond's Jurisprudence*, 1957 Edition, at page 294, the learned author clearly points out that the right 'of a tenant to the temporary use of a property' is an

(1) A.I.R. 1964 Madras 209.

encumbrance. In Bouvier's Law Dictionary, Volume I, 1914 Edition, at page 1530, it is stated that 'Incumbrance, when used in reference to real estate, includes every right to or interest in the land granted, to the diminution of the value of the land, but consistent with the passing of the fee by the owner thereof; An ordinary lease.' In *Davies v. Davies* (2), a lease from year to year was held not to be an encumbrance because a surrender of the tenancy could be obtained or it could be put an end to by notice, but in *Baggett v. Meux* (3), a lease for thirty years was held to be an encumbrance. So a lease for a term of years is apparently an encumbrance. In *Shree Ambarnath Mills Corporation, Bombay v. D. B. Godbole* (4) Shah J., delivering the judgment of the Division Bench, held that where the rights of a party in land are not evacuee property, but relate to such property, the same are extinguished under sub-section (2) of section 12 of the Compensation Act, because the Central Government takes the property free from all encumbrances. So the fact that the lease rights of the defendant, Sham Lal, are non-evacuee property will not derogate from the effective operation of sub-section (2) of section 12 of the Compensation Act to extinguish such rights, providing the same are within the scope of the meaning of the word 'encumbrances' as used in sub-section (2) of that section.

(9) The question then turns to this, whether there is anything in the Compensation Act which narrows the meaning and scope of the word 'encumbrances' as used in section 12(2) of that Act in derogation to the ordinary meaning of that word so as to exclude the lease rights of a non-evacuee in evacuee property? It is not only under section 12(2) of the Compensation Act that, on the publication of a notification under sub-section (1) of that section, an evacuee property vests absolutely in the Central Government free from all encumbrances, but on the issue of such a notification it also becomes part of the compensation pool under section 13, and sub-section (2) of section 14 again says that "the compensation pool shall vest in the Central Government free from all encumbrances". There is no other provision in the Compensation Act, which is relevant barring section 19, and rule 102 of the Displaced Persons (Compensation and Rehabilitation) Rules of 1955. Before, however, reference is made to those provisions it is

(2) (1851) Law Journal Reports 20 Q.B. 408.

(3) (1844) Law Journal Reports 13 Ch. 228.

(4) A.I.R. 1957 Bom. 119.

relevant to refer to section 12 of Act 31 of 1950. That Act originally came into force on April 12, 1950. At that time sub-section (1) of section 12 of that Act gave power to the Custodian to cancel any allotment or terminate any lease or amend the terms of any lease or agreement under which any evacuee property was held or occupied by any person, where such allotment, lease or agreement had been granted or entered into after August 14, 1947. So, initially section 12 only related to leases entered into after August 14, 1947. Sub-section (1) of section 12 of Act 31 of 1950 was amended by Act 11 of 1953 when in that sub-section for the words 'where such allotment, lease or agreement has been granted or entered into after the 14th day of August, 1947', were substituted the words 'whether such allotment, lease or agreement was granted or entered into before or after the commencement of this Act'. So, by the amendment even leases granted before the commencement of Act 31 of 1950, as from April 17, 1950, could be cancelled or the terms of the same amended by the Custodian, but this power of the Custodian was by the same amending Act, by the addition of a proviso to sub-section (1) of section 12, circumscribed in this manner—

"Provided that in the case of any lease granted before the 14th day of August, 1947, the Custodian shall not exercise any of the powers conferred upon him under this sub-section unless he is satisfied that the lessee—(a) has sublet, assigned or otherwise parted with the possession of the whole or any part of the property leased to him; or (b) has used or is using such property for a purpose other than that for which it was leased to him; or (c) has failed to pay rent in accordance with the terms of the lease.

Explanation.—In this sub-section, 'lease' includes a lease granted by the Custodian and 'agreement' includes an agreement entered into by the Custodian."

This proviso thus limited the powers given to the Custodian to cancel or amend the terms of a lease granted before August 14, 1947. If the lessee did not commit any of the three breaches mentioned in the proviso, the Custodian had no power to cancel or amend the lease in his favour. The Custodian could not, without amending the lease, authorise such a lessee to commit breach of conditions (a) and (b) in the proviso and yet not be liable to cancellation or amendment of his

lease. But he could not amend the lease unless and until the lessee committed breach of any of those conditions and also may be of condition (c). So there was no power in the Custodian to condone the breach of any of those conditions. If there was a breach by the lessee, the Custodian could exercise his power under sub-section (1) of section 12, but if there was no breach by the lessee he just could not touch his lease. The position, however, was different with regard to the lease granted by the Custodian himself. The explanation to sub-section (1) of section 12 of Act 31 of 1950 attracts the main body of that sub-section to leases granted by the Custodian and to such leases obviously the proviso to that sub-section has no application. The cancellation or variation of leases granted by the Custodian was subject to the provisions of rule 14 of the Administration of Evacuee Property (Central) Rules, 1950, but that rule did not bar the Custodian from amending or varying a lease granted by him so as to permit a lessee to sublet, assign or otherwise part with possession of the whole or any part of the leased property, or to permit him to use such property for a purpose other than for which it was leased. So, the power with regard to a lease granted by the Custodian himself is rather more extensive than the power with regard to a lease existing before the commencement of Act 31 of 1950. On the evacuee property vesting in the Central Government in consequence of action taken under section 12 of the Compensation Act obviously the Custodian ceased to have its management which then passed on to the officers under this Act such as the Managing Officer and his superiors. Now, sub-section (1) of section 19 gives power to a Managing Officer to cancel a lease whether granted before or after the commencement of the Compensation Act, but that is made expressly subject to any rules made under that Act. This brings in rule 102 of the 1955 Rules and in this rule a Managing Officer can cancel or vary a lease referred to in sub-section (1), of section 19, on the grounds (a), that the lessee has sub'et or parted with possession of whole or any part of the property leased to him without the permission of a competent authority, or (b) he has used or is using such property for a purpose other than that for which it was leased to him without the permission of a competent authority or (c), he has committed any act which is destructive of or permanently injurious to the property, or (d), for any other sufficient reason to be recorded in writing. Now, it has been held in *Mohinder Singh v. Union of India* (5), that the reason invoked under clause

(5) A.I.R. 1958 Punj. 212.

(d) of rule 102 must not necessarily be *ejusdem generis* with reasons contained in clauses (a), (b) and (c). The reason for cancellation of an allotment under clause (d) of rule 102, need not be analogous to the reasons given in clauses (a), (b) and (c) and it is sufficient if the reason given is otherwise adequate. The power with the Managing Officer to cancel, amend or vary a lease under this rule is far more extensive than that with the Custodian under section 12 of Act 31, of 1950 and rule 14 of the 1950 Rules framed under that Act. The difference is (a) that so far as clauses (a) and (b) of rule 102 are concerned, unlike the power of the Custodian under clauses (a) and (b), of proviso to sub-section (1) of section 12 of Act 31 of 1950, the Managing Officer has been given power to grant permission to a lessee to sublet or part with the possession of the leased property or to use it for a purpose other than for which it was leased, and (b) that under clause (d) of rule 102 of the 1955 Rules the Managing Officer has been given wide discretionary power to cancel, amend or vary a lease for any sufficient reason to be recorded by him in writing. This power applies to leases granted before or after the commencement of the Compensation Act. It thus, covers leases before the commencement of that Act which fall in two categories (i), those granted by the Custodian himself under the provisions of Act 31 of 1950, and (ii) those granted by the evacuees to non-evacuees before the coming into force of Act 31 of 1950. In so far as clauses (a) and (b) of rule 102 of the 1955 Rules are concerned a competent authority has been given power to grant permission to the lessee to sublet or part with the possession of the leased property or to use it for a purpose other than for which it was leased, but in the Compensation Act or the Rules of 1955 no definition of the expression 'competent authority' has been given. This has to be gleaned from the provisions of this Act as also having regard to the provisions of Act 31 of 1950 on the subject of grant, cancellation, amendment and variation of leases. It has already been pointed out that in view of sub-section (a), of section 12 of Act 31 of 1950, and rule 14 of the 1950 Rules framed under that Act, the Custodian could only grant such permission with regard to leases granted by him and not with regard to leases existing prior to the coming into force of Act 31 of 1950. In so far as the Compensation Act, section 19(1), and rule 102 of the 1955 Rules made thereunder, are concerned, a Managing Officer has been given such power with regard to all types of leases. So in a lease like that in the present case the Custodian would not have been the competent authority

to give permission to sublet or part with possession of the leased property or for its use for a purpose other than that for which it was leased, but the Managing Officer has been given such power under rule 102 of the 1955 Rules when that is taken with sub-section (1) of section 19 of the Compensation Act. A consideration of the provisions of the two Acts in relation to leases of evacuee property, whether existing prior to Act 31 of 1950, or coming into existence thereafter, shows that the Managing Officer has complete power to cancel, amend and vary the same. If it was the intention of Parliament that a lease thus subject to the extensive powers of the Managing Officer should not come within the meaning and scope of the word 'encumbrances' as in section 12(2), and section 14(2) of the Compensation Act, and if the effect intended was to wipe off any such encumbrance on the evacuee property vesting in the Central Government and coming to form part of the compensation pool, there was no occasion or necessity for giving power to the Managing Officer under section 19(1) of the Compensation Act and rule 102 of the 1955 Rules made thereunder to cancel, amend, or vary even a lease of an evacuee property existing prior to the coming into force of Act 31 of 1950, and the Compensation Act. The evacuee property vesting in the Central Government free from all encumbrances would normally include such vesting as free from a lease for a term of years as in this case, but if this was the meaning and scope of the word 'encumbrances' as used in sections 12(2) and 14(2) of the Compensation Act, as stated, there was no possible occasion for enacting section 19(1) of the Compensation Act and making a rule thereunder as rule 102 of the 1955 Rules. In this approach there is only one conclusion possible that while in its ordinary meaning the word 'encumbrances' would cover a lease for a term of years, but as that word is used in sub-section (2) of section 12 and sub-section (2) of section 14 of the Compensation Act, it does not do so because of the express power reserved to the Managing Officer under sub-section (1), of section 19, and rule 102 of the 1955 Rules made under that Act, to deal with a lease of an evacuee property even existing prior to the coming into force of Act 31 of 1950. Somewhat similar view has been expressed by a Division Bench of the Gujrat High Court in *Pirdhandas Parsumal v. Hajrabai Mahomad* (6), though that was a case of a right of residence in the widow of a deceased person in the house of her deceased husband.

Madan Tarlok Singh and others v. The Union of India and others
(Sandhawalia, J.)

The observations of the learned Judges support the approach as above. I have been in some doubt about the observation of the learned Judges in *M. Ratanchand Chordia's case* (1), that as no compensation for encumbrances has been provided, so the encumbrances referred to in section 12(2) of the Compensation Act are not within the meaning of the word 'encumbrances' as ordinarily used, but it is not necessary to go into this matter any further in the view that has been taken above that section 19(1) of the Compensation Act and rule 102 of the 1955 Rules provide clear intention of Parliament to keep alive enabling the Managing Officer to administer the same and thus taking the same out of the purview of sections 12(2), and 14(2) of the Compensation Act. This appears to have been done in the wake of clause (d) of rule 102, under which a lease can be cancelled, amended or varied by a Managing Officer for any sufficient reason to be recorded in writing. In that manner an encumbrance in the shape of a lease which could not be got rid of otherwise can be put an end to.

(10) In the result, the judgment and decree of the learned Single Judge is affirmed, and this appeal is dismissed, leaving the parties to their own costs.

RANJIT SINGH SARKARIA, J.—I agree.

K.S.K.

FULL BENCH

Before Harbans Singh, D. K. Mahajan, and S. S. Sandhawalia, JJ.

MADAN TARLOK SINGH AND OTHERS,—Petitioners.

versus

THE UNION OF INDIA AND OTHERS,—Respondents.

Civil Writ No. 3759 of 1968

April 28, 1970

Constitution of India (1950)—Article 276, entry 82 of List I and entry 60 of List II of Schedule VII—Scope of—Limitations for the applicability of Article 276—Stated.

Punjab Professions, Trades, Callings and Employment Taxation Act (VII of 1956)—Applicability of to the Union Territory of Chandigarh—Whether hit by Article 276—Act—Whether ultra vires.