

Saraswati Gir Chela Devi Gir v. Dhanpal Singh (G. R. Majithia, J.)

the action being taken to absorb such contract labour in a particular establishment by the Southern Railway. In this behalf, the Supreme Court advertent to the reports of the Parliamentary Committee felt that the conditions specified in Section 10(2) of the Act for issuing a notification for abolishing the contract labour, appeared to be satisfied. It was in that background that certain directions were issued by the Supreme Court. However, in the present case, the Central Government i.e. the appropriate Government has not thought fit to issue such a notification as far as the Corporation is concerned regarding its establishments in Punjab : whereas it has issued such a notification for abolishing contract labour in other parts of the Country regarding Food Corporation of India. Same is the position regarding the other case in *M. M. R. Khan's case* (supra). The learned Single Judge has rightly distinguished these cases.

(19) We may also clarify that in view of the notification dated 29th June, 1989, issued by the appropriate Government, i.e. Central Government whereby it has not chosen to abolish contract labour as far as the establishments of the Food Corporation of India in Punjab are concerned, it will not make any difference even if 20 or more persons are employed by the Corporation in Punjab through the contract labour as it is not prohibited under the Act. Moreover, the Corporation has not itself registered under Section 7 of the Act.

(20) For the reasons recorded above, we find no merit in these appeals, which are dismissed. However, there will be no order as to costs.

P.C.G.

Before : G. R. Majithia, J.

SARASWATI GIR CHELA DEVI GIR,—Appellant.

versus

DHANPAL SINGH,—Respondent.

Regular Second Appeal No. 889 of 1989.

5th December, 1990.

Lease-deed stipulating forfeiture on failure to pay 3 consecutive months' rent—Lessor entering possession in exercise of his rights—Lessee suing for restoration of possession—Such lessee—Whether entitled to restoration.

Held, that the lessor defendant having enforced his right of forfeiture has every right to take possession of the disputed premises. He has been found to be in possession of the leased out premises. His possession cannot be termed either illegal or unlawful and the defaulting lessee whose lease already stood terminated on breach of express covenants of the lease deed could not move the court for restoration of possession to him so that he could remain in possession for the unexpired lease period.

(Para 10)

Regular Second Appeal from the decree of the Court of Shri R. M. Gupta, Addl. District Judge, Ropar, dated the 26th day of October, 1988 reversing with costs throughout that of Sardar Manmohan Singh Walia, Sub Judge 1st Class, Kharar dated the 5th February, 1987 and decreeing the suit of the plaintiff for declaration to the effect that he is lessee of the suit property upto 26th November, 2000 and decreeing the suit for possession of the suit property after removal of encroachment of the boundary wall.

Claim.—*Suit for declaration to the effect that the plaintiff is lessee over the site ABCDE situated within the municipal limits of Kharar and bounded as below :—*

North : Gardev and Mandir

South : Siswan Road.

East : Property of Block Samiti.

West : Shop of Mandir Devi Daula.

Upto 26th November, 2000 and for permanent injunction restraining the defendants from raising any construction or encroaching upon any portion of the site in dispute or making any construction in it or in the alternative suit for possession of the site in dispute after removal of encroachment of the boundary wall raised by the defendant Sham Gir.

Claim in appeal.—*For reversal of the order of lower appellate court.*

I. S. Saini, Advocate, for the Appellant.

S. K. Pipat, Sr. Advocate, with Vivek Bhatia, Advocate, for the Respondent.

JUDGMENT

G. R. Majithia, J.

(1) The unsuccessful defendant has come up in second appeal against the judgment and decree of the first Appellate Court reversing on appeal those of the trial judge whereby the suit of the plaintiff/respondent for possession of the property in dispute was dismissed.

Saraswati Gir Chela Devi Gir v. Dhanpal Singh (G. R. Majithia, J.)

The facts :—

(2) The respondent/plaintiff filed a suit for a declaration to the effect that he was a lessee of the disputed site situate within the municipal limits of Kurali, which was leased out to him under a registered lease deed dated 26th November, 1970 by Surasti Gir on an annual rent of Rs. 480, for a period of 30 years. He was put in possession of the same. The original lessor left the temple and in his absence Sham Gir threatened to dispossess him necessitating the filing of the instant suit. He claimed that he was in possession and improve it is found otherwise, a decree for possession be passed in his favour.

(3) Defendant No. 1 died during the pendency of the suit. His name was deleted from the array of the parties.

(4) Defendant No. 2 contested the suit and controverted the allegations made therein. He denied if any lease deed was executed in favour of the plaintiff and if any such was executed, it was the result of fraud and undue influence. It was further pleaded that the disputed site is owned by temple Devi Dawala and he was only its *Mohtmim* and manager. He denied if the plaintiff was in possession of the disputed site. He was in possession of the disputed site through his tenants Raj Kumar, Prem Kumar, Parkash, Karam Chand and Sham Lal. The tenants on the site did not pay the rent. He filed applications for eviction in the court of Rent Controller, Kharar. Some of the tenants vacated the demised premises in their possession. Sham Lal, one of the tenants, is still in possession and is paying rent to him. He also asserted that a boundary wall on the site in dispute was raised by him.

(5) On the pleading of the parties, following issues were framed by the trial judge :—

1. Whether the plaintiff alongwith Sarup Singh took on lease the vacant site ABCDE on 26th November, 1970 at yearly rent of Rs. 480 from Surasti Gir Chela Devi Gir as alleged ? OPP
2. Whether the plaintiff is in possession of the suit property? OPP
3. If issue No. 2 is not proved whether the plaintiff is entitled for possession of the suit property ? OPP

4. Whether the suit is not maintainable in the present form?
OPD
5. Whether the plaintiff has got no *locus standi* to file the present suit ? OPD
6. Whether the suit is time barred ? OPD
7. Whether the suit is bad for non-joinder of necessary party ? OPD
8. Whether the lease deed dated 26th November, 1970 is result of framed and undue influence ? OPD
9. Relief.

(6) Issues No. 1, 2 and 3 were disposed of together and it was held by the trial judge that defendant No. 2 executed a lease deed with respect to the suit property on November 26, 1970 in favour of the plaintiff and Sarup Singh. He further found that the rent was payable monthly and in case of non-payment of rent for three consecutive months, the lessor had a right to enter into possession of the lease hold premises. He also found that no rent was paid after 1978; issues No. 4, 5 and 6 were given up by the defendant,—*vide* statement dated February 5, 1987; issue No. 7 was decided against the defendant; issue No. 8 was decided in favour of the plaintiff and in view of findings on issues No. 1, 2 and 3, the plaintiff's suit was dismissed.

(7) The plaintiff assailed the judgment and decree of the trial judge in first appeal and the first Appellate Court found that no rent was paid after 1978. It also found that defendant No. 2 was in possession of the disputed property through his tenants. His tenants did not pay the rent and he sought their eviction for non-payment of rent in the Court of Rent Controller. The eviction applications were disposed of,—*vide* orders Ex. D7 to Ex. D9. He also found that in the municipal record defendant No. 2 is recorded as owner and his ownership is reflected by Ex. D1 to Ex. D5. The first Appellate Court, however, held that there was no clause in the lease deed providing for forfeiture of tenancy rights in case of non-payment of rent for three consecutive months and that the lease was validly executed and its term was the expiry on November 26, 2000 and as such the plaintiff was entitled to restoration of possession to enjoy the lease hold rights till the expiry of the lease.

Saraswati Gir Chela Devi Gir v. Dhanpal Singh (G. R. Majithia, J.)

(8) The lease deed Ex. P-1 provides that the lessee will pay the rent monthly and in case of non-payment of rent for three consecutive months, the lessor had the right to enter into possession by dispossessing the lessee. The first Appellate Court also came to the conclusion on examining the lease deed and held thus :—

“The only stipulation is that in case the rent for 3 consecutive months is not paid the respondent shall have right to dispossess the appellant and also to recover arrears of rent.”

After so holding, the appellate Judge hastened to add that although there is no evidence of payment of rent after 1978 but it does not mean that the appellant had forfeited his right under the lease deed. He also found that the plaintiff is not in possession of the disputed property and passed a decree for possession in favour of the plaintiff.

(9) The first Appellate Court did not try to comprehend the correct legal principles applicable to the facts of the instant case. It found as a matter of fact that if the rent was not paid for three consecutive months, the lessor had a right to enter into possession of the lease hold premises. It also found that after 1978 till the filing of the suit on March 15, 1984 no rent was paid by the lessee. On the termination of the lease which in the instant case took place when the plaintiff defaulted in payment of rent for three consecutive months, the full rights in the lease hold property including the right to possession reverted to the lessor. Even if the lessor in making a forcible entry infringes the criminal law, he will make fringe no right of the lessee. I am supported in my observation by a Division Bench decision in *State of West Bengal v. Birendra Nath Basunia and others* (1), wherein it was held thus :—

“As regards the position under the general law between a lessor and his lessee, there is no rule or principle which makes it obligatory for the lessor to resort to Court and obtain an order for possession before he can put out the lessee who has refused to quit the land even after his right to remain on it has terminated. He is perfectly entitled to throw out the lessee himself, if he can and resume possession of his own property.

It is true that no man can break the law even for the purpose of enforcing a legal right, but that is an obligation which

(1) A.I.R. (42) 1955 Calcutta 601.

a citizen owes to the State and not to the person who is unlawfully resisting his lawful claim. Such person cannot come to the Court and ask for protection from force being used against him. If the lessor, in taking forcible possession, exceeds the permissible limits of force, he will bring himself within the mischief of the criminal law and will have to answer to the State for the breach of public peace committed by him.

But that potential liability in the event of excess being committed gives no right to the lessee to seek an injunction against the lessor's entry upon the land on the basis that if such entry be attempted, he, who has no right to remain on the land, will still offer resistance and a breach of the peace will occur. In seeking to take forcible possession, the lessor will take the risk of being driven to commit a criminal offence, but there cannot possibly be any objection to his taking forcible possession, merely because it is forcible. Besides, no force or no appreciable force may be called for."

This judgment was followed by a Full Bench of Jammu and Kashmir High Court in *Bhagat Rajinder Kumar Sawhney and another v. State of Jammu and Kashmir and another* (2), and it was held thus :—

"It is well settled that a lessor while enforcing his right of forfeiture has every right to take possession of the premises without his having resort to Court to obtain an order for possession provided it is done peaceably and without actual resistance."

(10) The lessor defendant having enforced his right of forfeiture has every right to take possession of the disputed premises. He has been found to be in possession of the leased out premises. His possession cannot be termed either illegal or unlawful and the defaulting lessee whose lease already stood terminated on breach of express covenants of the lease deed could not move the court for restoration of possession to him so that he could remain in possession for the unexpired lease period.

(11) For the aforementioned reasons, the judgment and decree of the first Appellate Court are set aside and those of the trial Court are restored but with no order as to costs.

S.C.K.

(2) A.I.R. (47) 1960 J&K 50.