Badrilal vs Municipal Corporation Of Indore on 6 December, 1972

Equivalent citations: 1973 AIR 508, 1973 SCR (3) 15, AIR 1973 SUPREME COURT 508, 1973 JABLJ 1018, 1972 (1) SCWR 340, 1972 SCD 238, 1973 (19) MPLJ 447, 1973 2 SCC 388, 1973 3 SCR 15

Author: A. Alagiriswami

Bench: A. Alagiriswami

PETITIONER:
BADRILAL

Vs.

RESPONDENT:
MUNICIPAL CORPORATION OF INDORE

DATE OF JUDGMENT06/12/1972

BENCH:
ALAGIRISWAMI, A.
BENCH:
ALAGIRISWAMI, A.
DUA, I.D.
VAIDYIALINGAM, C.A.

CITATION:
1973 AIR 508 1973 SCR (3) 15
1973 SCC (2) 388
CITATOR INFO :
R 1984 SC 143 (5)

ACT:
Madhya Pradesh Municipal Corporation Act, s. 80-Terms of lease accepted by Commissioner-Resolution of Corporation not to grant lease Effect of.
Tenant by sufferance-It should be given notice. before eviction.

HEADNOTE:
The appellant was a lessee of a plot of land belonging to the respondent-corporation. When the respondent issued notice to the appellant directing him to vacate the land on the date of expiry of the lease, the appellant applied for a

grant to him of a lease for 99 years or at least for 10 years. The respondent passed a resolution that the land would be given to the appellant if he deposited certain amount as upset price and paid a higher rent, and that otherwise possession of the land should be taken back. The appellant did pot comply with the terms but made a counter offer., Having failed in his appeal to the Minister, 7 years after the resolution passed by the respondent, he offered to pay a part of the amount fixed by the resolution and the balance in instalments. This was accepted by the Municipal Commissioner. The appellant did not pay any amount and the respondent filed a suit for eviction. During the pendency of the suit the appellant offered to pay the full upset price, the rent that may be found due, as well as costs of the suit and requested that permanent lease for 99 years may be granted to him. He also sent a cheque for part of the amount (the rent having been calculated at the old rate) but after receiving reminders from the Commissioner paid the balance a few days later. The respondent however passed another resolution refusing to grant the lease to the appellant.

The trial court and the first appellate court dismissed the suit holding that the appellant was a tenant holding over. The High Court in second appeal decreed the suit of the respondent-Corporation.

Dismissing the appeal to this Court,

HELD:(1) No contract was concluded between the parties as a result of the payments by the appellant. [18 G]

The Commissioner cannot enter into a contract by himself and can do so only if it is sanctioned by the Corporation under s. 80 of the Madhya Pradesh Municipal Corporation Act. Nor was it open to the Commissioner to make any offer to the appellant or to accept any offer from the appellant in respect of the land except with the sanction of the municipal council. Even the offer made by the respondent-corporation by its resolution came to an end with the filing of the suit by the 'Corporation and the Corporation, cannot be deemed to have kept it open. The appellant's offer,' after the suit was filed, was a new offer and it was rejected by the only authority competent to accept it namely, the Corporation. [18 G-H; 19 D-G]

(2) The deposit of the rent by the appellant and acceptance of it by the Commissioner cannot be deemed to make the appellant a tenant holding over. [20 B]

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The payment was at the old rate by the appellant and its acceptance by the Commissioner was not an acceptance of rent as such and in clear recognition of the tenancy right of the appellant. It cannot amount to the Corporation consenting to the appellant continuing as a tenant by paying the old rates of rent. There is thus no question of the appellant being a tenant holding over. He had become only a tenant by sufferance and hence there was no need for any

notice before he could be evicted. [20 A-C]
Kai Khushroo Bezonjee Capadia v. Bai jerbai Hirjibhey Warden Anr. [1949-50] F.C.R. 262 at 270 and Bhawanji Lakhmshi v. Himatla Jamnadas Dani [1972] 1 S.C.C. 388 followed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1243 of 1967.

Appeal by special leave from the judgment and decree dated May 7, 1966 of the Madhya Pradesh High Court, Indore Bench in Second Appeal No. 475 of 1962.

S. V. Gupte and Rameshwar Nath for the appellant. V. M. Tarkunde, P. C. Bhartari, J. B. Dadacharji and Ravinder Narain, for the respondent.

The Judgment of the Court was delivered by Alagiriswami, J. This is an appeal by special leave against the judgment of the High Court of Madhya Pradesh in Second Appeal No. 475 of 1962 on the files of that Court. The appellant became a lessee of a plot of land measuring 10,375 sq. feet (721 Chasmas) situate at 28, Parsimohalla Street No. 5, Sanyogtaganj, Indore belonging to the Municipal Corporation for a period of 10 years in 1919. This lease was renewed from time to time and the last of such renewals was in the ye 1939 for a period of 10 years. The lease expired on 30th September, 1949. On 24-5-1949 the respondent, Municipal Corporation of Indore, issued a notice to the appellant directing him to vacate the land on 30-9- 1949. Thereupon he applied to the Municipal Commissioner either to grant him a lease for 99 years and it was not possible to renew it at least for a period of 10 years. 0 19-12-1949 the Municipal Council passed a resolution to the following effect:

> "Opinion of the Lease Committee is accepted. The land, situated in Parsimohalla, Sanyogitaganj, be given to applicant Badrilal Bholaram only in case he is ready to deposit Rs. '16,212 of the lease rent and upset price as per Schedule rate in accordance with letter No. 3239 dated 26-10-49 sent to him by the Municipal Commissioner otherwise the said land be taken back into possession."

On 31-12-1949 the Municipal Commissioner wrote Ex. P.20 to the appellant informing him that the land would be given to him on long lease on condition that he-paid an upset price of Rs. 16,212 and an annual lease rent at Rs. 9 per Chasma. He was further informed that if he accepted the said condition he should deposit the upset price within 15 days and submit an application giving his consent, and that otherwise steps would be taken to take back possession of the land. The appellant wrote (Ex. P. 1 8 on 9-1-1950) that the upset price and rent claimed by the Municipal Council was too much and requested that the rent and upset price be modified and during the pendency of his petition proceedings before the Commissioner be stayed. He then seem to have filed a petition for revision before the Minister incharge of municipalities and this was dismissed on 7-9- 1952. Almost 4 years later on 14-5-1956 he wrote Ex. D. 2 to the Commissioner requesting that an amount of Rs. 8212 may be accepted and he may be permitted to pay the balance in annual instalments of Rs. 1000 each. On 20-6-1956 the appellant was informed by the Commissioner by letter Ex. D.3 that he

should deposit the sum of Rs. 8212 within two days and thereafter the balance would be realised in instalments. The appellant not having paid the amount the Municipal Commissioner again wrote on 30-7-1956 giving him two days time to deposit the amount of Rs. 8212. On 20-2- 1957 the Commissioner again wrote to the appellant directing him to deposit the whole of Rs. 16,212 within two days telling him that on his failure to do so steps would be taken for evicting him from the land.

The suit out of which this appeal arises was filed on 16th September, 1957. The appellant filed his written statement on 20th January, 1958 and the issues were framed on 24th March, 1958. At this stage the defendant wrote Ex. D.4 on 17-3-1959 in the following terms :

> "I beg to say that it has been approved by you to give me the plot of land at H.N. 85 Parsimohalla on permanent lease of 99 years after having received the upset price from me. I agree to pay whatever lease rent found due against me upto 31-3-1951 besides reasonable costs of the suit and I have deposited today vide cheque number E/2/104221 dated 17-3-59 in the Indore Bank, Sanyogitaganj and I undertake to pay in cash any amount found due against me at the time of execution of the lease deed."

The Commissioner wrote Ex. D.5 to the defendant on 23-4- 1959 asking him to deposit the upset price of Rs. 1.6,212, rent according to the new rates after deducting a sum of Rs. 824-6-0 already paid by the appellant up to 31-3-54, as also the court expenses.

63ISup.C.I./73 Along with his letter dated 17-3-1959 the appellant had apparently sent a cheque for Rs. 16,601.93. The balance not having been paid, as demanded in the letter Ex. D.5, the Commissioner wrote again on 28-5-1959 and sent a further reminder on 19-8-1959 giving the appellant four days' time for paying the 'balance which was actually paid only on 22-9-1959. The Municipal Council passed a resolution on 31- 5-1960 refusing-to grant the lease to the appellant and directing the Municipal Commissioner to take back possession of the land.

Curiously the appellant somehow pleaded that he was a perma- nent lessee of the land but that claim obviously could not be and was not seriously pressed before this Court by Mr. Gupte, learned counsel appearing for him. The Trial Court surprisingly held that he became a permanent tenant, the Trial Court as well as the 1st Appellate Court held that the appellant was a tenant holding over. Both of them decided in favour of the appellant. The, High Court observes at one place that the appellant's position after 30-9-1949 was that of a lessee holding over and not that of a trespasser, but there is no discussion as to why it considers that the appellant was a lessee holding over. We shall later point out that the appellant cannot be deemed to be a lessee holding over. The High Court, also held that there was no compromise of the suit by any person authorised to do so on behalf of the Corporation. It also held that there was no acceptance of rent with the sanction of the Council. As a consequence it allowed the appeal and decreed the plaintiff's suit.

Before this Court Shri Gupte appearing for the appellant did not contend that there was a compromise of the suit. His contention on the other hand Was that a concluded contract emerged when the appellant paid a sum of Rs. 5697.93 on 22-9-59 pursuant to the letter of the Commissioner and therefore the suit could not continue. He also argued that the appellant would be entitled to the

benefit of the provisions of Section 53A of the Transfer of the Property Act, and that in any case he was a tenant holding over and would be entitled to the benefit of provisions of Section 106 and 1 1 6 of the Transfer of the Property Act. We may straight away say that we find ourselves unable to agree with the contention that there was a concluded contract between the Municipal Council and the appellant on 22-9-1959. There is no dispute that in this case the Commissioner cannot enter into a contract by himself and can do so only if it is sanctioned by the Municipal Corporation under section 80 of the Madhya Pradesh Municipal Corporation Act. The resolution of the Corporation dated 9-12-1949 was specific that the land would be given to the appellant if he deposited the upset price and rent in accordance with the letter dated 26-10-1949 sent by the Municipal Commissioner to the appellant and otherwise the land should be taken back into possession. That letter is not on record. Apparently, it was on the same terms as Ex.P. 20 dated 31-12-1949. It could not be otherwise. The appellant did not comply with the terms of that letter. He went on to make a counter offer by Ex. P. 19 dated 9-1-1950. He, appealed to the Minister and having failed there, he waited nearly 7 years after the Corporation s resolution to pay a part of the amount and pay the balance in instalments. This was accepted by the Municipal Commissioner on 20-6-1956. But we must make it clear that the Municipal Commissioner had no power in view of the resolution of the Corporation to accept the appellant's offer. He was given a specific mandate and was not authorised to enter into negotiations with the appellant regarding the lease. The amount was not paid in spite of two further letters and the suit was filed on 16-9-1957. The Municipal Commissioner had no power to go on accepting the offers from the appellant more than 15 days after his letter to him on 31-12-1949; nor could he accept any terms other than those mentioned in the Corporation's resolution either within those 15 days or later. Even the offer made by the Corporation's resolution came to an end with the filing of the suit, which was a clear and unequivocal revocation of the resolution. Thereafter the Corporation cannot be deemed to keep open its offer of the year 1949. Nor was it open to the Commissioner either to make any offer to the appellant or to accept any offer from the appellant in respect of the land except with the sanction of the Municipal Council. The appellants offer made on 17-3-59, a year and a half after the suit was filed, was a new offer and it was rejected by the only authority competent to accept it i.e. the Corporation on 31-5-1960. The correspondence carried on by the Commissioner with the appellant was wholly beyond his powers.

The offer made by the appellant in 1959 cannot have anything to do with the resolution passed by the Municipal Council in 1949. The offer was of a different set of terms and included an offer to pay the costs of the suit and that also had in fact been deposited by the appellant at the instance of the Commissioner. That indicates the new situation that had come into existence and establishes beyond doubt that this was a fresh offer. We therefore hold that no contract came into existence between the parties on 22-9-1959. It was then urged by Mr. Gupte that the appellant having deposited the rent up to 31-3-1954 and the Municipal Commis- sioner having accepted it he should be deemed to be a tenant holding over. Leaving aside for the moment the contention put forward on behalf of the Corporation that this payment was made behind its back, it has to be noted that the payment was at the rate prevailing before 30-9-1949 and on that date the Corporation having passed a resolution specifying a new rate rent of Rs. 9 per Chasma the payment at the old rate by the appellant and its acceptance by the Municipal Commissioner was not an acceptance of rent as such and in clear recognition of the tenancy right of the appellant. It cannot amount to the Corporation consenting to the appellant continuing as a tenant by paying the old rates of rent. There is thus no

question of the appellant being a tenant holding over. But a person who was lawfully in occupation does not become a trespasser, even if he does not become a tenant holding over but is a tenant by sufferance. The position at law was explained in Kai Khushroo Bezonjee Capadia v. Bai Jerbai Hirjibhoy Warden & Anr.(1) as follows :

> "On the determination of a lease , it is the duty of the lessee to deliver up possession of the demised premises to the lessor. If the lessee or a sub-lessee under him continues in possession even after the determination of the lease, the landlord undoubtedly has the right to eject him forthwith; but if he does not, and there is neither assent nor dissent on his part to the continuance of occupation of such person, the latter becomes in the language of English law a tenant on sufferance who has no lawful title to the land but holds it merely through the laches of the landlord. If now the landlord accepts rent from such person or otherwise expresses assent to the continuance of his possession, a new tenancy comes into existence as is contemplated by S. 116, Transfer of Property Act, and unless there is an agreement to the contrary, such tenancy would be regarded as one from year to year or from month to month in accordance with the provisions of S. 116 of the Act." At page 272 it was pointed out :' "It can scarcely be disputed that the assent of the landlord which is founded on acceptance of rent must be acceptance of rent as such and in clear recognition of the tenancy right asserted by the person who pays it." The same position was explained in a recent decision of this Court to which one of us was a party in Bhanwnji Lakhamshi v. Himat- lal Jamnadas Dani(2). At page 391 it was observed :
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> "The act of holding over after the expiration of the term does not create a tenancy of any kind. If a tenant remains in possession after the determination of the lease, the common law rule is that he is a tenant on sufferance. A distinction should be drawn between a tenant continuing in possession after the determination (1)[1949-50] F.C.R. 262 at 270. (2) [1972] 1 S.C.C. 389.

of the term with the consent of the landlord and a tenant doing so without his consent. The former is a tenant at sufferance in English Law and the latter a tenant holding over or a tenant at will. In view of the concluding words of Section 116 of the Transfer of Property Act, a lessee holding over is in a better position than a tenant at will. The assent of the landlord to the continuance of possession after the determination of the tenancy will create a new tenancy. What the section contemplates is that on one side there should be an offer of taking a new lease evidenced by the lessee or sub-lessee remaining in possession of the property after his term was over and on the other side there must be a definite consent to the continuance of possession by the landlord expressed by. acceptance of rent or other- wise. In Kai Khushroo Bezonjee Capadia v. Bai Jerbai irjibhoy Warden and Another, the Federal Court had occasion to consider the question of the nature of the tenancy created under section 116 of the Transfer of Property Act and Mukherjea, J., speaking for the majority said that the tenancy which is created by the "holding over" of a lessee or under-lessee is a new tenancy in law even though many of the terms of the old lease might be continued in it, by implication; and that to bring a new tenancy into existence, there must be a bilateral act. It was further held that the assent

of the landlord which is founded on acceptance of rent must be acceptance of rent as such and in clear recognition of the tenancy right asserted by the person who pays it."

The appellant being merely a tenant by sufferance there is no need for any notice before he could be evicted. Thus the judgment of the High Court is correct, in so far as it held the appellant was liable to be evicted.

The appeal is dismissed with costs. The petition for reception of additional evidence is also dismissed.

V.P.S. Appeal dismissed.