Basant Lal (Dead) By Lrs. & Anr vs The State Of U.P. And Anr on 25 September, 1980

Equivalent citations: 1981 AIR 170, 1981 SCR (1) 815, AIR 1981 SUPREME COURT 170, 1980 ALL. L. J. 1080, (1981) 1 SCR 815 (SC), 1981 (1) SCR 815, (1981) MAHLR 121, 1981 BBCJ 16, (1981) WLN 53 (SC), 1980 (4) SCC 430, (1981) ALL RENTCAS 70, (1981) 2 RENCJ 331, (1981) 1 RENCR 484, (1981) 1 RENTLR 469, (1980) ALL WC 707

Author: Syed Murtaza Fazalali

Bench: Syed Murtaza Fazalali, A.D. Koshal

PETITIONER:
BASANT LAL (DEAD) BY LRS. & ANR.

Vs.

RESPONDENT:
THE STATE OF U.P. AND ANR.

DATE OF JUDGMENT25/09/1980

BENCH:
FAZALALI, SYED MURTAZA
BENCH:
FAZALALI, SYED MURTAZA
KOSHAL, A.D.

CITATION:
1981 AIR 170 1981 SCR (1) 815
1980 SCC (4) 430

ACT:
Transfer of Property Act, sections 108(h) and 114A, scope and applicability of.

HEADNOTE:
The appellants terminated the lease of the suit lands by a notice dated 26th February, 1944 and allowed the lessee company "Narain Das Lachman Das Oil Mill" time till 30th June, 1944 for the removal of machinery, stores, buildings and other constructions in terms of clause (6) of the lease-deed dated 2nd June, 1941. The company not only secured an order from a Civil Court forbidding the appellants from

ejecting it, but applied to the State Government for compulsory acquisition of the suit land. In the land acquisition proceedings, the claim of the appellants "for the machinery, stores, buildings and other constructions made by the lessee" by virtue of automatic vesting in the appellants in terms of clause (6) of the lease-deed dated 2nd June, 1941 and also, pursuant to notice of termination, was negatived. Having failed before the District Court and the High Court to obtain the relief, the appellants obtained special leave of the Supreme Court.

Allowing the appeal, the Court

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HELD: (1) Although the lessee continued to remain in the premises after the expiry of the notice terminating the lease, yet by force of the express recitals in clause (6) of the lease-deed dated 2nd June, 1941, the buildings, etc., became the property of the lessors. Therefore, after the Government acquired the property it was bound to pay compensation to the appellants not only for the land but also for the buildings and structures thereon. [821H; 822A]

(2) There was no waiver of the notice by the appellants. There is no reliable evidence at all in the instant case to show the exact date when the rent was accepted or, at any rate, the fact that the rent was accepted between the 26th February, 1944, when the notice was sent, and the 30th June, 1944, when the Company was asked to vacate the premises. Besides there is a finding of fact that the Company was treated as a trespasser ever since 26th February, 1944, namely, the date when the notice was given and that any rent which the appellants accepted was really not rent but mere compensation for wrongful use and occupation of the land. [819C-E]

(3) It is no doubt true that s. 114A of the Transfer of Property Act requires two conditions to be fulfilled before a suit for ejectment could lie-(i) that a notice should be given to the lessee specifying the particular breach complained of, and (ii) that the lessee should be called upon to remedy the

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breach. If these conditions are fulfilled, then alone the lessor would be entitled to bring a suit for ejectment of the lessee. Section 114A merely bars a suit for ejectment of the lessee in the instant case as the land had been acquired for the purpose of the lessee, namely, the Company, the question of filing a suit for ejectment did not arise at all. In fact, the lessees themselves filed a suit and obtained injunction restraining the appellants from ejecting them before the land acquisition proceedings were taken in respect of the land in dispute. Thus, the non-compliance of sub-s. (b) of s. 114A is of no consequence so far as this particular case is concerned. In the lease dated 2nd June, 1941, clause (6) clearly lays down that within four months after the expiry of the period of the lease the lessee would

be entitled to remove the stocks and machinery. The last part of that clause also empowers the lessor to re-enter possession and acquire title to the buildings etc., that may be constructed by the lessee. [819H; 820B-D]

(4) A construction of clause (h) of s. 108 of the Transfer of Property Act clearly reveals that where there is a contract contrary to the provisions of that section would not apply. In the lease dated June 2, 1941, there is not only an express clause under which the lessee was entitled to remove the stocks and materials within four months after the termination of the lease but thereafter there was another stipulation that in case the lessee failed to do so, all the buildings etc. would become the property of the lessor. [821A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1145 of 1970.

From the Judgment and Order dated 8-4-1969 of the Allahabad High Court in First Appeal No. 45/55.

Mrs. Rani Chhabra for the Appellant.

B. N. Dikshit, O. P. Rana and Mrs. Shobha Dikshit for the Respondent.

The Judgment of the Court was delivered by FAZAL ALI, J.-This appeal by certificate is directed against a judgment dated January 6, 1969 of the Allahabad High Court and arises in the following circumstances.

The land in dispute originally belonged to Smt. Jawahar Devi who had inherited the same from her father Shankar Das who died sometime in or before the year 1905. Jawahar Devi had a daughter Putli Bibi who had three sons, namely, Basantlal, Shankarlal and Girdharilal. Jawahar Devi died in the year 1934.

On the 25th February 1905, Jawahar Devi let out the land to the late Lala Lachman Das for the construction of a mill which was known as 'Narain Das Lachman Das Oil Mill'. The lease was to continue for 50 years and contained a clause for renewal. In the year 1936-37, the lessee Lachman Das transferred his rights in the lease to Northern India Oil Industries Limited (hereinafter referred to as the 'Company'). Thereafter, the three sons of Putli Bibi sent a notice on the 15th of December 1937 to M/s. Narain Dass Lachman Dass claiming damages. At that stage Girdharilal sold his rights in the land to his brother Basant Lal. In the year 1938, a suit was filed by Basantlal and Shankarlal against M/s. Narain Dass Lachman Dass as well as the Company. This suit was, however, compromised on the 2nd of June 1941 and on the same date a fresh lease was executed by the two plaintiffs therein in favour of the company. The terms of the lease were incorporated in the

compromise (Exhibit 31) but both the lease and the compromise were contained in unregistered documents.

Disputes again arose between the parties and led to the institution of a suit by the company against Basantlal and Shankarlal for specific performance of the compromise above mentioned (Exhibit 31). This suit also ended on the 26th of May 1943 in a compromise according to which a fresh lease embodying the terms of the lease dated the 2nd June 1941 was to be executed by Basantlal and Shankarlal in favour of the Company and at its cost within a week provided the company complied with the covenants contained in that lease to the satisfaction of Rai Bahadur Lala Ram Narain, Treasurer, Imperial Bank of India, Kanpur. Despite the second compromise disputes again cropped up between the parties and ultimately Basantlal and Shankarlal, who are the appellants before us, sent to the company a notice dated 26th of February 1944 (Exhibit 36-A) terminating the lease dated the 2nd June 1941 on the ground of breach by the company of covenants 2, 4 and 5 contained therein. Time was allowed to the company till the 30th June 1944 for the removal of machinery, stores, buildings and other constructions. The Company, however, secured an order from a civil court forbidding the appellants from ejecting it.

On the 7th June 1946, the Company applied to the State Government for compulsory acquisition of the land. Its request was accepted and the land covered by the lease was acquired by the Government for the purpose of the company. In proceedings before the Collector the appellants claimed compensation not only for the land but also for the buildings and other structures standing thereon. Compensation for the land was awarded to them but the rest of their claim was turned down. The matter was re-agitated before the District Judge to whom it was referred and then in appeal before the High Court. The District Judge and the High Court raised the quantum of compensation for the land but rejected the claim of the appellants for compensation in respect of buildings and structures.

In the appeal before us no dispute subsists about the compensation for the land and the controversy is limited to the compensation for the buildings, etc., which were constructed on the premises by the lessee and to which the appellants claim title on the ground that the company did not remove the same despite a period of more than 4 months granted to it for the purpose in the notice dated the 26th of February 1944 and that the title thereto had consequently vested in the appellants with effect from 1st July 1944.

Before proceeding further we may recapitulate the manner in which the present dispute was dealt with by the two Courts below. It was argued before the District Judge on behalf of the State that the lease dated the 2nd June 1941 being unregistered it was inadmissible in evidence and that the Company, therefore, was not bound to vacate the premises. The District Judge overruled the argument (and in our opinion rightly) on the ground that the terms of the lease formed part of the decree based on compromise Exhibit 31, that the compromise related to the property which was the subject-matter of the suit and that, therefore, the compromise did not require registration. The argument was repeated before the High Court and was rejected for the same reason for which it was repelled by the District Judge.

Another point taken before the District Judge was that as the appellants had accepted the rent after having given the notice dated February 26, 1944, their conduct in doing so amounted to waiver of the notice as a result of which the tenancy continued to subsist. The District Judge accepted this point and non-suited the appellants mainly on this ground. The High Court, however, did not agree with the conclusion of the District Judge and held that, in the first place, there was no evidence to show that the rent was accepted at any time after the notice was given to the company, and, secondly, as the rent was accepted by the appellants under protest, it could not amount to waiver because there was no intention on the part of the lessor to treat the lease as subsisting. In this connection, the High Court observed as follows:-

> "We have been taken through the deposition of Basant Lal, but we have failed to find anything in that statement which may go to show that rent for the period beginning after the termination of the lease was accepted by him. All that he said was as follows:-
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> "Rent was sent to me and I accepted some rent under protest."
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> "From that statement, it cannot be said that the rent so accepted was for the period after termination of the lease. There is another sentence in the statement of Basant Lal, which reads as follows:-
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> "'I treated the defendant as trespasser from 26th February 1944 and accepted payment for use and occupation of the land.'"
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> "The learned District Judge, therefore, was not right in taking the view that the notice was waived."

We find ourselves in complete agreement with the view taken by the High Court. There is no reliable evidence at all to show the exact date when the rent was accepted or, at any rate, the fact that the rent was accepted between the 26th February 1944, when the notice was sent, and the 30th June 1944, when the Company was asked to vacate the premises. Furthermore, the High Court has pointed out from the evidence of the appellants that the Company was treated as a trespasser ever since 26th February 1944, namely, the date when the notice was given and has held that any rent which the appellants accepted was really not rent but mere compensation for wrongful use and occupation of the land. In these circumstances, we fully endorse the finding of the High Court that there was no waiver of the notice such as was spelt by the District Judge. The High Court, however, upheld the order of the District Judge for a different reason which was that there could not be any forfeiture of the tenancy under s. 111(g) of the Transfer of Property Act unless a notice was given to the lessee by the lessor expressing his intention to terminate the lease and in addition a notice under s.114-A of that Act also affording an opportunity to the lessee to comply with the terms, the non-compliance of which would result in forfeiture. According to the High Court, as the second condition was not complied with, there was no forfeiture and hence the title to the structures, etc., continued to vest in the lessee and therefore after the Government acquired the land under the Land Acquisition Act, the appellants were not entitled to any compensation for the structures and the

materials as claimed by them. We are, however, unable to agree with the view taken by the High Court for the reasons that we shall give hereafter.

It is no doubt true that s. 114-A of the Transfer of Property Act requires two conditions to be fulfilled before a suit for ejectment could lie-(1) that a notice should be given to the lessee specifying the particular breach complained of, and (2) that the lessee should be called upon to remedy the breach. If these conditions are fulfilled, then alone the lessor would be entitled to bring a suit for ejectment of the lessee. In the instant case, it is no doubt common ground that in the notice dated February 26, 1944 the appellants did not at all mention that the lessee should remedy the breach within a reasonable period to be fixed by the lessor, but that does not advance the case of the lessee because s.114-A merely bars a suit for ejectment of the lessee. In the instant case, as the land had been acquired for the purpose of the lessee, viz., the Company, the question of filing a suit for ejectment did not arise at all. In fact, the lessees themselves filed a suit and obtained an injunction restraining the appellants from ejecting them before the land acquisition proceedings were taken in respect of the land in dispute. Thus, the non- compliance of sub-section (b) of s.114-A is of no consequence so far as this particular case is concerned.

In the lease dated 2nd June, 1941, clause (6) clearly lays down that within four months after the expiry of the period of the lease the lessee would be entitled to remove the stocks and machinery. The last part of that clause also empowers the lessor to re-enter possession and acquire title to the buildings, etc., that may be constructed by the lessee.

Mr. Dixit, appearing for the State of U.P., relied on s.108(h) of the Transfer of Property Act which runs thus:

> "108(h). The lessee may even after the determination of the lease remove, at any time whilst he is in possession of the property leased, but not afterwards, all things which he has attached to the earth, provided he leaves the property in the State in which he received it."

He contended that even if the lease was determined, the title to the construction, etc., would vest in the lessor only if the lessee does not remove the materials at any time whilst he is in possession of the property leased. It was argued that in the instant case, as the leased land was acquired by the Government while the lessee was still in possession and continued to be in possession, by virtue of the land having been acquired, the lessor could not claim any title to the constructions or the materials. There could be no doubt that this is the real effect of clause (h) of s. 108 but s. 108 opens with a sort of a non-obstante clause which is as follows:

> "In the absence of a contract or local usage to the contrary, the lessor and the lessee of immovable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased."

A construction of this clause clearly reveals that where there is a contract to the contrary the provisions of s.108(h) would not apply. In the lease dated June 2, 1941, there is not only an express clause under which the lessee was entitled to remove the stocks and materials within four months after the termination of the lease but thereafter there was another stipulation that in case the lessee failed to do so, all the buildings, etc., would become the property of the lessor. In this connection, the relevant part of the lease may be extracted thus:-

> "6. That within four months after the expiry of the period of lease, the lessees, their successors or assigns will be entitled to remove their stocks and machinery etc. pipelines, electric installation, fixtures, fittings, including stocks and materials of their constructions and fittings which stand on the plot of land shown by the letters A F H G in the accompanying map and will, on the expiry at the period of lease have over to the lessors the said plot of land (shown by letters A F H G in the accompanying map) duly levelled but the lessees would not be entitled to remove the boundary walls or any constructions or buildings which at present are created, which may be created during the period of lease on the plot of land shown by letters A B E F in the accompanying map and which is outside the compound of the lessees Oil Mills on the eastern side and on which at present stand twenty three quarters facing Hamirpur Road, as their quarters or any other buildings that may be created in their place or on their site as well as boundary walls would become the property of the lessors on the expiry of the period of lease, without any compensation being paid for the same by the lessors to the lessees."

(Emphasis ours) Thus, although the lessee continued to remain in the premises after the expiry of the notice terminating the lease, yet by force of the express recitals in clause(6) extracted above, the buildings, etc., became the property of the lessors. Unfortunately, this aspect of the matter does not appear to have been considered by the High Court. In these circumstances, therefore, the conclusion is inescapable that after the Government acquired the property it was bound to pay compensation to the appellants not only for the land but also for the buildings and structures thereon.

As, however, neither of the Courts below have assessed the compensation for the buildings, etc., as they stood in the year 1946 when the land was acquired, the matter will have to be determined by the District Judge afresh in so far as such compensation is concerned. We would, therefore, allow this appeal with costs, set aside the Judgments of the High Court and the District Judge in so far as no compensation has been awarded in respect of the buildings, structures, etc., and remand the case to the District Judge for determining such compensation according to the rates prevailing in 1946 and also to determine the interest and solatium to be paid on such compensation from 1946 upto the date of payment.

S.R. Appeal allowed.