

Kundla Press And Oil Mill Pvt. Ltd vs State Of Gujarat And Ors on 28 March, 2017

Equivalent citations: AIR 2017 SUPREME COURT 1645, 2017 (13) SCC 701, (2017) 3 CIVILCOURT 257, (2017) 2 RENTLR 8, (2017) 3 ICC 374, (2017) 5 ALLMR 435 (SC), (2017) 4 SCALE 101, (2017) 173 ALLINDCAS 83 (SC), (2017) 122 ALL LR 502

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Bench: Deepak Gupta, Madan B. Lokur

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4536 OF 2017
(Arising out of Special Leave Petition (Civil) No.30727 of 2016)

Kundla Press and Oil Mill Pvt. Ltd.

.. Appellant(s)

Versus

State of Gujarat & Ors.

..Respondent(s)

J U D G M E N T

DEEPAK GUPTA, J.

Leave granted.

2. This Civil Appeal is directed against the judgment dated 06.09.2016 delivered in Letters Patent Appeal No. 797 of 2016 whereby the appeal filed by the appellant was dismissed and the judgment of the learned Single Judge passed in Special Civil Application No. 352 of 2013 was upheld.

3. The facts necessary for decision of the case are that 28,176 square metres of land in Savarkundla was given on lease to the appellant Company in the year 1922 for a period of 30 years for running an oil mill. The lease expired in the year 1952. Thereafter, fresh lease deed was executed in favour of the appellant by the Administrator of the Savarkundla Municipality on 18.09.1956. In this lease deed it was mentioned that on this leased area, there are factories, residential units, warehouse (godown), press factory, expeller and office buildings etc. which were constructed by the appellant. The lease

deed was granted for a further period of 30 years. Relevant portion of the lease deed reads as follows:

“The Deed of Lease would be renewed on expiry of the same. And based on the conditions prevailing at that time changes in the amount of rent may be made by the Municipality. The Municipality will have the right to do so” The aforesaid lease deed was to expire in the year 1982.

4. It appears that, in the meanwhile, the Savarkundla Municipality issued two notices to the appellant company in the year 1976 asking the appellant company to handover the land to the Municipality. A dispute arose since the company did not handover the possession of the leased property. Thereafter, this dispute was referred to the Arbitration. The Arbitrator made the award in favour of the company on 11.03.1978. The Arbitrator held as follows:

“....The Company can carry out any sort of construction it may deem fit and for any purpose it may find useful for. And the Municipality is liable to grant permission for construction without laying any condition. In this regard, as stated above, the Company has the right to renew the Deed of Lease and so the only question that arises is that whether the Company can carry out construction on the aforesaid land or not. This land has been given this land for its business (sic). Therefore the Company can carry out construction over this land for its business.....”

5. The operative portion of the Award reads as follows:

“3. The Company can carry out on the land construction which it deems proper and for such use as it deems proper. Since the Municipality is an autonomous body and the Rent Act is not applicable to the land owned by a local autonomous institution. In case of such properties the Rights of Tenants and Property Owners are as per the provisions of the Transfer of Properties Act. The Municipality is responsible to grant the permission for construction as per the permission of construction granted by the Company.” The Arbitrator held that the appellant company was entitled to renewal of the lease deed and was also entitled to make construction on the land in question connected with its business. This Award was made Rule of the Court on 26.04.1978.

6. Though the Award was passed in favour of the company and the Decree in terms of the Award had also been passed, the Collector, Savarkundla cancelled the lease deed on the ground that the appellant was trying to raise construction on the land in question. Thereafter, the appellant filed a Writ Petition being Special Civil Application No. 845 of 1978. This Writ Petition was allowed and the order of the Collector was set aside. Thereafter also, no lease deed was executed since the Municipality did not have the power to execute the lease deed for more than 10 years. Finally, on 23.10.1991, the Government of Gujarat issued an order that the lease deed may be renewed for a further term of 30 years from 01.04.1982. In actual fact, this lease deed was only executed on 12.04.2007. However, this lease deed was made effective for a period of 30 years from 01.04.1982 till 31.03.2012.

7. Shri Ashok Desai, learned senior counsel appearing for the appellant, submits that in view of the conditions quoted hereinabove, the appellant is entitled to renewal of the lease deed as a matter of right. He further submits since the Municipality has permitted the appellant to construct and raise buildings on the land in question the appellant is entitled to renewal of the lease. He has candidly submitted that the Municipality may charge enhanced lease rent.

8. On the other hand, Shri Preetesh Kapoor, learned counsel appearing for respondents submits that there can be no lease in perpetuity in favour of any person. He submits that the State Government had given permission to the Municipality to lease out land only for a period of 30 years in terms of Section 65 (2) of the Gujarat Municipalities Act, 1963 which reads as follows:

“65. Powers of municipality to sell, lease, and contract.-

xxx xxx xxx (2) In the case of every lease or sale of land under sub-section (1) of section 146 and of a lease of immovable property for a term exceeding ten years and of every sale or other transfer of such immovable property, the market value of which exceeds one lakh of rupees, the previous permission of the State Government is required:

Provided that in the case of a lease or sale of land under sub- section (1) of section 146 no such permission shall be granted if such land forms a street or part of a street which has been declared to be a public street under section 148.”

9. A bare perusal of the aforesaid section makes it very clear that the Municipality has no authority to grant a lease for a period exceeding 10 years without prior permission of the State Government. In the present case, the State Government had only granted permission to lease the land till the year 2012. Therefore, the appellant has no inherent right to claim that fresh lease be granted in its favour.

10. Another factor which has to be considered is that the original lease was granted for running an oil mill and as on date admittedly there is no oil mill situated on the land. The leased property is a public property leased out at a very meagre rent. It cannot be utilised for a purpose other than the purpose for which it was leased out. True it is that the appellant may have been permitted to raise construction on the leased land but it is obvious that the construction to be raised should have connection with the original business of the company i.e. running an oil mill. The appellant has raised a huge commercial complex earning crores of rupees but is paying only a few hundred rupees to the Municipality.

11. We are of the considered view that the appellant is not entitled to claim that lease deed must be renewed in his favour. The High Court of Gujarat was perfectly justified in holding that the appellant cannot claim that he is entitled to renewal of the lease deed as a matter of right. The finding of the High Court that the appellant is earning huge profits by way of rent is not denied. It has also been stated that the land is required by the Municipality for educational purposes.

12. Having regard to the rival submissions and the facts and circumstances of the case, we find no merit in the appeal and the same is accordingly dismissed.

.....J. (MADAN B. LOKUR)J. (DEEPAK GUPTA) New Delhi March 28, 2017 ITEM NO.1B COURT NO.5 SECTION IX (For Judgment) S U P R E M E C O U R T O F I N D I A RECORD OF PROCEEDINGS Petition(s) for Special Leave to Appeal (C) No(s). 30727/2016 (Arising out of impugned final judgment and order dated 06/09/2016 in LPA No. 797/2016 in SCA No. 352/2013 passed by the High Court of Gujarat at Ahmedabad) KUNDLA PRESS AND OIL MILL PVT. LTD. Petitioner(s) VERSUS STATE OF GUJARAT AND ORS. Respondent(s) Date : 28/03/2017 This petition was called on for pronouncement of judgment today.

For Petitioner(s) Mr. Anirudh Sharma, AOR
 Mr. Abhaid Parikh, Adv.

For Respondent(s) Ms. Hemantika Wahi, AOR
 Ms. Jesal, Adv.
 Ms. Puja Singh, Adv.

Hon'ble Mr. Justice Deepak Gupta pronounced the non-reportable judgment of the Bench comprising Hon'ble Mr. Justice Madan B. Lokur and His Lordship.

The appeal is dismissed in terms of the signed non-reportable judgment.

(Meenakshi Kohli)
MASTER

(Sharda Kapoor) COURT
COURT MASTER

[Signed non-reportable judgment is placed on the file]