

R.V. Bhupal Prasad vs State Of Andhra Pradesh & Ors on 11 August, 1995

Equivalent citations: 1996 AIR 140, 1995 SCC (5) 698

Author: K. Ramaswamy

Bench: K. Ramaswamy, B.L Hansaria

PETITIONER:

R.V. BHUPAL PRASAD

Vs.

RESPONDENT:

STATE OF ANDHRA PRADESH & ORS.

DATE OF JUDGMENT 11/08/1995

BENCH:

RAMASWAMY, K.

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RAMASWAMY, K.

HANSARIA B.L. (J)

CITATION:

1996 AIR 140

1995 SCC (5) 698

JT 1995 (6) 258

1995 SCALE (5) 41

ACT:

HEADNOTE:

JUDGMENT:

ORDER Leave granted.

Smt. Saleha Begum, the 3rd respondent has demised her property, namely, Shaensha Mahal situated on Congress Road, Governorpet, Vijayawada, A.P. to the appellant for a period of 20 years by lease deed dated January 1, 1964 and in furtherance thereof, the appellant has been running the exhibition of Cinematograph films in the said theatre. The lease, by efflux of twenty years, contracted thereunder expired on December 31, 1983. When the appellant sought renewal of the licence granted under the A.P. Cinemas (Regulation) Rules, 1970 (for short, 'the Rules'), the

landlady objected to the renewal. The licensing authority and the appellate authority had granted licence but in a write petition filed by the landlady the learned single judge held that the appellant is not in lawful possession of the theatre and that, therefore, the grant of renewal was not justified in law. This was affirmed in W.A. Nos.1118 and 1183 of 1992 dated September 3, 1993. Thus these appeals by special leave.

Sri U.R. Lalit, learned senior counsel for the appellant, contended that in 1983, the Rules have been amended and the pre-existing Rule has been bifurcated into initial grant of licence in Rule 11(B) and renewal is separately dealt with under Rule 12(B). Rule 11(B), sub-rule (2) envisages proof of lawful possession of the site, building and the equipment, while Rule 12(B) expressly omits to satisfy the requirement. The rule making authority having had knowledge of the decisions rendered by various courts including this Court on the insistence of proof of lawful possession by the licensee and unlawful or litigious possession disentitles the licensee to have renewal, rule making authority had done away with the requirement of being in lawful possession at the stage of granting renewal. On interpretation of the rules, the legislative intendment should be given effect to. The Full Bench of the Andhra Pradesh High Court in *Smt. Y. Anasuya v. Government of A.P.* [1993 (1) ALT 661 (F.B.)] wrongly interpreted the rule bringing the requirement of being in lawful possession at the stage of granting renewal. He also further contended that the appellant having lawfully entered into possession and having remained in possession during the subsisting period of lease and after expiry thereof, his possession also is juridical possession until he is duly ejected by a decree of the Court. His possession cannot be termed to be unlawful nor can he be treated as a rank trespasser. The appellant is in long settled possession. The appellant is in long settled possession. The object of the Rules is to facilitate the exhibition of Cinematograph films to entertain the public. When the licensee is in settled possession protected by general law, he continues to be in lawful possession till he is duly ejected. While interpreting the Rule, the Court would endeavour to give effect to the juridical possession so long as he is not duly ejected in due course of law. The Full Bench, therefore, was not right in its conclusion. In support thereof, he placed reliance on the decision of this Court in *Lalu Yeshwant Singh v. Rao Jagdish Singh & Ors.* [(1968) 2 SCR 203] and in *Krishna Kishore Firm v. Govt. of A.P. & Ors.* [(1990) Supp. 2 SCR 8 at 11]. He also cited in his support *East India Hotels Ltd. v. Syndicate Bank* [(1992) Supp 2 SCC 29].

Sri K. Ram Kumar, learned counsel appearing for respondent No.3, contended that under the conditions of the lease, on its expiry, the appellant had to deliver not only the vacant possession but also the equipment without claiming any compensation. There is nothing to indicate that the landlady had acquiesced in the appellant's continuance in possession of the theatre after the expiry of the lease. In fact, the landlady filed O.S. No.538/85 on the file of the Court of the Principal Subordinate Judge at Vijayawada for eviction of the appellant from the demised premises which would indicate that the possession of the appellant was never treated to be lawful. It is also contended that the Full Bench, while interpreting the Rule, has taken notice is to be renewed it should be subject to the willingness of the lessor. When the lessor objected to the grant of the licence on the ground that she had not acquiesced in the possession of the licensee under the Rules, the possession of the licensee of the theatre cannot be considered to be lawful possession. Therefore, the High Court was right in its conclusion that the possession of the appellant is not lawful for grant of the renewal of the licence.

The respective contentions give rise to the question whether the possession of the appellant is lawful possession. Rule 11(B), sub-rule (2) envisages thus :

"(2) On receipt of the reports and certificates referred to in clause (b) for sub-rule (1) or, if the same have not been received in time on consideration of the certificates referred to in clause (c) of Rule 11-A on merits, if the licensing authority is satisfied that the applicant is in lawful possession of the site, building and equipment he shall, within ten days from the date of receipt of the above reports and certificates or the due date for the receipt of above reports and certificates grant a license in Form-B with or without adding additional conditions thereto, consistent with the provisions of these rules, as he may deem fit in the interest of the health and safety of the public;

Provided that if the licensing authority is satisfied that the provisions of these rules have not been fulfilled and or that, in the case of a temporary cinema building the provisions in Appendix-IV are not fulfilled he may refuse to grant the licence applied for the communicate to the applicant the reasons for such refusal.

Provided also that the period of validity of a licence shall so far it may be co-related with the period of validity of electrical and fire certificate granted in accordance with the provisions in Appendix-IV."

Rule 12 (B) (1) read thus:

"Renwal of Licences to cinema buildings :- (1) within fifteen days of receipt of such application, the licensing authority shall;

(a) If the application is not in accordance with the rules, dispose it of in accordance with clause (a) of sub- rule (1) of Rule 9(B).

(b) If the application is in order, the electrical and fire certificate is valid and if the certificate of longevity of the building initially issued by the concerned Executive Engineer (R&B) is valid for the period for which the renewal of licence is applied for, the licence may be renewed for the period applied for:

Provided further that, in case of an application for renewal of a licence (in respect of a permanent cinema building) which is made three months in advance of the expiry of the licence, if the authorities concerned do not furnish their reports and certificates in time, the respective certificates shall be deemed to have been renewed;

Provided that if the licensing authority is satisfied that the provisions of these rules have not been fulfilled he may refuse to grant the renewal applied for and communicate to the applicant the reasons for such refusal;

Provided further that the period of validity of electrical and fire certificate granted in accordance with the provision in Appendix-VI."

It is true, as rightly pointed out by Shri U.R. Lalit, that under Rules 11 of the unamended Rules, the right to initial grant and the renewal of the licence was compendiously considered as an integral scheme in single Rule, which was thereafter, i.e. in 1983, amended giving separate headings and consideration for the grant of the licence and grant of renewal of the licence. One of the conditions for the grant of licence is that the applicant shall satisfy the licensing authority that the applicant is in lawful possession of the site, building and equipment. When the licensee sought renewal of the licence, diverse conditions prescribed in Rule 12(B) are required to be complied with. Application for renewal of a licence for a permanent cinema building should be made three months in advance of the expiry of licence. If the authorities concerned do not furnish their reports and certificates in time, the respective certificates shall be deemed to have been renewed provided that if the licensing authority is satisfied that the provisions of these rules have not been fulfilled he may refuse to grant the renewal applied for and communicate to the applicant the reasons for such-refusal. The second proviso provides clearly that not only the conditions enumerated in clauses (a) and (b) of sub-rule (1), but also all the provisions of the Rules should be satisfied for the grant of the renewal.

For the grant of the licence, one of the requirements is that the applicant should have lawful possession of site, building and equipment. It is true that the right to grant licence and right to grant renewal are separately dealt with by Rule 11(B) and Rule 12(B) respectively. But when Rule 11(B) and Rule 12(B) respectively. But when Rule 12(B)(1), second proviso itself indicates that the licensing authority should satisfy itself that the licensee that satisfied all the provisions of the rules, the licensee should satisfy that he is in lawful possession when he seeks renewal.

Section 105 of the Transfer of Property Act [for short, 'the TP Act'] defines "lease" of immovable property as "a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transfer by the transferee, who accepts the transfer on such terms". Therefore the lessor of immovable property by contract in writing or otherwise can transfer his property to the lessee to enjoy such property. It may be made for a certain time, express or implied, or in perpetuity, in consideration of a price or promised, or of money etc. and the lessee accepts the transfer on such terms. Under Section 111 of the TP Act, a lease of immovable property determines, inter alia, by efflux of the time limited. Section 116 envisages the effect of holding over and provides that "if a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in Section 106". Section 106 of the TP Act deals with the duration of certain leases in the absence of written contract or local usage with which we are not concerned in this case since the appellant and the landlady are governed by the written lease. Since the landlady had not accepted or asserted to the appellant's continuance in possession, he cannot be treated under Section 116 to be a tenant holding over.

Tenant at sufferance is one who comes into possession of land by lawful title, but who holds it by wrong after the termination of the term or expiry of the lease by efflux of time. The tenant at sufferance is, therefore, one who wrongfully continues in possession after the extinction of a lawful title. There is little difference between him and a trespasser. In Mulla's Transfer of Property Act [7th Ed.] at page 633, the position of tenancy at sufferance has been stated thus: A tenancy at sufferance is merely a fiction to avoid continuance in possession operating as a trespass. It has been described as the least and lowest interest which can subsist in reality. It, therefore, cannot be created by contract and arises only by implication of law when a person who has been in possession under a lawful title continues in possession after that title has been determined, without the consent of the person entitled. A Tenancy at sufferance does not create the relationship of landlord and tenant. At page 769, it is stated regarding the right of a tenant holding over thus: The act of holding over after the expiration of the term does not necessarily create a tenancy of any kind. If the lessee remaining in possession after the determination of the term, the common law rule is that he is a tenant on sufferance. The expression "holding over" is used in the sense of retaining possession. A distinction should be drawn between a tenant continuing in possession after the determination of the lease, without the consent of the landlord and a tenant doing so with the landlord's consent. The former is called a tenant by sufferance in the language of the English law and the latter class of tenants is called a tenant holding over or a tenant at will. The lessee holding over with the consent of the lessor is in a better position than a mere tenant at will. The tenancy on sufferance is converted into a tenancy at will by the assent of the landlord, but the relationship of the landlord and tenant is not established until the rent was paid and accepted. The assent of the landlord to the continuance of the tenancy after the determination of the tenancy would create a new tenancy. The possession of a tenant who has ceased to be a tenant is protected by law. Although he may not have a right to continue in possession after the termination of the tenancy, his possession is juridical.

The question then is what is the meaning of the expression 'lawful possession'. This was considered by this Court in a leading decision on the right to grant licence under the Cinematographic Act and Madras Cinemas Rules in *M.C. Chockalingam & Ors. v. V. Manickavasagam & Ors.*, [(1974) 2 SCR 143 at 152]. Rule 13 of the Madras Rules required the licensee in lawful possession, when he had applied for renewal after the expiry of the lease of the licensee. The Court observed thus:

"Turning to rule 13, even in the first part if the applicant for the licence is the owner of the property he has to produce before the licensing authority the necessary records not only relating to his ownership but also regarding his possession. It is implicit, that the owner having a title to the property, if he can satisfy the licensing authority with regard to his possession also, will indeed be in 'lawful possession', although the word 'lawful' is not used in the first part. It is in that context that the word 'possession' is even not necessary to be qualified by 'lawful' in the first part of rule 13. If, however, the applicant for the licence is not the owner, there is no question of his showing title to the property and the only requirement of the law is to produce to the satisfaction of the authority documentary evidence with regard to his lawful possession of the property. The word 'lawful'. therefore, naturally assumes significance in the second part while it was not even necessary in the first part. The fact that after expiry of the lease the tenant will be able to continue in possession of

the property by resisting a suit for eviction, does not establish a case in law slaw to answer the requirement of lawful possession of the property within the meaning of rule 13. Lawful possession cannot be established without the concomitant existence of lawful relationship between the landlord and the tenant. This relationship cannot be established against the consent of the landlord unless, however, in view of a special law, his consent becomes irrelevant. Lawful possession is not litigious possession and must have some foundation in a legal right to possess the property which cannot be equated with a temporary right to enforce recovery of the property in case a person is wrongfully or forcibly dispossessed from it. This Court in Lalu Yeshwant Singh's case (supra) had not to consider whether judicial possession in that case was also lawful possession. We are clearly of opinion that juridical possession is possession protected by law against wrongful dispossession but cannot per se always be equated with lawful possession."

This decision has been followed in many subsequent decisions of this Court. In Krishna Kishor Firm's case (supra), this Court has considered the controversy in a slightly different scenario. The facts therein were that the appellant-firm while running the Cinema Theatre on a licence granted pursuant to a lease by the landlords, one of the co- owners had agreed to sell his share of the property and another co-owner also entered separately into a lease. The question therein was whether the possession was lawful possession under the Rules. Giving various illustrations, this Court held that the lawful possession means legal possession which is also rightful or at least excusable. Thus that which is not *stricto legalo* may yet be lawful. It should not be forbidden by law. In fact "legal" is associated with provisions in the Act, rules etc. whereas "lawful" visualizes all that is not illegal, against law or even permissible. "Lawful" is wider in connotation than "legal". Although provisions in Specific Relief Act empowering a person or tenant to recover possession if he has been evicted forcibly by the landlord, may be juridical and not lawful or a tenant holding over is not in lawful possession unless landlord agrees or acquiesces in expressly or impliedly but that does not alter the legal position about possession of a person not legal yet not without interest. In considering the Chockalingam's case, this Court made a distinction between nature of the possession of the lessee after the expiry of period of lease and the nature of the possession of the lessee acquiesced in by the landlord. In that context, it was pointed out that the lessee before expiry of period of lease acquired lessor's entire interest resulting in drowning or sinking of inferior right into superior right. That is a right one of merger into another. It has been separately recognised by Section 111(d) of the TP Act. Similarly, a tenant after expiry of period of lease may be holding over and the lessor may acquiesce in his continuance, expressly or impliedly. That is from conduct into lawful. The other may be where lessor may not agree to renew the lease nor he may acquiesce in his continuance. Such a lessee cannot claim any right or interest. His possession is neither legal nor lawful. Such was the ratio of Chockalingam's case.

In the backdrop of the factual position, law laid down by this Court in Krishna Kishore Firm's case [supra] requires to be understood. It is seen that one of the lessors had entered into an agreement of sale with the lessee to the extent of his share in the joint property and some of the co-owners had also entered into a fresh lease to the extent of their share in that property. The property being joint and indivisible, in that backdrop this Court had held that the possession of the appellant therein

cannot be considered to be unlawful. The ratio is clearly distinguishable. Decision of this Court in *Lalu Yeshwant Singh's case* [supra] also renders little assistance to the appellant. Therein, the tenant had committed default in payment of rent. The landlord instead of filing a suit for ejectment of the tenant had taken law into his hands and had the tenant forcibly ejected from possession. When he approached the Court, this Court settled the legal position that the landlord is not permitted to take forcible possession except in due process of law and they must obtain such possession as they are entitled through court of law as the law recognised. The possession of a tenant who had ceased to be a tenant, after expiry or termination of the lease, is protected by law until he is duly ejected. Although he may not have a legal right to continue in possession after the termination of the tenancy or after the expiry of the tenancy, his possession was at sufferance recognised to be juridical and that possession is protected by Common law.

Suppose a person trespasses into Government land and remains in unlawful possession, whether he is liable to be ejected under the Public Premises Act. Since Government has not recognised the right of the trespasser to remain in possession of the Government land, the Government is free to take action as is available under law either under Public Premises Act or appropriate law. But the Government cannot forcibly eject the trespasser. In fact, this sort of controversy had arisen in *East India Hotels Ltd. case* [supra]. Therein, the licensor, after the fire had broken in the premises, requested to give possession for effecting repairs and the licensor was alleged to have promised to give back possession to the licensee. Since the possession was not redelivered, the licensee approached the High Court under Section 6 of the Specific Relief Act, 1963 for possession. The High Court granted decree for possession until he was duly ejected. One of us [K. Ramaswamy, J.] considered the entire case law including the cases cited by Sri Lalit in the context of the power of the Court under section 6 of the Specific Relief Act to grant decree for possession for a licensee. It was held in para 44 that:

"Law respects possession even if there is no title to support it. No one is permitted to take law in one's own hands and to dispossess the person in actual settled possession without due course of law. No person can be allowed to become a judge in his own case. The object of s.6 is to discourage people to act in self-help, however, good their title may be. The licensee in possession for well over 15 years is in settled possession and is entitled to remain in possession and is entitled to remain in possession and make use of the premises for the purpose for which it was demised until he is ejected in due course of law. The acquiescence of the landlord in this context would be to the initial unlawful entry into possession and continuation thereafter but not to the continuance in possession of the licensee after the expiry or termination of the licence. That was what this Court appears to have meant in the previous decisions. Take for instance that when a licence was granted for a couple of years and after its expiry by efflux of time, or on termination, if the possession of the licensee, though unlawful and unjust is not protected, the aggressor or mighty would trample upon the right of the weak and meek and denial of relief under s.6 would put a premium upon the aggression or treachery or tricks. No doubt long delay in disposal of cases due to docket explosion became a ruse to unscrupulous litigant to abuse the due course of law to protract litigation and remain in unjust or wrongful possession of

property. Landlord could be suitably compensated by award of damages. It cannot, by any stretch of imagination, be said that a person in settled possession, though unlawful, is not entitled to the protection under s.6 of the Act. Maintenance of law and order and enthusing confidence in the efficacy of rule of law are condition precedent for orderly society. Therefore, giving primacy, legitimacy or legality to the conduct or acts of the landlord to take possession of the property in derogation of the due course of law would be deleterious to rule of law and a pat on high-handedness or self-help."

It was held that so long as the licensee has not been evicted in execution of the decree lawfully obtained, his possession under s.6 of the Act as a licensee is protected. Section 6 can be availed of to recover possession until he is lawfully dispossessed in due course of law.

In view of the settled position of law, the possession of the appellant is as tenant at sufferance and is liable to ejectment in due course of law. But his possession is not legal nor lawful. In other words, his possession of the theatre is unlawful or litigious possession. The appellant may remain in possession until he is ejected in due course in execution of the decree in the suit filed by the respondent. His possession cannot be considered to be settled possession. He is akin to a trespasser, though initially he had lawful entry.

In this behalf, it is necessary to see even the contract under which he was put in possession.

Para 22 & 23 of the contract reads thus:

22. "That the lessee shall quit the scheduled properties on expiry of the lease period and deliver possession of the entire demised properties to the Lessor including furniture installed by the Lessors and other improvements, alterations, constructions reconstructions and additions effected by the Lessees if any in good condition subject only to the changes caused by reasonable wear and tear and irresistible force; that in default of so quitting the premises, the Lessees shall pay enhanced rent and damages at the rate of Rs.100/-per day, till they are evicted by the provisions of law by the Lessor.

23. On expiry of the lease period, the Lessees should sign all necessary applications and papers and co-operate to obtain transfer of all the licences back in the name of Lessor or her nominees promptly and also send all necessary statements to the officers concerned for the purpose or otherwise, the Lessor gets every right to get all the licences transferred in her name automatically immediately after the expiry of the Lease period."

A reading of these two covenants clearly manifests the intention of the parties that after the expiry of the lease he is enjoined to deliver possession of the demised premises to the landlady.

After the expiry of the lease, he is treated to be in unlawful possession, since he is required to pay damages for use and occupation at the rate of Rs.100/- per day till he is evicted in due course of law. Thereby it is clear that his possession was not treated to be juridical possession but only unlawful. He is required to pay damages for use and occupation. Clause 23 indicates that on expiry of the lease, the lessees should sign all necessary applications and papers and cooperate with the lessor to obtain transfer of all the licences. That would clearly indicate the intention, namely, that the appellant shall remain in possession only for the period of twenty years and thereafter his possession becomes unlawful.

The High Court, therefore, was right in its conclusion that the possession of the appellant is unlawful. The learned Single Judge of the High Court [K. Ramaswamy, J., as he then was] in *M. Kameswara Somayajulu vs. State of A.P.* [1989 (1) APL] 82 (SN)] was not correct in his holding that at the time of renewal, the licensee need not establish his lawful possession due to omission in Rule 12(B) (1) which was followed by another Division Bench. The Full Bench has reconsidered the controversy. For different reasons given by us, we think that the conclusion reached by the Full Bench is correct.

The appeals are dismissed. No costs. The respondents are entitled to withdraw the amount deposited by the appellant pursuant to the interim order passed by this Court.