Raja Mohammad Amir Ahmad Khan vs Municipal Board Of Sitapur And Anr. on 3 December, 1964

Equivalent citations: AIR1965SC1923, AIR 1965 SUPREME COURT 1923, 1965 SCD 788, 1965 (1) SCWR 848, 1966 (1) SCJ 484, ILR 1965 ALL 909

Author: N. Rajagopala Ayyangar

Bench: K. Subba Rao, Raghubar Dayal, N. Rajagopala Ayyangar

JUDGMENT

N. Rajagopala Ayyangar, J.

1. The plaintiff is the appellant in this appeal, by special leave, which is directed against the judgment and decree of the High Court of Allahabad. The plaintiff's suit was dismissed by the Civil Court of Sitapur and the High Court confirmed that order of dismissal.

2. The facts necessary for the disposal of the appeal, in view of the only point raised before us lie in a very narrow compass. The dispute relates to the claim of the appellant to an area of 16 Bighas or 3 acres odd in plot 160 bearing Municipal number 1444, situated in Chhauni Qadim, Sitapur Cantonment. The plaintiff is the Taluqdar of the Mahmudabad estate in the district of Sitapur. The dispute relates to the nature of his title to the interest in his property which is admittedly nazul land and the particular whether he has forfeited his leasehold interest by reason of his acts and conduct to which we shall refer presently.

3. From the evidence on record the precise date upon which the predecessors in title at the appellant's ancestors obtained this property on lease or the terms upon which they held it are not very clear. We should also add that this has not been the subject of examination by the High Court. There was, however, evidence that there was a bungalow constructed by a previous tenant on this property. This bungalow was burnt down by an accidental fire some years before these proceedings began and on the finding of the Courts, the site was vacant and without any buildings at the commencement of these proceedings. While so, the appellant appears in or about September 1947 to have sub-divided the plot, leasing them out to different persons for enabling them to erect buildings on them. The municipal Board of Sitapur objected to this dealing with the property and contested his right to do so, and passed a resolution requesting the State Government to terminate his lease. The Government thereupon issued a notification, in December 1948, for the acquisition of an extent of 2.68 acres out of this plot under Section 9 of the Rehabilitation of Refugees Act (Act 26 of 1948) for the purpose of erecting buildings for housing refugees from Pakistan. Before the Land Acquisition Officer assessing the compensation the contention raised by Government was that the

land was admittedly nazul land and that the plaintiff was merely a non-occupancy tenant and that therefore he was entitled only to one year's rent as compensation. In answer to this claim the plaintiff filed, on March 25, 1949 an application claiming that he and his ancestors had been owners of the land and had been exercising "permanent, heritable and transferable lights" in the land openly and to the knowledge of and with the consent of the Government. He, therefore, claimed that he was entitled by reason of such interest in the land to a sum of Rs. 52,900 as compensation for its acquisition. He also stated in that application that as his title to the property had been disputed by the Municipal Board of Sitapur which asserted that he had no rights to transfer or lease the parcels of land as he had done in September, 1947 he was filing a suit in the Civil Court for a declaration of his title in respect of that land and lie, therefore, prayed that till the decision of the Civil Court the determination of the amount of compensation due to him may be deferred. Alternatively he prayed that if his claim as to the amount of compensation was not accepted the matter may be referred for decision to the Court for adjudication. The Compensation Officer, however, rejected the claim of the appellant to the title that he claimed to the properly and holding that he was a mere non-occupancy tenant decided the he was not entitled to anything more than a year's rent and assessed the compensation payable at Rs. 15. This order was passed on March 26, 1949. Soon thereafter and after the expiry of the period of notice, that he had given under Section 80 of the Civil Procedure Code the appellant filed a suit out of which this appeal arises, on July 11, 1949 impleading the Municipal Board, Sitapur which had disputed his right to parcel out the lands and lease them to refugees, and the State of United Provinces which disputed his claim in the compensation proceedings as defendants. After stating the earlier history of the property the plaint proceeded :

> "The plaintiff and his ancestors have been owning the bungalow and other constructions and holding the premises with a permanent heritable and transferable rights.
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> The plaintiff and his predecessors have been exercising heritable and transferable rights in the land in dispute openly and to the knowledge of the Government and Municipal Board and in any view of the case have acquired such rights by adverse possession."

After reciting that the Municipal Board had been realising a consolidated amount of Rs. 388/8/- per year from the plaintiff and his ancestors in respect of the lands of all their bungalows including the plot in dispute, it prayed for a declaration that he had a permanent heritable and transferable right as owner and, in any case, as a permanent lessee for building purposes and that he had right to lease out the same.

4. We are not concerned with the written statement of the Municipal Board but the Government of U.P. filed one on April 10, 1950 to whose terms it is necessary to advert. In paragraph 5 they admitted that there was a bungalow on plot 1444 but since the last 30 years no bungalow, out-houses or any land of constructions had existed on the land in dispute which had been lying vacant up to March 18, 1949. In answer to the allegation in paragraph 11 of the plaint wherein it had been set out that the plaintiff decided to parcel out lands and lease the same to different persons the Government stated that the plaintiff had no right to parcel out the land in dispute and had done so

by wrongly representing himself as the owner and had sold it to the general public by auction. In other words, it was this action on the part of the plaintiff in parcelling out and sub-leasing the lands, that was said to amount to a repudiation of the title of the landlord. The plaintiff's complaint regarding the action of the Municipal Board in requesting the Government to terminate the lease and hand over the land to the Board was answered in paragraph 13 by saying:

> "The Municipal Board passed a resolution terminating the tenancy of the plaintiff and requesting the Government to take over the land on the ground that the action of the plaintiff amounted to a denial of ownership of the landlord and was further detrimental to public interest and constituted a violation of the purpose for which the holder of the land was permitted to use it."
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> "The Government accordingly terminated the tenancy and took over the land." The contention regarding the repudiation of the title of the landlord in this manner was also repeated in paragraph 14 of the written statement which was emphasised and elaborated in paragraphs 25, 26 and 27 which ran:
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> "25. The plaintiff's claim to permanent heritable and transferable right as owner is wrong, baseless and without any foundation.
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> 26. Under the Cantonment tenure governing such areas no one except the Government can have any title to the land in the said area, and the Government can resume it at any time.
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> 27. In spite of the fact that the plaintiff had no claim to the land in dispute as owner, he repudiated the title of the landlord, and representing himself as the owner actually parceled it out into various plots and with a view to make money out of it sold portions of it by auction to the general public representing himself to be the owner thereof. Under the circumstances the Municipal Board had to terminate the lease of the plaintiff and the Government acquired the land for building houses for refugees and have actually constructed the said houses on it.
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> .....The conduct of the plaintiff has resulted in the forfeiture of the rights of the plaintiff in the tenancy claimed by him."

5. Other defences were also raised to which however it is not necessary to refer.

6. On April 22, 1950, nearly a fortnight after the filing of the written statement the Government issued a notice to the plaintiff stating, to quote the material part:

> "That the Government is the absolute owner of this plot. That in the acquisition proceedings as well as on other occasions you set up a title in yourself as owner and proprietor of the said land and claimed the same in that capacity. That on account of the said acts on your part, I, on behalf of the Government hereby give you notice that

> the Government have forfeited the tenancy rights, if any, possessed by you in the said land."

On May 15, 1950 the plaintiff moved an application for amending the plaint by admitting in express terms the ownership of the Government and claiming rights merely as a permanent lessee but this application was dismissed.

7. The question raised in this appeal if whether the plaintiff had incurred forfeiture of his lease-hold interests by denying the title of the Government so as to justify the latter in terminating the lease. On the basis of the pleadings as many as 12 issues were raised of which it is necessary to refer only to.

> "4. If this property was made a part of Taluqa Mahmudabad in 1919 and whether the plaintiff has a permanent heritable and transferable right in it?
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> 6. If the Municipal Board had been realising rent for the land in suit on behalf of the U.P. Government from the plaintiff and his predecessors."

7. Whether the plaintiff is and his predecessors were mere licensees of the land in suit, and whether by sales and his attempt to allot parcel out of it to others, has ceased to be a licensee?

8 Whether the defendants terminated the tenancy of the plaintiff and took possession of the land as landlord after forfeiture of the plaintiff's rights?

9. If the right of the plaintiff, if any, terminated by his own acts viz., (1) denial of his landlord's title, (2) Use of the land for purpose inconsistent with the purpose of the tenancy, (3) by the destruction of the house about 30 years ago".

At the stage of the trial and particularly during the arguments before the learned trial Judge, the learned Counsel for the plaintiff sought to argue that the plaintiff had a permanent transferable and heritable right in the land as a lessee, i.e., he was a permanent lessee the origin of which was unknown. The learned Judge, however, construed the plaint as not permitting such a case to be made out and that the choice was between the plaintiff's full title as owner which he held had not been established or a title as a licensee or a non-occupancy tenant which was the entry in the revenue register. On this reasoning the learned trial Judge decided issue No. 7 in favour of the defendants. If the plaintiff was thus a licensee of the site of the bungalow and a tenant at will in respect of the rest of the land the learned trial Judge held that by the written statement that he filed on March 25, 1949 he had repudiated the title of the landlord--an attitude which had been repeated in the oral evidence in Court at the trial. He, therefore, held that the plaintiff had incurred forfeiture and that the Government were therefore entitled to revoke the licence and put an end to his rights. The learned trial Judge also referred to the application that was made for amending the plaint filed in May, 1950, but held that this would not help the plaintiff for avoiding the effect of the forfeiture he had already incurred. The result was that on the finding the plaintiff had incurred a forfeiture and the tenancy was properly terminated the suit was directed to be dismissed.

8. From this judgment and decree the plaintiff-filed an appeal to the High Court. In the appeal only two points were urged on his behalf. The first was that the learned trial judge was wrong in negativing his case that he was a permanent lessee with heritable and transferable rights, of the land in suit. In support of this position it was urged "that the manner of dealing with the property, the fact that the giant was lost in antiquity and the other circumstances of the case clearly indicated that the plaintiff held a permanent lease with heritable" and transferable rights". An objection was raised on behalf of the State who was the only contesting respondent before that Court (the Municipal Board who was impleaded as the first defendant having chosen to remain ex parte) that the plaintiff had come to Court with a statement that he was an owner and wanted a declaration to that effect. The learned Judges, however, construed the plaint as meaning that the plaintiff had prayed for a declaration in the alternative and that, at any rate, on the facts proved he was prima facie a permanent lessee who had a right to lease out the plots. It will be noticed that this was the subject-matter of the controversy between the plaintiff and the Municipal Board when the latter body invoked the aid of the Government to put an end to the lease. The learned Judges also referred to the application filed by the plaintiff on May 15, 1950 to amend his prayer and praying in specific terms for the relief that the plaintiff "was the owner with a permanent heritable and transferable right to property of which the Government had a paramount proprietary title" The learned Judges stated that they would not be prepared to accept the finding of the learned trial Judge on the point whether, in fact, the plaintiff was a permanent lessee who had a right to sub-lease the property which he held under the lease. In this connection they observed as follows:

> "We were, therefore, inclined to remand this case for a proper determination of the fact as to whether the plaintiff was a permanent lessee or an ordinary lessee or a mere licensee. We had come to this opinion only because we found that repeated attempts made by the plaintiff to summon certain documents from the defendants, particularly the defendant No. 1 had been improperly blocked. We were taken through three applications 100 Ga, 101 Ga and 103 Ga, the last having been filed on the 22nd July, 1950. We are satisfied with the manner in which these applications had been dealt with. We are aware that the plaintiff had not included these documents in any list of documents submitted by him either with the plaint or immediately after the issues within the time granted to him. There could, however, be no doubt as to the genuineness of these documents as they were being summoned from the defendant No. 1. There was hardly any question of proof, as the documents were coming from the possession of defendant No. 1 and they would have been immediately exhibited in the case. We arc of opinion that in the circum-stances the learned Civil Judge should have allowed the summoning of these papers on payment of costs and should have admitted them as evidence in the case and whatever costs be considered just and proper could be imposed on the plaintiff in respect of each document."

The result of this was that on this main point which was urged by the plaintiff the learned Judges gave no definite finding themselves but were not prepared to accept as correct the finding of the trial Judge negativing the plaintiff's claim that he was a permanent lessee and holding that he was merely a licensee or a tenant at will.

9. It would have been noticed that the learned trial Judge had recorded a finding that the plaintiff had denied the title of the landlord and having thus incurred a forfeiture, had no further interest in the suit property as to obtain the relief of declaration in any form that he wanted. The second point that was urged before the learned Judges of the High Court was that the trial Judge was in error in holding that the plaintiff had denied the title of the landlord by the statements which were relied upon for that purpose--both having regard to the circumstances in which they were made as well as their tenor. Learned Counsel for the State stated that he was prepared to argue the case on the basis that the plaintiff was a permanent lessee with heritable and transferable rights and contended that oven if it were so, the tenancy had been forfeited and determined and therefore there was no necessity for a remand. The learned Judges thereafter considered the terms of Ex. A-18 which was the application made to the Compensation Officer in the land acquisition proceedings and considered that it contained an unequivocal assertion of the plaintiffs absolute and proprietary right in the land and an unambiguous denial of the title of the landlord and rejecting the submission of the plaintiff as regards the construction and legal effect of Ex. A-18 dismissed the appeal holding that by the statements contained in that application the plaintiff had clearly denied the title of the landlord and thus incurred forfeiture in passing we might mention that the suit sought a declaration as to the title of the plaintiff to the entirety of plot 160 of 16 bighas, whereas the Land Acquisition proceedings and Ex. A-18 filed in the said proceedings related to a smaller extent of 2.68 acres out of the said plot. This was either not noticed or considered immaterial.

10. It is the correctness of this judgment of the High Court that is canvassed in the appeal before us. Before we proceed to state the points urged before us, it is necessary to mention that the arguments before us have proceeded on the assumption that the appellant was a permanent lessee with heritable and transferable rights. We are saying this because the learned Judges of the High Court have not recorded any definite finding on this issue of fact but have expressed the opinion that if it were necessary to determine that question the matter would have to be remanded to the trial court after summoning the documents which are referred to in the passage extracted earlier. We would only add that we entirely agree with the observations of the learned Judges on this matter.

11. Section 111(g) embodies in statutory form this incident of a tenancy and it reads:

> "a lease of immoveable property would be determined by forfeiture in case the lessee renounces this character as such by setting up a title in a third person or by claiming title in himself", to quote the material words. No doubt, the provisions of the Transfer of Property Act were not, it is stated in terms, applicable to the area in question, but it has been laid down that the principles embodied in Section 111(g) are equally applicable to tenancies to which the Act does not apply on the ground of the same being in consonance with justice, equity and good con-science (See Maharaja of Jeypore v. Rukmini Pattamahadevi, 46 Ind App 109: (AIR 1919 PC 1). It was also clear law that permanent tenancies are within the rule and are liable to forfeiture if there is a disclaimer of the tenancy or a denial of the landlord's title. That the disclaimer or the repudiation of the landlord's title must be clear and unequivocal and made to the knowledge of the landlord is also beyond dispute. The question then is whether the learned Judges of the High Court were right in holding that by the

> statement filed on behalf of the appellant before the Land Acquisition Officer marked as Ex. A-18 the appellant: had renounced his character as lessee claiming title in himself. For answering it we have to consider whether on the terms of Ex. A-18: (1) the appellant had asserted an ownership in himself repudiating the title of the Government, and (2) whether the terms of this assertion of ownership are clear and unequivocal.

12. That the land-plot No. 1444--held by the appellant was nazul land is not in controversy, nor did the respondent controvert this. It was subject to the payment of a nominal annual rent of Rs. 45/14/- which has been unvarying as long as is known. There was no document evidencing the grant of the lease so as to enable the ascertainment of the terms upon which it was granted, in other words, its origin was shrouded in obsecurity. There was, however, evidence to show that a bungalow was constructed on a part of the property now in dispute which was originally owned by one Mr. Paton and then by one Captain Marett from whom the appellant's predecessor purchased it in the year 1870. By a deed dated August 8, 1918 an ancestor of the appellant who was the then Taluqdar of Mahmudabad, certain properties including that now in suit were annexed to the Taluqdar) and declared subject to the Oudh Estates Act, 1869 on which the main Taluqdari was held. This deed was executed under the terms of Section 32A of: the Oudh Estates Act, 1869 which was introduced into the enactment by U.P. Act 3 of 1910. Section 32A reads, to quote the material words:

> "Any Taluqdar may, by a registered instrument bearing a non-judicial stamp of Rs. 15 signed by him and attested by two or more witnesses, declare the immovable property situated in the United Provinces in which he has a separate permanent, heritable and transferable right, and which is specified in the instrument is a part of his estate for the purposes of this Act.
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> Such declaration shall take effect from the date of the registration thereof."

This deed was presented for registration and was registered on August 12, 19i8. We are not now concerned with the legal effect of this declaration or to ascertain whether by reason thereof the lease of the property attained the. character of permanency with hereditary and transferable rights in the hands of the then Talukdar or his successors but we are reciting this anterior history regarding which there is no dispute for the purpose of appreciating the significance of the claim made in Ex. A-18, and in ascertaining whether it amounted to a repudiation of the landlord's title.

13. There are three paragraphs in Ex. A-18 which have been relied on by the learned Judges in this connection and these are paragraphs 2, 5 and 8. Ex. A-18, as stated earlier, was an application to the Compensation Officer in respect of the compensation awardable to the appellant for the property in suit which had been acquired tinder Act 26 of 1948 for the rehabilitation of refugees. Two prayers were made in it and they wore: (1) that the determination of the compensation might be deferred pending the suit which he proposed to file for a declaration regarding the nature of his interest in the land. (2) in the alternative he prayed that a sum of Rs. 52,900 might be paid to him as compensation for the acquired plot. Paragraph 2 of this application ran:

> "The land acquired is part of Jali Kothi or Bungalow Marett Saheb, belonging to me, in the Civil Lines, Sitapur."

After reciting in paragraph 4 the declaration made by his ancestor under Section 32A to which we have adverted, he proceeded in paragraph 5 to state:

> "That I and my ancestors have been owners of the land and have been exercising permanent heritable' and transferable rights in this land, openly and to the knowledge and consent of the Government."

Before proceeding to paragraph 8 it would be useful to summarize the intervening two paragraphs. In paragraph 6 he set out his having plotted out the land to various tenants for being built on and in paragraph 7 he said:

> "Under a misconception of my rights some wrong entries have been made perhaps by the Patwari without any official order. (The reference here is to his being recorded as a non-occupancy tenant of the land). On the same basis the Municipal Board, Sitapur, disputed my rights of transfer or lease in September, 1947, requested the Government to hand over possession of the plot to the Municipal Board and ultimately persuaded the Government to acquire the land for rehabilitation of refugees, though other vacant lands were available for the said purposes."

Paragraph 8 stated:

> "That on account or the conduct of the Municipal Board, Sitapur I have been forced to file a suit in the civil court for declaration of my title in respect of this land."

In paragraph 9 he prayed that the determination of the amount of compensation might be deferred till the decision of the Civil Court, after pointing out that the Government had already taken possession of the land and houses had been constructed on it for refugees and that the delay in the determination of the compensation would not prejudice anyone. He then proceeded to make a claim for Rs. 52,900 if the officer was not prepared to defer consideration of the claim.

14. Now to revert to paragraphs 2, 5 and 8 which the learned Judges considered amounted to a clear and unequivocal denial of the Government's title, they referred in para 2 to the words "belonging to me" as constituting a disclaimer of the tenancy and a repudiation of the landlord's title. We do not agree that this is the only or proper construction which the words are capable of bearing. Though the word "belonging" no doubt is capable of denoting an absolute title, is nevertheless not confined to connoting that sense. Even possession of an interest less than that of full ownership could be signified by that word. In Webster "belong to" is explained as meaning inter alia "to be owned by, be the possession of". The precise sense which the word was meant to convey can therefore be gathered only by reading the document as a whole and adverting to the context in which it occurs. In Prag Narain v. Kadir Bakhsh, ILR 35 All 145 a tenant effected a mortgage of the premises including the land which he held on lease and on which he had constructed buildings and in the mortgage deed

employed the following words to describe the property mortgaged "house with the lands which belong to me". The landlord of the site claimed that this amounted to a denial of his title. The Court, however, held that the words were not unambiguous and as the denial was not unequivocal it did not entail a forfeiture. In the case before us there had been a bungalow constructed on the property and learned Counsel for the respondent con-ceded that if that bungalow were in existence and the property had been referred to as "my bungalow' or "bungalow belonging to me" it would not be a disclaimer or rather the denial would not be unequivocal but he urged that if the same terms were used in respect not of the super-structure and the land together but of the site alone on which the super-structure stood, the interpretation of the assertion would be different. It is in this context that the circumstances of the tenancy become material for determining the nature of the assertion made. Here was a tenancy whose origin was not definitely known. The lessee had constructed super-structures and the appellant and his ancestors had been in enjoyment of the property for over three quarters of a century. There had been transfers effected of the property and the same had been the subject of inheritance. There had been a document in which there had been a public assertion that though it was Government land for which a nominal rent was payable, they had "a permanent heritable and transferable right". Notwithstanding enjoyment of this nature with public assertions of the type, when the property was sought to be enjoyed by sub-leasing it to others for construction of houses the municipality had come in and asserted rights in denial of these claims. It is with that background that one has to judge as to whether when the tenant stated that the land "belonged to him" he was asserting merely the substantial character of his interest in the property or was disclaiming the reversionary interests of Government or its right to demand and receive a fixed rent in respect of the property. We consider that the words employed did not, in the circumstances, amount to a disclaimer or a renunciation of the tenancy.

15. Coming next to paragraph 5, what we have stated in regard to paragraph 2 and the use of the expression "belonging to me" occurring there would in our opinion apply equally to the use of the word 'owner' in this paragraph. The reference to the appellant and his ancestors exercising permanent heritable and transferable rights to the land is an obvious reference to the deed dated August 8, 1918 executed under Section 32A of the Oudh Estates Act, 1869 in which also the same words occur. Though divorced from the context these words are capable of being construed as an assertion of absolute ownership, they cannot, in our opinion, in the setting in which they occur and bearing in mind the history of the enjoyment by the appellant and his predecessors of this property, be deemed an assertion unequivocal in nature of absolute ownership sufficient to entail a forfeiture of a permanent tenancy of this nature. In this connection it might be noticed that this enjoyment is stated to be with the consent of the Government. If the assertion were understood to be as an absolute owner in derogation of the rights of the Government as landlord, the reference to the consent of Government to such an enjoyment would be wholly inappropriate. Consent would have relevance only if the Government had interest in the property and we, therefore, understand the passage to mean that the permanent, transferable and heritable, particularly the right to transfer which was being denied by the municipality, was stated to have been enjoyed with the consent of the Government. That is an additional reason for our holding that at the worst the assertion was not unequivocal as to entail a forfeiture of the tenancy.

16. What remains for consideration is paragraph 8 and the reference there to the suit for declaration "of my title in respect, of this land". This passage is, if anything, less capable of the construction sought to be put upon it by the respondent that it amounts to an assertion repudiating the title of the landlord. If we are correct in the conclusion as regards paragraphs 2 and 5 it would follow that the title of which it seeks a declaration is such title as he has in the suit property. A title as a permanent lessee with a heritable and transferable right in the property is as much a title as one with full ownership and if he stated that he was seeking a declaration from the Civil Court of his title as permanent lessee of such a character, there would, of course, be no question of his setting up a title in himself in derogation of the landlord's.

17. Learned Counsel for the respondent placed before us certain English decisions, particularly Vivian v. Moat, (1881) 16 Ch D 730 and Warner v. Sampson, in support of his submissions. In the former case a claim by a tenant disputing the right of the landlord to increase the rent which, on the facts, he was entitled to, was held to be a disclaimer of the tenancy entailing a forfeiture. The rule enunciated in (1881) 16 Ch D 730 is however inapplicable to India, besides as pointed out by Sir Dinshaw Mulla the tenant's assertion in (1881) 16 Ch D 730 was to hold at customary rent which was held to involve a denial of the relationship of landlord and tenant. As Lord Phillimore stated in 46 Ind App 109: (AIR 1919 PC 1):

> "Now, the rule of English law is that a tenant will forfeit his holding if he denies his landlord's title in clear unmistakable terms, whether by matter of record, or by certain matters in pais. The qualification that the denial must be in clear and unmistakable terms has not unfrequently been applied by the Courts in India, which have held that where a tenant admits that he does hold as a tenant of the person who claims to be his landlord, but disputes the terms of the tenancy, and sets up terms more favourable to himself, he does not though he fails in establishing a more favourable tenancy, so far deny the landlord's title as to work a forfeiture. Vithu v. Dhondi, ILR 15 Bom 407; Venkaji Krishna Nadkarni v. Lakshman Devji Kandar, ILR 20 Bom 354 (FB); Unhamma Devi v. Vaikunta Hegde, ILR 17 Mad 218; Chinna Narayudu v. Harischendana Deo, ILR 27 Mad 23."

Though the Judicial Committee did not find it necessary to decide the case on this line of reasoning, the Inclination of their opinion is clear, for on page 120 (of Ind App) we have the following:

> "That a tenant who disputes his character as tenant does not thereby forfeit a lease for a term certain is shown by Doed Graves v. Wells, (1889) 10 A and E 427. The doctrine of (1881) 16 Ch. D 730 does not apply to Indian tenures such as the present: Kali Kishen Tagore v. Golam Ali, ILR 13 Cal 3 and Kali Krishna Tag- ore v. Golam Ali, ILR 18 Cal 248; and ILR 15 Bom 407 already cited."

As a fact, there are, besides those referred to by Lord Phillimore, a catena of decisions of High Courts holding that where a tenant claims rights higher than what he was entitled to he does not incur forfeiture (See ILR 32 Bom 78 and Amar Krishna v. Nazir Hasan, ILR 14 Luek 723: (AIR 1989 Oudh 257), to mention a few). In Amar Krishna Narain Singh's case, ILR 14 Luck 728: (AIR 1989

Oudh 257) it was held that by setting up a permanent tenancy right a tenant whose tenancy was not of that nature did not on that account disclaim the title of the landlord as to incur forfeiture.

18. In a Divisional Court held that even by an inadvertent denial in a pleading of the right of the landlord, a tenant would incur forfeiture. We do not consider that this is the law in India, and for the same reason for which (1881) 16 Ch. D. 730 was held inapplicable to this country. We consider the law to be that unless there is a disclaimer or renunciation in clear and unequivocal terms whether the same be in a pleading or in other documents, no forfeiture is incurred.

19. Ex. A-18 was the only document containing the statement of the appellant which was held by the High Court to amount to a disclaimer entailing a forfeiture. Learned Counsel for the respondent, however, drew our attention to statements in a few more documents which he submitted either by themselves amounted to a disclaimer or could be used to clarify the intention of the appellant in the statements or assertions that he made in Ex. A-18. The first one referred to in this connection was Ex. A-19 dated October 2-1, 1949. It would be recalled that in Ex. A-18 the appellant made a claim for Rs. 52,900 as the proper compensation payable to him. The officer by his order dated March 26, 1949 awarded him Rs. 15. Complaining of this award he made a claim for the amount he originally sought, by a reference to the District Judge under Section 11(3) of Act XXVI of 1949 and the application he filed for this purpose was Ex.A-19 in which again the appellant made the two alternative prayers as he had done before the Compensation Officer. The learned District Judge, it may be noticed, by his order dated December 23, 1949 stayed the proceedings before him till the disposal of the present suit The averments made in support of the reference were identical with those in Ex. A-18 which he had filed before the Compensation Officer on March 25, 1949. Paragraph 2 of Ex. A-19 stated that the land acquired was a part of the Jali Kothi or Bangla Marett Saheb "belonging to the claimant" and was situated in the heart of the city. Paragraph 6 which corresponds to paragraph 5 of Ex. A-18 ran:

> "The claimant and his ancestors have been owners of the land and have been exercising permanent heritable and transferable rights in this (as in other lands mentioned in para 4 above) openly and to the knowledge and consent of the Government for more than sixty years", and in paragraph 18 he said:
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> "The claimant was then forced to file a declaratory suit No. 24 of 1949 against the U.P. Government and the Municipal Board, Sitapur that the rights of the claimant in the whole land acquired requisitioned and left out are those of an owner or of a permanent lessee." This, if anything, is less unambiguous and unequivocal than the statements contained in Ex. A-18. Learned Counsel next referred us to the terms of the plaint. Here again, the only assertions made were that the plaintiff and his ancestors had been in possession of the bungalow and its compound since the last 79 years; that the plaintiff and his ancestors had been owning a bungalow and other constructions and holding the premises with permanent heritable and transferable rights, that the plaintiff and his predecessors had been exercising heritable and transferable rights in the land in dispute openly and to the knowledge of the Government and the Municipal Board and in any view of the case had acquired such

> rights by adverse possession. In paragraph 20 the plaintiff prayed that it may be declared that the plaintiff had a permanent heritable and transferable right as an owner and, in any case, as a permanent lessee for building purposes and he had the right to lease out the same. We do not consider that the position of the respondent is improved by the plaint or that it takes us beyond the assertions in Ex. A-18 which we have considered in detail. If one proceeds on the basis that the appellant was a permanent tenant, holding at a nominal and invariable rent, and had a transferable and heritable interest in the plot, none of the allegations in Exs. A-18, A-19 or the plaint go beyond it or purport to deny the landlord the right to the reversionary interest or to demand and receive the fixed rental for the property. Mr. Agarwala referred us, besides, to the oral evidence of the manager of the appellant who stated that the plaintiffs believed that they were the owners. We do not think that this assists the respondent.

20. The one fact that remains is that rent was being continuously paid right up to March, 1947 and the appellant never raised a dispute as regards his liability to pay rent. This was stressed before the learned judges of the High Court as pointing to the assertion made by the appellant not amounting to a claim to full ownership in himself. The learned Judges, however, dismissed this argument on the ground that it was not proved that rent was paid up to 1949. Mr. Aggarwala made the same submission to us. As regards this matter, however, two things stand out prominently: The first is what we have already stated that the appellant never disputed his liability to pay rent. The next is that as early as September 24, 1947 the Municipal Board objecting to the subleases effected by the appellant applied to the Government to terminate the lease and the Government also appear to have concurred with the municipality in this matter. The notification for acquisition of the suit plots was published on December 3, 1948 and immediately thereafter possession appears to have been taken as is recited in Ex. A-18 which we have extracted earlier. In these circumstances, we do not consider that any inference adverse to the appellant could be drawn from his not tendering the rent for the period up to the date on which possession was taken.

21. We, therefore, hold that the learned Judges were in error in holding that the appellant had incurred a forfeiture of his tenancy, assuming it was a permanent tenancy, by the claim that he made in Ex. A-18 and the other documents to which we have referred so as to justify the forfeiture which the Government claimed to enforce by Ex. A-15.

22. The appeal is accordingly allowed and the matter remanded to the High Court for being dealt with in accordance with law. The appellant would be entitled to his costs here and in the High Court. The costs to be incurred in future will bar subject to the directions of the High Court.