Dr. H. S. Rikhy And Others vs The New Delhi Municipal Committee on 13 September, 1961

Equivalent citations: 1962 AIR 554, 1962 SCR SUPL. (3) 604, AIR 1962 SUPREME COURT 554

Author: Bhuvneshwar P. Sinha

Bench: Bhuvneshwar P. Sinha, P.B. Gajendragadkar, Raghubar Dayal

PETITIONER:
DR. H. S. RIKHY AND OTHERS

Vs.

RESPONDENT:
THE NEW DELHI MUNICIPAL COMMITTEE

DATE OF JUDGMENT:
13/09/1961

BENCH:
SINHA, BHUVNESHWAR P.(CJ)
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GAJENDRAGADKAR, P.B.
DAYAL, RAGHUBAR

CITATION:
1962 AIR 554 1962 SCR Supl. (3) 604

ACT:
Rent control--Fixation of standard rent-Maintainability of application-Relation of land and tenant, if esseatial-Delhi and Ajmer Rent Control Act, 1952 (38 of 1952), ss. 2(c), 2(g), 2(j), 8, 38-Punjab Municipal Act, 1911 (Punjab III of 1911), ss.18, 47.

HEADNOTE:
The respondent Municipal Committee, in pursuance of a resolution passed by it, called for tenders and put the respondents, who made the highest offers, into possession of certain shops and premises on amounts varying from Rs. 135-8-0 to Rs.520 payable for every month. After they had continued in possession for some years on payment of the said amounts, described as rents in the receipts, the

appellants applied under s.8 of the Delhi and Ajmer Rent Control Act, 1952, for standardisation of rent. There were admittedly no contracts of transfer in writing signed and attested in the manner prescribed by S.47 of' the Punjab Municipal Act, 191 1. The respondent took the preliminary objection that the applications were not maintainable as there was no relation of landlord and tenant between the parties within the meaning of the Rent Control Act. The trial court found in favour of the appellants but the High Court in the exercise of its revisional jurisdiction set aside the decision of the trial court.

Held, that it was evident from the definitions of the terms landlord', 'Premises and tenant contained in ss. 2(c), 2(g) and 2(j) that the Delhi and Ajmer Rent Control Act, 1952 , that the Act applied only to such letting of premises as created an interest in the property, whatever its duration, and gave rise to the relation of landlord and tenant between the parties.

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It was not correct to say that the letting' contemplated by the Act included not merely a transfer to a tenant but also to a licensee, or that the use of the word 'rent' in receipts precluded the landlord from pleading that there was no relation of landlord and tenant between the parties.

Although s. 18 of the Punjab Municipal Act, 191 1, vested power in a Municipal Committee to enter into contracts for the transfer of its properties, the mandatory provisions of s.47 laid down the essential conditions of the exercise of it. Those conditions were not in any way inconsistent with the provisions of the Rent Control Act and did not come within the mischief of s.38 of that Act.

Crook v. Corporation of Seaford, (1871) L.R. 6 Ch. 551 and Deo v. Taniere (1848) 116 E.R. 1144, held inapplicable.

H. Young & Co. v. The Mayor and Corporation of Royal Leamington Spa, (1883) L.R. 8 App. Cas. 517, referred to.

Where a statute makes a specific provision that a body corporate has to act in a particular manner that provision is mandatory, and not directory and must be strictly followed.

Consequently, in the instant cases, no relation of landlord and tenant was created between the parties and the applications must fail.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 30 to 32 of 1959.

Appeals from the judgment and order dated April 25, 1956, of the' Punjab High Court in Civil Revision Applications Nos. 186, 187 and 203 of 1954.

M. C. Setalvad, Attorney-General for India, Anoop Singh and R. Gopalakrishnan, for the appellants. C. K. Daphtary, Solicitor-General of India R. Ganapathi Iyer and G. Gopalakrishnaa, for the respondents. 1961. September 13. The Judgment of the Court was delivered by SINHA, C. J.--The question for determination in these three appeals, on certificates 'of fitness granted by the High Court of Punjab under Art. 133(1)(c) of the Constitution, is whether the provisions of S. 8 of the Delhi and Ajmer Rent Control Act (38 of 1952) (which hereinafter will be referred to as the Act) apply to the transactions in question between the appellants in each case and the New Delhi Municipal Committee (which for the sake of (tee brevity we shall call the Committee' in the course of this judgment). It is necessary to state, the following facts in order to bring out the nature and scope of the controversy. It is not necessary to refer in detail to the 'facts of each case separately for the purpose of those appeals. The Committee built in 1945 what is known as the Central Municipal Market Lodi Colony. This Market has 32 shops, with residential flats on 28 of them. In April 1945, the Committee, in pursuance of a resolution passed by it, invited tenders from intending bidders for those shops and premises. On receipt of tenders, the highest bidders were allotted various shops on rents varying from Es. 135-8-0 to Rs. 520 per mensem. The allottees occupied the shops and the premises in accordance with the allotments made by the Committee and continued to pay the respective amounts, which may be characterised as rents, without prejudice to our decision on the question whether it was legally a rent', because as will presently appear, one of the controversies between the parties is whether it is 'rent' within the meaning of the Act. Towards the end of 1952, 30 of the occupants filed applications under s. 8 of the Act praying for the fixation of standard rent in respect of the premises in their respective occupation. The Committee raised a preliminary objection to the maintainability of the aforesaid applications on the ground that there was no relationship of landlord and tenant between the applicants and the Committee, within the meaning of the Act. The Trial Court accordingly framed the following issue for determination in the first instance :

> "Whether the relationship of tenant and landlord exists between the parties, therefore, those applications are competent and the Court has jurisdiction to fix the standard rent?"

The learned Subordinate Judge, who dealt with these cases in the first instance, came to the conclusion that the several applicants were tenants within the meaning of the Act, and that, therefore, the applications were competent. The committee moved the High Court in its revisional jurisdiction, and the learned Chief Justice, sitting singly, referred those cases to be heard by a Division Bench, as they raised questions of general importance. The matter was thus heard by a Division Bench composed of G. D. Khosla and Dulat, JJ. The High Court, by its judgment dated April 25, 1956, set aside the aforesaid finding of the Trial Court, but made no order as to costs. The High Court in an elaborate judgment, on an examination of the relevant provisions of the Act, came to the conclusion that there was no relationship of landlord and tenant, between the parties, inasmuch as there was no letting', there being no properly executed lease, and the doctrine of part performance was not attracted to the facts and circumstances of the case. For coming to the conclusion that there was no valid lease between the parties, the High Court relied upon the provisions of s. 47 of the Punjab Municipal Act (Punjab Act III of 1911). The High Court also negatived the contention that the Committee was estopped from questioning the status of the applicants as tenants, having all along admittedly accepted rent from them. The appellants moved

the High Court and obtained the necessary certificates of fitness for Coming up in appeal to this Court. The certificates of the High Court are dated October 28, 1957. That is how the matter has come before this Court.

It has been argued on behalf of the appellants that the Transfer of Property Act does not apply to the transactions in question, and that therefore, the High Court was not justified in insisting upon a registered lease, or even a written lease, executed between the parties. It was enough that the tenants in each case had given a written Kabuliyat from which the terms of the respective tenancies could lee be ascertained. It was also contended that the High Court was in error in relying upon the provisions of s. 47 of the Punjab Municipal Act which, it was contended, was subject to the provisions of the Act, in view of the overriding provisions of s. 38 of the Act. It was further contended that the definitions of landlord' [s. 2(c)], of 'premises'[s. 2(g)]. and of tenant' [s. 2 (j)] in the Act were comprehensive enough to take in the transactions between the appellants and the Committee. Reference was also made to s. 3 of the Act to show that a public body like the Committee was not intended to be excluded from the opt-ration of the Act.

On the other hand, the learned Solicitor General, appearing for the Committee, contended that the essential element of 'letting' becomes apparent from the consideration of the provisions of the Act, with particular reference to the definitions of landlord', 'Premises' and 'tenant'. His contention was that the key word 'letting' should be equated with the creation of an interest in immovable property by a valid contract; hence, if there was no valid contract, there was no transfer of property, and, therefore, no letting. If there was no letting, the relationship of landlord and tenant was not created between the parties and the amount received by the Committee as rent was legally not rent in the strict sense of the term. Though the Act (lid not prescribe any form of 'letting', the provisions of s. 47 of the Municipal Act applied, and as the provisions of that section are not in direct conflict with any of the provisions of the Act, there was no inconsistency between them. That being so S. 38 of the Act was 'out the way of the Committee. The Committee, being a corporation, has no capacity to contract or to transfer property except in accordance with the provisions of s. 47.

Admittedly the provisions of s. 47 have not been complied with. Therefore, the,, Committee is not bound to recognise the transactions in question as creating an interest in immovable property; there being no interest in immovable property in favour of the appellants, they cannot be called 'tenants' within the meaning of the Act, and' as only a tenant can invoke the provisions of s. 8, the applications must be held to be incompetent. There could be no question of estoppel because both parties knew that under the- law there had to be'& transfer of property by the Committee in-accordance with the provisions of s. 47 of the Municipal Act. It is well settled law that there cannot be an estoppel against the provisions of a Statute. The question whether the petitions under s. 8 of the Act were competent, it is common ground must depend on whether or not there was relation. ship. of. landlord' and tenant between the parties The learned Attorney General, who appeared in. support of these appeals contended in the first place, that:the definitions of landlord', premises,. and ,tenant' in s. 2, cls.(c), (g) and (j) respectively, of the Act make it clear that the person for, the time. being receiving rent is the landlord and the, person who is; paying the rent is the tenant of the premises. These definitions are as follows:

> "landlord' means a person who, for the time being is receiving, or is entitled to receive the rent of any premises whether on his own account or on account of, or on behalf of, or for the benefit of, any other person or as a, trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to;. receive the rent, if the premises were let to a tenant;... 'premises' .'moans any, building or Part of a buildings which is., or is intended' to be let separately for use as residence or for commercial use or for any other purpose, and includes-
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> (i) the garden grounds and outhouses if any, appertaining to such building or part of a building ;
>
> (ii) any furniture supplied by the landlord for use in Such building or part of a building;

but does not include a room in a, hotel or lodging house...

'tenant' means any person by whom or on whose account rent is payable for any premises and includes such sub-tenants and other persons as have derived title under a tenant under the provisions of any law before the commencement of this Act...".

The argument is that the Act has been enacted ,to provide; for the control of rents and evictions' and that in making these provisions for safeguarding the interests of tenants under the Act the provisions of other enactments relating to the creation of the, relationship of landlord and tenant and regulating the incidence of tenancy and grounds of eviction, the Act has provided for a simple rule that without paying any regard to formalities, the fact of receiving rent by a person Constitutes him the landlord and the payer of the rent the tenant, within the meaning of the Act. The Act does not stop to consider whether there is a lease, and if so, what are the terms contained in the lease regulating the relationship of landlord and tenant, and that if there is any inconsistency between the provisions of the Act and any other law for the time being in force, the former shall prevail, as laid down in s. 38 of the Act. The section reads as follows:

> "The provisions of this act and the rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any, other law for the ; time being in force or in any instrument having effect by virtue of any such law."

With reference to the terms of the section, just quoted, it has been contended, that the provisions of the Transfer of Property Act regulating the grounds of eviction, or even the provisions of the, Municipal Act, particularly s. 47, have no legal effect in so far as they are inconsistent with the provisions of the Act. In this connection it is, asserted that the formalities required by s. 47 of the Municipal Act, in order to invest binding force to the transfer of property or the contract made by. the Committee, are inconsistent with the provisions of the Act, namely, the definitions of landlord' 'tenant' and 'Premises'. With reference to s. 47 of the Municipal Act, it is further contended that the, section does not confer capacity to contract or to transfer property but only prescribes the mode for-., entering into a contract or for making a transfer of property by the Committee, and that

therefore s 47 cannot have the effect of rendering null and void what was done by the Committee, namely, advertising the premises for being allotted to the highest bidders on terms and conditions as contained in the Kabuliyat given by the, tenants. In this connection reliance was placed upon Crook v. Corporation of Seaford (1) and Deo v. Taniere(2). It has also been urged that the letting' contemplated by the Act does not necessarily connote a transfer of property, but simply permitting the tenant to occupy the premises for a sum of money. In other words, even a licensee, as distinguished from a lessee, would come within the purview of the Act. In this con- nection reference was made to the Shorter Oxford Dictionary, which contains the following words, inter alia, under the 'word let':

"to grant the temporary possession and use of in consideration of rent or hire".

(1) (1871) L.R 6 Ch, 551. (2) (1848) 116 E. R. 11.44 If this contention is correct, then there cannot be the, least doubt that a licensee would also come within the ambit of the Act. But we are not prepared to hold that the Act, by its terms, intended to be so comprehensive as to include within its sweep not only tenants properly so called, but also licensees. It is true that the dictionary meaning applies the, term letting' to inducting a tenant and deli- vering possession to him as such, of the premises for a consideration which can be characterized as "rent', or a licensee who has been permitted to occupy the premises for a consideration which may be called 'hire', If the argument is correct, then a person hiring a room in a hotel as a licensee would also come -within the purview of the Act. But the Act, in terms, has excluded a room in a hotel or lodging house from the definition of 'premises'. It was also contended that it was admitted by the respondent that rent *as received and receipts for rent were granted by its agents. The use of the word "rent' is, not conclusive of the matter. It may be used in the legal sense of recompense paid by the tenant to the landlord for the exclusive possession of premises occupied by him. It may also be used in the generic, sense, without importing the legal significance aforesaid, of compensation for use and occupation. 'Rent' in the legal sense can only be reserved on a demise of immovable property. Reference may be made in this connection to paragraphs II 93 and 11 94 of Halsbury's Laws of England (Third Edition, Vol. 23) at pages 536-537. Hence, the use of the term -,rent' cannot preclude the landlord from pleading that, there was no relationship of landlord and tenant. The -question must, therefore, depend upon whether or not there was a relationship of landlord and tenant in the sense that there was a transfer of interest by the landlord in favour of the tenant.

In our opinion, the Act applies only to that species of 'letting' by which there relationship of land-

lord and tenant is created, that is to say, by which an interest in the property-, however limited in duration, is created.

Having held that the Act applies to 'letting' which creates an interest in immovable' property we have to determine the question whether in these cases there was a contract creating such a relation. ship. Now, under the Punjab Municipal Act-, s. 18, a Committee is a corporate body with perpetual succession and a common seal, with power to acquire and hold property and to transfer any property held by it "subject to the provision of this Act, or of any rules thereunder". Section 18, therefore, contains the authorisation in favour of the committee to enter into contracts and to

transfer property belonging to it. This power is subject to the other provisions of the Act. Thus, in so far as the Committee's power to enter into a contract or to transfer a property is concerned the power may be delegated in accordance with the provisions of s. 46. The contract to transfer property has to satisfy the conditions laid down in s. 46 (2) of the Municipal Act if the value or amount thereof exceeds Rs. 500. No such contract can be made until it has been sanctioned at a meeting of the Committee. That condition has been satisfied in these cases. But we have to consider he provisions of s. 47 which have been very strongly relied upon on behalf of the Committee. The section is in these terms :

> "47. (1) Every contract made by or on behalf of the Committee of any municipality of the first class whereof the value or amount exceeds one hundred rupees,, and made by or on behalf of the Committee of any municipality of the second and third class whereof the value or amount exceeds fifty rupees shall be in writing, and must be signed by two members, of whom the president or a vice president shall be one, and countersigned by the secretary:
>
> Provided that, when the power of entering into any contract on behalf of the committee has been delegated under the last foregoing section, the signature or signatures of the member or members to whom the power has been delegated shall be sufficient. (2) Every transfer of immovable property belonging to any committee, must be made, by an instrument in writing, executed by the president or vice-president, and by at least two other members of committee whose executions thereof shall be attested by the secretary.
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> (3) No contract or transfer of the des-

cription mentioned in this section executed otherwise than in conformity with the pro-

visions of this section shall be binding on the committee."

Now in order that the transfer of the property in ,question should be binding on the Committee, it was essential that it should have been made by an instrument in writing executed by the President or the Vice-President and at least two other members of the Committee, and the execution by them should have been attested by the Secretary. If these conditions are not fulfilled, the contract of transfer shall not be binding on the Committee. But it has been contended on behalf of the appellants that the noncompliance with the provisions aforesaid of s. 47, quoted above, would not render the contract of transfer of property void but only voidable. In other words, where the actings of the parties have given effect to the transactions, as in the instant cases by delivery of possession of the pro. Perty by the Committee and payment of the rent 'by" the appellants, the absence of formalities would not render the transactions of no legal effect But it has to be noted that it was not contended on behalf of appellants that the provisions of s.47(3) of the Municipal Act, are not mandatory and are merely directory.. Such an argument was not 'and could not have been advanced, because it is settled Law. that. the provisions of a Statute in those peremptory terms could not but be construed as mandatory.

But the learned counsel for the appellants placed a great deal of reliance on the decisions: in the cases of Crook v. Corporation of Seaford (1) and Deo v. Taniere (2). In the first case, the suit was for specific performance of' a contract by the- Corporation which was evidenced by a resolution of the Corporation, to let to the plaintiff a piece of land the boundaries of which had not been fully determined. though there was no contract under seal, Crook pursuance of the contract built a wall and terrace on parts of the land in question. The Corporation brought a suit for ejectment, and the plaintiff thereupon filed a bill in Chancery for specific performance. It was held by the Lord Chancellor, Lord Hatherley, confirming the decision of the Vice-Chancellor, that though the agreement was not under seal, the corporation, was bound by acquiescence and must perform the agreement to grant the lease. It must be remembered that was a suit to obtain a lease from the grantor, the Corporation, that is to say, it was an action in equity, and the Court of Equity held, in the words of the Lord Chancellor, that "at all events, a Court, of Equity could not allow the ejectment to proceed after the plaintiff had spent so much money on 'the wall". The decision was, therefore, explicitly based on. the doctrine of 'Standing by'. In that case there is no reference to any statute., the terms of which could said to have been infringed. In the second case [Deo V. Taniere (2)] again there was no question of the infringement of any. mandatory provision of a Parliamentary statute. That is the case of a grant of lease for 99 years, omitting a covenant to build. It was held, that whether (1) (1871) L.R. 6 Ch. 551. (2) (1848) 116 E.R. 1144.

the lease was only voidable, or void, receipt of rent without proof of any instrument under seal could raise a presumption of a demise from seal to year. It is thus clear that neither of those cases, strongly relied upon by the counsel for the appellant is an authority for the provisions that where the statue makes it obligatory that there should be a contract under seal, the absence of such a contract could be cured by mere receipt of rent. We have here to determine whether the provisions of a. 47 of the Municipal Act prevent the committee from entering into a 'contract or making a transfer of property without complying with the conditions laid down in that section. That the two cases referred to above are no authority on the question now arising for determination in the instant cases is clear from the decision of the House of Lords in Young & Co. v., The Mayor and Corporation of Royal Leamington Spa (1). In that case, their Lordships had to consider the effect of s. 174 of the Public Heath Act, 1875 (38 & 39 Act c. 55) which required that every contract made by an urban authority of the value or amount exceeding pound 50 shall be in writing and sealed with the common seal of the authority. It was hold that the provisions of s. 174 were obligatory and not merely directory and applied to an executed contract of which the urban authority had taken full benefit and had been in enjoyment thereof. That was a case which came before the Queen's Bench Division on a reference. The question referred was whether the absence of the common seal of the Corporation required by a. 174 of the Public Health Act aforesaid WA* fatal to the plaintiff's claim to recover from the Corporation the costs of the works constructed by the, plaintiff at the instance of the Corporation. The decision of the Court of Appeal, composed of Brett, Cotton and Lindley, L. JJ.

(1) (1888) L.R. 8 App. Cas. 517.

confirming the judgment of the Queens Bench Division is reported in. 8 Q.B.D. 579. In the House of Lords, Lord Blackburn made an extensive quotation from the judgment of Lindley, L.J., from which the following passage may be read.

> "The cases on this subject are very numerous and conflicting, and they require review and authoritative exposition by a Court of appeal but, in my opinion, the question thus raised does not require decision in the present case. We have here to construe and apply an Act of Parliament. The Act draws a line between contracts for more than pound 50 and contracts for pound 50 and under. Contracts for not more than pound 50 need not be sealed and can be enforced whether executed or not and without reference to the question whether they could be enforced at common Law by reason of their trivial nature. But contracts for more than pound 50 are positively required to be under seal; and in a case like that before us, if we were to hold the defendants liable to pay for what has been done under the contract. we should in effect be repealing the Act of Parliament and depriving the ratepayers of that protection which Parliament intended to secure for them."

It a pears that in England there is a distinction between contracts made under the Common Law by Municipal Corporations which may not be under seal, and contracts made by them in pursuance, of a statute like the one now under consideration. The following except from the Judgment of Brett, L. J., quoted in the judgment of Lord Blackburn, is instructive from this point of view:

> "I should wish to say that I have come to the same conclusion after weeks spent in attempting to Come to another. However, I come to the same conclusion as Lord Justice Lindley and Lord Justice Cotton in this case, upon the ground that, although this was a municipal corporation, yet in the transaction in question, it was acting as a board of 'health, and that therefore it was bound by the statute, and that as to the construction of that statute we are bound by a former decision of this Court which held that the enactment as to the necessity for a seal is mandatory and not merely directory".

The same distinction is very we I brought out in the following observations of Lord Bramwell at page 528 :

> "As I think-the case turns on the construction of the statute, I have not thought it necessary to go into the doubtful and conflicting cases governed by the Common Law."

It is noteworthy that neither of the two cases discussed above was even referred to at the bar or by their Lordships in the course of their judgment, though many cases appear to have been cited at the bar. That was apparently for the reason that these earlier cases, rather ancient, did not turn upon the construction of any statute like the one we are now considering.

Thus, the provisions of s,47 being mandatory and not merely directory the question which now has to be determined is whether those provisions are inconsistent with any of the provisions of the Act, as contemplated by s. 38 of the Act. It has not been contended before us that there is anything in the Act which in terms is inconsistent with the provisions of s. 47 of the Municipal Act. But it has been contended that such an inconsistency is implicit in the terms of the Act as they appear from the

definitions of landlord', 'premises' and 'tenant'. In our opinion, there is no substance in this contention. We have already pointed' out that those definitions postulate the' relationship of landlord and tenant which can come into existence only by a' transfer of interest in immovable property, in pursuance of a contract. These definitions are entirely silent as to the mode of creating the relationship of landlord and tenant. Therefore, the question is whether the. complete silence as to the mode of creating the relationship between landlord and tenant can be construed as making a "provision, by implication, inconsistent, with the terms of s. 47 of the Municipal Act. In our opinion, the mere absence of such provisions does not create any inconsistency as would attract the application of S. 38 of the Act. It is note- worthy that the provisions of s. 38 of the Act were not relied upon either in the High Court or in the Court of first instance. In those Courts great reliance had been placed on the doctrine of part performance which has now been crystalised in s. 53A of the Transfer of Property Act (IV of 1882) and which in terms cannot apply. Rightly, therefore, no reliance was placed on behalf of the appellants on the provisions of s. 53A of the Transfer of Property Act.

On the question of the validity of the transfer, it is necessary to consider the further argument raised on behalf of the appellants, namely,, that the power of the Committee is contained in s. 18 and not in s. 47 of the Municipal Act, which only lays down the mode of executing contracts and transfer of property, as appears from the marginal note to the section i. e., the words "Mode of Executing Contract and Transfer of Property". It is true that s. 18 contains the power to enter into a contract and to transfer any property held by the Committee, but s. 47. lays down-the' essential conditions of the exercise of the Power and unless those conditions are fulfilled there could be no contract 'and no transfer of property. In this connection, it was further argued that sub s. (3) of s. 47 only says that a, contract or transfer of Property contemplated in the section executed otherwise than in accordance with the provisions of the section shall not be binding on the Committee. Therefore, the argument further is that the contract may not be binding of it the Committee but it is not void. Now, what is the legal significance of the expression shall 'not be binding on the Committee"? It against the Committee, and it is clear beyond doubt that an agreement not enforceable in law is void. It must, therefore, be held that.the provisions of s. 47 aforesaid are essential ingredients of the power contained in s. 18 of the Act.

The same argument was advanced in another Act form, viz., that the effect of s. 47 of the Municipal Act is not to render the transactions in question between the parties entirely void but it was only declared to be not binding an the Committee. In other words, the argument is that a distinction has to be made between acts which are ultra vire's and those for the validity of which certain formalities are. necessary and have not been gone through. This distinction assumes an importance where the rights of third parties have come into existence and those parties tire not expected to know the true facts as to the fulfilment of those formalities. That it is so becomes clear from the following statement of the law in Halsbury's Laws of England (3rd edition, Vol. 15) paragraph 428 at page 227:

> "Distinction between ultra vires and irregular acts. A distinction must be made between acts which are ultra vires and those for the validity of which certain formalities are necessary. In the latter case, persons dealing Without notice of any

> informality ate entitled to presume omnia rite esse acta. Accordingly a company which, possessing the requisite powers, so conducts it self in issuing debentures as to represent to the public that they are legally transferable, cannot set up any irregularity in their issue against an equitable transferee for value who has no reason to suspect it."

In this connection, it is, also convenient here to notice the argument, that the Committee is estopped by its conduct from challenging the 'enforceability of the contract. The answer lo the argument is that where a statute makes a specific provision that a body corporate has to act in a particular manner, and in no other, that provision of law being mandatory and not directory, has to be strictly followed. The statement of the law in paragraph 427 of the same Volume of Halsbury's Laws of England to the' following effect settles the controversy against the appellants:

> "Result must not be ultra vires-A party cannot by representation, I any more than by other means, raise against himself an estoppel so as to create a state of things which he is legally disabled from creating. Thus, a cor- porate or statutory body cannot be estopped from denying that it has 'entered into a contract which it was ultra vires for it to make. No corporate body can be bound by estoppel to do something beyond its powers, or to refrain from doing what it is its duty to do.....
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> In view of these considerations it must be held that there was no relationship of landlord and tenant between the parties and that, therefore, the applications under s. 8 of the Act made by the appellants had been rightly dismissed by the High Court as incompetent. The appeals are accordingly dismissed with costs, one set of hearing fees. Appeals dismissed.