# Hitkarini Sabha, Jabalpur vs The Corporation Of The City Of Jabalpur & ... on 3 May, 1972

## Equivalent citations: 1972 AIR 2017, 1973 SCR (1) 495, AIR 1972 SUPREME COURT 2017, 1973 RENCR 113, 1972 JABLJ 771, 1973 (1) SCR 493, 1972 MPLJ 1077, 1972 SCD 720

## Author: A.N. Grover

## Bench: A.N. Grover, K.S. Hegde

PETITIONER:
HITKARINI SABHA, JABALPUR

Vs.

RESPONDENT:
THE CORPORATION OF THE CITY OF JABALPUR & OTHERS

DATE OF JUDGMENT03/05/1972

BENCH:
GROVER, A.N.
BENCH:
GROVER, A.N.
HEGDE, K.S.

CITATION:
1972 AIR 2017 1973 SCR (1) 495
1972 SCC (3) 325
CITATOR INFO :
D 1991 SC 14 (7)

ACT:
Land Acquisition Act 1894--Apportionment of compensation--Unauthorised lease by Municipal corporation to local College-lease deed Containing renewal clause-Since lease is ineffective renewal clause cannot be taken into consideration for purpose of apportionment-Quantum of compensation-This Court will not interfere when lower courts have taken all factors into consideration.

HEADNOTE:
The Municipal Corporation of Jabalpur purporated to grant a leave of certain land to the appellant Sabha. According to the document the period of lease was 30 years. The

appellant was entitled on the expiry of the lease to, have the same renewed on such terms and conditions as might be agreed between the parties, The appellant made a college hostel on the aforesaid land and had also used the attached ground as playground for students. A portion of the said land was sought to be acquired by the State Government under the Land Acquisition Act, 1894 for constructing the Home Science College. The Collector of Jabbulpur by his award dated July 18, 1955 dealt with the claims filed by the appellant and the Municipal Corporation and assessed the compensation at As. /8/- per sq. ft. Apportionment was made between the appellant and the Corporation on the footing that the appellant was not merely a tenant at will as contended by the Corporation but was a lessee for the terms mentioned in lease. The appellant and the Corporation made applications for reference under s. 18(1) of the Act. The Additional District Judge held that the price should be As. /10/- per. sq ft. and that the appellant and' the Municipal Corporation were entitled to equal compensation. The Corporation and the appellant filed appeals to the High Court. The decision of the Addl. District Judge fixing the price of the land As. /10/- per sq. ft. was affirmed. As regards the dispute regarding apportionment the High Court held that the lease deed having been exempted by the Administrator during the time when the Corporation stood superseded was ineffective to convey the leasehold interest to the appellant. However, the appellant was paying the rent which had been accepted for a long time by the Corporation. there was thus a tenancy by necessary implication. The High Court further held that the lease was to continue for the period of 30 years mentioned in the deed but there was no valid contract for renewal of least-- because the clause relating to that was vague and uncertain. The apportionment was made on acturial basis between the appellant and the Corporation in the ratio of 1038 : 962.In appeal before the Court the quest-ions relating to quantum of compensation and the apportionment between the appellant and the Corporationfell for consideration.

HELD : (1) No lease could be spelt out of the deed dated August 31, 1940 for a period of 30 years containing the renewal clause. If th officer who executed the lease deed had no power to lease out the property in question the grant of the lease was wholly null and void. It is true that by the acceptance of rent from the appellant the relationship of landlord and tennant came into xistence. But that did not show that a lease deed for a period of 30 years with a renewal clause had come into existence. [497E]

Since the lease deed was ineffective the lease could be under the provisions of section 106- of the 'transfer of 'Pro@y Act, only from. mouth

494

to month because the immovable property had not been leased

out for agricultural or manufacturing purpose in which case it would have been from year 'Lo year. Therefore the :contention that the renewal clause was effective and should have been taken into consideration while making the apportionment between the appellant and the Corporation could not be accepted. (The question whether the High Court was right in holding that the period of lease was 30 years was not gone into because the Corporation had filed no appeal against that portion of the decision. [497H]
Dagdulal v. Municipal Committee, Burhar, (19'60) M.P.L.J. 627 and H. V. Ranan v. G. N. Gopat & Ors. A. I. R. 1961 Mys. 29, referred to.
(2) The value which was fixed by the Addl. District Judge and the High Court was fixed by reference to sales of plots of comparable nature. There was no doubt that the High Court had taken all the factors into consideration while as essing the value and there was no reason to interfere in this regard. [499A-C]
Raja Vyigheria Narayana Gajapatiraju v.. The Revenue Divisional Officer Vizagapatam, 66 I.A. 104, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 702 and 703 of 1967.

Appeals from the judgment and order dated September 28, 1960 of the Madhya Pradesh High Court in Misc. First Appeals Nos. 12 and 16 of 1958.

M. C. Chagla, Rameshwar Nath and Swaranjit Ahuja, for the appellant (in both the appeals).

S. T. Desai and D. N. Mukherjee, for respondent No. 1 (in both the appeals).

I. N. Shroff, for respondents Nos. 2 and 3 (in C.A. No. 703 of 1967) and respondent No. 2 (in C.A. No. 702 of 1967). The Judgment of the Court was delivered by Grover, J. These appeals which have been brought by cer- tificates from a common judgment of the Madhya Pradesh High Court arise out of certain acquisition proceedings. The facts may be stated. Plots Nos. 670, 671 and 735 situate in Madan Mahal Extension area, Jabalpur were acquired by the State Government under the Land Acquisition Act 1894, hereinafter called the 'Act', for constructing the Home Science College. In the present appeals we are concerned mainly with Plot No. 670. On August 31, 1940, a deed of lease had been executed on behalf of the Municipal Corporation granting a lease free of premium to the Hitkarini Sabha, Jabalpur, which is the appellant before us. The laese was in respect of 10 Acres of land comprising Plot No. 670 and another strip of land measuring 0.621 Acres as described in the deed and delineated in the plan annexed thereto. The period of the lease was 30 years and the purpose for which the land was to be used was for locating and running the Hitkarini City College. Amongst other terms and conditions the, appellant was to pay a yearly rent of Rs. .5 / , for 1 0 acres and Re. 1 / for the other strip of land besides, paying, and discharging all rates and taxes-etc. The

appellant, on the expiry of the lease, was entitled to have the same renewed on-, such terms and conditions as might be agreed between the parties. The appellant had built a, college hostel on the aforesaid land and had also used the attached ground as playground for students. The Collector of Jabalpur, by his award dated July 18, 1955 dealt with the claims filed by the appellant and the Municipal Corporation and after disposing of certain preliminary objections he assessed the compensation for the lands in all the three plots at As.0/8/-per sq. ft. According to the Collector the appellant was not merely a lessee or tenant-at-will as contended by the Corporation but was a lessee for the term mentioned in the lease-deed dated August 31, 1940, the lease having been made for a specific purpose, i.e. for locating and running a City College. As regards Plot No. 670 the apportionment was made between the appellant The appellant and the Corporation were dissatisfied with the award of the Collector. Applications for reference were made under s. 18 (1) of the Act. The Additional District Judge held that the price should be 10 As. per sq. ft. and that the appellant and the Municipal Corporation were entitled to equal compensation for plot No. 670. The Corporation and the appellant filed appeals to the High Court. The decision of the Additional District Judge, fixing the price of the land at As. 0/8/- per sq. ft. was affirmed. As regards the dispute regarding apportionment the High Court held, following a decision of a Division Bench of the same court in Dagdulal v. Municipal Committee, Burhar(1), that the lease deed having been executed by the Administrator during the time when the Corporation stood superseded was ineffective to convey the lease hold interest to the appellant. However, the appellant had been paving refit at the stipulated rate which had been accepted for a long time by the Corporation. It amounted, therefore, to the creation of a tenancy by necessary implication and the relationship of landlord and tenant came into existence. On the character of tenancy, whether it should be deemed to be from year to year or whether it should be on terms contained in the lease deed, the High Court held that the tenancy continued on the terms contained in the lease deed. The High Court then proceeded to say :-

> "The lease deed in this case was executed on 31- 8 1940 and was for a period of thirty years. It was, therefore to remain in force for 15 years more after the date of acquisition. There is a renewal clause which has been already quoted above. The lessee is entitled for renewal "on such terms and conditions as, may be agreed to between the parties". It appears to. us that the clause (1) 1960 M. P. L. J. 627 is uncertain and vague and does not form a valid contract for renewal of the lease. Normally in a covenant for renewal there is an express agreement that the lease would be continued on the same terms and conditions subject to a reservation that the rent way be enhanced under certain circumstances. In the instant, case, ill the terms and conditions have been left to the agreement of patties which may not take place at all. Although a renewal is contemplated no terms on which it can be granted have been fixed between the parties. Under section 29 of the Indian Contract Act such a contract cannot be enforced., It has been held in Ramaswami v.

Rjajagopala (I.L.R. I I Mad. 260) that a lease whereby a tenant agreed to pay whatever rent the Landlord might fix was void for uncertainty".

The apportionment was made on acturial basis between the appellant and the Corporation in the ratio of 1038 : 962. Before us two matters have been sought to be raised. One one relates to the quantum of compensation awarded by the learned Additional District Judge and the other to the apportionment between the appellant and the Corporation. We shall first deal with apportionment. It has been argued that since the High Court had held that the tenancy continued on the terms contained in the lease deed benefit should have been given of the renewal clause also. The High Court had taken the view that that clause was uncertain and vague and did not form a valid contract for the renewal of the lease. Our attention has been invited to a judgment of the Mysore High Court in H. V. Rajan v. C. N.Gopal & Others.(1) There the relevant portion of the renewal clause was "lessee shall have the option of five years but subject only to such terms and conditions as may be mutually agreed upon". It was observed that ordinarily the renewal clause in a lease deed was an important term of the agreement and the courts would be reluctant to ignore that clause on the ground that it was vague unless on a reasonable construction no meaning could be attached to it. An agreement to renew the lease, without more, must be deemed to be an agreement to renew as per the original terms. Even if the renewal provided was dependent on the agreement between the parties the clause merely provided for an agreement on reasonable terms. If the parties could not agree as to those terms the courts could step in.

In our judgment it is altogether unnecessary to decide the true scope and effect of the renewal clause contained in the deed executed on August 31, 1940. At the time the lease was executed (1) A.I.R. 1961 Mys. 29.

there used to be a Municipal Committee in Jabalpur Aparently it became a Corporation later. The Committee was superseded in-Charge of the Committee Jabalpur as also Secretary of the Municipal Committee had signed the lease on behalf of that Committee. In the decision of the Madhya Pradesh High Court in Dagdulal's(1) case the view had been expressed that so long as Municipal Committee was not reconstituted the ownership of the property stood transferred by operation of law to the State Government and therefore the Administrator had no power whatsoever to sell the property which had vested in the Government. The Additional District Judge had observed that the lease deed had been executed in pursuance of a resolution which had already been passed by the Municipal Committee. The High Court, however, found on the evidence produced before the Additional District Judge that the final resolution passed by the Municipal Committee was only for the grunt of a license and not a lease to the appellant. The deed of lease, therefore, was, held to be ineffective for conveying any lease-hold interest to it. But still the High Court held that the tenancy was to last for a period of thirty years.

We are wholly unable to comprehend how any lease could be spelt out of the deed dated August 31, 1940 for a period of 30 years containing the renewal clause which has already been mentioned. If the officer who executed the lease deed had no power to lease out the property in question the grant of the lease was wholly null and void. It is true that by acceptance of the rent from the appellant the relationship of landlord and tenant came into existence between the parties but Mr. Chagla for the appellant has not been able to show how a lease for a period of 30 years together with a renewal clause could be held to have been created or to have come into existence. It may be mentioned that we are not concerned with the period of 30 years which has already been taken into consideration by

the High Court because no appeal has beep filed on that point by the Corporation. The only matter which requires determination is whether the High Court, while deciding the question of apportionment, should have given due affect to the renewal clause. In our opinion the High Court could riot have done so. If the so called deed of lease dated August 31, 1940 was wholly ineffective and void for the purpose of demising the land for a period of 30 years one could only look at the provisions of the Transfer of Property Act for determining the term for which the tenancy came into existence. Under s. 106 of that Act the ,tenancy, in the present case, could be only from month to month because the immovable property had not been leased out (1) (1960) M..P.L.J. 627.

for agricultural or manufacturing purpose in which case the lease would have been from year to year. We are therefore unable to accede to the contention that the renewal clause in the lease deed dated August 31, 1940 was effective and should have been taken into consideration while making the apportionment between the appellant and the Corporation. The next question relating to quantum can be disposed of shortly. The sole criticism of Mr. Chagla is that the potential value of the plot in question was not taken into consideration. It is true, as pointed out in Raja Vyrigherla Marayana Gajapatiraju v. The Revenue Divisional Officer Vizagapatam(1) that where the land to be valued possesses some unusual or unique features as regards its position or its potentialities the court determining the market value will have to ascertain as best as it can from the materials before it what a willing vendor might reasonably expect to obtain from a willing purchaser for the land in that particular position and with those particular potentialities. It has been urged that Plot No. 670 had a special situation or position in view of its size, locality, nearness to business centre and the Madan Mahal Station. But the value which was fixed by the Additional District Judge and the High Court was fixed by reference to sales of plots of comparable nature. The following portion of the judgment of the High Court shows how the matter was dealt with "We may observe that the two witnesses relied upon by the appellants purchased small plots at the rate of Re. 1/- per sq. ft. As the map of the Wright Town Madan Mahal Extension area produced by the Corporation before us shows, these plots are in a fully developed lay out having roads and drains round about. We had asked the Corporation to calculate how much area out of the acquired sites would be required to be left open for roads and drains and they have calculated that about 70,000 sq. ft. would have to be left open for this pur- pose. Obviously, therefore, it is only the remaining plot which would have value as building sites. Besides leaving so much area open, costs will have to be incurred in developing the roads, and drains for which the Corporation has estimated the cost to be Rs. 8,500/-. Considering all these factors and also calculating the built up area in the lay outs surroundings the acquired land, we find that it is only eighty per cent of the land which can be sold as building site.

On these calculations if the average price of the plots sold in the locality is taken to be /12/- per sq. ft. the (1)66 I.A. 104.

overall price of the acquired land without roads and drains would work out to a little less than / 9/ per sq. ft. To put the matter, in a different way, the value of / 10/ per sq. ft. found by the Additional Judge would work out to a little over /12/- per sq. ft., if only the area which could be built upon is considered saleable as building site. We,therefore, find that the price at-/10/per sq. ft. allowed by the Additional District judge, is not unreasonable; if anything it errs on the generous side".

We have no manner of doubt that the High Court had taken all the factors into consideration while assessing the value. In the result the appeals fail and are dismissed. There will be no order as to costs.

Appeals dismissed.

G.C.