

State Of U.P vs Zahoor Ahmad & Anr on 8 August, 1973

Equivalent citations: 1973 AIR 2520, 1974 SCR (1) 344, AIR 1973 SUPREME COURT 2520, 1973 2 SCC 547, 1974 (1) SCJ 530, 1974 (1) SCR 344, 1973 SCD 868

Author: D.G. Palekar

Bench: D.G. Palekar

PETITIONER:
STATE OF U.P.

Vs.

RESPONDENT:
ZAHoor AHMAD & ANR.

DATE OF JUDGMENT 08/08/1973

BENCH:
SIKRI, S.M. (CJ)
BENCH:
SIKRI, S.M. (CJ)
PALEKAR, D.G.

CITATION:
1973 AIR 2520 1974 SCR (1) 344
1973 SCC (2) 547
CITATOR INFO :
RF 1977 SC2328 (80)

ACT:
Transfer of Property Act, 1882, s. 116, and Government Grants Act, 1895 Ss. 2 & 3-Lease of reserved forest in U.P. whether not governed by S. 116 T.P. Act because of provisions of Government Grants Act.

HEADNOTE:
The appellant State was the proprietor of a reserved forest. The respondent took on lease from the appellant a plot of land for industrial purposes in the said forest area. As found by the High Court the lease was originally granted for one year in 1947 at an annual rent of Rs. 100. It was renewed in 1948 and 1949 for one year. After the termination of the lease in March 1949 the respondent continued to be in possession of the land and agreed to

abide by the, terms to be fixed by the appellant. Under the terms fixed by the appellant the respondent was required to pay Rs. 100 as annual rent for the occupation of the land till July 15, 1950. The respondent remained in possession of the leased property after the determination of the lease in 1950, for a further period of three years. The appellant wanted to enhance the rent to which the respondent did not agree. In the consequent suit filed by the appellant the trial court passed a decree in the suit allowing Rs. 6000 as rent for the years 1950-51 and 1951-52 and Rs. 5000 as damages for 1952-53. The High Court reversed the decree. It held that no notice as required under s. 106 of the Transfer of Property Act had been given and since on the facts the respondent must be deemed to have held over within the meaning of s. 116 of the Transfer of Property Act, the rent was payable as under the previous lease, On this view it passed a decree in favour of the appellant for Rs. 300 being rent at Rs. 1000 per year for the three years in question. In appeal by special leave to this Court the appellant State contended that s. 116 of the Transfer of Property Act was not applicable to the case because of s. 2 of the Government Grants Act.

Dismissing the appeal,

HELD : The lease in the present case was for the purpose of erecting a temporary rice mill and for no other purpose. The mere fact that the State is the lessor will not by itself make it a Government grant within the meaning of the Government Grants Act. There was no evidence in the present case in the character of the land or in the making of the lease or in the content of the lease to support the plea on behalf of the State that it was a grant within the meaning of the Government Grants Act. [347E-G]

In the present case the High Court correctly found on the facts that the respondent after the determination of the lease held over. Even if the Government Grants Act applied section 116 of the Transfer of Property Act was not rendered inapplicable. The effect of section 2 of the Government Grants Act is that in the construction of an instrument governed by the Government Grants Act the court shall construe such grant irrespective of the provisions of the Transfer of Property Act. It does not mean that all the provisions of the Transfer of Property Act are inapplicable. To illustrate, in the case of a grant under the Government Grants Act section 14 of the Transfer of Property Act will not apply because section 14 which provides what is known as the rule against perpetuity will not apply by reason of the provisions in the Government Grants Act. The grant shall be construed to take effect as if the Transfer of Property Act does not apply. [348B-D]

Section 3 of the Government Grants Act declares the unfettered discretion of the Government to impose such conditions and limitations as it thinks fit, no matter' what the general law of the land be. The meaning of sections 2

and 3 of the Government Grants is that the scope of that Act is not limited to

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affecting the provisions of the Transfer of Property Act only., The Government has unfettered discretion to impose any conditions, limitations, or restrictions in its. grants, and the right, principles and obligations of' the grantee would be regulated according to the terms of the grant, notwithstanding any provisions, of any statutory or common law. [348D-F]

Jnanendra Nath Nanda v' Jadu Nath Banerje, I.L.R. [1938] 1 Cal. 626, and Secretary of State for India in Council v. Lal Mohan Chaudhuri, I.L.R. 63 Cal. 623, applied.

Lala Kishun Chand v. Sheo Dutta, I.L.R. 1958 All. 879, approved.

JUDGMENT :

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1718 of 1967 Appeal by special leave from the judgment and Order dated 23-10-64 of the Allahabad High Court at (Lucknow Bench) in First Appeal No. 89 of 1957.

G. N. Dikshit and O. P. Rana, for the appellant. S. S. Shukla, for respondent No. 1.

The Judgment of the Court was delivered by RAY, C.J.-This is an appeal by special leave from the judgment dated 23 October, 1964 of the Allahabad High Court. The High Court reversed the decree for Rs. 1 1,000/- and passed a decree for a sum of Rs. 3,000/- with proportionate costs in favour of the appellant State.

The appellant is the proprietor of the reserved forest in Uttar Pradesh. The respondent took lease from the appellant of a plot of land at Chandan Chowki, Sonaripur Range in the North Kheri Forest Division at an annual rent of Rs. 1,000/-.

The High Court found these facts. The appellant had granted a lease to the respondent for one year from 18 March, 1947 at an annual rent of Rs. 100/-. The lease was renewed the following year on 10 June, 1948 with effect from 18 March, 1948 for one year. The lease was renewed again in 1949 for one year. The lease expired on 18 March, 1950. After the termination of the lease in March, 1949 the respondent continued to be in possession of the land and agreed to abide by the terms to be fixed by the appellant. Under the terms fixed by the appellant the respondent was required to pay Rs. 1,000/- as annual rent, for the occupation of the land till 15 July, 1950.

The respondent remained in possession of the leased property after the determination of the lease on 15 July, 1950. The appellant allowed the respondent to be in occupation for three years beyond 15 July, 1950. The respondent did not agree to give any undertaking after 15 July, 1950 as in the year 1949 to agree to abide by the decision of the Government. The appellant was on the one hand

anxious to charge as: high rent as possible and the respondent on the other was willing to pay reasonable rent. On 27 August, 1951 the Forest Officer of the- appellant wrote to the respondent for discussion regarding the rent for the year 1950-51. There is no evidence as to whether there was any such discussion. This is however a letter of the appellant dated 4 December, 1951 to the respondent where the respondent was asked to pay Rs. 3000/- for the year 1950-51 and if the respondent did not agree to pay the amount the rent would be reduced to Rs. 1800/- but the miff would not be allowed to have the lease in future in any circumstance. The respondent was allowed to continue in occupation of the land without any agreement as to the amount of rent payable for the year 1950-51. On 29 October, 1952 the Conservator of Forests on part of the appellant sent a notice to the respondent that the appellant offered to allow the respondent to run the miff beyond 15 July, 1950 for three years provided the respondent paid Rs. 3000/- per annum and for one year only in case the respondent was prepared to pay Rs. 1800/- with the further condition-that the lease would not be renewed. The notice further stated that since the respondent had not executed any lease incorporating the terms the respondent was a mere licensee. The respondent was asked to remove the plant within one month of the date of receipt of the notice and to pay Rs. 6000/- as damages for use and occupation. If the respondent did not do so the appellant gave notice of filing a suit for recovery of damages at the rate of Rs. 5000/- per annum for future use and occupation. On the facts found by the High Court, the High Court concluded that the respondent continued in occupation with the consent of the appellant without any agreement as to the amount of rent or without any undertaking that the respondent would pay the rent fixed by the appellant. The appellant, therefore, after the determination of the lease on 15 July, 1950 assented to the respondent continuing in possession. The lease was for industrial purposes. Under the terms of section 106 of the Transfer of Property Act such lease is from year to year. Therefore, there being no agreement to the contrary the continuance by the respondent in possession of the leased premises amounted to renewal of the lease from 16 July, 1950 as a lease from year to year. It would be a lease terminable by six months notice expiring with the end of the year of the tenancy. There was no such notice expiring with the end of a year of tenancy in 1952. The renewed tenancy therefore continued and was not terminated.

With regard to the amount of rent payable the provisions of section 116 of the Transfer of Property Act indicate that the renewal of the lease would mean that the terms and conditions would be the same as of the previous lease. The High Court, therefore, correctly found that in the absence of any agreement to pay Rs. 3000/- as annual rent or in the absence of any agreement and undertaking that the respondent would accept the amount fixed by the appellant as the rent. The appellant was not entitled to anything more than Rs. 1000/- a year which was the amount of rent for the year 1949 to 1950.

With regard to the claim of the State for Rs. 5000/- for the year 1952-53 as damages for use and occupation the High Court found that the respondent was holding over, and, therefore, the renewal of the lease would be on the same terms and conditions.

The High Court, therefore, allowed the State Rs. 3000/- at the rate of Rs. 1000/- for each year for three years 1950- 51, 1951-52 and 1952-53.

On behalf of the appellant it was contended that the, provisions of the Transfer of Property Act did not apply and therefore the respondent could not hold over within the meaning of section 116 of the Transfer of Property Act. The State relied on the Government Grants Act. Section 2 of the Government Grants Act enacts that nothing in the Transfer of Property Act shall apply to any grant or other transfer of land or of any interest therein in favour of any person, but every such, grant and transfer shall be construed and take effect as if the said Act had not been passed.

An example of a Government grant within the meaning of the Government Grants Act occurs in the decision in *Jnanendra Nath Nanda v. Jadu Nath Banerji* I.L.R. (1938) 1 Cal. 626. Two leases of two lots were granted by the Sunderban Commissioner on behalf of the Secretary of State. The lands comprised in the lots were waste lands of the Government. The waste lands of the Sunderbans were not the property of any subject. The Sunderbans were a vast impenetrable forest. It was the property of the East India Company. It later on vested in the Crown in those days by virtue of an Imperial statute. The history of the legislation showed that grants of Sunderban lands which, were vested in the Crown at that time were Crown Grants within the meaning of the Crown Grants Act as it then stood.

On the other hand, there is an illustration of what is not a Government grant within the meaning of the Government Grants Act. The decision in *Secretary of State for India in Council v. Lal Mohan Chaudhuri* I.L.R. 63 Cal. 523 furnishes that illustration. The Government in that case granted lease in respect of Khas Mahal lands. The lease of Khas Mahal was held not to fall within the category of grants as contemplated in the then Crown Grants Act. The lease in the present case was for the purpose of erecting a temporary rice mill and for no other purpose. The mere fact that the State is the lessor will not by itself make it a Government grant within the meaning of the Government Grants Act. There is no evidence in the present case in the character of the land or in the making of the lease or in the content of the lease to support the plea on behalf of the State that, it was a grant within the meaning of the Government Grants Act.

The High Court in the present case relied on a Bench decision of that Court. That is the case of *Lala Kishun Chand v. Sheo Dutta* I.L.R. 1958 All. 879. The land in that case belonged to the Government and was nazul. The management thereof vested in the notified area of the Bindi Board. The land, was taken on lease by the defendant for a period of 1-1/2 years in the first instance and thereafter for 4-1/2 years. After the expiry of the lease the defendant was permitted by the Board to continue in occupation as tenant and the rent used to be realised from him. In the mean time, the plaintiff obtained a lease in regard to the land from the Commissioner. The plaintiff could not get possession. The plaintiff filed a suit in the city civil court. The learned single Judge of the High Court affirmed the decision of the courts below that the defendant was a trespasser and the defendant's right as a lessee came to an end at the expiry of the lease in 1909. The High Court on appeal held that the lessee remained in possession after the termination of the lease and therefore there was holding over within the meaning of section 116 of the Transfer of Property Act. The contention which was advanced that section 2 of the Government Grants Act rendered the provisions of the Transfer of Property Act inapplicable was not accepted. The High Court correctly held that when the court is called upon to construe an instrument granting land by the Government it shall construe irrespective of the provisions of the Transfer of Property Act. The provisions of section 116 of the

Transfer of 'Property Act were correctly held by the High Court to be operative in that case.

In the present case the High Court correctly found on the facts that the respondent after the determination of the lease held over. Even if the Government Grants Act applied section 116 of the Transfer of Property Act was not rendered inapplicable. The effect of section 2 of the ,Government Grants Act is that in the construction of an instrument 'governed by the Government Grants Act the court shall construe such ,grant irrespective of the provisions of the Transfer of Property Act. It does not mean that all the provisions of the Transfer of Property Act are inapplicable. To illustrate, in the case of a grant under the Government Grants Act section 14 of the Transfer of Property Act Will not ,apply because section 14 which provides what is known as the rule against perpetuity will not apply by reason of the provisions in the Government Grants Act. The grant shall be construed to take effect as if the Transfer of Property Act does not apply.

Section 3 of the Government Grants Act declares the unfettered discretion of the Government to impose such conditions and limitations as it thinks fit, no matter what the general law of the land be. The meaning of sections 2 and 3 of the Government Grants is that the scope of that Act is not limited to affecting the provisions of the Transfer of Property Act only. The Government has unfettered discretion to impose any conditions, limitations, or restrictions in its grants, and the right, privileges and obligations of the grantee would be regulated according to the terms of the grant, notwithstanding any provisions of any statutory or common law.

For these reasons the decree of the High Court that the respondent held over within the meaning of section 116 of the Transfer of Property Act is upheld. The appeal is dismissed with costs.

G.C. Appeal dismissed.