

CASE NO.:  
Appeal (civil) 3663-64 of 2002

PETITIONER:  
RASHIDA BEGUM

Vs.

RESPONDENT:  
GENERAL SALES LTD.

DATE OF JUDGMENT: 09/07/2002

BENCH:  
D.P.MOHAPATRA, SHIVARAJ V. PATIL.

JUDGMENT:

D.P.MOHAPATRA, J.

Leave granted.

These appeals filed by the landlord are directed against the judgment of the High Court of Delhi in SAO No.3/2000 and CMP No.135/2000 setting aside the judgment of the Rent Control Tribunal dated 22.11.1999 in RCA No.127/97 and confirming the judgment dated 27.1.1997 of the Additional Rent Controller dismissing the eviction petition filed by the appellant as not maintainable. The premises in question is described as plot no.8, Block No.48, Shopping Centre, Malcha Marg, Diplomatic Enclave, New Delhi. The appellant was allotted the plot of land by the Union of India on which the premises in question stand. A registered agreement for lease was executed between the President of India through the Land and Development Officer (for short 'the L&DO") and the appellant on 24th December, 1965 setting out the terms and conditions which were binding on both the parties. In clause 18 of the agreement it was provided that till the formal lease deed was executed the lessee would be bound by all the covenants and conditions in the said format contained in like manner and with like consequences in all respects as if the lease had actually been executed. In clause 21 of the Agreement it was stated that in case of any breach or default in performance of any of the terms of the agreement, it shall be lawful for President or any officer in his employ on his behalf to enter into and upon the said Land and Building and take and retain possession of the said land and of all such buildings, erections and materials as may be found upon the said land for the absolute use of the President and thereupon the agreement shall be void. Thereafter the appellant applied for sanction of plan for erection of the building on the plot and on the plan being sanctioned by the New Delhi Municipal Committee, the appellant raised

the construction upon the land with two commercial shops on the ground floor and a residential quarter on the first floor. One such shop covering an area of 780 sq. ft. on the ground floor of the building was let out to the respondent vide rent deed dated 24th December, 1976 for commercial purpose at a rental of Rs.2340/- per month.

The Settlement Commissioner, Land and Development Office of the Ministry of Works and Housing issued the notice dated 24th September, 1983 to the appellant alleging that there were breaches of the agreement to the effect that the ground floor was being used as post office and office of Usha Intercontinental General Sales Pvt. Ltd.; that the breaches had not been removed so far in spite of the notice given by the lessor vide letter No.LIV/9/48(S-8)/83 dated 22.3.1983. It was further stated in the notice that in the circumstances the lessor had reentered the said premises in exercise of the powers conferred on him by clause XXI of the indenture of lease w.e.f. 25.7.1983. The lessee appellant herein was directed to handover peacefully possession of the premises including the land, building, fittings and fixtures etc. to the Assistant Engineer Mr. Gandotra in the Development Office. After receipt of the said notice from the Assistant Settlement Commissioner the appellant by the notice dated 24.10.1983 terminated the agreement in favour of the respondent with immediate effect and required him to vacate the premises and handover vacant possession of the same within 15 days of receipt of the notice. Since the tenant-respondent herein failed to vacate the premises the appellant filed the petition No.207/87 under section 14(1)(k) of the Delhi Rent Control Act, 1958 (for short 'the Act') seeking eviction of the respondent on the ground of misuser of the premises in question. The Additional Rent Controller (for short 'the ARC'), Delhi by order dated 27th January, 1997 dismissed the eviction petition filed by the appellant. On appeal the Rent Control Tribunal by judgment dated 22.11.99, set aside the order of the ARC and remanded the matter to ARC to proceed to determine the damages under section 14(1) of the Act after issuing notice to the L&DO. During pendency of the proceeding before the ARC after remand, the respondent filed an application praying for dismissal of the petition as no formal lease deed had been executed between the L&DO and the appellant. On receipt of the application the ARC recorded the statement of Shri T.C. Hingorani, Dy. Land & Development Officer who stated, inter alia that the agreement for lease with the appellant was signed by L&DO on 24.12.1965 and the document was registered vide S.I. 1986 Book No.1, Volume No.1490 pages 107-120 and was registered on 17.3.1966; in pursuance of the agreement a perpetual lease deed was to be signed; a copy of the perpetual lease deed was given to the appellant with the agreement for lease and this was signed in advance by appellant Ms. Rashida Begum. The perpetual lease deed was to be signed on completion of the building and after clearance of Government dues. The Deputy Land Development Officer further stated that non-signing of perpetual lease does not in any way affect the provisions as contained in the agreement between the parties. On consideration of the matter the ARC held that in the circumstances of the case where there is no formal lease between the parties no question of violation of terms of lease arises, nor there is any question of damages under Section 14(11) of the Act. Therefore the proceeding under section 14(11) of the Act was closed and the file was consigned to the record room vide

order dated 27.1.1997. In the appeal filed by the appellant herein against the order of the ARC the Rent Control Tribunal referring to the order of remand passed by the Tribunal, set aside the order passed by the ARC dismissing the eviction petition and remanded the case to him with a specific order that since the case was remanded for the purpose of fixing the compensation/penalty for misuser of the premises under Section 14(11) of the Act, after hearing the parties and the L&DO, the ARC had no option other than fixing the compensation or misuser charges as per the provisions in section 14(11) of the Act; that it was not open to the ARC to go into the question whether the petition itself was maintainable or not. The Tribunal further held that it was apparent from the covenants in the agreement executed between the parties that the lessee, who is appellant herein, was not only entitled to the possession of the premises but she was allowed to erect the building thereon by virtue of the agreement and further that the entire consideration amount towards the value of the land was paid by the lessee. The Tribunal was of the view that merely because the word 'lease' exists in clause (k) of the proviso to Section 14 of the Act it does not mean that unless and until a perpetual lease is executed between the parties the provisions under section 14(1)(k) of the Act would not be invocable. The Tribunal also took note of the prevailing practice of the Government issuing only an allotment letter and imposing conditions therein, without executing a lease deed and in case of breach of any of the conditions imposed upon the landlord under the agreement recourse was taken by him to clause (k) of the proviso to section 14(1) for eviction of his tenant. On the above discussion the Tribunal by its Judgment dated 22.11.1999 accepted the appeal filed by the landlord and set aside the order of the ARC and sent back the case to him with directions that the ARC shall after hearing the parties fix the compensation towards charges for misuser payable to the L&DO within one month and pass an order only under Section 14(11) of the Act, without traversing into the arena covered by the provisions of Section 14(1) (k) of the Act. The parties were directed to appear before the ARC on 2.12.1999. The tenant, who is respondent herein, filed appeal No.SAO 3/2000 before the High Court challenging the judgment/order of the Tribunal which was allowed by the judgment dated 10th May, 2000. The said Judgment of the High Court is under challenge in these appeals.

The moot question that arises for consideration is whether on the facts and circumstances of the case the High Court was right in dismissing that the eviction petition filed by the appellant under clause (k) of the proviso to section 14 (1) of the Act solely on the ground that no formal lease deed had been executed between the landlord and the superior lessor? The answer to the question in our view depends on the interpretation of clause (k) of the proviso to section 14 and its interaction with section 14(11) of the Act. Clause (k) of the proviso to section 14 (1) and Section 14(11) are quoted hereunder:

"14. Protection of tenant against eviction - (1)Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any

premises shall be made by any court or Controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely-

Xxxxxx xxxxxx xxxx

(k) that the tenant has, notwithstanding previous notice, used or dealt with the premises in a manner contrary to any condition imposed on the landlord by the Government or the Delhi Development Authority or the Municipal Corporation of Delhi while giving him a lease of the land on which the premises are situate;"

xxx xxx xxx

Sub-section (11) of Section 14 reads as follows:

"(11) No order for the recovery of possession of any premises shall be made on the ground specified in clause (k) of the proviso to sub-section (1), if the tenant, within such time as may be specified in this behalf by the Controller, complies with the condition imposed on the landlord by any of the authorities referred to in that clause or pays to that authority such amount by way of compensation as the Controller may direct."

On a plain reading of clause (k) of the proviso to section 14 (1) it is clear that the stress is laid on the conduct of the tenant, who has misused or dealt with the premises in a manner contrary to any condition imposed on the landlord by the Government while giving him the lease of the land on which the premises are situate. In the proviso to Section 14(1) are enumerated the grounds on which a landlord can seek recovery of possession of the premises from a tenant. The provision in clause (k) is intended to protect the interest of the landlord who may face termination of the lease and lose the property for breach of conditions imposed by the superior lessor on him while granting the lease of the land. Faced with such situation the landlord is given the right to move the Controller for eviction of the tenant and for recovery of possession of the premises so that he may be saved of the consequences of misuser of the premises and breach of conditions of lease. An opportunity is provided to the tenant to protect himself against threatened eviction from the premises if he complies with the condition imposed on the landlord by any of the authorities referred to in clause (k) of the proviso to section 14 (1) and pays to that authority such amount by way of compensation as the

Controller may direct. Provision for the purpose is made in sub-section (11) of section 14 of the Act. Neither of the aforementioned two statutory provisions mentions execution of a document of lease in any particular form. The stress is on compliance with the conditions subject to which lease of the property was given to the lessee who is the landlord of the tenant in occupation of the premises.

In the case on hand the application filed by the appellant for lease of a plot of land was granted by the officer acting on behalf of the President of India. A registered agreement was entered into between the superior lessor and his lessee in which were incorporated the conditions of lease. It was stated in the document that till such time as a formal document of lease is executed and in absence of such a document the terms and conditions set out therein shall be binding on the lessee and can be enforced in the same manner as if a formal document of lease has been executed between the parties. In pursuance of the said agreement possession of the land was delivered to the lessee and permission was granted by the New Delhi Municipal Committee for construction of a building. A building was constructed and a portion of it was rented out in favour of the respondent herein. In the circumstances there is little scope for doubt that between the superior lessor and the appellant there was an agreement for lease of the land with certain conditions which were binding on the lessee with the consequence of termination of the agreement in case of default in compliance of the terms, and for resumption/reentry upon the property on termination. Indeed the superior lessor had issued a notice to the appellant terminating the lease on the ground of misuser of the property and conveying the decision of the President of India to reenter upon the premises. In the circumstances, the appellant was entitled to file an application for eviction of the tenant in terms of clause (k) of the proviso to section 14 (1) of the Act. The technical plea that since no formal deed of lease had been executed between the President of India and the appellant was not available to the tenant respondent to raise in the proceeding for eviction in view of the undisputed factual positions as noted earlier; the ARC was clearly in error in declining to proceed under section 14(11) of the Act for determination of compensation to be paid by the tenant to the superior lessor for misuser despite specific direction to that effect in the remand order passed by the Tribunal. Therefore, the Tribunal was right in setting aside the said order of the ARC with the direction to proceed for determination of the compensation for misuser of the premises under section 14(11) of the Act. Consequentially it follows that the Judgment of the High Court setting aside the judgment/order of the Tribunal and dismissing the petition for eviction is unsustainable.

Accordingly the appeals are allowed with costs. The Judgment of the High Court dated 24th May, 2000 in SAO No.3/2000 is set aside and the Judgment dated 22.11.1999 of the Rent Control Tribunal in R.C.A.No.127/1997 is restored. Hearing fee assessed at Rs.10,000/-.

JUDIS