MANU/BH/0065/1960

Equivalent Citation: AIR1960Pat194

IN THE HIGH COURT OF PATNA
FULL BENCH

A.F.O.D. Nos. 397 and 398 of 1953

Decided On: 23.11.1959

Appellants: **Radha Gobinda Rai and Ors.**
Vs.
Respondent: **Dibakar Manto and Ors.**

Hon'ble Judges/Coram:
Vaidynathier Ramaswami , C.J., R.K. Choudhary and Kamla Sahai , JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: R.S. Chatterji, Adv.

For Respondents/Defendant: A.K. Chatterji, Adv.

JUDGMENT

Kamla Sahai, J.

1. These two appeals related to the apportionment between the landlords and tenants of the compensation money held by the Special Land Acquisition Officer of Dhanbad to be payable for acquisition of different pieces of lands in village Parasoania for the purposes of the Sindri Fertiliser Project of the Government of India,

2 . The question referred for decision to this Bench, as it stands after some amendments made by us, is as follows :

> "Whether, in the circumstances of these cases, the term in the documents of settlement, by which the raiyats in question agreed to forego the entire compensation money payable in case the whole or portion of the raiyati holding was acquired by the Government or by any company or railway, is lawful in view of the provisions of Section 79 of the Chota Nagpur Tenancy Act."

3 . The relevant facts are very simple. The Kabuliats executed by the tenants-respondents of both these appeals contain one common clause which is to the effect that, if the whole or any part of the leasehold land is acquired by the Government any company or railway, the entire compensation money would be paid to the lessors and their heirs, and the lessees would get only a proportionate remission of rent. On the basis of this condition in the two kabuliats, the landlords claimed the entire compensation money. One of the arguments advanced by the learned Pleader for the tenants (i e., the lessees) before the learned Subordinate Judge, who heard the reference made by the Special Land Acquisition Officer, was that the clause mentioned above was not binding upon the tenants, and he cited a Bench decision of this Court in Kashi Nath Ray v. Durga Prasad Singh 1 Pat LJ 604 : (AIR 1916 Pat 107) in support of his argument. There was a similar term in the kabuliats in question in that case. Their Lordships observed :

> "With regard to the kabuliats we would say only that where a harsh unconscionable bargain is entered into by the tenant for no apparent reason at all the Court is justified in presuming that undue influence was brought to bear upon him by the malik who undoubtedly stands in a position from which such undue influence can be exercised. The learned vakil for the appellant has wisely made no attempt to show that the tenants acted of their own free will in allowing so monstrous a clause to be inserted in the kabuliats."

In view of this decision, the learned Subordinate Judge held that the condition, referred to above, in the kabuliats in question in these cases also should be presumed to have been introduced by reason of undue influence exercised by the landlords. Hence, he did not give effect to it, and ordered that the landlords would get the capitalised value of the rent payable to them for the acquired lands, while the tenants, would get the entire balance of the compensation money. The landlords have, therefore, filed both these appeals.

4. The learned Judges who formed the Division Bench, before which these cases were put up, considered the provisions of Section 79 of the Chota Nagpur Tenancy Act and also the decision in Kashi Nath Ray's case 1 Pat LJ 604 : (AIR 1916 Pat 107). As they thought that the matter required further consideration by a larger Bench, these two cases have come before this Bench on a reference made by them.

5. The first point which Mr. R.S. Chatterji, appearing on behalf of the landlords-appellants, has argued is that undue influence was not pleaded on behalf of the tenants at any stage in this case, nor was any material placed in support of any such plea. He has also urged that the decision in Kashi Nath Ray's case 1 Pat LJ 604 : (AIR 1916 Pat 107) is based upon the facts of that case, and has no application to this case. Mr. A.K. Chatterji, who has appeared on behalf of the tenants-respondents, has admitted that there is neither any pleading nor any material to suggest the exercise or undue influence in this case He has, however, drawn our attention to Sub-section (3) of Section 16 of the Indian Contract Act, which reads :

> "(3) Where a person, who is in a position to dominate the wilt of another, enters into a contract with him and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of Droving that such contract was not induced by undue influence shall lie upon the person in the position to dominate the will of the other."

He has contended that the observations in Kashi Nath Ray's case 1 Pat LJ 604 : (AIR 1916 Pat 107) are based upon this sub-section, and that their Lordships have laid down a principle which ought to be followed in these cases as the condition in the two leases in question is similar to the one in that case.

6. In order to satisfy ourselves as to the circumstances in which the observations were made in Kashi Nath Ray's case 1 Pat LJ 604 : (AIR 1916 Pat 107) we sent for, and looked into, the original record of that case (First Anneal No. 169 of 1911). It appears from the judgment of the District Judge, dated 7-3-1911, that the tenants not only pleaded, but strongly urged, that the landlords had brought undue influence to bear upon them. I may usefully quote the following observations from that judgment:

> "In the first place these leases admittedly are not the leases under which the tenants took settlement. Admittedly the tenants had occupancy rights in this land before the execution of these leases. What then did the tenants get in return for these documents by which they surrendered a property of

> considerable value if a certain contingency arose. (Note: The District Judge appears to refer to the surrender of compensation money in case of acquisition of the land.).
>
> There is no evidence to show that they received anything at all as consideration for this surrender. ... The tenants say that they did not understand what they were agreeing to. I should think it very probable. But in any case considering the fact that the relation of landlord and tenant existed between the parties and that as I have said there is nothing to show that there was any consideration whatever for these documents I think the only possible inference is that they were executed under undue influence".

It is manifest that the Bench made the observations which I have quoted above with reference to the facts of that particular case, and that their Lordships have not laid down any principle which is to be followed in other cases in which there is a similar condition in a lease. I may also point out that the transaction in that case was unconscionable on the face of it because there was no consideration for the promise made by the tenants which the learned Judges have signified by using the words "for no apparent reason".

Indeed, the agreement in that case was void for the simple reason that there was no consideration, and it was hardly necessary to go into the question of undue influence. In this respect, the facts of the present case are entirely dissimilar. The tenants-respondents do not claim to have had any right or interest in the acquired lands in question before the execution of the kabuliats. Furthermore, it appears, that the tenants did not pay any salami though agreed to pay rent.

The landlords could have demanded immediate payment of salami as a consideration for parting with the possession of the lands, but, instead of that, the agreement was that the landlords would get the entire compensation money payable on the acquisition of the lands. Thus, the payment of compensation money really takes the place of payment of salami, and becomes a consideration for the landlords having originally made over possession of the lands to the tenants.

The consideration for the tenants' agreement to the condition in question was that the landlords transferred possession of the lands to them without salami. It cannot, therefore, be said that there is anything unconscionable in the transaction.

7. In the circumstances mentioned above, there is not the slightest justification for presuming or holding in this case that the tenants' consent to the agreement relating to the impugned condition was procured by exercise of undue influence. The learned Subordinate Judge was clearly in error.

8. The next question which requires consideration is whether the agreement is unlawful for any other reason. Mr. A.K. Chatterji contends that it is unlawful, and the only reason which he gives for this contention is that the agreement offends against Section 79(3) (in) of the Chota Nagpur Tenancy Act. I read that clause :

> "Nothing in any contract made between a landlord and a tenant, after the commencement of this Act, shall take away the right of an occupancy-raiyat to transfer his holding or any portion thereof subject to, and in accordance with, the provisions of this Act."

Learned Counsel has urged, firstly, that acquisition is also a form of transfer, &,

secondly, that the right of transfer will become illusory if the condition in question stands because intending purchasers would hardly pay any price for the lands. In so far as the first branch of the argument is concerned, it is manifest that Clause (iii) of Sub-section (3) of Section 79 deals with voluntary transfer by private treaty and not with compulsory acquisition.

The words used in the clause are not capable of any other interpretation because they protect the right to transfer, and no one exercises any right of transfer when his land is compulsorily acquired. I may also mention that, in case of voluntary transfer, the tenancy continues; only the person of the tenant changes; the vendee takes the place of the vendor as the tenant. In the case of compulsory acquisition, in the other hand, the tenancy itself is extinguished to the extent of the land acquired.

9. There is no merit even in the second branch of the argument. It is perfectly true that the price which a land will fetch when it is subject to a condition like the one in question in this case, will be lower than the price which it will fetch when it is not subject to any such condition. I am unable, however, to hold that a land subject to that condition cannot be sold at all or that the price fetched will be nominal. In any case, the words used in Clause (iii) are 'take away', and the word 'limit' has not been added as it has been added in Clause (ii). Even if it is assumed that there will be some difficulty in an occupancy raiyat transferring a land with the condition in question it may possibly be said that the right of transfer has been limited but not that it has been taken away.

10. A similar covenant in a lease came up for consideration in Gadadhar Bhatta v. Lalit Kumar Chatterji 10 Cal LJ 476. Their Lordships held that the covenant was perfectly valid and enforceable. The lessees in that case were given the right to transfer the land, and their Lordships observed that there was 'a distinction between a covenant which is operative during the continuance of the tenancy and a covenant which comes into operation only upon the termination of the tenancy.' They further said that the covenant for the whole amount of the compensation money being paid to the landlord came into operation only when the tenancy was terminated by reason of acquisition of the land. This decision was followed in Ashutosh Ghandra Mitra v. Haripada Ganguli 35 Cal LJ 133 :MANU/WB/0328/1921 and also in Radhanath Maity v. Krishna Chandra (MANU/WB/0140/1936 : AIR 1936 Cal 249) :40 Gal WN 722 .

11. Mr. A.K. Chatterji has drawn our attention to the decision in Santosh Kumar Mitra v. Arabinda Chowdhury 62 Cal WN 370. The English translation of the stipulation made by the lessee, which required consideration in that case has been put in the judgment as follows:

> "If I lease out or sell this land or any portion of it to another person, then you shall get the mutation fee or salami in respect of it. Any objection of me in that respect will not be maintainable."

Section 178(l)(g) of the Bengal Tenancy Act stood as given below:

> "Nothing in any contract between a landlord and a tenant made before or after, the passing of this Act shall take away or limit the right of an occupancy raiyat to transfer his holding or any share or portion thereof in accordance with the provisions of Sections 26B to 26G."

Their Lordships held that the stipulation limited the right of the lessee to make a sub-lease, and hence it was unenforceable. An observation made in the judgment may be

quoted :

> "It is well known that, when a lease is granted, the yearly rent reserved usually forms only a part of the consideration -- very often a minor part -- and that the salami that is paid forms, if not a major part, certainly an important part of the consideration, for the lease. An agreement that this entire salami would have to be paid over to the superior landlord cannot therefore, but be considered to be a serious inroad on the right of the raiyat to lease."

12. It is thus perfectly clear that the learned Judges proceeded in that case upon the word 'limit' in the clause which they considered. As I have already mentioned, this word has not been used in Clause (iii) of Sub-section (3) of Section 79 of the Chota Nagpur Tenancy Act. Hence, that is not of any assistance on the point under consideration in this case. I may also mention that the facts of that case are distinguishable from those of this case.

13. The conclusion which I have reached is that there is nothing in Section 79(3) (iii) of the Chota Nagpur Tenancy Act which hits a term in a lease of the kind in question in this case. It has not been shown that any other part of Section 79 forbids a covenant of this kind. I, therefore, hold that the term in question in the documents of settlement is lawful, and answer the question referred to this Bench in the affirmative.

Vaidynathier Ramaswami, C. J.

14. I agree.

R.K. Choudhary, J.

15. I agree.