



IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.9355 OF 2011

STATE OF ORISSA

....APPELLANT

VERSUS

SANTI KUMAR MITRA & ANOTHER

....RESPONDENT(S)

J U D G M E N T

ARAVIND KUMAR, J.

FACTUAL BACKGROUND

1. The appellant/State of Orissa has filed this appeal assailing the order of the High Court of Orissa dated 13/11/2009 passed in Second Appeal No.98/1993 whereunder second appeal filed by the appellant herein came to be dismissed and consequently the judgement and decree passed in favour of the

respondents by the First Appellate Court in TA No.2/100 of 1992-1991 came to be affirmed.

2. The suit property, being a Khasmahal, measuring 594 decimals situated in Plot bearing No.894, Khata No.158, Balukhand Puri was originally leased in favour of one Shailendra Nath Mitra (hereinafter referred to as "original lessee") for 30 years commencing from 29/09/1905 and said lease was due to expire on 29/09/1935. On 16/10/1935, the original lessee applied for renewal of the lease which came to be referred as Lease Renewal Case No.40/1935-36.

3. Above being the situation, the original lessee expired on 04/06/1941 leaving behind his two sons Nalininath Mitra, Jatindranath Mitra (Father of the Plaintiffs), his wife Khagendrabala Mitra and his daughter-in-law Smt. Gauribala Mitra as his legal heirs. A substitution petition came to be filed by the legal heirs of original lessee in Case No.40/1935-36 and subsequently on 22/01/1944 the lease came to be renewed and a fresh lease deed came to be executed in favour of the legal heirs of the original lessee, for a further period of 30 years with effect from date of expiry viz., 26/09/1935. The aforesaid lease agreement executed in favour of the legal heirs of the original lessee expired on 25/09/1965.

4. On 23/12/1972, Late Nalininath Mitra (one of the lessee) preferred an application for renewal of the lease in Lease Renewal Case No.11/1972. The Revenue Officer, Puri, Orissa directed the case records to be forwarded to Tahsildar, Puri for enquiry and report. Pursuant to the order of the Revenue Officer, the Tahsildar after conducting field verification, submitted a report on 30/05/1975 to the Collector, Puri indicating that the structures over the suit property are dilapidated and that outsiders have occupied the house and consequently, the Tahsildar suggested for initiation of resumption proceedings.

5. Pursuant to the same, Balu Resumption Case No.6/1975 came to be registered. By order dated 21/08/1975, the Collector, Puri after considering the report of the Tahsildar, determined the lease by observing that the lessee had violated the terms of the lease agreement under clause 9 & 20 as prescribed under the Bihar and Orissa Government Estates Manual, 1919 and directed the lessee to surrender the lease hold land within 30 days from the date of notice. Accordingly, notice came to be issued to the lessee Nalininath Mitra on 22/08/1975, directing him to surrender the lease hold land after removing the structures within 30 days from the date of notice, failing which the Tahsildar would re-enter and take possession. Subsequently, the Collector after visiting the site and noting that the building is in utter state of disrepair passed an order on 17/09/1976 in Balu Resumption Case No.6/1975 directing the Tahsildar,

Puri to take physical possession of the land and remove the standing structures. On 24/09/1976, the Tahsildar took over the physical possession of the lease hold land along with the building.

CASE OF THE PLAINTIFFS/RESPONDENTS

6. In the aforesaid factual scenario, the plaintiffs/respondents herein i.e. legal heirs of Jatindranath Mitra (another son of original lessee) filed a suit for declaration and permanent injunction in OS No.161/402-90/86 praying for declaration that the order of the Collector dated 21/08/1975 in Resumption Case No.6/1975 as illegal, without jurisdiction and to direct the Collector to renew the lease and pass a decree directing the defendant/appellant herein to execute and register a lease deed in respect of the suit property by way of renewal in favour of the plaintiffs, and to pass a decree of permanent injunction restraining the defendant from leasing out the suit property to others.

7. It was the case of the plaintiffs that being the legal heirs and successors of original lessee, Late Shailendra Nath Mitra, the lease had been renewed in their favour in 1944 for a period of 30 years commencing from 26/09/1935 and a suit for partition had been filed in Suit No.1377/1967 before the Calcutta High Court wherein a receiver came to be appointed in respect of the suit property,

who had applied for further renewal of the lease in respect of the suit land and no action was taken by the defendant/appellant herein and subsequently, Nalininath Mitra (one of the lessees) had also applied for renewal of lease in the year 1972 and he had expired on 13/12/1975 and on 23/12/1975 advocate of Late Nalininath Mitra replied to a letter issued by Tahsildar by intimating the death of Nalininath Mitra and had prayed that the application for renewal filed be treated to have been made on behalf of Khagendrabala Mitra and Jatindranath Mitra, the mother and brother of Nalininath Mitra respectively. In the partition suit, the suit properties were exclusively allotted to the share of the plaintiffs/respondents herein vide decree dated 10/12/1973 and as such the plaintiffs had approached the authorities for the renewal of the lease, in the year 1980 for which, no reply was furnished to them. Further when they made enquiries in 1983, they came to know that the defendant/appellant had initiated suo moto proceedings in the year 1975 and without issuing notice to the plaintiffs, the lease had been determined on 21/08/1975. On the basis of these averments, the plaintiff sought for decreeing the suit.

CASE OF THE DEFENDANT/APPELLANT

8. The defendant/appellant herein filed their written statement denying the averments made in the plaint. It was the case of the defendant that suit property

was originally leased to one Shailendra Nath Mitra for 30 years on 26/09/1905 and after the expiry of the lease on 25/09/1935, the original lessee applied for renewal of the lease. The original lessee expired in the year 1942 and the suit property came to be mutated in the name of his legal heirs and subsequently the lease came to be renewed in favour of his legal heirs on 22/01/1944. It was further pleaded that pendency of partition suit, appointment of receiver was not within the knowledge of the defendant. It was further stated that receiver did not apply for the renewal of the lease, whereas late Nalininath Mitra had applied for the same on 23/12/1972 which could not be sanctioned as necessary documents were not filed and no application had been filed by other lessees. It was further contended that lease hold land came to be resumed and lease came to be determined as the lessee violated the conditions of the lease. On these amongst other averments made in the written statement, the defendant sought for dismissal of the suit.

FINDINGS OF THE TRIAL COURT

9. The Learned Trial Court framed the following 6 issues for its determination.

- a. Is the suit maintainable in law?
- b. Is the suit property correctly described?
- c. Is the order passed in Resumption Case No.6/75 illegal, void and without jurisdiction?

- d. Are the plaintiffs entitled to renewal of the lease?
- e. Are the plaintiffs entitled to a decree of permanent injunction?
- f. To what relief are the plaintiffs entitled?

10. The Trial Court after analysing the facts and evaluating the evidence tendered by both parties, dismissed the suit of the plaintiffs by arriving at a conclusion that plaintiffs had not applied for the renewal of the lease within three months before the expiry of the lease period; that the plaintiffs had not kept the building in proper repair; and all the lessees had not applied for the renewal of the lease except Nalininath Mitra.

FINDINGS OF THE FIRST APPELLATE COURT

11. Against the dismissal of the suit, the plaintiffs filed an appeal before the Court of the Subordinate Judge, Puri in Title Appeal No.2/100 of 1992/1991. The First Appellate Court by its judgment and decree dated 23/12/1992 allowed the appeal and set aside the order of the Trial Court on the following grounds:

- a) The resumption proceedings could not have been initiated by the Collector without referring the matter to the Civil Court;
- b) The land leased can be resumed only if the land is required for public purpose;

c) PW1 and PW2 have deposed that the building is in a habitable condition and no rebuttable evidence was placed on record;

d) Balu Resumption Case No.6/1975 could not have been initiated without first deciding Lease Renewal Case No.11/1972.

FINDINGS OF THE HIGH COURT

12. Aggrieved by the order of the First Appellate Court, the defendant/appellant herein preferred a second appeal before the High Court of Orissa, Cuttack in Second Appeal No.98/1993 and the High Court while admitting the appeal framed the following substantial question of law:

“Whether the period of lease having expired long since and not been renewed, the impugned judgment of the lower appellate court is at all sustainable in law and whether the lower appellate court is justified in holding that Government cannot take possession of the land even though it has held earlier that the State can resume possession in accordance with law”.

13. The High Court after hearing both the parties dismissed the second appeal of the defendant/appellant by answering the substantial question of law in favour of plaintiff/respondent by assigning the following reasons:

a. There was no material before the Collector to arrive at a conclusion that Clause 9 of the lease deed had been violated.

b. The defendant did not bring any material on record before the Trial Court to show that the determination of lease made

by Collector was in accordance with Clause 15 of the lease deed.

c. The renewal application could not have been rejected otherwise without recording a finding that the lessee had not duly observed and performed all the conditions of the lease.

d. The State had not brought on record any material to show that there was any specific public purpose for which the land was required as provided under Rule 28 of the Bihar and Orissa Government Estate Manual, 1919 for returning the land.

e. Unilateral resumption cannot be sustained when the lessor has not approached the common law forum for determination of the lease.

14. Assailing the aforesaid judgement and decree, the State/appellant herein filed special leave petition and this Court by Order dated 31/10/2011 had granted leave to appeal.

15. We have heard, Mr. Jaideep Gupta, learned Senior Advocate appearing for the appellant-State and Ms. Fereshte D. Sethna, learned counsel appearing for the respondents. The prime contentions urged by the respective learned Advocates are as under:-

CONTENTIONS ON BEHALF OF THE APPELLANT

16. It is submitted that, when the lease expired on 25/09/1965 and the legal heirs of the original lessee did not take any steps for filing any application for

renewal of the lease till 22/12/1972 and only on 23/12/1972, one of the lessees namely Nalininath Mitra had preferred an application for renewal of the lease, question of considering said application does not arise at all.

16.1 It is contended that Tahsildar, after conducting field verification had submitted a report to the Collector on 30/05/1975, indicating thereunder that the structures over the suit land was dilapidated and outsiders had occupied the land. It is also contended that the said report clearly indicates the violation of Clauses 9, 19 & 20 of the Bihar & Orissa Government Estates Manual, 1919 and these clauses when read together would clearly demonstrate that State is empowered to determine the lease and resume the property so leased.

16.2 It is further contended that one of the lessee, namely Nalininath Mitra himself has admitted the condition of the building being dilapidated in his letter addressed to the Collector, Puri dated 06/10/1975 which establishes violation of Clause 9 of the Manual of 2019 and there was no further material required to be placed on record. It is also contended that in the same letter, the lessee has accepted that lease rent and municipal taxes could not be paid to the Government for last several years which was in clear violation of Clause 15 and 16 of the Manual of 2019, which mandates the lessee has to pay the rent as

well as the Municipal Tax as assessed periodically and by relying upon said letter he assails the impugned order.

16.3 It is further contended that non-fulfilment of condition stipulated in Clause 14 of the Bihar & Orissa Government Estates Manual, 1919 enables the Collector to determine the lease and accordingly the lease has been determined based on the report of the Tahsildar and the admission of the lessee regarding the violation of clause 9 in his letter dated: 06.10.1975.

16.4 It is further urged that suit of the plaintiffs was barred by limitation as the suit was filed in the year 1986 i.e., 10 years after the order of the Collector taking possession of the suit land.

16.5 It is further contended that High Court erred in proceeding on the basis of Clause 9 and 15 of the lease agreement having not been violated by plaintiffs though facts depicted otherwise.

16.6 It is further contended that resumption of the lease was on the ground of violation of Clause 9 of the lease agreement "due to dilapidated condition of the building" and not on the ground of violation of Clause 9 of the lease agreement which speaks about "Sanitary Improvements". The letter of one of

the lessee is a clear admission that the building was in a dilapidated condition and the said document has not been considered by the High Court.

16.7 It is contended that the resumption case was initiated due to violation of clause 9 and 19 of the Manual, 1919 and not on the ground that the land was required for any public purpose as contemplated under Rule 28(5) of the Manual, 1919 and Rule 28 had no application to the case on hand.

16.8 It is contended that right of the lessee under Clause 18 of the lease agreement can only be considered if the lessee had duly observed and performed all the conditions of the lease, and in the instant case no rent was paid, municipal taxes were not paid, the structures were in a dilapidated condition and outsiders were in possession of the property which were in blatant violation of the terms of the lease. As such the lease was determined and possession of the lessee was declared as illegal under clause 19 of the Manual of 1919 due to violation of the terms and conditions of the lease and possession of leased land was resumed.

16.9 It is contended that High Court had not considered the notice of the Collector dated 28/08/1975 and the reply thereto furnished by one of the lessees on 06/10/1975.

16.10 It is contended that no document was tendered before the Trial Court to demonstrate that a receiver had been appointed by the High Court in Suit No.1377/1965 and application had been filed by the receiver for renewal of the lease. On the above grounds, the appellant sought for allowing the appeal.

CONTENTIONS ON BEHALF OF THE RESPONDENTS

17. It is contended that the application for renewal of the lease submitted by Naliniath Mitra on 23/12/1972 has not been adjudicated and is pending till date and without disposing of the renewal application, the appellant/State could not have initiated and adjudicated resumption proceedings No.6/75 as such the resumption order was declared illegal by the appellate court and rightly so.

17.1 It is urged that the option of renewal has been left with the lessee and not with the khasmahal authorities as per Clause 18 of the lease deed and this option had been exercised by the lessee and without adjudicating the same, lease could not have been determined.

17.2 It is further contended that the respondents have the right of renewal as they have not violated any of the terms & conditions of the lease.

17.3 It is submitted that no material had been placed on record by State to support the finding of the Tahsildar that the building was in a dilapidated condition or it was not habitable and one sided report of Tahsildar could not be relied upon.

17.4 It is urged that the resumption of possession can only be taken under due process of law i.e. by way of filing a civil suit in a court of competent jurisdiction as per Clause 20 of the Bihar and Orissa Estates Manual 1919. The action of the appellant in adopting extra judicial methods to unilaterally resume possession is clearly *mala fide*, illegal and contrary to the law.

17.5 It is submitted that, even assuming that the land was required for any public purpose as indicated in the resumption order, no such material was brought on record to show that there was any specific purpose for which the land was required by the Government. Further reliance was placed on the judgment passed by the Hon'ble High Court of Orissa in the matter of *Shankarlal Verma and Others v Smt. Uma Sahu and Others* [1992 SCC Online Ori 239] to contend that lease deed could only be determined in the case of requirement of the land for a public purpose or breach of the conditions of the lease. It was further urged that the lease deed cannot be cancelled when the lease deed does not provide that upon expiry of the term, the lease shall stand

determined and by relying upon the judgment of the First Appellate court, he has sought for upholding of the same

17.6 It is urged that none of the terms of the lease having been violated by the lessee, the lease ought not to have been determined by the State and on the above grounds, the respondents sought for dismissal of the appeal by defending the impugned judgment.

POINTS FOR CONSIDERATION

18. Having heard learned advocates appearing for the parties, we are of the considered view that following points arise for our consideration:

1. Whether the impugned order of the High Court requires to be affirmed or reversed?
2. What Order?

RE: POINT NO.1

19. The lease agreement came to be executed in favour of original lessee on 29.09.1905 for 30 years and after expiry on 29.09.1935 it came to be renewed on 22.01.1944 for a period of 30 years with effect from 26/09/1935. The said lease expired on 26/09/1965 and none of the lessees took any steps for renewal till 22/12/1972. On 23/12/1972, one of the lessees namely Late Naliniath Mitra preferred an application for renewal of lease in Lease Renewal

Case No.11/1972. On two occasions dated 23/12/1972 and 09/05/1973, the Revenue Officer, Puri directed Late Nalininath Mitra to file relevant documents i.e. Lease agreement, Khasmahal rent receipts, Municipal Tax receipts and sanctioned building plan, for verification. Since the lessee failed to produce the documents, the revenue officer directed the case records be sent to the Tahsildar, Puri for enquiry and report. Pursuant to the order of the Revenue Officer, the Tahsildar conducted an enquiry and submitted a report to the Collector, Puri on 30/05/1975. On basis of the said report, Balu Resumption Case No.6/1975 came to be registered and the Collector, Puri resumed the lease hold land by order dated 21/08/1975 by determining the lease. Subsequently, notice came to be issued on 22/08/1975 directing the lessee to handover possession of the land after removing the structure etc within 30 days. Thereafter, Collector passed an order on 17/09/1976 in Balu Resumption Case No.6/1975 directing the Tehsildar, Puri to take physical possession of the land and remove the standing structures. On the basis of said order Tahsildar took physical possession of the subject land along with the building. The order of the Collector dated 21/08/1975 was the subject matter of challenge before the Trial Court in TS No.161/402 - 90/86.

20. It is pertinent to delve into various clauses of the lease agreement which have been relied upon by the State for determining the lease as it will have a

direct bearing in this appeal and the claim made in the suit. Clause 15 of the lease agreement gives the power to the Collector to declare that the lease as void and determine the lease deed, on breach or non-observance of any of the terms or conditions of the lease agreement. Clause 15 reads as under:

“(15) That on breach or non-observance of any of aforesaid terms or conditions, the Collector may declare that the Lease has determined and become void, that an order of the Collector declaring that there has been such breach or non-observance at between the parties here to and that on the expiry of one month from the date of such order the Collector or any officer or person appointed in that behalf by the Collector shall be entitled to take possession of the land lease and the buildings erected thereon.

PROVIDED that the Collector shall at the time of such declaration, either offer to pay reasonable compensation for the structures and other improvements made with the consent of the Collector or direct the LESSEES to remove the structures or other improvement within a specified time and, if the LESSEES fail to remove them accordingly, the Collector shall cause such removal to be effected and recover the cost from the LESSEES. Where compensation is offered, the amount of such compensation shall be fixed by the Collector whose decision shall be final, conclusive and binding on the Lessees, subject to revision by the Revenue Commissioner.”

Clause 7 of the agreement mandates the lessee to keep the building in proper repair and lessee is prohibited from making any structural alterations in or additions to the building. Clause 7 reads as under:

“(7) That the Lessees shall keep the building in Proper repair and shall not make any structural alterations in or additions to them of any kind whatever either inside or outside the building without the previous Written consent of the Collector”

Clause 12 mandates the lessees to pay rent before the date fixed for such payments and failure to do so attracts interest @ 10% p.a. Clause 12 reads as under:

“(12) That, in the event of the Lessees’ not paying any instalment of the rent on or before the dates herein fixed for such payments, the Lessees shall, in addition to the arrears, pay interest at the rate of ten per cent per annum on such arrears.”

Clause 13 mandates the lessee to pay all Municipal or other local rates and taxes imposed or assessed upon their holding under any law for the time being in force and it reads as under:

“(13) That the Lessees shall pay all Municipal or other local rates and taxes imposed or assessed upon their holding under any law for the time being in force whether the same be payable by the landlord, tenant, owner or occupier in respect thereof.”

“(14) If three months prior to the expiration of the said term the lessee shall notify the Collector/Deputy Commissioner that he is desirous of taking a new lease of the said premises and shall have duly observed and performed all the terms and conditions aforesaid he shall be entitled to a new lease for such term and on such rent enhanced or otherwise and on such terms and conditions as the Collector/Deputy Commissioner or in the event of disagreement the Commissioner may deem proper. In the event of the lessee not taking a new lease as aforesaid he shall not be entitled to any compensation for any buildings or improvements on the said premises or otherwise.”

Clause 14 indicates that where lessee is desirous of taking a new lease is required to notify the Collector/Deputy Commissioner 3 months prior to the expiration of the terms specified in the lease deed after having duly observed

and performed the terms and conditions and this enables or gives a right to the lessee to seek for new lease.

21. It is the contention of the appellant that Clause 7, 12, 13 and 14 of the lease agreement had been violated by the lessee. Whereas the said contention have been denied by the respondents. When the report of the Tahsildar submitted on 30/05/1975 is perused, it is evident that the structures located over the suit land was in a dilapidated condition and outsiders had occupied the land. The said findings would get further strengthened by the admission of one of the lessees i.e., Late Nalininath, who by his letter dated 06/10/1975 has admitted this fact. Further in the same letter, the lessee has accepted that lease rent and municipal taxes could not be paid to the government for the last several years. For immediate reference said letter is extended hereinbelow:

“To
The Collector, Puri
Puri District Office,
Revenue Section, Puri
ORISSA

Reference your Notice No. 6263/REV Dated 22.08.1975

Reference your notice above I beg to say that due to bad circumstances the Municipal Tax of the property could not be paid for the last several years, nor the lease rent has been paid to the Government. For paucity of fund the building could not be kept in a habitable state. The building was constructed at great cost and the present condition is due to vagaries of weather and people. I have thought it fit with

your kind permission to transfer the lease and the property thereof to Sri Raghunath Chatterai of Narayangarh, District Puri, on condition that clears up all the dues of the Municipality. Lease rent of the Government and pays the transfer fees as may be determined by you and has reimbursed me for any compensation that may be due to me from Government and has already paid Municipal Tax on my behalf and further has paid me sum of Rs. 6075/- as advance against consideration money, which is to be refunded if no transfer permit is given by you. Further he should bind himself to the Government to repair the old buildings and/or exact new buildings in accordance to your plan and within a stipulated time as may be fixed by you.

I now, therefore, most humbly pray that you will kindly transfer the lease to the said Raghunath Chatterai.

Sd/- Nalini Nath Mitra
6.10.75

//TRUE COPY//

In the light of above admission, we are of the considered view that Clause 7, 12 and 13 of the lease agreement were blatantly violated and not adhered to by the lessee. This being the case, the appellant/State had all the right to declare the lease as void and determine the lease under Clause 15 of the agreement. The High Court under the impugned judgement erred in arriving at a conclusion that defendant had not placed any material on record to demonstrate that determination of lease made by Collector was not in accordance with Clause 15 of the lease deed. When the lessee himself has admitted about non-compliance of the terms of the lease, shifting the burden on the State to prove

that building was in dilapidated condition or rent was not paid and municipal taxes were not remitted does not abide.

22. The argument of the respondents (plaintiff) that the option of renewal has been left with the lessee needs to be considered in light of Clause 20 of the Bihar & Orissa Government Estates Manual, 1919 and Clauses 15 and 16 of the lease agreement.

Clause 20 of the Bihar & Orissa Government Estates Manual, 1919 reads as under:

(20) That on the expiry of the terms of your lease, you shall, if you have duly observed and performed all the conditions of the lease, execute a new lease for such period and on such rent and containing such other terms and conditions as the Collector may then deem proper. If you decline to accept a new lease on the terms and conditions stated above, then the Collector may from the date of expiry of the present lease enter on and take possession of the land and of all buildings erected thereon, provided that in such case you shall be entitled to compensation for houses erected and other improvements made in the land with the consent of the Collector, the amount of such compensation to be fixed by the Collector whose decision shall be final, conclusive and binding on you.’’

Clause 15 and 16 of the lease agreement reads as under:

“(15) That on breach or non-observance of any of aforesaid terms or conditions, the Collector may declare that the Lease has determined and become void, that an order of the Collector declaring that there has been such breach or non-observance at between the parties here to and that on the expiry of one month from the date of such order the Collector or any officer or person appointed in that behalf by the Collector shall be entitled to take possession of the land lease and the buildings erected thereon.

PROVIDED that the Collector shall at the time of such declaration, either offer to pay reasonable compensation for the structures and other improvements made with the consent of the Collector or direct the LESSEES to remove the structures or other improvement within a specified time and, if the LESSEES fail to remove them accordingly, the Collector shall cause such removal to be effected and recover the cost from the LESSEES. Where compensation is offered, the amount of such compensation shall be fixed by the Collector whose decision shall be final, conclusive and binding on the Lessees, subject to revision by the Revenue Commissioner.”

(16) That in the event of breach or non-observance of any of the aforesaid terms or conditions in addition to or in lieu of any other remedy to which the Collector may be entitled the LESSEES shall be subject to a penalty to be imposed by the Collector which shall not exceed half the yearly rental.”

A perusal of these two clauses would disclose that the said option of renewal is not unrestricted and can only be exercised by the lessee after having duly observed and performed all the conditions of the lease. From the perusal of the report submitted by the Tahsildar on 30/05/1975 and the letter dated 06/10/1975 by the lessee, it is evident that multiple terms and conditions of the lease have been breached by the lessees. This being the case, the appellant/State had rightly not renewed the lease as per Clause 20 of the Manual, 1919 and Clause 16 of the lease agreement.

23. The reliance placed by the respondents on the judgement of the High Court of Orissa *in Shankarlal Verma and Others v Smt. Uma Sahu and*

Others (supra) would not come to their rescue as the terms and conditions of the lease have been squarely breached and not adhered to by the lessees in the present case. As such the lease came to be determined in the present case even though the lease deed does not provide anywhere that upon expiry of the term, the lease shall be determined.

24. Yet another fact which cannot go unnoticed is that on expiration of the lease on 25.09.1965, the legal heirs of the original lessee did not take steps for renewal by filing an application, much less 3 months prior to the expiration of the term as required under clause 14. On the other hand, such renewal was sought only on 23.12.1972, that too by one of the lessees that is Mr. Nalininath Mitra by filing an application for renewal of the lease which undisputedly is not adjudicated or disposed of till date. For this reason, we have opined that the State would be at liberty to consider the said application on its own merits and as rightly stated by Mr. Jaideep Gupta, Learned Senior Advocate appearing for the State that same would be considered on its merits.

25. The High Court held that the appellant/State did not bring any material on record to show that there was any specific public purpose for which the land was required as provided under Rule 28 of the Bihar and Orissa Government Estate Manual, 1919 and as such resumption of land & determination of lease

was bad. It is pertinent to note that the resumption case was initiated due to breach of conditions of the Manual of 2019 and the condition of the lease agreement and not on the ground that the land was required for any public purpose as contemplated under Rule 28(5) of the Manual of 2019. As such Rule 28 has no application to the present case on hand.

26. In view of the above findings, the impugned judgement of the High Court cannot be sustained and it is liable to be set aside.

27. During the course of the arguments, the counsel for the appellant fairly submitted that the renewal application registered as Lease Renewal Case No.11/1992 would be considered in accordance with law. Said submission is placed on record.

28. In light of the above discussion, the impugned judgement of the High Court dated 13/11/2009 and the First Appellate Court dated 23/12/1992 is set aside and consequently the order of the Trial Court dated 30/09/1991 is confirmed. The pending renewal application in Lease Renewal Case No.11/1992 is directed to be considered by the appellant within 6 months from the date of this order and it would be needless to state that respondents would be at liberty to challenge the order passed in Lease Renewal Case No.11/1992

before appropriate forum in the event of any adverse findings recorded.

Consequently, appeal is allowed with no order as to costs.

.....J.
(Pamidighantam Sri Narasimha)

.....J.
(Aravind Kumar)

New Delhi
May 10, 2024