

(2021) 12 Scale 1

Supreme Court Of India

Case No: Civil Appeal No.6119 Of 2021

Anapurna Jaiswal

APPELLANT

$$V_S$$

Indian Oil Corporation
Ltd. And Ors.

RESPONDENT

Date of Decision: Sept. 30, 2021

Acts Referred:

Registration Act, 1908 – Section 47#Transfer of Property Act, 1882 – Section 5, 105

Citation: (2021) 12 Scale 1

Hon'ble Judges: K.M. Joseph, J; Pamidighantam Sri Narasimha, J

Bench: Division Bench

Advocate: Kamini Jaiswal, Rohit Kumar Singh, Rani Mishra, Priya Puri, Rashmi Sachdeva, Yati Sharma, Ranjay Dubey, Smriti Sinha

Final Decision: Dismissed

Judgement

Parameter	Subheads	Description	Max Marks	Evaluation
1	1	1	1	1
2	2	2	2	2
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,"Suitable land for

retail outlet", "Ã¢,¬ÄÃ¢,¬Ä!Ã¢,¬Ä!..Ã¢,¬ÄÃ¢,¬ÄœBÃ¢,¬Ä,¢ site Having

clear title to land "own

land/Registered sales deed /having

land on long lease (registered) for a

minimum period of 19 years 11

months as on date of application.",35,"Based on verifying the

documents submitted

and evaluation of

committee as

explained in Pt.14 and

15 below.

„The words „in present or in future“ qualify the word „conveys“ and not the word „property“ in the section and it has been held that a

“firm offer“ of land for

purpose/long lease”,25,

“The words „in present or in future“ qualify the word

“conveys“ and not the word „property“ in the section and it has been held that a

transfer of property that is not in existence operates as a contract to be performed in the future which may be specifically enforced as soon as the

property comes into existence.

As was observed by the Privy Council in 12 Moo Ind App 275 (PC) (E):

“But how can there be any transfer, actual or constructive, upon a contract under which the vendor sells that of which he has not possession, and”

to which he may never establish a title? The bill of sale in such a case can only be evidence of a contract to be performed in future, and upon”

the happening of a contingency, of which the purchaser may claim a specific performance, if he comes into Court shewing that he has himself done all”

that he was bound to do.

It is only by the operation of the equitable principle that as soon as the property comes into existence and is capable of being identified, equity taking as

done that which ought to be done fastens upon the property and the contract to assign thus becomes a complete equitable assignment. In the case of a

decree to be passed in the future therefore there could be no assignment of the decree unless and until the decree was passed and the agreement to

assign fastened on the decree and thus became a complete equitable assignment. The decree not being in existence at the date of the transfer cannot

be said to have been transferred by the assignment in writing and the matter resting merely in a contract to be performed in the future which may be,,,,,

specifically enforced as soon as the decree was passed there would be no transfer automatically in favour of the transferee of the decree when,,,,,

passed.,,,,,

It would require a further act on the part of the transferor to completely effectuate the transfer and if he did not do so the only remedy of the,,,,,

transferee would be to sue for specific performance of the contract to transfer. Hence,,,,,

12. Section 105 specifically deals with lease of immovable property, and it reads as follows: -",,,,,

"105. Lease defined- A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or",,,,,

in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically",,,,,

or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. Hence",,,,,

13. A lease of immovable property is a transfer of immovable property. The transfer consists of the transfer of a right to enjoy immovable property. It,,,,,

creates an interest in the property. One of the essential elements of the lease is the period of time for which the demise holds good. A lease may be,,,,,

for certain time which may be express or implied. It may also be in perpetuity. Therefore, when one thinks of a lease of an immovable property one of",,,,,

the essential terms would be the period for which the lease operates. In this case, the lease or the period of the lease is 30 years. The question would",,,,,

immediately arise as to when the lease bears life.,,,,,

The expression "certain time" is premised on there being a beginning in point of time and the end again with reference to time. Hence",,,,,

" would in other words be a period of time. The answer is given by the lease itself, namely that the period begins with effect from the date of",,,,,

approval of the petrol pump. In other words, here is a lease deed which contemplated the period of the lease commencing at a point of time in the",,,,,

future. What is more it would commence only with effect from the date of approval of the petrol pump. The parties in fact contemplated in clause 7",,,,,

that in case the petrol pump was not approved then the second party (the
Appellant (herein) must handover the land transferred on rent to the",,,,
first party",,,,,

14. Whatever doubts one may have is dispelled by clause 5 which reads as follows: -",,,,,

"5. That after completion of leased period, viz., after expiry of 30 years, both
parties shall have option renewal period by a lease deed in respect of",,,,,

land transferred on rent on the basis of mutual consent",,,,,

A perusal of clause 5 would reveal that lease period is explained as after the
expiry of 30 years and it speaks about the renewal of the lease",,,,,

period. The completion of the lease period which is after the expiry of the 30 years again
would have to be reckoned only with effect from the date of",,,,,

approval of the petrol pump. Therefore, it is clear that the lease which the appellant laid
store by contemplated the period of the lease commencing not",,,,,

on the date of the lease but at a point of time in the future. In fact, the point of time or the
event upon which the period of lease was to begin with",,,,,

itself uncertain. Maybe it is true that it could come into effect upon future events taking
shape on the principle that in equity on the future event",,,,,

happening relating to the subject matter of the lease, the lease could have affected the
property in the future. But we need not explore the matter on",,,,,

those lines any further as it is clear that the lease did not take effect on the date of the
lease namely 8.11.2011. If that be so there was also no lease in",,,,,

place as on the date of the application namely 11.11.2011",,,,,

15. The appellant attempted to derive support from Section 47 of the Registration Act,
1908. Section 47 of the Registration Act, 1908 is only intended",,,,,

to give effect to the lease deed which is registered at a later point of time than when it is
executed. It is intended to provide that the document which is",,,,,

registered will have efficacy on its own terms with effect from the time when it was supposed to have come into effect under the document. In other,,,

words, the fact that it is registered at a later point of time could not detract from the document commencing to operate when it would have",,,,

commenced but for it not having been registered. In fact, if one applies Section 47 of the Registration Act, to the facts of this case it would not have",,,,

the effect of preponing the period of the lease as commencing from the date of the execution of the lease. The lease would operate on its terms and,,,

the period of the lease would commence only upon approval being granted despite it being registered.,,,,

16. The result of this discussion is that the appellant cannot be possibly entitled to the benefit of 35 marks which is vouchsafed only for those,,,

applicants who inter alia had a long-term lease as on the date of the application.,,,,

17. There is another aspect we must bear in mind. We are dealing with a case where what is sought is judicial review of the decision to award,,,

largesse. A fairly large measure of free play in the joints is vouchsafed to a public authority when it comes to understanding the terms under which the,,,

offer is made. We cannot be oblivious to this aspect as well. The fact that in the rectification deed also which was executed much after the date of,,,

the advertisement and application an attempt is made to correct the original lease deed and to indicate that it was as a result of an error that clause 1,,,

which we have referred to came to be inserted also would fortify us in our reasoning which we have employed in finding that appellant is not entitled,,,

to 35 marks.,,,,

18. In the light of above discussion, we see no reason to interfere with the impugned judgment passed by the High Court. The appeal is dismissed.",,,,

No order as to costs.,,,,

Pending application(s), if any, stand disposed of.",,,,