

(2010) 05 P&H CK 0305

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 2578 of 2002

Ram Murti and Sons
and Another

APPELLANT

Vs

Punjab Wakf Board and
Others

RESPONDENT

Date of Decision: May 28, 2010

Acts Referred:

- Contract Act, 1872 - Section 196, 227, 228
- Punjab Waqf Act, 1995 - Section 15(2)(1), 56
- Transfer of Property Act, 1882 - Section 106, 106(3), 111, 116
- Waqf Act, 1954 - Section 36, 64(2)

Citation: (2010) 159 PLR 733 : (2011) 1 RCR(Civil) 157 : (2010) 2 RCR(Rent) 529

Hon'ble Judges: Vinod K. Sharma, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Vinod K. Sharma, J.

This is defendants" regular second appeal against the judgment and decree dated 16.4.2002 passed by the learned lower appellate court, vide which the suit for possession filed by the plaintiff/respondent stands decreed.

2. The plaintiff Wakf Board filed a suit for possession on the pleadings that the plaintiff was a body corporate and Mohammed Sadiqui being Estate Officer/Principal Officer and being duly authorized to file and verify the pleadings, was competent to file the present suit.

3. The Wakf Board claimed to be owner in possession of the suit property shown in the site plan, as also of superstructure constructed over the suit property. Father of defendant No. 2, Ram Murti son of Amin Chand was a licensee in possession of the suit land

measuring 450 square yards. After the expiry of licence, defendant No. 2 applied for lease of plot in the name of M/s Ram Murti & Sons. The application was accepted and he was given the property on lease w.e.f. 1.1.1978 at the rate of Rs. 100/- (Rupees one hundred only) per month Lessee constructed seven shops, and sublet the major portion in unauthorized manner, to defendants No. 3 to 9 without permission from the Board.

4. It was claimed that the defendants violated the terms of the lease which resulted in termination of the lease. It was also the case set up by the plaintiff/respondent that defendants No. 1 and 2 were liable to vacate the premises, and hand over the possession as they had no right to sublet. It was pleaded that the defendant/appellants have damaged the property whereby the value and utility of the leased property, has been diminished. It was also the case of the plaintiff/respondent, that the claim of the appellant/defendants, that they were lessee in terms of the lease dated 5.1.1980, was not sustainable, as the lease deed was the outcome of fraud and foul play. The Board denied having executed any lease deed in favour of defendants No. 1 and 2. The lease deed was said to be illegal and not binding on the plaintiff. The relief claimed was for possession with a consequential relief of permanent injunction, restraining defendants No. 3 to 9 from paying rent to defendants No. 1 and 2.

5. Suit was contested by defendants No. 1 and 2, wherein stand was taken, that the suit was not filed by a competent person as Mohammad Sadiqui was not authorized to file or verify the pleadings. The ownership of wakf board was admitted. It was the stand of the defendant/appellants, that the construction was raised by the defendants, on the property leased out by the Board, which was given on lease at the rate of Rs. 200/- (Rupees two hundred only) with a permission to raise construction. It was also the case of the defendants that after raising construction, defendants No. 1 and 2 sublet the shops constructed by them. It was further the case of the defendants, that after permitting the defendants to raise construction, the rent was increased from Rs. 100/- (Rupees one hundred only) to Rs. 200/- (Rupees two hundred only), which was paid by the defendants till 1985. The stand of the defendants was, that no permission was required to lease out the shop constructed by the defendant/appellants, as at the time of allowing the construction, permission to sublet was granted. Lease deed dated 5.1.1980 was claimed to be genuine document, sanctity of which stood decided in the earlier proceedings. The officials of the Board had deposed admitting lease, to have been issued by the Board, and the Board was receiving the rent, under the said lease.

6. Defendants No. 3 to 9 were said to be tenants under defendants No. 1 and 2. Other material averments were also denied.

7. Defendant No. 4, filed a separate written statement admitting the ownership of the plaintiff. Stand of defendant No. 4 was that defendants No. 1 and 2 by misrepresenting their right to sublet, leased out the property to him, though they had no such right. Defendant No. 4 claimed to be the tenant under the plaintiff Board and not under defendants No. 1 and 2. Other averments made in the plaint were denied.

Defendants No. 3, 5 to 9 were proceeded ex parte.

8. In the replication, averments made in the written statement were denied and those made in the plaint were reiterated.

9. On the pleadings of the parties, learned trial court framed the following issues:

1. Whether the present suit has been filed through competent person? OPP

2. Whether the defendants have committed breach of the terms of the lease? OPP

3. Whether the defendants are liable to be evicted from the premises on the grounds mentioned in the plaint? OPP

4. Whether the lease of the defendants has been terminated by the competent authority? If yes, its effect? OPP

4-A Whether the plaintiff is estopped from filing the present suit as defendants No. 1 and 2 were permitted to raise construction over the suit property? OPD

5. Relief.

10. In support of the case, the respondent Board examined Shakil Ahmad as PW 1, Mohammad Iqbal Yunus as PW 2, Mohmmad Sadiqui as PW 2/A and thereafter closed its evidence.

11. The defendants/appellants, on the other hand, examined Rattan Lal Ahmamad as DW 1, Ram Murti appeared as DW 2 and examined Anup Abrol as DW 3. By way of documentary evidence, defendant/appellants tendered judgment in the consolidated suits, titled as Anup Abrol v. Ram Murti decided by Shri Mohinder Singh, Civil Judge (Senior Division) as Ex.DX, & Ex.DY and the decree sheet as Ex.DZ.

12. Learned trial court took issues No. 1, 2, 3 and 4 together, and on appreciation of evidence, decided issue No. 1 in favour of the plaintiff.

13. Issues No. 2, 3 and 4 were decided against the plaintiff and in favour of defendants No. 1 and 2.

14. On issue No. 4-A, learned trial court held that it was proved, that the plaintiff board, had allowed construction to be raised, and thereafter received advance rent, therefore, held, that the Board, was estopped from filing the present suit against defendants No. 1 and 2.

Learned trial court decided issues No. 2, 3 and 4 referred to above for the reasons against the plaintiff by recording a finding that Mohammad Iqbal Yunus while appearing as PW 2 proved, resolution and notification showing that the Board was superseded. The

Administrator appointed was authorized as per the statute to direct the secretary to pursue the suit. The learned trial court held that resolution proved, showed that the Secretary of the Board was duly authorized to institute the suit.

The learned trial court also held that notification Ex.PW2/A proved that the Estate Officer on being authorized by the Administrator was competent to maintain the suit. The learned trial court held, that the suit was filed by the competent person. The learned trial Court also by referring to Section 64(2) of the Punjab Wakf Act, 1954 read with Section 15(2)(1) to hold that all powers of the Board vested in the Administrator.

Learned trial court, however, did not accept the contention of the plaintiff Board raised against the letter dated 15.1.1980, for the reason that PW 2 in cross examination admitted that the Board had been receiving rent from defendants No. 1 and 2, at the rate of Rs. 200/- (Rupees two hundred only), which was settled vide letter dated 15.1.1980. The learned trial court further held that vide letter Ex.DW2/A and lease deed Ex.D.1, defendants No. 1 and 2 were given permission to raise construction. Factum of raising construction over the suit property, stood decided by the civil court in the judgment exhibited as DW2/D. The appeal against the said judgment and decree was also dismissed vide judgment Ex.DW2/2.

Learned trial court, therefore, held that the lease deed Ex.D.1 dated 17.1.1980, coupled with receipt Exs.D/2 to Ex.D/7 made it clear that the Board, had accorded implied consent for raising construction. The Board had been receiving the rent up till 1.4.1985. The learned trial court further held that thereafter remittance of Rs. 9600/- (Rupees nine thousand and six hundred only) by way of bank draft was also proved.

Learned trial court did not accept the contention of the learned Counsel for plaintiff Board, that as per provisions of Section 36(2)(f) lease for more than 3 years could not be executed nor did the court accept the plea that the lease was outcome of fraud, for the reason, that the Board had been accepting the enhanced rent from the defendant/appellants.

The learned trial court held, that though under the provisions of the Act, lease for more than 3 years was not permissible, still the evidence showed that the Board itself had impliedly given consent for raising construction and had continuously received rent at the rate of Rs. 200/- (Rupees two hundred only). The learned court accepted the version, that the construction was raised with the permission of the Board. Learned trial court in view of the finding proceeded to hold that lease in favour of defendant No. 1, was to be taken as perpetual lease as the defendants/appellants were allowed to raise construction.

To support this finding, reliance was placed on the judgment of Hon"ble Supreme Court of India in the case of [Chavalier I.I. Iyyappan and Another Vs. The Dharmodayam Company](#), ; judgment of Patna High Court in the case of [Deep Chand Sao Vs. Smt. Kasturi Devi and Others](#), .

The learned trial court also did not accept the contention of the learned Counsel for the plaintiff/respondent, that the letter Ex.D.1 and Ex.DW2/A were not issued by the competent person, in view of the conduct of the plaintiff Board, in accepting the enhanced rent for the last 10 years as mentioned in these letters.

The stand of the defendant N4, was not accepted for the reason, that because of his claim, that he was lessee under the Board, already stood adjudicated and the lease without handing over possession to defendants No. 1 & 2 in his favour by the Board was only a paper transaction.

The Board being dissatisfied, preferred an appeal against the judgment and decree, passed by the learned trial court.

The learned lower appellate court reversed the findings by recording, that after coming into force of Punjab Wakf Act, 1995, the lease by the Board was to be governed by Section 56 of the Act, which imposes restriction on the Board to grant lease of wakf property, which reads as under:

(1) A lease or sub-lease for any period exceeding three years of any immovable property which is Wakf property shall, notwithstanding anything contained in the deed or instrument of wakf or in any other law for the time being in force, be void and of no effect.

(2) A lease or sub-lease for a period exceeding one year and not exceeding three years of any immovable property which is wakf property shall, notwithstanding anything contained in the deed or instrument of wakf or in any other law for the time being in force, be void and of no effect unless it is made with the previous sanction of the Board.

(3) The Board shall, in granting sanction for lease or sublease or renewal thereof , under this section review the terms and conditions on which the lease or sub-lease is proposed to be granted or renewed and make its approval subject to the revision of such terms and conditions in such manner as it may direct.

Learned lower appellate court, held that the lease or sub-lease for any period exceeding three years of any immovable property of the wakf was void, and could not result in creating perpetual lease. Learned lower appellate court by referring to Section 56 of the 1995 Act, considered the facts of the case, and held that the property was under the tenancy of Amin Chand, as per lease deed Ex.PW2/B. The property was thereafter leased out to Ram Murti for a period of 11 months vide rent note Ex.PW2/F. The important terms of the lease were as under:

3. That we will not sub-let the premises or transfer its tenancy rights to anyone else and will not create any joint partnership with anybody else in the said plot without prior permission of the Punjab Wakf Board.

7. That I undertake to keep the plot in good condition.

12. In the event of the rent is not paid within one month from the due date if falls due or any of the above provisions of this rent deed is infringed the rent deed shall be terminated and the Punjab Wakf Board in addition to or in the alternative to any other remedy that may be available to it at its discretion will have the right to resume the plot provided one month"s notice shall be given by the Wakf Board to me.

13. That I will not alter or change the nature of the property and I will not effect any repairs etc. without the prior permission of the Board.

15. Thereafter, vide letter dated 5.1.1980, Ex.DW2/A, defendants No. 1 and 2 were allowed to raise construction. Letter DW2/A reads as under:

Subject: Proposal of construction of seven shops permission to sublet them by Sh. Ram Murti. and sons of wakf land attached to masjid Kumharan, Jullundur held by him as an allottee on a monthly rent of Rs. 100/-. Sh. Ram Murti is the allottee of one kanal of land on rent of Rs. 100/- p.m. He wants to construct seven shops on the premises under his tenancy as per site plan submitted by and to sublet these shops to sub-tenants. The approval of proposal is given on the following terms:

1. That he will construct seven shops and stair-case at his own cost out of money to be advanced by him for this purpose on behalf of the Board not to be claimed from the Punjab Wakf Board at any time.
2. That the new shops shall be property of the Board and he will not claim ownership over it.
3. That he will be entitled to sublet the shops.
4. That he will enhance rent from Rs. 100/- per month to Rs. two hundred per month. A deed of agreement will be got executed and a Rent deed be sent to H.O. Ambala Cantt. Sd/ Secretary Punjab Wakf Board, Ambala

16. After issuance of the letter by the Secretary, a lease deed was executed, wherein the defendants/appellants agreed, that they will construct seven shops and staircase, at their own expenses and will not claim any damages from the Punjab Wakf Board, at the time of vacating the premises. The important terms of the lease deed read as under:

13. In the event of the rent is not paid within one month from the due date if falls due or any of the above provisions of this Rent Deed is infringed the Rent Deed shall stand determined and the Punjab Wakf Board in addition to or in the alternative to any other remedy that may be available to it at its discretion will have the right to resume the land provided one month notice shall be given by the Wakf Board to me.

14. That I will not alter or change the nature of the property and I will not effect any alternations.

15. That I will not raise any construction on the back of the said shops without the prior permission of the Punjab Wakf Board and also will not give the said vacant/open site behind the said shops to any one else.

17. Learned lower appellate court, thereafter, considered the legality of the letter Ex.DW2/A dated 5.1.1980, issued by the Secretary of the Board and held, that as per the resolution, the secretary could sanction the lease of vacant plot for a period of not exceeding three years up to a monthly lease of Rs. 50/- (Rupees fifty only) only. Learned lower appellate court also held, that as per resolution Ex.PW2/A, the Secretary did not have any power to allow the raising of construction over the Wakf property or to enhance the rent, nor any such authority was available under the Act. The learned lower appellate court, therefore, held that the act/lease being in violation of provisions of the statute, was not legal, thus could not advance the case of the defendants/appellants.

Learned lower appellate court applied the principle, that there can be no estoppel against statute, and that no allotment letter was issued by the Wakf Board to validate this action.

The learned lower appellate court proceeded to hold, that subsequent action of the board in accepting the rent could not legalise an illegal action.

18. In support of this contention reliance was placed on the judgment of Hon"ble Supreme Court in the case of [New India Assurance Co., Shimla Vs. Kamla and Others etc. etc.,](#) .

19. Reliance was also placed on the judgment of Hon"ble Patna High Court in the case of Sudhanshu Kanta v. Manindra Nath AIR 1965 Patna 144.

20. By placing reliance on the judgments referred to above, learned lower appellate court held, that the contracts which were void could not be rectified by the concerned authorities.

Learned lower appellate court also held, that on the principle of estoppel, a void transaction could not be held to be valid.

The learned court also took note of the fact that, Secretary of the Board was subsequently dismissed and case under the Prevention of Corruption Act, was registered against him.

The learned lower appellate court held that defendants/ appellants, also could not take benefit of Section 196 of the Indian Contract Act to claim rectification of the acts of the Secretary. Learned lower appellate court placed reliance on Section 227, of the Indian Contract Act to hold, that acts of the agent which are within his authority are only binding on the principal and not other.

Reliance was placed on Section 228 of the Indian Contract Act to hold, that if illegal part of transaction cannot be separated, then the whole transaction is not binding on the principal.

The learned lower appellate court, therefore, held that as per the rent note, the defendant/appellants, could not alter or change the nature of property, nor affect the repairs without the permission of the Board.

The learned Court, therefore, held that the lease was rightly terminated, by issuing notice u/s 106 of the Transfer of Property Act. Learned lower appellate court did not accept the contention raised by the defendants-appellants, that in view of the stand taken by the plaintiff board in civil suit No. 316 of 1982, decided on 8.12.1982, the letter Ex.DW 2/A was to be held to be legal for the reasons that the validity of letter Ex.DW2/A was not decided in the suit.

The learned lower appellate court thereafter, proceeded to hold that besides the shops allowed to be constructed, defendants/appellants had also raised construction behind the shops and also on the first floor without any permission from the Board.

The learned lower appellate court referred to Clause 15 of the rent deed Ex.D1 dated 17.1.1982, which reads as under:

That I will not raise any construction on the back of the said shops without the prior permission of the Punjab Wakf Board and also will not give the said vacant/open site behind the said shops to any one else.

The learned lower appellate court, held that additional construction raised i.e. five rooms and a store at the batik of the shop, was in violation of the terms of lease.

Learned lower appellate court relied on the provisions of Section 111 of the Transfer of Property Act to hold, that the lease of property stood determined by the efflux of time allowed therein, as the period of 11 months had expired and the tenancy came to an end, and therefore, the accepting of rent could extend the lease only on month to month basis.

The learned lower appellate court held, that on the breach of the terms of the lease agreement, the lease stood terminated as also by service of notice.

Learned lower appellate court reversed the findings of the learned trial court, holding that with permission to raise construction, a perpetual lease was created by holding this finding not to be based on facts and circumstances of the case. Findings of the learned trial court on Issues No. 2, 3 and 4 and Issue No. 4A, were reversed for the reasons stated above.

The learned lower appellate court held, that as the construction was not raised with the permission of the Punjab Wakf Board, therefore, the Board was entitled to possession of

plot, as leased out after removal of Malba. Appeal was accordingly accepted and the suit for possession was decreed by directing the respondents No. 1 and 2 to remove the malba and superstructures over the disputed property, and hand over vacant possession to the plaintiff.

Defendants No. 3 to 9 were also restrained from paying the rent to defendants/appellants.

21. Mr. M.L. Sarin, learned Senior counsel appearing on behalf of the appellants contended, that in this appeal, following substantial questions of law arise for consideration of this Court.

1. Whether Section 56 of the Punjab Wakf Act, 1995 could have retrospective effect to determine the lease executed in 1978?

2. Whether there was any violation of provisions by the Secretary of the Board in granting sanction for construction or in the alternative whether the acts of the Secretary stood rectified by necessary implication as the defendants were allowed to continue in his possession on payment of enhanced rent?

3. Whether the suit could be decreed for possession by removal of malba against the relief claimed.?

4. Whether the lease deed could be terminated with 15 days notice in violation of provisions of Section 106 of the Transfer of Property Act?

22. In support of the substantial questions of law, learned senior counsel for the appellants vehemently contended, that the learned lower appellate court wrongly applied the provisions of Section 56 of the 1995 Act, though it could not have retrospective operation, and could not affect the lease executed in the year 1978, as disabling provisions in an Act can apply prospectively and not retrospectively.

23. It was also the contention of the learned senior counsel, that learned lower appellate court wrongly held the lease to be in violation of the 1995 Act as the lease deed was not for a period of three years, but was only for 11 months, therefore, there was no violation of any provisions of the Act, as lease for 22 months is permissible.

24. It was also seriously contended by the learned senior counsel for the appellants, that finding of the learned lower appellate court, that the lease deed executed by the Secretary of the Board, vide which permission was granted for raising construction was not void as it was proved that by way of necessary implication Board had consented to it, as would be clear from the facts that (i) the defendants/appellants were allowed to remain in possession of the premises after the expiry of lease period on payment of rent; (ii) the consent of the Board was also proved from the fact that in the previous litigation, a specific stand was taken by the Board, admitting the tenancy of the defendants/appellants, and (iii) that the permission was granted by the Board to raise

construction.

25. There is force in the contentions raised by learned senior counsel for the appellants.

26. The first and second substantial questions of law raised, are therefore, answered in favour of the appellants/defendants and it is held, that provisions of Section 56 of the Punjab Wakf Act, 1995, were not applicable to the lease executed in favour of the defendants/appellants nor it was governed by Section 56 of the Act, but by the terms of the lease deed as Section 36 of the 1954 Act was not enforced.

27. It is also held, that the lease deed in favour of the defendants/appellants was not void, as after the execution of the lease deed the defendants/appellants were allowed to raise construction and the Board accepted the rent at the revised rate till 1985 i.e. after expiry of lease period. There was thus, implied consent of the Board to the lease executed by the secretary to the Board, the action of the secretary stood ratified.

28. The plea of the defendants/appellants that the lease was to be treated as perpetual lease, as held by the learned trial court, cannot be accepted for the reason, that while granting permission for the construction, it was made clear that the lease was for a period of 11 months. Furthermore, that the defendants/appellants would not claim any damages, for the construction and were to hand over vacant possession of the plot on the termination of the lease, thus in view of agreed terms in the lease, it cannot be said that lease was perpetual. This position was not disputed by the learned Counsel for the appellants.

29. Learned senior counsel thereafter contended, that though the lease was for a period of 11 months only, however, as the defendants/appellants continued in possession of the property after the expiry of lease, it was a case of holding over u/s 116 of the Transfer of Property Act, therefore, could not be evicted except by following the process of law. The contention of the learned senior counsel was, that the tenant holding over after expiry of the original lease, is to be governed by the terms of the lease, embodied in the original contract, though it may be treated to be a monthly tenancy.

30. In support of this contention reliance was placed on the judgment of this Court in the case of Dayal Chand v. The Union of India and Ors. 1970 R.C.R. (Rent) 205, wherein this Court was pleased to lay down as under:

4. In our opinion, the decision of the trial Court as well as of the learned District Judge must stay-on a very short ground which will now be stated. It is common ground that the tenants did hold over. What is the effect of a tenant holding over, is now beyond the pale of controversy in view of the decision of the Federal Court in AIR 1949 124 (Federal Court) , Mukherjea, J. (as he then was) who spoke for the majority of the Court, while dealing with the position of a tenant holding over, observed as follows:

This argument, though plausible at first sight, does not appear to me to be sound. It is perfectly right that the tenancy which is created by the "holding over" of a lessee or under-lessee is new tenancy in law even though many of the terms of the old lease might be continued in it, by implication; and it cannot be disputed that to bring new tenancy into existence, there must be a bilateral act. What Section 116 T.P. Act contemplates is that on one side there should be an offer of taking a renewed or fresh demise evidenced by the lessee's or sub-lessee's continuing in occupation of the property after his interest has ceased and on the other side there must be a definite assent to this continuance of possession by the landlord expressed by acceptance of rent or otherwise. It can scarcely be disputed that the assent of the landlord which is founded on acceptance of rent must be acceptance of rent as such and in clear recognition of the tenancy right asserted by the person who pays it.

It is, therefore, clear that after the expiry of the period fixed in the original leases, the original contract of tenancy came to an end and a new contract of tenancy came into being. Of course, by implication, the terms of lease embodied in the original contract would be deemed to be the terms of lease in the new contract. It has been held by two learned Judges of the Calcutta High Court in *Lachminarain Bhareodan v. Hoara Miller & Co.* ILR 1914 Cal 35, and *Bahadur Mull Chaudhuri v. Nagar Mull Madan Gopal* ILR 1941 Cal 451, that an arbitration clause in an old contract does not ipso facto become an arbitration clause in the new contract. Therefore, on the parity of reasoning it must be held that the arbitration clause, that is, clause 13 in the lease deed, does not become ipso facto a clause of the new contract of lease u/s 116 of the Transfer of Property Act.

31. The contention of the learned senior counsel for the appellants was that in view of the law referred to above, the terms of the lease by way of holding over is to be read as under:

1. That I will construct the shops from my own expenses and I will not claim any damages from the Wakf Board at the time of vacating the said premises.
2. That I will give the said shops on rent to other persons and the said tenants will be only my own tenants and they will not claim any tenancy rights from the Wakf Board.
3. That I shall pay Rs. 200/- (Rupees Two hundred only) per month as rent from 1.10.1979 to the Punjab Wakf Board in advance in the first week of each month.
4. That a sum of Rs. 400/- has accrued as arrears of rent which I undertake to pay to the Punjab Wakf Board, as under:
 - (a) Rs. on execution of the rent deed and there-after monthly instalment of Rs. 200/- each along with the rent.
4. That I will not sublet the premises or transfer my tenancy rights to any one else and also will not create any partnership with anybody else without the permission of the Board

with regard to the shops in question.

5. That I will not use the premises for any purpose which is Un-Islamic.

6. That I have taken the above plot for permanent construction for eleven months and that I will not change its purpose and whenever I vacate it, I shall deliver its possession to the Punjab Wakf Board, through one month notice to the secretary.

7. That I will allow the officials of the Wakf Board to enter into the premises at all convenient times from the purposes of inspection and measurements.

8. That I undertake to keep the property in good condition.

9. That all the taxes which are payable by the Punjab Wakf Board in respect of this property/plot will be payable to the authorities concerned by me.

10. That I will be responsible for the re-action and repercussions that may arise as a result of leasing, and the Wakf Board will not be liable to incur expenditure on this accounts.

11. In any case of any new laws, rules or directions which may in future be made by the Provincial or Central Government or under any emergency it may become necessary for the Punjab Wakf Board to get back this plot. It will be open to the Punjab Wakf Board to rescind the contract even before the expiry of the lease period and I will deliver its possession to the Punjab Wakf Board, after removing the said construction made thereon or handing over the same to the Punjab Wakf Board in the same condition and will not claim any damages/compensation from the Wakf Board.

12. That I alone will be responsible for any action of the Government, Municipal Corporation, Semi-Government, Town Planning Department or Courts order which it may take against for the unplanned constructions of the shops made by me or for its use for inhygenic.

13. In the event of the Rent is not paid within one month from the due date if fails due or any of the above provisions of this Rent Deed is infringed the Rent Deed shall stand determined and the Punjab Wakf Board in addition to or in the alternative to any other remedy that may be available to it at its discretion will have the right to resume the land provided one months notice shall be give by the Wakf Board to me.

14. That I will not alter or change the nature of the property and I will not effect any alterations.

15. That I will not raise any construction on the back of the said shops without the prior permission of the Punjab Wakf Board and also will not give the said vacant/open site behind the said shops to any one else..

In witness whereof I have executed this Rent Deed this day of January, 1980.

32. By referring to the terms, learned senior counsel for the appellants contended, that the lease deed could only be terminated if any new law, rules or directions were enforced for getting back the plot, and not otherwise. The contention was, that there was no breach of terms of the lease, which could entitle the Board to cancel the lease deed.

33. The main contention was, that the notice issued was not in consonance with the terms of the lease deed and therefore, could not be said to be a valid notice as the notice stipulated was of one month, whereas admittedly notice of 15 day was given.

34. Section 106 of the Transfer of Property Act reads as under:

106. Duration of certain leases in absence of written contract or local usage.-

(1) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months" notice; and a lease of immovable property for any other purposes shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days" notice.

(2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in-sub-section (1) shall commence from the date of receipt of notice.

(3) A notice under Sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.

(4) Every notice under Sub-section (1) must be in writing signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

35. It was also the contention of the learned senior counsel for the appellants that the suit filed by the plaintiff was for possession of the property and therefore, decree for possession by removal of malba could not be granted.

36. In view of the contentions referred to above, it was prayed, that the substantial questions of law Nos. 3 and 4, be also decided in favour of the defendants/appellants and against the plaintiff Board.

37. Mr. S.K. Pipat, learned senior counsel appearing on behalf of the respondent/Board, controverted the contentions raised by the learned senior counsel for the appellants by

contending, that the lease of the defendants/appellants was validly terminated, for violating the terms of the lease as, besides the construction of 7 shops and stair, the defendants/appellants also raised further construction at the back and on the ½ first floor, without permission of the Board, as held by the learned lower appellate court.

38. Learned senior counsel for the respondent also contended, that though in the lease deed it was stipulated, that the lease could be terminated with notice of one month, still it was not open to the defendants/appellants to question the validity of notice as no such plea was raised in the written statement.

39. It was the contention of the learned senior counsel for the respondent Board, that notice u/s 106 of the Transfer of Property Act was issued to the defendant/appellants on 4.12.1989. Reply to which was sent on 14.12.1989. Suit was filed only on 17.5.1990 i.e. after expiry of 30 days, to which written statement was filed on 2.4.1994. It was, therefore, not open to the defendants/appellants to challenge the validity of notice in view of Section 106(3) of the Transfer of Property Act.

40. Learned senior counsel for the respondent/Board contended, that the Law Commission while recommending the amendment of Section 106 of the Transfer of Property Act had proposed that the amendment would apply to the pending cases also. The appeal being the continuation of the suit would, therefore, be covered by the amended provisions of Section 106 of the Transfer of Property Act.

41. In support of the contention, that objection regarding invalidity and infirmity of notice u/s 106 of the Transfer of Property Act, was required to be raised specifically, at the earliest and in absence thereof it would be deemed to have been waived. In support, reliance was placed on the judgment of Hon"ble Supreme Court in the case of Parwati Bai v. Radhika 2003(1) R.C.R. (Rent) 607.

42. Learned senior counsel for the respondent also raised a contention, that in the absence of plea, that the tenant was occupying the premises as a tenant holding over, no notice u/s 106 of the Transfer of Property Act was necessary. Learned Counsel for the respondent referred to the written statement where no such contention was raised, rather the stand taken was, that it was a perpetual lease. This stand was admitted to be not sustainable, even by the learned senior counsel appearing on behalf of the defendants/appellants. In support of the contention reliance was placed on the judgment of Hon"ble Andhra Pradesh High Court in the case of A.G. Chandrasekhar v. Smt. Ramagiri Mahalaxmi 2004(1) R.C.R. (Rent) 236.

43. Learned senior counsel for the plaintiff-respondent also placed reliance on the judgment of Hon"ble Supreme Court in the case of [Jaswant Raj Soni and Jabar Lal Vs. Prakash Mal and Kan Mal](#), in support of the contention, that where under the agreement it was provided that one month's notice was necessary to quit, and the notice fell short of one month, but the eviction petition is filed on expiry of one month it would meet the

requirement of notice.

44. Reliance was also placed on the judgment of Hon"ble Supreme Court in the case of Nopany Investments (P) Ltd. v. Santokh Singh (HUF) 2008(1) R.C.R (Rent) 6, wherein it was held, that if suit for eviction is filed under general law no notice to quit was necessary u/s 106 of the Transfer of Property Act as filing of the eviction suit under general law, itself was a notice to quit.

45. In view of the submission referred to above, learned Counsel for the plaintiff/respondent, contended, that substantial questions of law No. 3 and 4 be decided against the defendants/appellants and in favour of the plaintiff/respondent.

46. On consideration of matter, I find force in the contention raised by the learned senior counsel for the respondent/Board. It is well settled law, that it is always open to the courts to grant lesser relief than claimed, in the facts and circumstances of the case. The decree of the learned lower appellate court, cannot be said to be bad merely because in a suit for possession along with superstructure, the learned lower appellate court had decreed the suit for possession by directing the defendants/appellants to hand over possession of the plot leased out, after removing the malba which belonged to the defendants/appellants.

47. Notice of termination of the lease, also cannot be said to be bad in law as by raising additional construction over and above 7 shops and stair qua which permission was given, the defendants-appellants violated the specific terms of the lease deed. Furthermore, as per the amended law, the defendants/appellants could not be allowed to continue even though the amended Jaw was not retrospective in operation, but by way of specific term, the defendants/appellants had agreed to abide by any change in law.

48. In view of the judgments, relied upon by the learned senior counsel for the plaintiff/respondent, the notice cannot be said to be invalid so as to hold that the lease deed continued to subsist. The owner under the general law is competent to seek eviction of the lessee by issuing notice of termination of the lease which, in fact, has been done in the case in hand.

49. Substantial question of law Nos. 3 and 4 are, answered in favour of the plaintiff/respondent and against the defendants/appellants.

50. In view of the findings referred to above, judgment and decree passed by the learned lower appellate court is upheld though for different reasons as given above, and the regular second appeal is dismissed, but with no order as to costs.