

(1983) 11 AHC CK 0010

Allahabad High Court

Case No: Second Appeal No. 363 of 1971

Burma Shell Oil Storage and
Distributing Co. of India Ltd.

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision: Nov. 10, 1983

Acts Referred:

- Transfer of Property Act, 1882 - Section 106, 116

Citation: AIR 1984 All 89

Hon'ble Judges: V.K. Khanna, J; K.C. Agrawal, J; A.N. Verma, J

Bench: Full Bench

Advocate: Swami Dayal, for the Appellant; Standing Counsel, for the Respondent

Final Decision: Disposed Of

Judgement

V.K. Khanna, J.

The following question of law has been referred for the opinion of the Full Bench:--

"Whether, for the purposes of Section 116 of Transfer of Property Act, it was necessary that there should be a contract subsequent to the termination of the original lease regarding the period of notice required u/s 106, T. P. Act."

2. According to the learned single Judge there was a clear conflict of opinion expressed in two Division Bench decisions of this Court reported in [Radha Ballabh Vs. Bahore Ram Chand](#), and [Zahoor Ahmad Abdul Sattar Vs. State of Uttar Pradesh and Another](#), . The learned single Judge in the referring order has held that the earlier Division Bench (Radha Ballabh supra), has held that "the contract to the contrary" mentioned in Section 116 of Transfer of property Act may be the one contained in the original lease and it was not necessary that such a contract must necessarily be arrived at after the old lease comes to an end while the latter Division Bench in the case of Zahoor Ah-mad Abdul Sattar (supra) has held that such a contract to the contrary must necessarily be arrived at or after the holding over by

the contractual tenant commences. The period of notice also was held to be dependent on the "purpose" of the lease.

3. As far as our High Court is concerned, the following cases have dealt with the question referred to this Full Bench:--

- (1) [Badal and Others Vs. Ram Bharosa and Others](#), ;
- (2) [Suiti Devi and Another Vs. Banarsidas Bhagwandas](#), ;
- (3) [Radha Ballabh Vs. Bahore Ram Chand](#), ;
- (4) [Zahoor Ahmad Abdul Sattar Vs. State of Uttar Pradesh and Another](#), ; and
- (5) [Shiv Nath, minor under guardian Sahu Girdhar Lal Vs. Shri Ram Bharosey Lal](#), .

4. In the case of Badal (supra) a learned single Judge of this Court held that it was settled law that when the lessee holds over after the expiry of the term fixed by the lease, the relations between the parties are governed by the same terms as are embodied in the original lease.

5. In the case of [Suiti Devi and Another Vs. Banarsidas Bhagwandas](#), a Division Bench of this Court while construing the provisions of Sections 116 and 106 of the Transfer of Property Act and after reviewing the earlier authorities of this Court held:--

"With the greatest respect we find it difficult to follow the reasoning of the decision in [Dasarathi Kumar Vs. Sarat Chandra Ghose and Another](#), u/s 116 in the absence of an agreement to the contrary, if a tenant remains in possession of the property leased to him after the determination of the period of the lease, and the lessor accepts the rent from him, the tenancy is renewed from year to year or from month to month according to the purpose for which the property is leased as specified in Section 106. Referring to that Section we find that a lease for agricultural or manufacturing purposes is deemed to be a lease from year to year terminable by six months" notice expiring with the end of a year of the tenancy. This is, however, subject to any contract which the parties may enter into to the contrary. In the case before us the contract was that if the property leased was sold either by a private sale or in pursuance of a decree that might be passed in the mortgage suit instituted by the Bank, the lease could be determined by the lessor with three months" notice to_ the lessee. In view of such a contract as regards the notice required for determination of the lease, it cannot be successfully contended that the notices issued by Mr. Captain were not good and valid notices as required by the law"

From the aforesaid decision it would thus be clear that the Division Bench clearly held that the contract regarding the period of notice could also be earlier to termination of the lease and for the period of notice the original contract was looked into.

6. In the case of Radha Ballabh AIR 1956 All 679 (supra) a Division Bench of this Court clearly held.-

"Renewal of a lease from year to year or from month to month, according to the purpose for which the property is leased, is to be presumed only when there is no "agreement to the contrary"

The agreement referred to in Section 116 may be an agreement after determination of the original lease or it may be in the original lease itself. (Emphasis provided). This Division Bench of our High Court, therefore, also clearly lays down that the contract regarding the period of notice could be either in the original lease itself or may be arrived at between the parties after the extermination of the original lease.

7. A Full Bench of this Court in [Shiv Nath, minor under guardian Sahu Girdhar Lal Vs. Shri Ram Bharosey Lal](#), had also the occasion to interpret the meaning of the words "in the absence of a contract to the contrary" occurring in Section 116. In paragraphs 28, 28 (a) and 29 of the judgment the decisions given in the cases of Suiti Devi (supra) and Radha Ballabh (supra) have been approved. The Full Bench has also approved a case of Oudh High Court reported in AIR 1925 173 (Oudh) in which it was held that where a new tenancy is created by reason of the landlord allowing the tenant to hold over after the original lease terminates, then, in the absence of any terms in respect of the new tenancy, the terms governing the original lease will be deemed to have been accepted by the parties and if there was a provision in the original tenancy dispensing with a notice to quit, the same applies with regard to the new tenancy.

8. It has now to be seen as to whether a Division Bench of this Court in the case of Zahoor Ahmad Abdul Sattar (supra) has taken a view contra to what had been expressed in the aforementioned decisions of this Court.

9. The Division Bench in the case of [Zahoor Ahmad Abdul Sattar Vs. State of Uttar Pradesh and Another](#), has held:--

"12. In this case the lessee, the defendant, remained in possession of the leased property after the determination of the lease on the 15th of July 1950. The lessor, the government of U. P. did not accept rent from him but from the conduct of the former, it must be deemed otherwise to have assented to his continuing in possession. In the circumstances there being no arrangement to the contrary, the lease deed for industrial purposes must be deemed to have been renewed from year to year as specified in Section 106 of the Transfer of Property Act. There was thus a renewal of the lease from the 16th July, 1950 and one of the terms of the lease was that it was a lease from year to year and in terms of Section 106 of the Transfer of Property Act, it was a lease determinable by six months" notice expiring with the end of the year of tenancy. What would under these circumstances be the amount of rent payable? A perusal of Section 116 would show that though the lease had determined, it was renewed. The renewal of the lease would mean that its

terms and conditions would be the same as of the previous lease except that having due regard to the nature of the lease, it would be deemed to have been renewed from year to year in view of the specific provisions contained in Section 116 of the Transfer of Property Act.

17. It would thus appear from the trend of authority as also from the plain interpretation of the section that the renewed lease would be on the same terms as the original lease except that it would be a lease from year to year or from month to month according to the nature of the tenancy, the other conditions remaining the same.

18..... The holding over, therefore, makes this much difference that if there is any condition in the original lease as to the period of the lease, that condition would no longer apply but instead the lease would be from year to year or from month to month according to the nature of the lease terminable with the end of the month of the tenancy as the case may be....."

The aforesaid Division Bench, therefore, has held that the term of the new lease would be the same as the old lease except the condition in the original lease as to the period of the lease. The period of the lease being a fixed period, naturally that could not form part of the terms of the new tenancy created by holding over. However, a careful reading of the aforesaid Division Bench would clearly show that all the conditions which existed in the original lease, which may include a condition regarding notice, would become applicable to the lease created by holding over u/s 116.

10. In our opinion, therefore, there is no conflict in so far as the law laid down by the two Division Bench decisions of this Court in the cases of [Radha Ballabh Vs. Bahore Ram Chand](#), and [Zahoor Ahmad Abdul Sattar Vs. State of Uttar Pradesh and Another](#), is concerned. The answer to the question referred therefore is that it is not necessary that there may be a contract subsequent to the termination of the original lease regarding the period of notice required u/s 106 of the Transfer of Property Act. The contract could be either in the original lease or may be arrived at between the parties after the determination of the original lease.