

M. Gangadhara Rao Vs Bapurao Naidu, Revenue Divisional Officer, Amalapuram, E.G. District

Court: Andhra Pradesh High Court

Date of Decision: Sept. 2, 1998

Acts Referred: Andhra Pradesh (Andhra Area) Tenancy Act, 1956 â€” Section 10, 13

Constitution of India, 1950 â€” Article 226

Contempt of Courts Act, 1971 â€” Section 10, 11, 12

Land Acquisition Act, 1984 â€” Section 29, 30, 4(1)

Transfer of Property Act, 1882 â€” Section 106, 107, 108, 111, 116

Citation: (1998) 6 ALD 132 : (1998) 6 ALT 8 : (1999) 3 RCR(Civil) 331 : (1999) 1 RCR(Rent) 636

Hon'ble Judges: B.S.A. Swamy, J

Bench: Single Bench

Advocate: Mr. S. Ashok Anand Kumar, for the Appellant; Mr. Metta Chandrasekhara Rao, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. This contempt case is filed by the petitioner by contending that the respondents flouted the orders of this Court in Writ Petition No.15301 of

1996 dated 5-8-1996 as modified in review WPMP No.3674 of 1997, dated 20-2-1997 under Sections 10 - 12 of the Contempt of Courts Act.

In other words the action of the respondents in not apportioning the compensation for the lands belonging to the Temple which arc under the

enjoyment and possession of the petitioner as a lessee and stands acquired for public purpose by the Government, is assailed in this Writ Petition

as well as Contempt Case.

2. The claim of the petitioner as contested by the respondents by stating that by the time the notification was issued u/s 4(1) of the Land

Acquisition Act on 28-1-1996, the petitioner suffered an order of eviction and thereby he lost the right of cultivating tenant. Hence the question of

paying compensation to the petitioner by apportioning the compensation received by the landlord docs not arise. The learned Counsel for the

petitioner did not bring the true facts to the notice of the Court at the time of the disposal of the writ petition and the review WPMP. He simply

stated that he was the cultivating tenant of the lands in question and though he filed an application for apportionment of compensation, the

respondents are not in a mood to apportion the compensation. In those circumstances I disposed of the main writ petition at the admission stage by

order dated 5-8-1996 directing the respondents to apportion the compensation as the tenancy has been admitted by the respondents. The Temple

Authorities having received the order, filed an application to review the order of the Court. But unfortunately in the review application the Temple

authorities contended that the petitioner is not a statutory tenant and one Mamidiseti Manikyam and Gubbala Reddy were the statutory tenants of

the petition schedule land. In those circumstances I disposed of the review WPMP by order dated 20-2-1997 directing the respondents for

apportionment of compensation as the relationship of Landholder and tenant is still subsisting though the original tenant has sub-leased the land to

the petitioner and the sub-lease is between the petitioner and his principal. Now the petitioner filed the present case by contending that the orders

of this Court in review WPMP are not being complied with. The contemnors having received the notice resisted the claim of the petitioner by

stating that the question of paying any portion of compensation to the petitioner does not arise as the competent Court has already passed an order

of eviction against the petitioner for violation of the conditions of the lease. Rebutting the orders, the petitioner submits that though he suffered an

order of eviction, he still continued in possession of the property and when the lands were acquired for public purpose, he voluntarily surrendered

the possession to the Land Acquisition Officer. Hence he is entitled to receive the compensation. To resolve the controversy a look at the

provisions relating to the lease of immovable properties is required. The lease of immovable properties is governed by Chapter 5 of the Transfer of

Property Act, 1882. Section 106 of the Act deals with the duration of certain leases in the absence of written contract or local usage and all leases

of immovable properties for agricultural or manufacturing purposes will be deemed to be a lease from year to year terminable, on the part of either

lessor or lessee, by six months notice expiring with the end of a year of the tenancy; and a lease of immovable property for any other purpose shall

be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days notice expiring with the end of a

month of the tenancy. This Section comes into play only in the absence of a written contract by satisfying the period of lease and it is not governed

by any local law or usage to the contract. u/s 107 a lease of immovable property from year to year, or for any term exceeding one year, or

reserving a yearly rent, can be made only by a registered instrument and all other leases of immovable property may be made either by a registered

instrument or by oral agreement accompanied by delivery of possession. Section 108 of Transfer of Property Act deals with the rights and

liabilities of lessor or lessee. Section 111 deals with the determination of lease. The effect of the lessee remaining in possession of the property after

determination of the lease is dealt within Section 116. If a lessee or under-lessee of property remains in possession thereof after the determination

of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his

continuing in possession, the lease, is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month,

according to the purpose for which that property is leased, as specified in Section 106. The effect of Sub-Section "B" that as and when a lessee

continues in possession of the property after determination of the lease, if the lessor or his representative accepts the rent from the lessee or under-

lessee or otherwise assents to his continuing in possession, in the absence of an agreement to the contrary, the lease is deemed to be renewed

either year to year or month to month as specified in Section 106 of the Act and the tenant is considered to be tenant holding over. The rights of a

tenant holding over was considered by the Supreme Court in Bhawanji Lakhamshi and Others Vs. Himatlal Jamnadas Dani and Others, to the

following effect:

The act of holding over after the expiration of the term does not create a tenancy of any kind. If a tenant remains in possession after the

determination of the lease, the common law rule is that he is a tenant on sufferance. A distinction should be drawn between a tenant continuing in

possession after the determination of the term with the consent of the landlord and a tenant doing so without his consent. The former is a tenant at

sufferance in English Law and the latter a tenant holding over or a tenant at will. In view of the concluding words of Section 116 of the Transfer of

Property Act, a lessee holding over is in a better position than a tenant at will. The assent of the Landlord to the continuance of possession will

create a new tenancy. What the Section contemplates is that on one side there should be an offer of taking a new lease evidenced by the lessee or

sublessee remaining in possession of the property after his term was over and on the other side there must be a definite consent to the continuance

of possession by the landlord expressed by acceptance of rent or otherwise.

3. From the above it is seen that the tenant remains in possession after determination of the lease, he shall be treated as a tenant at sufferance and if

the tenant is in continuous possession after determination of the lease with the consent of the landlord, he should be treated as a tenant holding over

or tenant at will. In view of the language used in Section 116 of the Transfer of Property Act, the possession of a lessee holding over is somewhat

better than that of a tenant at sufferance. If he can prove the acceptance of the landlord for continuance of possession, it will create a new tenancy.

For creation of a new tenancy there must be an offer from the tenant and there must be a definite consent to the continuance of the possession by

the landlord. The possession of a statutory tenant under the Rent Act was also considered by their Lordships of the Supreme Court in the same

judgment and held as hereunder:

We have already held the whole basis of Section 116 of the Transfer of Property Act is that, in case of normal tenancy, a landlord is entitled,

where he does not accept the rent after the notice to quit, to file a suit in ejectment and obtain a decree for possession, and so his acceptance of

rent is an unequivocal act referable only to his desire to assent to the tenant continuing in possession. That is not so where Rent Act exists; and if

the tenant says that landlord accepted the rent not as statutory tenant but only as legal rent indicating his assent to the tenant's continuing in

possession, it is for the tenant to establish it.

4. In other words after the determination of the lease under the Rent Act, even if the landlord accepts the rent, it would not create any statutory

benefit, but he will be receiving legal rent indicating his assent to the tenants continuing in possession. The effect of payment and acceptance of rent

by a tenant after expiry of lease by efflux of time and continuing in possession by virtue of protection granted under the rent control legislation was

considered by the Supreme Court in *Ganga Dutt Murarka Vs. Kartik Chandra Das and Others*, for the following effect:

Section 116 of the Transfer of Property Act insofar as it is material provides that if a lessee of property remains in possession thereof after the

determination of the lease granted to him and the lessor accepts rent from the lessee or otherwise assents to his continuing in possession, the lease

is, in UK absence of an agreement to the contrary, 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. It is, however, well settled that where a contractual tenancy to which the rent control legislation

applies has expired by efflux of time or by determination by notice to quit and the tenant continues in possession of the premises, acceptance of

rent from the tenant, by the landlord after the expiration or determination of the contractual tenancy will not afford ground for holding that the

landlord has assented to a new contractual tenancy.

5. Hence mere acceptance of rent by the landlord after expiration or determination of the contractual tenancy by virtue of the protection granted

under the Rent Control Act, cannot give rise to any presumption that the landlord has assented for a fresh lease or tenancy. He is only disabled to

initiate proceedings to recover the possession of the premises because of the statutory prohibition imposed by the statute and not the result of any

voluntary conduct of the landlord and as such it does not amount to assent of the lessee continuing in possession. Of course there is no prohibition

against the landlord entering into a fresh contract of tenancy with a tenant whose right of occupation is determined and who remains in occupation

by virtue of the statutory immunity. Apart from an express contract, conduct of the parties may undoubtedly justify an inference, that after

determination of the contractual tenancy, the landlord had entered into a fresh contract with the tenant, but whether the conduct justifies such an

inference, that after determination of the contractual tenancy, the landlord had entered into a fresh contract with the tenant, and whether the

conduct justifies such an interference must always depend upon the facts of each case. Occupation of premises by a tenant whose tenancy is

determined is by virtue of the protection granted by the statute and not because of any right arising from the contract which is determined. The

statute protects his possession so long as the conditions which justify a lessor in obtaining an order of eviction against him do not exist. Once the

prohibition against the exercise of jurisdiction by the Court is removed, the right to obtain possession by the lessor under the ordinary law springs

into action and the exercise of the lessor's right to evict the tenant will not, unless the statute provides otherwise, be conditioned.

6. From this it is seen that the statute protects the possession of a tenant as long as the conditions which justify the lessor in obtaining an order of

eviction do not exist. Alternatively, as long as the tenant fulfils the conditions stipulated under the Act, for enjoyment of statutory protection, when

once the statutory protection is not available to the tenant by virtue of breach of conditions of the lease or otherwise, the right of the landlord under

common law to obtain possession will spring into action.

7. The possession of a tenant by sufferance was considered by the Supreme Court in *Badrilal Vs. Municipal Corporation of Indore*, . Repealing

the arguments of the appellant's Counsel that though no contract came into existence between the parties as the appellant has deposited the rent,

the appellant should be deemed to be a tenant holding over, their Lordships of the Supreme Court held as hereunder:

Leaving aside for the moment the contention put forward on behalf of the Corporation that this payment was made behind its back, it has to be

noted that the payment was at the rate prevailing before 30-9-1949 and on that date the Corporation having passed a resolution specifying a new

rate of rent of Rupees 9/-per Chasma the payment at the old rate by the appellant and its acceptance by the Municipal Commissioner was not an

acceptance of rent as such and in clear recognition of the tenancy right of the appellant. It cannot amount to the Corporation consenting to the

appellant continuing as a tenant by paying the old rates of rent. There is thus no question of the appellant being a tenant holding over. But a person

who was lawfully in occupation does not become a trespasser, even if he does not become a tenant holding over but is a tenant by sufferance.

8. From the above decision it is seen that if a tenant is continuing in possession of the property after expiry of the lease or determination of the lease

and if there is an offer by the tenant to pay the rent and there is an express consent of the landlord by accepting the rent, he will be treated as a

tenant holding over and a new tenancy will create payment of rent by a tenant after expiry of the lease or determination of the lease to continue in

possession of the property. By virtue of the statutory protection under Rent Act he shall not be treated as a tenant holding over, but he will be

treated as tenant by sufferance as he will be paying only the legal rent without reference to the consent and once the statutory prohibition is lifted,

justifying the landlord to take action for eviction of the tenant, the tenant shall be treated as a tenant by sufferance, has no title to hold the

possession. But u/s 117 of the Transfer of Property Act, the leases for agricultural purposes are exempted from the provisions of the Transfer of

Property Act.

9. As far as the Andhra region is concerned, the agricultural tenancies are governed by the provisions of the Andhra Pradesh (Andhra Area)

Tenancy Act, 1956. u/s 10 of the Act, every lease subsisting at the commencement of the Andhra Pradesh Tenancy Act shall be deemed to be in

perpetuity after the commencement of the amending Act under Act 39 of 1974 and all agricultural leases are deemed to be in perpetuity. After the

commencement of the amending Act 39 of 1974 which came into force in 1974, every lease entered into between the landlord and his cultivating

tenant shall be for a minimum period of 6 years and every renewal shall be for a further minimum period of 6 years at a time and the same are also

heritable. u/s 13 of the Act the landlord is given the option to terminate the tenancy for the grounds or any of the grounds mentioned in Section 13

of the Act.

10. Admittedly in this case the petitioner committed default in payment of rent and the landlord also obtained order of eviction against the petitioner

and the eviction order obtained by the landlord also has been confirmed by the appellate Court as well as this Court in exercise of its jurisdiction

under Article 226 of the Constitution of India.

11. At this stage, the lands in possession were acquired and the petitioner seemed to have surrendered the possession to the Land Acquisition

Officer. As the petitioner suffered eviction order from a competent Court, he cannot be treated as a tenant holding over or atleast as a tenant at

sufferance and his possession after the orders of the Court is only that of a trespasser. Hence the temple authorities are justified in resisting the

claim of the petitioner for apportionment "of compensation payable by the Government and in fact they have rightly done so in this case.

12. Hence the action of the respondent is perfectly justified and the question of initiating contempt proceedings against the petitioner does not arise

and the orders passed by this Court in writ petition as well as the Review WPMP are at the behest of the petitioner who did not place all the

relevant facts before the Court before obtaining those orders. Hence the petitioner cannot take advantage of the orders passed by this Court and

seek punishment of the respondent for flouting the orders of the Court under the provisions of the Contempt of Courts Act.

13. The contempt case is accordingly dismissed.