Madan Theatres Ltd. Vs Sm. Charushilla Dassi and Others

Court: Calcutta High Court

Date of Decision: March 18, 1954

Acts Referred: Bengal Amusements Tax Act, 1922 â€" Section 3, 3(1), 3(3), 3(3b), 3(4)
Transfer of Property Act, 1882 â€" Section 111(g)

Citation: 58 CWN 624

Hon'ble Judges: Chakravartti, C.J; S.R. Das Gupta, J

Bench: Division Bench

Advocate: S.M. Bose, A.G., E.R. Meyer and Sankar Mitra, for the Appellant;Atul Chandra Gupta and Anil C. Ganguly, for the Respondent

Judgement

Chakravartti, C.J.
The principal defendant in an ejectment suit, Madan Theatres Ltd., has preferred this appeal against a decision of P. B.

Mukharji, J., by which the learned Judge held that the appellant had forfeited a lease of two contiguous premises held by it under the first

respondent, Sm. Charushila Dassi, by reason of breaches of a condition which entitled the lessor to re-enter. The appellant contends that no

condition of the lease was broken and, alternatively, that assuming a breach had occurred, it was only a breach of an implied condition which could

not entail a forfeiture of the lease. Before the learned trial Judge, it was contended further that even if a forfeiture had been incurred, the court could

relieve the Appellant against it and ought to do so in the circumstances of the case, but before us that contention was expressly abandoned by the

learned Advocate-General. The premises concerned are Nos. 138-1 and 138-2, Cornwallis Street, Calcutta, the former of which appears also to

be numbered as 3, Gurucharan Lane, on one side. Their owner is admittedly the Respondent Sm. Charushila Dassi. Originally, on the 29th

October, 1919, she granted a lease of No. 138-2, Cornwallis Street, to one J. F. Madan for a period of 20 years with liberty to use the premises

for Bioscope and Cinema shows, variety entertainments, theatrical and all other purposes of a like nature."" The term of the lease was to be taken

as having commenced on the 8th July, 1915. It was stipulated by the lease that the lessee would be entitled to build on the premises, but he would

be bound to dismantle any structures that he might erect and restore the land to its original condition at the determination of the lease.

2. One of the conditions of the lease was that ""the lessee shall, during the term of the demise, allow to the Lessor a free complimentary pass for

four seats in the first class stalls or a private box for the performances at the Theatre or cinema on the demised premises"". As there was no

entertainments tax at the time, the lessee had only to forego the price of the seats in order to observe the condition and accordingly had no difficulty

in observing it.

3. The lease of 1919 was assigned by the lessee to a company promoted by him, called Madan Theatres Ltd., which is the appellant before us. It

appears that in 1922, the company applied to the lessor for a lease of an adjoining plot of land, known as 138-1, Cornwallis Street, for a period of

20 years and for an extension of the term of the lease of No. 138-2, Cornwallis Street, so that the two leases might terminate at the same time. The

request was granted and two leases were executed on the 14th November, 1924, one demising premises No. 138-1, Cornwallis Street, for a

period of 20 years with effect from the 18th July, 1922, and the other demising premises No. 138-2, Cornwallis Street, for a period of 7 years and

ten days with effect from the 8th July, 1935, both leases to terminate on the 17th July, 1942. In the case of the second lease, the purposes for

which the premises were to be used were the same as in the lease of 1919, while in the case of the first, they were ""theatrical and operatic shows,

variety entertainments and other purposes of a like nature."" These leases also contained a provision that the lessee would be bound to remove all

structures and restore the lands to their original condition at the expiry or sooner determination of the leases. Like the lease of 1919, they provided

further that the lessee would have to allow to the lessor a free complimentary pass for four seats in the first class stalls or a private box for theatrical

or cinematographic performances on the demised premises.

4. In the meantime, the Bengal Amusements Tax Act had been passed and it had come into force on the 1st of April, 1922. But as the Act

imposed a tax only on tickets paid for and none on free or complimentary passes, the lessee had yet no difficulty in providing free admission to the

lessor in (sic) (sic)terms of the leas(sic) (sic) 138-1, it put up (sic)called ""Crown Cine (sic)(sic) No. 138-2, it set (sic)(sic), called ""Cornwallis (sic)

the 19th August, 1933, the (sic) with which we are directly con-(sic) was executed. It covered both (sic) and was for a term of 15 (sic)(sic) on the

18th July, (sic)(sic)and ending on the 17th July,1 (sic) This lease was executed by way (sic) ling the terms of the two pre-(sic) leases in accordance

with the provisions of a compromise decree passed in a suit for ejectment brought against the lessee. The purposes for which the premises were to

be used were described as """"Bioscope and Cinema shows, variety entertainments, theatre clubs and all other purposes of a like nature.

5. There was no longer any provision that the lessee would have to dismantle and remove the structures constructed by it at the termination of the

lease, but it was provided on the other hand that on the expiration or sooner determination of the lease, ""the building and structures that are now

standing on the land.....or that may hereinafter be erected, with the fixtures, save and except the furniture. Bioscope machinery, engines,

generators, fans and theatrical scenes shall belong absolutely to the lessor"". The second of the lessee''s covenants provided that the company ""shall

pay the monthly rent..... and shall also pay both the owner''s and occupier''s shares of taxes and other outgoings and impositions payable in

respect thereof"", i.e.. in respect of the demised premises. There was again a provision as to the free admission of the lessor to shows and

performances held on the premises, but it was expressed in a more elaborate manner in the seventh covenant in the following terms :

That the company shall at all times during the period of the lease keep one box containing not less than four seats in each of the said Cornwallis

Theatre and Crown Cniema at the disposal of the lessor for the use of herself or of other person or persons authorised by her or on her behalf in

writing and if the lessor so desires in writing, the company shall, instead of four seats in the box, permit six persons in the stall and eight persons in

the Gallery or pit to view the performances which will be held in the aforesaid demised premises.

6. A further clause in the lease provided that if the lessee ""fails or neglects to carry out or perform any of the terms, covenants and conditions, then

the lessor shall, notwithstanding hereinbefore contained, be at liberty to determine the lease and shall re-enter the said premises.

7. Thereafter, on some date which does not appear from the record, the Cornwallis Theatre was re-named as ""Sree Cinema"" and the Crown

Cinema was re-named as ""Uttara Cinema

8. Barring that some trouble arose in 1947 about obtaining the free seats reserved by the lease and that the matter was settled by an arrangement

by which the nature of the accommodation to be provided was slightly altered, the lease worked satisfactorily till 1949 when the Bengal

Amusements Tax Act was amended by West Bengal Act XT of that year. By the amendment, the entertainments tax was imposed on free or

complimentary passes and tickets as well, if they were for admission to a cinematographic exhibition. The amendment came into force on the 1st

April, 1949. Before that date, on the 29th March, 1949, a Director of Exhibitors Syndicate Ltd., a company which was managing the two cinema

houses as a lessee of Madan Theatres Ltd., addressed a, letter to an officer or relative of Sm. Charushila Dassi and asked him to take note of the

fact that, by the amended law, even free admissions to cinema shows had been taxed and that the tax was to be paid by the person who was

admitted on a free or complimentary pass or ticket. The writer accordingly suggested that persons who might go to the two. cinema houses in

order to avail themselves of the free admission provided for in the lease, might be advised to pay the entertainments tax. The lessor, however, did

not accept that view of her rights under the lease and insisted that if any tax was payable, it was to be paid, under the terms of the lease, by'' the

lessee. Accordingly, on the 3rd April, 1949, six persons, authorised by her, presented themselves at the ""Sree Cinema"" and claimed admission

without payment of the tax and similarly they or six other persons presented themselves at the ""Uttara"". They were told that they could be admitted

only if they paid the tax, but as they were not prepared to pay it, admission was refused. Some correspondence followed, the parties maintaining

their respective positions and ultimately the lessor gave notice of her intention to determine the lease on the ground of a breach of the condition as

to providing free admission to her nominees and herself and next, on the 1st September, 1949, she gave (sic)(sic) section 114A (sic)(sic) perty

Act. The (sic) (sic) to determine the lease (sic) (sic) included in the Paper B(sic) (sic) receipt was admitted in (sic) (sic) of the Appellant''s written

(sic) (sic)

9. On the 21st September, (sic) (sic) present suit was brought. It a (sic) that the Appellant had mortr (sic) (sic) leasehold to a certain party (sic)

(sic) receivers of the property (sic) (sic) appointed in a suit by the (sic) (sic) The Appellant and the recen.(sic) (sic) all impleaded as defendants in

(sic)(sic) suit. The only contention raised on behalf of the defendants which is now material was that under the terms of the lease, read with the

provisions of the Act, it was for the lessor and not the lessee to pay the entertainments tax chargeable in respect of the free or complimentary

passes and tickets issued to her. The further contention urged before us that, in any event, the condition as to providing free accommodation to the

lessor was not such that a breach of it by claiming the entertainments tax would entail a forfeiture of the lease does not appear to have been raised

in the pleadings or advanced in the argument before the court below. A great many other contentions were raised to which a brief reference will be

made later. The learned trial Judge overruled all of them and granted the lessor a decree for possession, as prayed for by her.

10. Several points which appear to have been pressed on the learned Judge with a certain degree of insistence, were not repeated before us. It

was no longer contended, as had been done before him on behalf of the receivers, that all that the lease required the lessee to do was to keep a

certain number of seats reserved for the lessor and that it did not even exempt her from paying the price of those seats. Nor was it contended any

more that" whatever the terms of the lease, section 5 of the Act would subject the. lessor to a criminal liability if he admitted the lessor or her

nominees without making them pay the entertainments tax themselves and that, therefore, observance of the seventh covenant to the extent of

admitting the lessor and her nominees without realising the tax from them could not be said to be within the contemplation of covenant and could

not be enforced. This contention appears to have been placed in the fore-front in the argument before the learned Judge and a consideration of it

occupies the bulk of his judgment. No reliance was placed on it by the Appellant in the argument before us. On behalf of the lessor, again, no

attempt was made by Mr. Gupta to support the finding of the learned Judge that the lessee was bound to pay the entertainments tax even under the

provisions of the second covenant which required him to pay the corporation taxes and ""other outgoings and impositions"" payable in respect of the

demised premises.

11. The principal question calling for our decision is whether by the lessee''s refusal to admit the lessor or her nominees to exhibitions held at the

two cinema houses except on payment of the entertainments tax, a breach of the seventh condition of the lease had occurred. The learned trial

Judge accepted the lessee''s contention that under the Act, the liability to pay the tax was of the person who attended a cinema show on a free

pass or ticket, but he held that such incidence of the tax could be shifted by contract and that, in the present case, it had been shifted by the

seventh condition of the lease to the owner of the cinema house, that is to say, the appelant lessee. It was pointed out that there was nothing in the

Act or in the general principles of law to prevent one person from paying the entertainments tax on behalf of another and indeed the Act itself, in

section 3(4) and the exception to section 4. had provided for two ways in which the proprietor of a cinema house could lawfully admit persons,

coining with free or complimentary passes or tickets, without realising the tax from them. In the learned Judge''s view, though the Act laid the

liability for the tax on the lessor or her nominees as holders of complimentary passes or tickets, the lease required the lessee to discharge such

liability on their behalf and if he did so, which was legally permissible for him to do, the demand of the statute and the demand of the contract could

be reconciled. Not having so paid the tax on the lessor''s behalf and not having admitted the lessor''s nominees without payment of the tax, the

lessee had broken the seventh condition of the lease and, accordingly, the lessor was entitled to re-enter by virtue of the eighth.

12. The Appellant''s main contention before us was that the seventh condition, of the lease exempted the lessor only from payments which the

lessee himself could charge for the seats reserved for her, but not also from payments which a third party might charge her or her nominees for

witnessing the shows from those seats The entertainments tax, it was contended, was a tax charged by and payable to the State and under the

provisions of the Act, the charge lay on the person who held a complimentary pass or ticket. By the seventh condition, it was said, the lessee had

not undertaken to pay-such a tax.

13. On behalf of the Respondent, it was not specifically contended by Mr. Gupta that the Act made the tax payable by the owner of the cinema

house, but what he contended was that even if it was payable by the holder of the pass or ticket, the lessee in the present case had, by the express

terms of the contract, undertaken to pay it in respect of the passes or tickets of which the lessor or her nominees might avail themselves. That, in

my view, is the correct approach to the question in issue. It is true that if the tax is payable by the owner of the cinema house, the lessee was bound

to pay it on the passes or tickets issued to the lessor and no other question would arise. But even if the tax is payable by the spectator, the question

cannot be answered at once in favour of the lessee: he may still be found to have undertaken to pay it. The owner''s share of the municipal tax, for

ex-ample, is payable under the law by the lessor, but the liability to pay it was undertaken by the lessee by the second covenant in the lease. The

real question for our decision is thus the extent of the lessee''s liability under the contract and the question as to who is liable for the tax under the

Act is only incidental.

14. The tax was imposed on free or complimentary passes and tickets only by the amending Act of 1949 and even then it was limited to such

passes and tickets for cinematographic exhibitions Free passes or tickets for other forms of entertainments were still exempt and continue to be so.

The liability in the case of cinema shows is laid by sub-section (3b) of section 3 of the amended Act which is in the following terms :

Entertainments tax shall be charged, levied and paid on all free or complimentary passes or tickets by whatever name called, issued by the

proprietor of a cinematographic exhibition in respect of admissions without payment to a seat or other accommodation therein and every person

who is so admitted on a free or complimentary pass or ticket shall be liable to pay the same amount of entertainments tax as would be payable by

him, had he been admitted to such seat or other accommodation on payment.

15. There can be no question that this section provides clearly and directly that it is the person admitted to a cinema show on a free or

complimentary pass or ticket who is to pay the tax. but at the same time it pre- supposes that a person admitted on payment is liable to pay tax of

a certain amount and it imposes on persons admitted without payment the same liability. The section thus throws one back on section 3(1) which is

the main charging section and purports to deal with admissions on payment. The learned Advocate-General was constrained to admit that section

3(1) did not contain any direct provisions that the tax was payable by the person admitted to an entertainment and not by the person who provided

it for a price. It only says that ""there shall be charged, levied and paid to the State Government a tax"" at a certain rate ""on all payments for

admissions to any entertainment."" That language does not clearly indicate that the tax shall be charged on the spectator, levied from him and paid to

Government, but is perfectly consistent with the view that it shall be charged on the payments which the proprietor has received by selling the

admissions and shall be paid by him. It follows that if section 3(1) has not laid on a person admitted on payment a clear liability to pay the tax, his

liability under the section is nil and, consequently, although sub-section (3b) of the section makes a person admitted to a cinema show on a free or

complimentary pass or ticket liable to the same extent as a person admitted on payment, in effect it has imposed no liability at all, unless the liability

of persons admitted on payment can be made out from other provisions of the Act.

16. The learned Advocate-General contended that the true import of even a taxing statute was to be ascertained from a consideration of all its

provisions and that in the present case the liability of the person admitted to an entertainment on payment had been indirectly provided for in other

provisions of the Act. For an Act enacted for the sole purpose of imposing a tax, it is strange to impose it indirectly, but in these days, clumsy or

confused draftsmanship of statutes is unfortunately not rare. It may be conceded that the Act has. succeeded in saying that a tax shall be charged,

but as to the person on whom the charge shall lie in ordinary cases of admissions on payment, it is not sufficiently or clearly articulate. Section 4(a)

to which reference was made is of no assistance in answering the question, because all that it provides is that ""no person liable to pay an

entertainment tax shall be admitted to an entertainment except with a ticket stamped with ""a revenue stamp"". Clearly, the person to whom the

section applies is a person who has already been declared as liable to pay the tax by other provisions of the Act and, in the next place, there is

nothing in the section to indicate that it is not the owner of the cinema house who is to pay the tax and show the payment by affixing a revenue

stamp on each of the tickets sold by him. Another section to which reference was also made is section 7(1), but even that section merely provides

that the tax shall be charged ""in respect of each person admitted for payment"" and ""shall he paid by means of the stamp on the ticket"". It does not

say by whom the tax shall be paid. It was further contended that at least the provision contained in section 5 was clear, because it made the

proprietor of an entertainment criminally liable, if he admitted any person liable to pay the entertainments tax without the provisions of section 4

being complied with. But like section 4, section 5 also applies only to persons liable to pay the tax and so on the question as to who is liable, it

throws no greater light than section 4 does. Even assuming that section 5 makes the proprietor of an entertainment liable to a penalty if he admits

any person whatsoever without realising the tax from him and thus provides for refusal of admission to the intending spectator unless he pays the

tax, it would seem that to create a person''s liability for a tax by requiring another person to demand it from him on pain of a penalty or to keep him

out if he does not pay the tax, is so crude a legislative act that no legislature should be held guilty of having perpetrated it. Indeed, even so read,

section 5 does not really lay a liability for the tax on the spectator, for he has not to pay it if the proprietor takes the risk of admitting him without

payment.

17. The learned Advocate-General referred in the end to the assumption contained in sub-section (3) of section 3 and to the language of section

3(4) which speaks of ""the gross sum received by the proprietor on account of payments for admission to the enter-tainment and on account of the

tax"". The latter also contains no more than an assumption and cannot serve the purpose of a charging section, creating the spectator''s liability to

pay the tax. If indirect references to an intention to charge the spectator can be relied on. there is a stronger one contained in section 3(3) which

prescribes the rate of tax on the basis of ""payments for admission"" and takes ""the payment excluding the amount of the tax"" as the basis. It is

certainly implied there that the payment which, a person has to make in order to obtain admission to an entertainment includes the tax. From these

assumptions and indirect references it is legitimate to infer that the legislature intended to make the spectator liable, but it seems to have been

overlooked that no direct provision creating such liability had been made and, consequently, whether a liability has actually been created is a matter

which admits of considerable doubt. For the purposes of the present case, however, I shall proceed on the basis that it has been created,

particularly as the Respondent did not wish us to hold otherwise. The position is a curious one, because the question is not whether a tax has been

imposed, but whether A or B has been made liable for it". If the principle that an ambiguity in a taxing statute must go in favour of the subject

applies, both A and B should get the benefit of it with the result that there will be no tax at all. I must add that such is the position only in regard to

admissions on payment.

18. On the assumption that the Act lays the liability for the tax on the person admitted to an entertainment, the liability of the person holding a free

or complimentary pass or ticket is clear. It appears from the closing words of section 3(3b) which has already been quoted. At one stage of the

argument, the Appellant contended that it appeared from the opening words as well and that even without the assumption and reliance was placed

on Rule 9 of the Rules framed under the Act, published by a notification of the 16th December. 1922. That Rule provides that ""the proprietor shall

not admit any person to an entertainment without anv payment, unless that person is the holder of a ticket or document entitling him to be admitted

without payment and clearly marked ''complimentary'' or ''free'' or a badge"". It was contended that since by virtue of that Rule, the proprietor

could not just let in any one on an oral permission, but was required to issue a pass or ticket even to those who were admitted without payment

and since the opening words of sub-section (3b) of section 3 of the Act said that the tax ""shall be charged, levied and paid on all free or

complimentary passes or tickets by whatever name called, issued by the proprietor"", it had been clearly enacted that it was the holder of a free or

complimentary pass or ticket who was to pay the tax. Mr. Gupta objected that the Act itself did not require a person admitted without payment to

hold a pass or ticket and if under the Act, a person could be admitted on an oral invitation or permission, in which case he would not come under

sub-section (3b), he could not be required by a rule to obtain a pass or a ticket and then made liable for the tax. That argument would have force if

Rule 9 had been framed after the enactment of sub-section (3b), but the fact is that when the sub-section was enacted, the Rule was already there

and if under the existing law, even persons admitted without payment were required to hold a pass or ticket and the sub-section laid a tax on such

passes or tickets, the tax was imposed not by the Rule but by the Act. The real difficulty about the Appellant''s argument on the opening words of

subsection (3b) is that, like the words in sub-section (1), they merely provide that a tax shall be charged, but do not say who will be charged.

19. I have, however, already decided to proceed on the basis that the tax is payable by the holders of free or complimentary passes or tickets. The

discussion on the Act has been necessary only to exclude the view that it was the proprietor. who was liable to pay the tax under the Act in which

case the lessee''s liability in the present case would be unquestionable. As already stated, Mr. Gupta did not put forward that proposition, but at

one stage of the argument he suggested that while in respect of free or complimentary passes or tickets, the liability imposed by sub-section (3b)

might be of the person holding such a pass or ticket, the sub-section did not apply to persons to whom a free or complimentary pass or ticket was

issued by the proprietor under the terms of a contract. I can find no warrant in the Act for such a distinction. It also appears to me that if any tax is

at all payable under the Act in respect of free or complimentary passes or tickets, it is payable, under the clear import of the closing words of sub-

section (3b), by the holder of such a pass or ticket and not, in any event, by the proprietor.

20. I may now proceed to a consideration of the principal question in the case, but before doing so, it will bo convenient to dispose of an argument

with which the parties appear to have engaged themselves mainly before the learned trial Judge. It is necessary to notice the argument only for

explaining certain passages in the judgment. The argument was that even assuming that under the terms of the contract, the lessee could not

demand: any payment of any kind from the lessor, the Act required him to demand the tax, if he was not to expose himself to a criminal liability.

That contention constrained the learned Judge to point out that if the Act was relied on as the excuse for the demand, the Act also provided for

ways in which the proprietor could lawfully admit a person without recovering the tax from him. Reference was made to subsection (4) of section 3

and the concluding paragraph of section 4. The first provides that the State Government may permit the proprietor to pay a consolidated amount,

computed in a certain manner, on account of the tax and the second provides that the proprietor may make arrangements, approved by the State

Government, for furnishing returns of admissions and paying the tax according to such returns in stead of paying it by means of revenue stamps

purchased by him and affixed on the tickets, as provided for in section 4(a). The argument before the learned Judge assumed that under the Act,

the tax was payable by the lessor while under the contract, it was payable by the lessee, so that the real question in the case was not touched. The

learned Judge held that it was possible for the lessee to fulfil his obligation under the contract and yet escape criminal liability by adopting one or

the other of the two methods pointed out by him. It appears to me if one person can lawfully pay the tax on behalf of another who is admitted to an

entertainment, the lessee could just pay the tax on behalf of the lessor or her nominees whenever they came to his shows and it was not even

necessary for him to resort to the methods of making a consolidated payment or furnishing returns. But the learned Judge, I apprehend, thought it

necessary to point out methods specifically warranted by the Act itself, since the Act was pleaded before him in bar of the contractual liability. I

may point out, however, that both section 3(4) and the concluding paragraph of section 4 contemplate the entire body of persons admitted to an

entertainment and it is hardly legitimate to hold that the contract requires the lessee to go to the extent of even making such arrangements for his

whole show, if the same be required for the purpose of discharging his obligation to the lessor. In the second place, both the provisions require the

consent of the State Government and it cannot be assumed that such consent will always be given, though it may be said that the lessee has not

proved that he tried to obtain it and failed Nothing, however, turns on this, point, as the real question is whether under the contract, the tax is

payable by the lessee, even assuming that under the law it is payable by the lessor.

21. The material words of the seventh covenant are ""shall keep one box at the disposal of the lessot"" and ""shall permit six persons in the stall and

eight persons in the Gallery or pit to view the performance."" The second provision is an, alternative of the first and no reliance was placed before

us on its language. The only question therefore is, did the lessee, by undertaking to keep some specified accommodation at the demised premises

at the disposal"" of the lessor for the purpose of her witnessing the performances held in them, undertake even to pay a tax in respect of such

accommodation, should such a tax come to be imposed subsequently and even though the relevant Act laid the charge for the tax on the person

witnessing the performance ? I find it impossible to hold that the words used in the seventh clause comprise such an undertaking. It is true that if a

person undertakes an obligation by a contract, there is an implied covenant on his part that he will do all things necessary to carry out the

obligation, but in all such cases it must be seen if and in what manner the obligation and the thing claimed of the obligor are related. Mr. Gupta

referred, to the decision in Motilal v. Nanhelal (1) (L R. 57 I.A. 333), which does not seem to me to aid his contention to the extent of covering

the facts of this case. There, the proprietor of some land entered into a contract for the sale of a share of it with all his rights and an Act which

applied to the land provided that a proprietor, desiring to make such a transfer, should apply for the sanction of a revenue-officer and the latter, if

satisfied as to certain things, would accord sanction. The Judicial Commissioner passed a decree for specific performance against the vendor,

directing him to apply for sanction within one month and to convey the property to the vendee within one month of the receipt of sanction. A point

being taken before the Judicial Committee that the Court had no jurisdiction to require the vendor to apply for sanction, it was held that the con

tract contained an implied covenant to do all things necessary to effect the transfer which would include an application for sanction and therefore in

decreeing specific performance of the contract, the Court could properly direct the vendor to apply to the revenue-officer to sanction the transfer.

It is to be noticed that at the date of the contract, the Act requiring sanction of transfers was already in force and in their judgment, their Lordships

of the Judicial Committee made a special reference to that circumstance. In the present case," sub-section (3b) did not exist at the date of the

contract of lease. Secondly, in the case cited, the Act made it the duty of the vendor to make the application for sanction and the contract was

construed as containing a covenant by the vendor to discharge that duty which was his own. In the present case, the duty to pay the tax in respect

of free or complimentary passes or tickets does not, under the Act, lie on the lessee. The principle that when a person enters into a contract, there

is an implied covenant on his part to do all things necessary to carry it out, means that he will do all things required of him to do, but not also that he

will do even the things required of the other party. If in the case cited, the law had said that the transferee would have to obtain the sanction or that

he would have to pay a transfer fee to Government, it could not have been heid that there was an implied covenant by the transferor that he w

apply for sanction or that the trransfer-fee would be paid by him.

22. The words of a contract may, however, be sufficiently wide so as to n one party liable to discharge all obligations of the other, whether existing

at the time or coming into existence in future. But I am unable to hold that the contract in the present case can be fairly read as contemplating the

payment of even a personal tax of the lessor, if some future legislation made her liable to pay such a tax in case she came to view cinema shows on

free passes or tickets issued to her under the terms of the lease. The covenant or condition is only to keep one box at her disposal. The learned

Advocate-General contended that if that covenant were to be read as creating an obligation to remove all impediments that might ever arise in the

way of the lessor availing herself of the box, one would not know where such obligation would end. If, for example some law came to provide that

persons occupying boxes at a cinema house should wear a particular kind of dress, the lessee would have to provide the dress or if the lessor,

coming to suffer from shortness of sight with increase of age, required the aid of opera glasses in order to witness the shows, the lessee would have

to provide the appliance. Those illustrations may be slightly far-fetched and to a certain extent fantastic, but, in my view, the basic contention that

the covenant does not create a liability in the lessee to discharge personal obligations of the lessor in respect of her enjoyment of the box which

might be imposed on her by the State or third parties is correct. It is true that the object of the seventh covenant is to make it possible for the lessor

and a specified number of her nominees to witness the performances without payment, but the exemption conferred is exemption from only such

payments as the lessee himself would be entitled to charge on his own account for the accommodation guaranteed If he made the box available to

the lessor and charged her no part of what he might himself charge others for similar accommodation, he would keep the box at her disposal in full

compliance with the seventh covenant. I am unable to hold that there is a further undertaking, implied in the covenant, that the lessee would also

pay on the lessor''s behalf a tax imposed on her by the State for witnessing the performances, if such a tax came to be imposed. To pay such a tax

would not be to keep the box at the disposal of the lessor, but to remove further difficulties of the lessor with third parties in the way of her availing

herself of the box, already placed at her disposal so far as the lessee is concerned. It is true that payment of the tax is also demanded by the lessee,

but he does not demand it for himself and only collects the tax on behalf of the State. The Act may tomorrow prescribe some other mode of

collection. If there be a contract between A and B that the former will provide the latter with free shows from a box at a particular cinema house

with which neither of them is connected, such a contract will necessarily comprise an agreement to pay not only the price of the box charged by the

proprietor of the show but also the tax charged by the State. But here the contract is by the owner of a cinema show with the lessor of the building

in which the show is held and he has contracted, not to provide shows free of all payment to any one in all circumstances but only to keep a box at

the disposal of the lessor. In my view, the proper meaning of such a contract is that the lessee has undertaken no more than to forego all payments

in respect of the box chargeable by himself and has only agreed that as between the lessor and the lessee, the box shall be free. Incidentally, I

might point out that according to the rate applicable to the period concerned, the annual rent for the two premises would be about Rs 25,560, and

we were informed that the tax charge for the accommodation guaranteed by the lease would be about Rs. 18,000 a year. It is hardly credible that

in entering into a contract of lease, reserving an annual rent of about Rs. 25,000, the parties contemplated that a further sum of Rs. 18,000 per

year might have to be paid by the lessee by way of the lessor''s tax in respect of the small accommodation reserved for her at performances on the

premises, but if the words of the contract create that burden for the lessee, he must undoubtedly bear it. In my view, they do not.

23. It has already been stated that Mr. Gupta placed no reliance on the second condition of the lease. That condition makes the lessee liable to

pay, besides municipal taxes, ""other outgoings and impositions payable in respect thereof"", i e., in respect of the demised premises. Clearly, the

entertainments tax is not payable in respect of the premises or of the seats installed therein, but it is payable by persons admitted to entertainments

in respect of their admission. It is a personal tax levied on persons going to an entertainment for the reason of their partaking of it. The words of the

second condition do not cover such a tax. Even assuming that the tax is a tax on the seats, the latter are no part of the demised premises. It is clear

from the previous leases and from the third condition of the present lease, that the furniture at the premises belongs to the lessee and shall continue

to belong to him even after the expiration of the lease. The furniture was not demised. Even the-buildings and structures, together with the fixtures,

were executed by the lessee and belong to him and they shall come to belong to the lessor, as appears from the third and the ninth conditions, only

when the lease expires. They too are no part of the demised premises, since at the date of the lease they were not the property of the lessor,

though the description of the subject-matter of the lease includes, somewhat inconsistently, some buildings In my opinion, the second condition is of

no assistance to the lessor.

24. In view of my finding as to the true construction of the lease, the question whether a forfeiture of the lease has been incurred does not arise On

that finding, no breach of any condition of the lease has occurred. But since a very interesting argument was addressed to us on the true meaning of

section 111(g) of the Transfer of Property Act, I would briefly indicate my view for the sake of completeness, I am proceeding on the assumption

that the seventh condition covers an undertaking that the lessee shall pay the tax on behalf of the lessor and that by reason of his non-payment of

the tax, the condition has been broken. If such be the position, a case for considering the effect of section 111(g) arises, because the eighth

condition of the lease provides that ""if the lessee fails or neglects to carry out or perform any of the terms, covenants, and conditions, then the

lessor shall.....be at liberty to determine this lease and shall re-enter upon the said premises.

25. The material part of section 111 (g) reads thus :

111 A lease of immoveable property determines--

(g) by forfeiture; that is to say (1) in case the lessee breaks an express condition which provides that on breach thereof the lessor may re-enter;

26. The section is expressed in an elliptical form and might at first sight appear to enact an impossibility. If all that a condition provides is that. on its

breach, the lessor may re-enter, one would wonder how such a condition could ever be broken. But the true meaning of the section appears if its

provision is analysed and to a certain extent amplified. The section does not mean that the only express condition contemplated by it is a condition

to the effect that, on its own breach, the lessor may re-enter. A breach of such a condition would be impossible. Really, the section contemplates

an express condition which first states itself and then proceeds to state or, in other words, further provides that upon its breach, the lessor shall be

entitled to re-enter. There is thus a condition consisting of two parts, first the condition itself which must be express and then a further provision for

re-entry upon its breach. What the section tries to paraphrase is the English concept of a condition with an express proviso for re-entry, and the

words ""an express condition which provides"" really mean ""an express condition with a proviso"". Even so, the section has misplaced the word

express"", unless there was a deliberate intention to depart from the English law. As far as I have been able to investigate, it is the proviso for re-

entry which is required in English law to be express, because the law leans against forfeiture and gives effect to it only when the stipulation is direct

and clear. u/s 111(g). it is the condition broken and not the provision for re-entry which is required to be express. The decisions in Mussa Kutti v.

Rangachariar (2) [(1910) 8 I. C. 309], and Nabakumar Datta v. Trailokya Nath Bose (3) (24 I. C 354), which take the word ""express"" as

applying to the forfeiture clause do not seem to be in accordance with the language of the section.

27. On the assumption on which I am proceeding, the condition broken in the present case is the lessee''s undertaking to pay the tax payable by

the lessor for her admission to the performances. Was that an ""express condition"" within the meaning of section 111 (g) ? Mr. Gupta contended

that the word ""express"", as used in the section, meant ""expressed"" as distinguished from implied by law. To put it more fully, his contention was that

an ""express condition"" meant a condition which was a matter of stipulation between the parties and was expressed in the lease in the form of a

term, while an implied condition'' meant a condition, imported or imposed by law without any agreement. If a condition was an expressed term of

the agreement between, the parties, it was an express condition, whether a particular implication of it lay on the surface or was to be ascertained

by construction. On that view, the undertaking to pay the tax in the present case was an express condition, being a part of the expressed term to

keep a box at the disposal of the lessor. An illustration of an implied term. Mr. Gupta submitted, was furnished by the second clause in section

111(g) which deals with forfeiture by disclaimer of the landlord''s title The learned Advocate-General''s contention, on the other hand, was that an

express condition"" meant a condition which was definitely expressed and ex-plicit and it did not cover a condition which was only implicit or

implied. At best, he contended, the undertaking to pay the tax came in only as a part of the implied covenant to do all things necessary to keep a

box at the lessor''s disposal and a breach of that implied condition could not entail a forfeiture.

28. In my view, the contention of Mr. Gupta is correct. The first clause of section 111 (g) certainly does not cover conditions which have not been

the subject-matter of an agreement between the parties, but are created or imputed 1 y the operation of law. But if a condition is such and so

expressed that the Court finds it possible to hold it to be a part of the stipulation between the parties, I can see no reason why the forfeiture clause

should not attach to it, although to find the condition, some interpretation of the relevant clause may be required. The forfeiture clause may occur as

a proviso to the clause containing the condition or it may be in a general form, as in the present case, providing that the lessor shall be entitled to

re-enter upon a breach of any of the conditions. If a clause at all contains a condition, whether in explicit terms or as an implied covenant, I am

unable to see how, after a finding that the condition exists, the operation of the forfeiture clause can logically be excluded. Breach of an implied

condition will also be breach of a condition and on such breach occurring, the forfeiture clause will be attracted, because the parties so stipulated

by the language used by them. The forfeiture clause would apply to the whole of the condition to which it is attached. It therefore appears to me

that the reasonable construction to put upon the words ""express condition"" is to hold them to mean a condition contained in an expressed term of

the lease, whether in explicit and positive terms or as an implied covenant, provided, in the latter case, that the court can reasonably hold it to be a

part of the stipulation between the parties. To hold otherwise would be to hold that the parties cannot agree to a term even if they wish to, that

upon the breach of even an implicit condition, the lease will be forfeited and that even where they use apt words to express their intention to agree

to such a term, the same cannot take effect I cannot find any reason to hold that the Legislature intended to lay down any such rule. It is true that a

forfeiture clause should be strictly construed, but I see no hardship in applying a forfeiture clause to an implicit term, because the lessor cannot

enforce forfeiture without giving notice of the breach u/s 114A and affording an opportunity, where the breach is remediable, to remedy the

breach, would therefore hold that if the seventh condition contains an undertaking by the lessee to pay the tax, the lease has been forfeited.

29. For reasons already given, however, I have held that the lease does not require the lessee to pay the entertainment tax in respect of free or

complimentary passes or tickets issued to and utilised by the lessor. There was thus no breach of any condition of the lease.

30. The appeal is accordingly allowed, the judgment and the decree of the court below are set aside and the plaintiff''s suit is dismissed with costs

here and below.

31. Certified for two counsel. [The judgment gave certain directions regarding costs.--Ed.]

S.R. Das Gupta, J.

32. I agree with my Lord, the Chief Justice, that this appeal should be allowed.

33. I only want to make it clear that in my opinion the effect of the Bengal Amusements Tax Act read as a whole is that the liability to pay the tax

under the said Act is upon the person who gets admission to any entertainment. The tax is levied and charged u/s 3. Under sub-section (1) of the

said section the taxes are to be charged ""on all payments for admission to any entertainment."" It is not stated that the same will be charged ""on

payments received by or in the hand of the proprietor for admission to an entertainment"". Although not very clearly but rather, to use the

expression of my Lord, the Chief Justice, clumsily expressed, the said clause in. my opinion means whoever pays for admission to an entertainment

has also to pay a tax. Sub-section (3) of the said section mentions the rates at which the said tax is to be levied. It provides that when the ""pavment

excluding the amount of the tax"" exceeds the figures mentioned in the different clauses of the said sub-section tax would also increase, and would

be at the rates put down against such subclauses. The words, which are important for the present purpose, used in the said sub-section are

payment excluding the amount of tax"" The use of the said words, in my opinion, also indicates that tax would be payable by the person who

makes pavment for admission. The next clause to be taken into consideration is sub-clause (3b) of section 3. It lays down that every person who is

admitted on a free or Complimentary pass or ticket shall be liable to pay the same amount of entertainment tax which would be payable by him if

he had been admitted on payment. This provision, to my mind, also shows that tax is payable by the person who gets admission to an

entertainment, whether free or on payment. Then comes section 4. It inter alia provides that no person liable to pay an entertainment tax shall be

admitted to anv entertainment. The question undoubtedly is who is the person liable to pay such tax and this is not made very clear in the section

itself; but some indication in the said; section as to the person who would be liable is furnished by the use of the words ""shall be admitted to any

entertainment"". This can only apply to persons who want admission to an entertainment and cannot apply to the owner of the cinema house.

34. I shall next refer to section 5 which says that if any person liable to Day entertainment tax is admitted without the provisions of section 4 being

complied with, then the proprietor shall be liable to prosecution and in addition liable to pay any tax which should have been paid. This section, in

my opinion, indicates more clearly than the others, to which T have referred, that the tax is payable by the person who is entertained and not by the

proprietor. Thus the combined effect of the different provisions of the Act is that the liability to pay the tax which is charged or levied u/s 3 of the

Act is on the person who gets admission to an entertainment. In order to safeguard the realisation of such tax, some provisions have no doubt been

made (vide sections 4, 5 and 7 of the Act). The scheme of those provisions to my mind is that the proprietor will refuse admission to a person

unless the latter holds a ticket stamped in the manner indicated in clause (a) of section 4. But if he allows admission otherwise than by such

stamped ticket, tax will be recoverable from him. This is the scheme of arrangement for realisation of tax laid clown in the Act. But the liability to

pay the tax is on the spectator and not on the proprietor. On all other questions involved in this appeal I apree with the view taken by my Lord, the

Chief Justice, in his judgment.