**(2011) 05 DEL CK 0294**

**Delhi High Court**

**Case No:** Regular Second Appeal No. 6 of 1983

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| Delhi Development Authority | | APPELLANT |
| | Vs | |
| Balraj Virmany | | RESPONDENT |

**Date of Decision:** May 31, 2011

**Hon'ble Judges:** Indermeet Kaur, J

**Bench:** Single Bench

**Advocate:** Anusuya Salwan and Neha Mittal, for the Appellant; Harish Malhotra N.K. Kantawala and Rahul Kumar, for the Respondent

**Final Decision:** Dismissed

**Judgement**

Indermeet Kaur, J.
This appeal has impugned the judgment and decree dated 29.08.1982 which had endorsed the finding of the trial Judge dated 07.03.1981 whereby the suit filed by the Plaintiff Balraj Virmani seeking a perpetual injunction to the effect that the Defendant/Delhi Development Authority (DDA) be restrained from taking action for taking possession of the disputed plot i.e. plot No. 2, Jhandewalan E Block, Delhi had been decreed.

2. Below noted facts are undisputed:

(i) The Delhi Improvement Trust had granted lease to the Plaintiff vide Ex.D-1 dated 06.01.1951 qua the suit land. It was initially for a period of 20 years to be extended for a further period of 20 years in terms of the conditions contained therein.

Clause (vi) is relevant and reads as under:

not to use the said land and buildings that may be erected thereon during the said term for any other purpose than for the purpose of Cold Storage plant without the consent in writing of the said lessor; provided that the lease shall become void if the land is used for any purpose other than that for which the lease is granted not being a purpose subsequently approved by the Lessor;

Clause III (b) reads as under:

In case this lease with the lessee shall continue for the said period of 20 years and provided the lessee has observed performed and complied with the terms and covenants conditions of this lease, the Government shall grant to the lessee an option to renew the lease on such terms and conditions as the lessor deems fit for further period of 20 years; provided that the notice of the intention of the lessee to exercise this option of renewal is given to the lessor six months before the expiration of the lease; provided further that if the lease is extended for a further period of 20 years the lessor shall have the right to enhance the rental upto 50% at the original rent.

(ii) Lease was to expire on 10.08.1968.

(iii) On 23.02.1967, the Plaintiff had given his option to renew the lease deed.

(iv) On 09.02.1968 (Ex.D-2) the Defendant had notified him four breaches (as detailed therein) had been committed by the Defendant; he was directed to rectify the said breaches failing which his lease was liable to be determined.

(v) On 16.02.1968 (Ex.DW-4/1) the contents of Ex.D-2 were reiterated.

(vi) On 01.03.1968, the Defendant filed his reply (ExDW-5/2) admitting the breaches in the lease deed.

(vii) Vide Ex.PW-3/5 dated 03.10.1969 DDA gave information to the Plaintiff informing him that a sum of Rs. 666.87 paise is payable by him as ground rent in terms of the lease.

(viii) Vide Ex. D-3 dated 01.09.1972 lease of the suit land was determined; DDA vide this communication had communicated to the Plaintiff that since he has failed to observe, perform and comply with its terms and covenants; breaches being continued, the DDA had decided not to renew the lease deed.

(viii) Vide Ex.PW-3/3, Ex.PW-3/4, & Ex.PW-3/6, the Plaintiff has paid rent for the aforenoted premises; these documents are all after 10.08.1968.

3. There are two concurrent findings of fact by the two courts below in favour of the Plaintiff.

4. This is a second appeal. It has been admitted and on 10.03.1983, the following substantial question of law had been formulated:

The RSA raises the question of interpretation of the lease, particularly with regard to the renewal which is likely to arise in a large number of cases.

5. On behalf of the Appellant, it has been urged that the judgment of the court below holding that the lease (Ex.-D-1) had given a unilateral option to the Plaintiff to renew the lease deed is a perversity; document has to read in its entirety and

aforenoted Clauses (vi) a read with clause III (b) clearly postulate a situation that if there was any breach committed by the Plaintiff, he is not entitled to a second renewal; it is submitted that the Defendant has admitted the breaches and this is evident from his reply dated 01.03.1968 (Ex DW-5/2). The impugned judgment reading it in this manner is clearly a perversity. The finding in the impugned judgment calls for an interference. It is further submitted that mere acceptance of rent for the subsequent months after the lease period does not amount to renewal of a lease. To support this submission, learned Counsel for the Appellant has placed reliance upon the judgments of the Apex Court reported in Shanti Prasad Devi and Another Vs. Shankar Mahto and Others, and Ors.; Sarup Singh Gupta Vs. S. Jagdish Singh and Others, The finding returned on this score in favour of the Plaintiff is also a perverse finding.

6. Arguments have been rebutted. It is pointed out that in terms of Ex.PW-3/5 dated 03.10.1969 a communication had been sent by the lessor to the lessee demanding rent for these premises pursuant to which rent payments had been made; this is not a case where the rent has been tendered without any demand from the lessor. It is pointed out that the lease deed Ex.D-1 envisages a permission to the Defendant to construct the premises on the lease hold plot which had been granted to him; it is pointed out that vide Ex.D-2 (09.02.1968) and Ex.DW-4/1 (16.02.1968) four breaches had been pointed out by the DDA yet in the inter-se communication of the Department dated 17.06.1968 (DW-5/1) it is clear that these four breaches had been reduced to two; these related to the running of a printing press by the Plaintiff which even as per Ex. DW-1/5 was a condonable breach and on the question of sub-letting by the Plaintiff to another party, the same had also since been rectified. It is pointed out that admittedly the Plaintiff had exercised his option to renew his lease vide his letter dated 23.02.1967; breaches had been pointed out by the Department but in the aforenoted communications Ex.D-2 (dated 09.02.1968), Ex.DW-4/1 (dated 16.02.1968) as also in the subsequent notice Ex.D-3 (dated 01.09.1972) the Defendant had till date not determined the lease of the Plaintiff; the first two communications merely asked the Plaintiff to rectify the breaches and the last communication (Ex.D-3) stated that the Department has no intention to renew the lease; it is pointed that non-renewal of lease is distinct from the determination of lease which till date has not been done. Certain subsequent events have also been pointed out by learned Counsel for the Respondent. It is submitted that the policy of the DDA for conversion from lease hold to free hold is under consideration and this is clear from the communication dated 22.01.2008 sent by the DDA to the present Appellant, copy of which has been placed on record and this is an admitted document. It is pointed out that case of the Plaintiff is in fact under consideration and he has paid Rs. one crore as conversation charges. Another subsequent event which has been brought to the notice of the Court is that in case of the adjoining property i.e. E-1 Jhandewalan, Delhi (suit property is E-2) has since been regularized which was also a lease granted by the DDA; on the payment of conversion charges,

the lease hold rights had been converted into free hold. Copy of the judgment dated 05.05.2009 passed in Writ Petition (Civil) No. 173/1988 D.L.F. Universal Limited v. Union of India and Ors. has also been placed on record. It is pointed out that these subsequent events must kept in mind while deciding this issue.

7. Record has been perused. There is no dispute to the proposition that the subsequent events which are admitted can be taken into account. The High Court in a second appeal can take note of such subsequent events and grant relief in accordance with it. This has been held by Apex Court in the judgment reported in Lakshmi Narayan Guin and Others Vs. Niranjan Modak, The aforenoted two subsequent events which have been pointed out and noted supra are even otherwise admitted.

8. Be that as it may, the merits of the controversy have to be detailed and discussed. The lease deed is Ex. D-1. The lease had been granted for a cold storage purpose stating therein that it is to be used for a cold storage and for no other purpose. Clause III (b) also cannot be interpreted to be read as a clause giving unilateral option to the Plaintiff to renew the lease; it clearly contained a proviso which proviso states that the lessee will have the option to renew the lease provided that lessee has observed, performed and complied with the terms covenant and conditions of the lease. It is also not in dispute that notices dated 09.02.1968 (Ex.D-2) and 16.02.1968 (Ex.DW-4/1) had been served upon the Defendant pointing out these breaches. These breaches had been pointed out before the period of lease had expired. The lease deed was dated 06.01.1951 and it was to expire on 10.08.1968. It is also not in dispute that prior to this date i.e. 23.02.1967, the Plaintiff had exercised his option to renew the lease. It is also not in dispute that vide the inter-se communications and noting of the Department, four breaches as pointed out had been reduced to two. This was in terms of the noting dated 17.06.1968 of the Defendant (Ex. DW-5/1). Ex.PW-3/5 is a very relevant document. This document dated 03.10.1969 is a communication by the department informing the Plaintiff that he has to pay ground rent pursuant to which rent has been paid by the Plaintiff to the Defendant. This letter was sent by the Department admittedly after the period of the expiry of the lease i.e. after 10.08.1968. This is thus not a case where the Defendant was a passive party; it was on his demand and asking (Ex.PW-3/5) that the ground rent was paid in terms of this lease (Ex. PW-3/3 dated 03.04.1970, Ex. PW-3/4 dated 04.10.1969 and Ex. PW-3/6 dated 23.06.1969 evidence payments of rent); acceptance of rent in such a case does tantamount to an intention of the lessor to continue with the lease. The first lease had admittedly expired on 10.08.1968. This communication of 03.10.1969 (Ex.PW-3/5) asking the Plaintiff to pay the arrears of rent for this lease is nothing but a clear indicator of the lessor to continue with the lease.

9. It is also not in dispute that the Department has formulated a policy for conversion of lease hold rights into free hold of properties at Jhandewalan and the

adjoining property E-1 has since been converted from lease hold to free hold. It is also admitted that Rs. 1 crore has been paid by the Plaintiff seeking a conversion from lease hold into free hold and his representation is under consideration.

10. This is a second appellate court. Findings of fact can be interfered with only if there is perversity. This finding in the impugned judgment that there was a unilateral option on the part of the Plaintiff to renew the lease can on no count sustained. However the act of the Defendant in demanding and accepting the rent clearly indicates the intention of the lessor to renew the lease.

11. Substantial question of law is accordingly answered as under:

Although the Plaintiff did not have a unilateral right to renew the lease yet in the factual scenario of the present case, acceptance of rent by the Defendant pursuant to a demand made by the Defendant, did amount to a renewal of lease.

12. Substantial question of law is accordingly answered in favour of the Respondent and against the Appellant. Appeal has no merit. Dismissed.