

**Smt. Munni Devi and anr. Vs. State of U.P. and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/456781](http://sooperkanoon.com/456781)

**Court :** Allahabad

**Decided On :** Apr-19-1977

**Reported in :** AIR1977All386

**Judge :** T.S. Misra, J.

**Acts :** [Transfer of Property Act, 1882](#) - Sections 105, 106 and 116; [Evidence Act, 1872](#) - Sections 115

**Appeal No. :** Second Civil Appeal No. 353 of 1970

**Appellant :** Smt. Munni Devi and anr.

**Respondent :** State of U.P. and ors.

**Disposition :** Appeal dismissed

**Judgement :**

**T.S. Misra, J.**

1. A plot of land measuring 22 ft. 6 inches north-south and 30 ft. 10 inches east-west, bounded in the north by the land of Qabul Ahmad and in the south by the house of Suraj Prasad in the east by a metalled road and in the west by the land of Qabul Almiad (at present Rasta and land called Quila), situate in village Ashraf Tola, Qasba Sandila, pergana and Tahsil Sandila shown by letters ABCD in the site plan attached with the plaint is Nazul land owned by State of U. P. and

managed by Municipal Board, Sandila. This land was given on lease to Jagannath per lease deed dated 1-12-1919 for building purposes for a period of thirty years on an annual rent of Rs. 3/-with a condition that the right and interest of the lessee in the land in question will come to an end on the expiry of thirty years unless renewed by the State Government on the application of the lessee, his heirs or assigns. Another important term of the lease was that the lessee, his heirs and transferees shall always be bound to keep the building built upon the leased land intact, in order and good condition and shall not demolish the same without the written permission of the lessor or its successor. It was also provided in the lease that in case of breach of or non-compliance with any of the conditions written in the lease deed the lessor and its successor shall be entitled to re-enter upon or to take actual possession of the land and the building standing on it and the lessor shall not be entitled to any compensation in respect of the building, The lessee, his heirs or transferees shall not remove any part of the building built upon the land. Jagannath the original lessee constructed a shop on the leased land which was recorded in the Nazul Register at serial number 16. He remained in possession of the shop till his death. On his demise his heirs Sita Ram. Dharam Das, and others succeeded to the property including the said shop. These persons remained in possession of the shop constructed by the original lessee. The period of thirty years of the lease expired on 1-12-1949. Sita Ram, it is alleged by the plaintiff, did not apply for the renewal of the lease, hence on the expiry of the period of lease neither he nor his heirs, successors or assigns had any subsisting right, title or interest in the land in suit, nor did they have any right of transferring it to any one to build upon it, On 28-12-1965 the defendants without the knowledge of the plaintiff purchased the shop built by the lessee from Sita Ram and Dharam Das. The defendants thereafter pulled down the old shop and with a view to make new construction at the site applied for sanction of a plan. The said plan was sanctioned. According to the plaintiff this action of the defendants in demolishing the shop without any notice to the authorities concerned was illegal and the Government of U. P. was thereby put to a loss of Rs. 5000 being the value of the materials i. e., the Amla. The plaintiff alleged that the defendants had obtained the sanction of the plan to make new constructions on the land in suit by making misrepresentation of facts and by practising fraud and collusion, However, when true

facts came to light the Municipal Board on 21-11-1966 cancelled and revoked the permission given to defendant No. 1, and notices were issued to him to stop making constructions on the land in suit. The District Magistrate rejected the representation of the Municipal Board, Sandila on 19-10-1966 for an entry of the name of Sheo Prasad and others in place of Sita Ram with respect to the land in suit. Defendant No. 1 illegally made constructions on the land in question between March, 1966 to December, 1966. The plaintiff, therefore, claimed to have become entitled to remove the encroachments and to secure possession over the same by eviction of the defendants. A notice was given to the defendants to vacate the premises and to deliver possession of the land in suit. They were also asked to stop making constructions on the said land but the defendants paid no heed to the same. The plaintiff, therefore, filed a suit for eviction of the defendants and for actual possession over the land in suit. It also prayed for a decree for Rs. 5000 with future interest and for a mandatory injunction for demolition of the constructions made by the defendants on the said land.

2. The defendants contested the suit pleading inter alia that after the expiry of the initial period of thirty years of the lease the original lessee as well as his successors Sita Ram and Dharam Das they were the lessees under the same terms and conditions of the lease as originally granted to Jagannath and the lease was expressly or impliedly renewed with the consent and approval of the plaintiff's agents, managers and officers. They also pleaded that under the terms of the lease deed Sita Ram applied for renewal of lease deed which was accepted and forwarded by the Board to Deputy Commissioner, Hardoi who in turn accepted the same and it was by mutual agreement that rent with effect from 1-12-1949 was enhanced from Rs. 3 per month to Rs. 4.50 per month. Further it was pleaded that in any view of the matter after expiry of the period of lease the new lease created was an annual and not a monthly lease. They sought to take the benefit of Section 53A of the Transfer of Property Act. According to the defendants their lease-hold rights were admitted and recognised not only by the Municipal Board, Sandila but also by Deputy Commissioner, Hardoi. They however, admitted that the land in suit was let out to and held by the original lessee, his heirs and successors, and transferees for building purposes. They denied to have received any notice for forfeiture under Section 111 of the T. P. Act. They maintained that the building was

constructed long before the alleged cancellation of permission by the Municipal Board as well as the alleged refusal of the Deputy Commissioner to renew the lease. They asserted that the plaintiff had suffered no damages and that there had been no collusion between the defendants and the officers of the Municipal Board, Sandila.

3. The trial court decreed the suit for possession of the land in suit and demolition of the constructions thereon. The defendants were directed to remove the constructions over the land in suit and deliver vacant possession of the land in suit to the plaintiff by 3-8-1969. The claim for Rupees 5000 as damages was also decreed.

4. Against that decision an appeal was preferred by the defendants. The appellate court below allowed the appeal in part setting aside the decree for damages amounting to Rs. 5000/- and maintaining the rest of the decree passed by the trial court. The defendants have now come up to this court on second appeal,

5. For the appellants it was urged that the lease in question was renewed for another period of 30 years. The original period of the lease expired on 1-12-1949. According to them the fresh lease shall now expire on 1-12-1979 i. e., after another period of 30 years. There is no dispute that the original lease deed dated 1-12-1919 was evidenced by a registered document. The lease which was said to be renewed was, however, not evidenced by a formal deed. It was thus neither executed nor registered, The Municipal Board, Sandila had given notice to Sita Ram the original lessee to get the lease renewed, if he so liked, but he did not do so, though after the expiry of the period of lease i. e., after 1-12-1949 he continued to be in possession of the shop in question and paid enhanced rent as demanded from him by the Municipal Board. The appellants, however, relied on two letters exchanged between the Municipal Board, Sandila and the District Magistrate Hardoi, Exs. 36 and 37 to contend that in view of the fact that Sita Ram continued to be in possession of the shop and paid rent at the enhanced rate, and the conduct of the parties which is said to be borne out from Exs. 36 and 37 the lease stood renewed. The argument was that from the said correspondence Exs. 36 and 37 the renewal of the lease could be culled out and even if a formal deed of lease

was not executed, the lease would not be hit by Article 299 of the Constitution. Ex. 36 is a letter from the President of the Municipal Board, Sandila to the District Magistrate, Hardoi whereby the President informed the District Magistrate that the lease of Nazul land in favour of Sita Ram had expired on 1-12-1949 and there was a provision for renewal. He further informed the District Magistrate that enhanced rent was being realised from the date of the expiry of the old lease. He, therefore, requested the District Magistrate to accord his sanction for renewal of the old lease for enhancement of rent and for change of entry as a result of directions given in column 5 of the list. The District Magistrate Hardoi by his letter Ex. 37 accorded his approval to the proposal of the Board. It cannot be gainsaid that a lease is the result of an agreement between the lessor and the lessee. It has its origin in contract. (See *Damadilal v. Parashram*, AIR 1976 SC 2229). All contracts and all assurances of property made in the exercise of the executive power of the State are required by Article 299 of the Constitution to be expressed to be made by the Governor and executed by such persons and in such manner as the Governor may direct or authorise. If a contract is not made and executed in accordance with the provisions of Article 299 of the Constitution it is void. (See *Mulamchand v. State of M. P.* AIR 1968 SC 1218).

6. There is no dispute that the original lease deed dated 1-12-1919 was in writing duly executed by a competent person, It provided that on the expiry of the period of thirty years the lease could further be renewed for another term of thirty years, provided the lessee asked for its renewal and executed a Qabuliat. The lessee did not make any such request and did not perform all the conditions precedent as mentioned in the renewal clause of lease deed. It is a well-settled proposition that when the covenant of renewal is subject to conditions precedent, the right of renewal only arises when notice is given to the lessor in terms of the renewal clause and the lessee has performed all the conditions precedent as mentioned in the renewal clause. (See (1959) ILR 38 Pat 1160, *the State of Bihar v. Indian Copper Corporation Ltd.* and AIR 1976 J, and K. 5, *Union of India v. Naraiu Singh*), In order to create or bring a new tenancy into existence there must be bilateral act. The original lessee in the instant case did not ask for the renewal of the lease, nor did he perform the other conditions precedent, though the Municipal Board had given him notice to do so. That being so, the contention of the

appellants that the lease deed stood renewed merely because of the aforesaid two letters Exs. 36 and 37 and the payment of rent at the enhanced rate cannot be accepted. The fact, however, remains that on the expiry of the first period of thirty years, the original lessee continued to be in possession of the demised premises and the Municipal Board, managing the Nazul land on behalf of the Collector, asked for payment of rent at enhanced rate and the lessee thereafter did pay the rent so demanded vide Exs. A-6, A-7, A-8 and A-9. From this it follows that a statutory tenancy was created by holding over under Section 116 of the Transfer of Property Act. Where a lessee remains in possession of immovable property leased even after the expiry of the term of the lease and the lessor accepts rent from him or otherwise assents to his continuing in possession, he would become by reason of the provisions of Section 116, Transfer of Property Act a tenant holding over. The tenancy created by the tenant holding over is a statutory tenancy which enables the tenant to retain possession after the expiry of the contractual tenancy. The statutory tenancy so created continues till it is terminated or determined. In the absence of any agreement to the contrary the statutory tenancy created under Section 116, Transfer of Property Act may be determined in the manner enjoined by Section 106 of the Act. The lease 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 aforesaid.

7. In the instant case, under the original lease the Nazul land was given on lease for a period of thirty years for constructing a shop thereon, It was not a lease for agricultural or manufacturing purposes; hence the tenancy created under Section 116, Transfer of Property Act was a lease from month to month terminable on the part of either the lessor or lessee by a thirty days' notice. The finding of the appellate court below in this behalf is correct. Sita Ram and Dharam Das had become tenants by holding over and when they transferred their right to the appellants the latter became the tenants by holding over. The tenancy of the appellants by holding over being the tenancy from month to month was terminable by a thirty days' notice. This tenancy was determined by notice given under Section 106, Transfer of Property Act. Ex. 35 is a copy of the said notice given to the appellants requiring them to vacate the land on the expiry of thirty days from the date of receipt of the said notice, The notice was duly served on the appellants

but they failed to comply with the same. The appellants, however, submitted that the said notice was waived because rent for the period subsequent to the notice had been accepted by the Municipal Board, Sandila. This point was urged before the appellate court below also but was repelled. As observed by the Supreme Court in AIR 1968 SC 933; Associated Hotels of India v. Ranjit Singh at page 937 that waiver is an intentional relinquishment of a known right. There can be no waiver unless the person against whom the waiver is claimed had full knowledge of the facts enabling him to take effectual action for the enforcement of such rights. Waiver is distinct from estoppel. Waiver is an agreement to release or not to assert a right, whereas estoppel is a rule of evidence. On the facts of this case, mere acceptance of rent after notice to quit under Section 106, Transfer of Property Act would not amount to waiver of notice. It was not made out that the clerk who accepted the rent was aware of the giving of notice in question and had accepted payment of rent despite that knowledge.

8. It was next urged that the Municipal Board, Sandila had granted permission to the, appellants to make new constructions and had sanctioned a plan for the same, hence the plaintiff-respondent was estopped from filing a suit for eviction as it was bar-red by the principle of estoppel and acquiescence. This contention, in my view, has no substance. Mere sanction of a plan by the Municipal Board would not create a right in favour of the appellants to continue their occupation for another period of thirty years, nor would it debar the respondent from terminating the tenancy by a notice under Section 106, Transfer of Property Act.

9. There is no merit in this appeal. It is accordingly dismissed with costs.

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