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PROPERTY LAW

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I INTRODUCTION

THE OWNERSHIP and possession of immovable property give rise to disputes involving application and interpretation of various provisions of the Transfer of Property Act, 1882 (TPA). The Act, provides for several modes of alienation of immovable property by acts of living persons. The cases reported this year and surveyed, analysed and commented in this survey contain in most of them clarification and interpretation of the provisions to cover new situations and laying down guidelines for courts to follow in future.

II GENERAL PRINCIPLES

Attested

Section 3 of the TPA is an interpretation clause and defines certain terms and expressions used in the Act. This section contains a long definition of the term 'attested'. This means and requires that an instrument alienating immovable property when executed must be attested by at least two witnesses who are present and who have read and seen that the instrument was executed and signed in their presence.

The High Court of Karnataka in a second appeal set aside the judgment and order of the first appellate court on the ground that the attesting witnesses were not present and had not seen the person executing the instrument signing in their presence.¹

Registration of composition deed not required

Section 5 of the TPA defines the term transfer of property to mean conveying right, interest and transfer in property movable, immovable, real or unreal or of any kind by transferor to transferee in present or future. Section 9 provides that a transfer deed need not be in writing except when so required by a particular law. However, section 17 of the Registration Act, 1908 requires certain documents to be registered. As a general rule a document transferring immovable property valued at more than Rs.100/- has to be registered. Section 17(2)(i) specifically provided that a composition deed is not required to be registered.

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1 *B.Raje Gowda v. H.B. Shanker Gowda*, AIR 2006 Kant 48.



But assignment of immovable property under a court decree passed on the basis of a family settlement contained in a composition deed was challenged for being not registered. The Supreme Court in an appeal by special leave negated the challenge and held that composition deed is exempt from the requirement of registration under the Act.²

Registration of relinquishment deed not required

Similarly, the High Court of Karnataka held that relinquishment deed wherein a member of a joint family relinquished his right by waiver by executing a relinquishment deed did not amount to transfer of his share of property in favour of other members of the family and as such was not required to be registered under the Registration Act.³

Operation of transfer

Section 8 of the TPA provides that unless a different intention is expressed or necessarily implied a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property. A husband bequeathed his self-acquired property in favour of his wife in a family settlement deed. He immediately acted upon the settlement deed and handed over the possession of property to her. The settlement deed did not mention the contingencies under which he can revoke the settlement but did contain a recital that he reserved the right to revoke.

After the settlement was thus acted upon and the property had passed to the transferee, the transferor executed a revocation deed and cancelled the settlement. The deed of cancellation was challenged. The Madras High Court in its judgment and order in second appeal held that the settlement was irrevocable and complete and the transferor had no right to revoke it.⁴

The High Court of Allahabad was called upon to interpret section 8 of the TPA in a very peculiar set of circumstances.⁵ A landowner executed an agreement of sale of a piece of agricultural land for a price of Rs.35000/- and received Rs.13000/- as earnest money and agreed to receive Rs.22000/- at the time of execution of the sale deed. Subsequent to the date of agreement of the sale, he planted certain trees on the said piece of land. The purchaser demanded the possession of land with standing trees and two *pucca* rooms on the land for the same price. He filed a suit for specific performance of the agreement and obtained a decree. In execution of the decree, the seller raised objections to part with the trees and the rooms on the land agreed to be sold. The executing civil court dismissed the objections and held that under section 8 of the TPA in the absence of a different intention, the transferor has passed forthwith his interest to the transferee which he was capable of passing in the property. He filed a writ petition in the high court. The court in its judgment and order "held that rejection of objection under section 47 C.P.C. is

2 *Amteshwar Anand v. Virender Mohan Singh*, AIR 2006 SC 151.

3 *Smt. Gangubai v. Mahagundappa*, AIR 2006 NOC 142 (Kant).

4 *Dhanalakshmi v. S.Thangavelur*, AIR 2006 Mad.

5 *Ram Chndra v. Kalyan Singh*, AIR 2006 All 184.



absolutely correct and well founded. It did not call for any interference. It is also noteworthy that the question of trees or two rooms standing on the plot was never pleaded and neither any issue was framed nor any finding has been recorded in the suit, therefore, these objections cannot be raised for the first time during execution proceeding⁶.”

The poor man has suffered a great loss for no fault of his. The agreement of sale was silent on trees and rooms.

Condition restraining alienation

Section 10 of the TPA provides that where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void except where he is not an absolute owner.

The Karnataka High Court applied this section to a case where a person holding life interest in a property disposed of that property by a will. The court held that the person who has received property in partition for his maintenance holds a life interest only and is not an absolute owner and cannot bequeath the same by making a will under the exception clause of section 10 of the TPA.⁷

Transfer not to defeat the right of maintenance

Section 39 of the TPA protects the right to maintenance of a wife in the property of her husband. The Punjab & Haryana High Court applied the provision of this section in a second appeal by the husband against his wife's claim for maintenance.⁸ The wife's suit for maintenance was decreed by the trial court. The husband with a view to defeat her claim transferred his property to his brother for no consideration but in collusion. The high court relying on an earlier decision of the Supreme Court under section 39 of the TPA held the transfer to be hit by section 39 and dismissed the appeal by the husband so as to enable the wife to satisfy her claim against the property allegedly transferred by her husband to his brother.

Transfer by ostensible owner

Section 41 of the TPA reads as follows: “where, with the consent, express or implied, of the person interested in immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it provided that the transferee, after taking reasonable care to ascertain that the transferor has powers to make the transfer, has acted in good faith.

The Punjab & Haryana High Court applied this provision to a case where upon the death of a land owner, the property was inherited by his widow and

6 *Id.* at 185-86.

7 *Supra* note 1.

8 *Sarwan Singh v. Jager Kaur*, AIR 2006 P&H 171.



three daughters heirs of class I. The said property was purchased by his two brothers, heirs of class II, from an ostensible owner and got it mutated. The widow and daughters filed a suit for declaration of their rights and the suit was decreed. The brothers filed an appeal claiming the benefit of section 41 of the TPA. The high court rightly dismissed the appeal holding that they were not entitled to such benefit for the reason that they lived in the same village, they knew the real owners and no other person had the authority to sell their land.⁹

Doctrine of lis pendence

Section 52 of the TPA incorporates therein the doctrine of *lis pendence* and provides that during the pendency in any court of any suit or proceeding concerning any right to immovable property, the said property cannot be transferred by any party to the suit or proceeding except under the authority of that court.

The Karnataka High Court in a second appeal examined the question in a matter where the property was transferred and purchased in a court auction while a suit concerning that property was pending. The court held that the sale by court auction was not void or voidable but was subject to the result of the pending litigation.

The appeal also involved another question of the property being subject to a charge under section 100 of the TPA. The property in the case was not free from any encumbrance at the time of court auction and the auction purchaser had purchased it subject to that charge and since he was required to abide by the result of the pending litigation, he was held liable to pay the amount decreed for the satisfaction of the charge.¹⁰

The Bombay High Court faced the same question in a second appeal. During the pendency of a suit for partition, property was purchased by a person who had the full knowledge of the pending suit proceedings. The high court, therefore, held that the purchase was hit by the provisions of section 52 of the TPA and the purchaser was bound by the judgment, order and the decree in the partition suit. The appeal was dismissed with costs.¹¹ This was a frivolous and vexatious litigation and the deal was contrary to law and the litigation was an attempt to abuse of the judicial process.

Doctrine of part-performance

Section 53 of the TPA incorporates therein the doctrine of part performance. The doctrine and the provision in section 53A come up for interpretation before the courts frequently. This provision is of great help to those who have executed an agreement for sale, have acquired the possession of the property by performing their part and are willing to perform the further part but are dragged to litigation by the vendor who is not willing to execute the sale deed. But sometimes vendors abuse the provision to defend their

9 *Gurcharan Singh v. Surjit Kaur*, AIR 2006 P&H 18.

10 *Smt. Lalitha Kariappa v. Snjeevi*, AIR 2006 Kant 25.

11 *Raghunath Gangadhar Kakade v. Ghyan Bahadur Kapse*, AIR 2006 Bom 150.



action. On other occasions people in unauthorized possession try to protect their unauthorized possession by taking recourse to this provision.

The Rajasthan High Court had to contend with such an attempt in a second appeal. A licensee refused to hand over vacant possession of the land on the expiry of the period of licence to the owner. The owner on the basis of his title filed a suit for possession. The licensee took recourse to the plea of part-performance. He pleaded that there was an oral agreement to sell which fact he could not prove. But he continued in possession even after the suit was decreed by filing the first appeal in the district court and a second appeal in the high court. The landlord died in the meantime and his legal representatives were substituted to contest the second appeal. The high court refused to interfere in the concurrent findings of the two courts below and dismissed the appeal. This was indeed a futile attempt.¹²

The Andhra Pradesh High Court decided a second appeal, which had arisen out of a suit in very peculiar circumstances¹³. A rice mill was owned by three owners. Two brothers owned one fourth share each and a third partner owned half of it. One of the brothers agreed to sell his one-fourth share by an agreement for sale. The agreement did not mention anything about the consent of the other two owners. The sale deed was not executed for a long time. Nor the payment was made. The agreement of sale was executed on 15.1.1985. He filed the suit for specific performance of the agreement for sale in 1995 on the basis of symbolic possession but the mill was being run by a lessee. The co-owner did not take any action to inform the lessee about the agreement or for attornment. The suit was dismissed holding that in the absence of possession or attornment or any other action by the purchaser doctrine of part performance was not applicable.

The suit was dismissed on 4.4.2001. He filed the first appeal in the district court and the second appeal in the high court which refused to interfere and dismissed the appeal.

The Karnataka High Court dismissed a second appeal where the plea of part performance was too far fetched.¹⁴ An agreement of sale dated 19.9.1968 was cancelled by the vendor by a notice with effect from 1.1.1971 but the purchaser continued in unauthorized possession for more than 12 years. He even filed a suit for specific performance of the agreement for sale on the basis of part performance. In the alternative, he took the plea of perfecting his title by adverse possession on the basis of continued possession for more than 12 years. The suit was dismissed by the trial court. The high court refused to interfere and dismissed the appeal.

However, in a case decided by the Madras High Court the vendor executed an agreement for sale, received the payment, handed over the possession of the land but refused to execute the sale deed. The agreement for sale was not registered. The Madras High Court in appeal held that the trial

12 *Ganga Ram v. Kamal Chand*, AIR 2006 Raj 17.

13 *Thota Rambabu v. Cherujuri Venkateshwara Rao*, AIR 2006 AP 114.

14 *H.C. Nagappa v. Thairnnisa*, AIR 2006 Kant 112.



court was right in decreeing the suit for specific performance of the contract by admitting in evidence the unregistered agreement for sale. The purchaser in this case had fulfilled the conditions required by section 53A and as such he was entitled to assert his claim for specific performance of the contract even though the agreement was not registered.¹⁵

On the contrary, in an appeal decided by the Kerala High Court, the vendor after executing the agreement for sale put the purchaser in possession of land but the purchaser who had agreed to pay the price in three instalments did not pay a single instalment. The vendor filed the suit for recovery of possession and *mesne* profit. The purchaser claimed the benefit of part performance. The court held that he was not entitled to this benefit, as he had not fulfilled the conditions stipulated by section 53A of the TPA.¹⁶

In Andhra Pradesh a vendor delivered possession of property to the purchaser on payment of part consideration and in spite of the fact that the purchaser was ready and willing to pay the balance consideration filed a suit for possession and got a decree. The decree was set-aside on appeal as the purchaser was entitled to specific performance of the contract.¹⁷

III SPECIFIC TRANSFERS

Sale

The vendor and purchaser in Karnataka executed an agreement for sale of agricultural land with an understanding that the sale deed would be executed when the ban would be lifted. The consideration for the sale was received by the vendor and possession of the land was handed over to the purchaser. The ban was lifted subsequently and permission to sell was duly secured. But the litigation followed questioning the legality of the sale agreements and the sale deed. The high court in appeal upheld the legality of the deed.¹⁸

In an appeal decided by the Supreme Court the question for consideration was whether a sale deed executed by the debtor in favour of the creditor was a mortgage by conditional sale or sale with a condition for repurchase. The owner of a piece of land took loan of Rs.400/- executed a sale deed with a condition that he would take it back by paying Rs.400/- within a period of three years. He failed to pay the said amount within the said period. The creditor who was in possession of the land got the land mutated in his name on the basis of the sale deed. The creditor sold the land to third party for Rs.4000/-. Now the debtor filed a suit for repurchase against the third party, an appeal to the district court and then to the high court. The Supreme Court on clear interpretation of the document held that the document was executed by way of security for the loan and it was not a sale deed and as such it did not convey any title and hence further sale by the creditor to a third party could

15 *K. Balaraman v. Pattamal*, AIR 2006 Mad 260.

16 *N.G. Vigneshwara Bhat v. P. Srikrishna Bhat*, AIR 2006 Ker 322.

17 *Parasa Ranga Rao v. Mathe Sanjeeva Rao*, AIR 2006 AP 366.

18 *Subbireddy v. K. N. Srinivasa Murthy*, AIR 2006 Kant 4.



not convey any title to him on the basis of the principle that a seller cannot convey a better title than what he has. He himself was not the owner but only a creditor notwithstanding the mutation in his name.¹⁹

The Rajasthan High Court in appeal from the judgment and order by a single judge of the same high court was called upon to consider two questions of law relating to the validity of a sale of agricultural land in favour of the purchaser of one agreement to sell and refusing to execute the sale deed in favour of the first party. The vendor had executed an agreement to sell the land on 31.1.1977 but refused to execute the sale deed even though he had received Rs.20000/- as earnest money. He executed a sale deed in favour of a third party in whose favour he pleaded to have executed another agreement to sell dated 20.1.1977 which was a forged one.

The division bench of the high court held that the purchaser in the agreement dated 31.1.1977 was entitled to specific performance of the contract.²⁰

The Rajasthan High Court was called upon to decide the validity of a sale in another second appeal on the question of right to pre-emption of a co-sharer in the sale by another co-sharer of entire property to a third person. The right of pre-emption of a co-sharer was recognized even though she was not living in her share in a joint family house.²¹

The Andhra Pradesh High Court upheld the validity of a decree passed by the trial court in a suit of declaration of title and delivery of possession of land and super structure thereon to its owner from a person who was in permissive possession but had pleaded that he had purchased the property under an oral agreement for sale. He also took the plea of adverse possession. The high court held that the plea of executory contract and adverse possession were not tenable and such transfer of immovable property is not permitted by section 54 of the TPA.²²

The Supreme Court in an appeal from the judgment and order of the Allahabad High Court considered the question of validity of purchase of immovable property for and on behalf of an unincorporated company. The court made the following observations:²³

Section 54 of the Transfer of Property Act defines sale and provides for a procedure as to how the same shall be made. It does not speak of conveyance of ownership. It does not bar a benami transaction. There is no embargo in getting a property registered in the name of one person; although the real beneficiary thereof would be another.

The Transfer of Property Act does not prohibit an oral transfer. The statute merely provides that if the value of the said property is more than

19 *Ramlal v. Phagua*, (2006) 1 SCC 168.

20 *Jagir Singh v. Ranjeet Singh*, AIR 2006 Raj 105.

21 *Inder Chand v. Sethi*, AIR 2006 Raj 251.

22 *Arjuna S.Reddy v. Arjuna C. Thangavelu*, AIR 2006 AP 362

23 *Jai Narain Parasrampuriah v. Pushpa Devi Saraf*, (2006) 7 SCC 756



Rs.100/- a registered document is required to be executed. Section 5 of the Transfer of Property Act provides for transfer in favour of the company which was unincorporated. The effect of the Transfer of Property Act, therefore, postulates transfer in favour of the unincorporated company. It does not create any bar.²⁴

Thus the purchase of the property by one of the promoters of the company for and on behalf of an unincorporated company was held to be valid under the TPA.

Mortgage

Section 54 of the TPA deals with sale whereas section 58 deals with mortgage. Some times people take loan on the security of immovable property and execute a deed for mortgage with conditional sale. The Supreme Court was called upon to interpret a deed for mortgage with conditional sale in an appeal from the judgment and order by the Jharkhand High Court. The deed in that case was an ambiguous one as it had used both the vernacular terms, namely, *kewala* and *bailbulwafa* meaning mortgage with condition of repurchase. The Supreme Court held in view of the facts and circumstances and evidence on record that the transaction was a mortgage with conditional sale and not sale with condition of repurchase. The owner of the property was held entitled to redeem it on payment of the loan amount.²⁵

Section 58 defines various kinds of mortgages. One of them is a mortgage by deposit of title deeds. But in an appeal from the Madras High Court against conviction for disproportionate income or assets by a public servant, the court held that “the creation of an equitable mortgage by depositing documents other than title deed is not valid or permissible²⁶.”

The Allahabad High Court considered the question whether a sale deed executed to secure the loan was a mortgage deed or a mortgage by conditional sale. A poor owner of two houses had executed a sale deed in respect of both houses in possession of tenants as a security for borrowing Rs.500/- from a moneylender. The moneylender sold both houses for Rs.10,000/-. The owner died and his widow filed a suit for declaration that the sale deed was a mortgage deed. The suit was dismissed but the first appellate court set aside the trial court judgment and held that it was a mortgage. The division bench dismissed the second appeal and thus the poor widow succeeded against a dishonest moneylender.²⁷

Similarly, the Supreme Court in an appeal from the Jharkhand High Court, set aside the judgment of the high court and restored that of the trial court and the lower appellate court on question whether a sale deed executed to secure a loan with a condition for repurchase was only a mortgage by conditional sale and not a sale.²⁸

24 *Id.* at 776.

25 *Tulsi v. Chandrika Prasad*, AIR 2006 SC 3359.

26 *Janakiraman v. State*, (2006) 1 SCC 697 710.

27 *Bhagwan Devi v. Beni Bai*, AIR2006 All 251.

28 *Bishwanath Prasad Singh v. Rajendra Prasad*, AIR 2006 SC 2956.

**Equity of redemption**

Section 60 of the TPA provides for the rights of a mortgagor to redeem his property from the mortgagee. This is also known as the equity of redemption. This is an absolute and unfettered right. This can be exercised at any time after the loan becomes due. The law of limitation cannot bar this right. The Supreme Court came across a case in an appeal from the Punjab & Haryana High Court where no time was fixed for redeeming the mortgage and the delay and laches of about one hundred years did not affect the right of redemption of a mortgagor on the basis of principles of law and doctrine of clog on the equity of redemption.²⁹

However, in another case from Madras, the Supreme Court held that where the mortgagee purchased from the mortgagor property at a court auction with the permission of the court in a transaction other than the mortgage, his claim to absolute ownership of the mortgaged property is sustainable.³⁰

In yet another case from Madras, the Supreme Court was called upon to consider whether the mortgage executed in 1935 was subsisting in 1977 when the legal representatives of the deceased mortgagor filed a suit for redemption. Meanwhile, by virtue of section 9 of the Tamil Nadu Debt Relief Act, 1979 all subsisting mortgages stood wholly discharged on 14.7.1978. The court held that in view of the facts and circumstances of the case that the mortgage was subsisting, it stood wholly discharged on 14.7.1978 and the mortgagor was entitled in 1977 to right of redemption. His suit was decreed accordingly.³¹

Foreclosure

Sections 60 to 66 of the TPA deal with the rights of a mortgagor and sections 67 to 77 deal with the rights of a mortgagee. Section 67 mentions the right of a mortgagee to foreclose. The High Court of Delhi was required to interpret the scope of section 67 in a suit by the mortgagee. A house was mortgaged to secure a loan payable within three years. Neither the mortgagor paid the loan within three years, nor he redeemed the property within the period of twelve years, nor the mortgagee filed a suit for recovery of the loan nor filed a suit for foreclosure within twelve years. The mortgagee filed a suit for declaration, possession and *mesne* profits against the legal heirs of mortgagor after 35 years. The high court rejected the suit as time barred.³²

'A' mortgaged his property to a bank as a security for a loan and created an equitable mortgage by depositing title deeds. He failed to pay the loan within the stipulated period. The bank filed a suit for foreclosure which was decreed. The property was sold in an auction. The mortgagor then filed an appeal challenging the auction. The High Court of Andhra Pradesh held that he himself by non-payment of the loan within the stipulated time period had extinguished his right of redemption.³³

29 *Hanrbans v. Om Prakash*, (2006) 1 SCC 129.

30 *Rukmini Ammal v. Jagdesa Gounder*, (2006) 1 SCC65.

31 *Prabhakaran v. Azagiri Pillai*, AIR 2006 SC 1567.

32 *Ramesh Kumar v. Yashpal Batra*, AIR 2006 Del 286.

33 *Alsokan Parabhayya v. Allahabad Bank*, AIR 2006 AP 236.

**Redemption by person other than mortgagor**

Ordinarily the right to redeem vests in a mortgagor. But if a mortgagor has assigned his right to redeem to another person, then the assignee has the right to redeem. Section 91 of the TPA therefore confers the right to redeem on a person who has any interest in or upon the right to redeem the same. The High Court of Allahabad was required to answer a question of law with regard to this provision in an appeal decided by it. The question for consideration was as follows: “Whether an auction purchaser in a mortgage decree purchases the property free of encumbrance when no encumbrance is shown in sale proclamation or not.”

This question was examined in the context where suit property was subject to several successive mortgages. Hence, the answer required interpretation of section 91(a) where under a *pusne* mortgagee stepped into the shoes of the mortgagor being his assignee. Therefore, the court gave the following answer:³⁴

It is thus held that the auction purchaser of the mortgaged property stepped into the shoes of the mortgagor and where the subsequent mortgagee is not a party to his suit for foreclosure such a *pusne*-mortgagee inferior in rank, acquires a right of redemption and can sue for his interest in the mortgaged property.

The High Court of Karnataka allowed the brother of a deceased mortgagor in a case of usufructuary mortgage to redeem the property under this provision of the TPA.³⁵ In yet another case, an assignee of the mortgagee was allowed to redeem an usufructuary mortgage under this provision.³⁶

Charge on immovable property

Section 100 of the TPA deals with the charges on immovable property and their transfers. The Karnataka High Court was required to consider the following questions of law in an appeal decided by it: “Whether the respondent is a bona fide purchaser for value without notice in a court auction and the charge created on the property is binding on him.”

The court answered the question in the affirmative as the *bona fide* auction purchaser without notice had purchased the property during the pendency of the proceedings for the enforcement of charges and as such under the doctrine of *lis pendence* he purchased the property subject to the result of the said proceedings.³⁷

Lease and licence

Sections 105 to 117 of the TPA regulate the relations of the lessor or lessee. The Indian Easement Act, 1882 deals with and regulates the rights and

34 *Chandulal Keshwani v. Balwant Singh*, AIR 2006 All 47 53.

35 *Sarmus Sab v. Ismain Sab*, AIR 2006 Kant 107.

36 *Yahsodaraiah v. S.B. Payidwaru*, AIR 2006 Kant 123.

37 *Lalitha Kariappa v. Sanjeevi*, AIR 2006 Kant 25.



obligations of a licensee. Goa Tourism Development Corporation permitted under an agreement a person to occupy a room as a licensee. When told to vacate the room, he refused and went to court on the plea that the landlord had failed to give a notice to quit as required by section 106 of the TPA. The High Court of Bombay on a writ petition filed by the landlord rightly held that a licensee was not a tenant and as such section 106 of the TPA was not applicable here.³⁸ The corporation was put to avoidable litigation for obliging a person in need.

Notice to quit

Section 106 of the TPA makes a provision as to the duration of leases in the absence of a written contract or local usage. This section was amended by the Transfer of Property (Amendment) Act, 2002. Section 106 after its amendment in 2002 provides that a lease of immovable property from month to month is terminable by 15 days notice expiring with the end of a month of tenancy.

A division bench of the Bombay High Court heard and decided a writ petition filed by a tenant challenging the constitutional validity of this amendment specially the fact that the amendment was given a retrospective effect. The high court relying upon earlier Supreme Court judgments on the point upheld its constitutional validity.³⁹

Determination of lease

Section 111 of the TPA mentions therein a number of modes by which a lease comes to an end. The Madras High Court disposed of two writ appeals by a common judgment deciding the validity of the action taken by a municipality determining the lease in respect of its own building let out to a private person. The building was let out to a person who was running a hotel therein since 1988. The lease was granted for a period of three years renewed thereafter several times. It expired in 2003 and further renewal was refused. A notice to quit was given and the lessee was asked to handover vacant possession.

The high court held that the proper course to take possession of the building was to move a court and obtain a decree in terms of an earlier decision of the Supreme Court cited therein.⁴⁰ The court justified its decision by giving detailed reasons in para 8 of its order which are convincing. It gave an option to the municipality either to go to a court of law or to proceed under the Public Premises Eviction Act.

A flat was let out under a registered lease deed dated 13.1.1969 for a period of 21 years with effect from 1.1. 1969. The lease deed contained a clause which permitted the parties to terminate the lease prior to the expiry with notice from

38 *Goa Tourism Development Corporation Ltd. v. S. C. Palyenkar*, AIR 2006 Bom 243.

39 *Allahabad Bank v. Prakash Shankar Wagh*, AIR 2006 Bom 321.

40 *K. M. Mohan v. Dist. Collector, Vellore*, AIR 2006 Mad 65.



either side. The lesser gave a notice on 29.9.1972 to vacate the flat. The lessee did not vacate. The lesser filed a suit in 1973 for eviction, recovery of arrears of rent and damages. The suit was decreed. But on payment of rent, the lessee was permitted to continue till completion of 21 years. Subsequently, the lessor filed a second suit in 1990 for eviction. This suit was decreed on 29.6.1996. The lessee had sought to seek protection of the Rent Control Act in the second suit which plea was not accepted by the court on grounds that his case was governed by the TPA, that he had availed of the benefit of the TPA to complete the full term of 21 years on payment of arrears of rent and the benefit of rent control legislation was available to the lessees of short term lease for less than 15 years only. The high court in appeal took a different view. The lessor then went in appeal to the Supreme Court. The Supreme Court interpreted the scope of the rent control legislation, specifically section 3 of the West Bengal Premises Act, 1956 and set aside the judgment of the high court and restored that of the trial court. The lessee was allowed time to vacate till 31.12.2006. Thus, by pursuing protracted litigation, the lessee got time to continue for ten long years from 29.9.1996 to 31.12.2006.⁴¹

Waiver of notice to quit

Section 113 of the TPA defines as to what is meant by waiver of notice to quit. It also gives two illustrations as to in what circumstances a tenant may plead that his landlord has waived the notice to quit. The Supreme Court in an appeal by special leave from a judgment and order of the Delhi High Court put the same in proper perspective. In this case, the landlord after giving the notice to quit kept on accepting rent from his tenant and also filed the suit for eviction and kept on proceeding with the case. The tenant pleaded that by accepting the rent, the landlord had waived the notice to quit. The court rejected this argument and held that merely by accepting the rent, he had not waived the notice. The fact that even after accepting the rent, he filed the suit and continued proceeding with it, showed that he had not waived the notice and he wanted to evict the tenant.⁴²

Effect of holding over

Section 116 of the TPA states as to what is the effect of holding over the premises by a tenant even after the expiry of the term of lease. The Supreme Court examined the scope of this provision in an appeal from the judgment and order of the Madras High Court. A dealer of the Hindustan Petroleum took on lease some premises for ten years. On the expiry of the term, the landlord refused to renew the lease, gave notice to quit and filed the suit for eviction. The tenant continued in possession and paid the rent. The landlord accepted the rent under protest and made it clear the same would be adjusted against compensation.

41 *Pabitra Kumar Roy v. Alita D'Souza*, (2006) 8 SCC 344.

42 *Sarup Singh Gupta v. S. Jagdish Singh*, AIR 2006 SC 1734.



The tenant took the plea that he was holding over with the assent of the landlord within the meaning of section 116 of the TPA. The Supreme Court rejected this argument and dismissed his appeal.⁴³

IV CONCLUSION

The foregoing shows that most of the appeals by special leave coming before the Supreme Court involves a question of law concerning interpretation of some or the other provisions of the TPA. The lessees in a few cases have come to the Supreme Court to continue in possession on questions whether they can avail of the benefit of rent control legislation and thus escape the rigors of TPA. Licensees have tried to avail of such benefits to which they are not entitled under the Easement Act. The law on mortgages has also given rise to lot of litigation.

43 *C. Albert Morris v. K. Chandrashekar*, (2006) 1 SCC 228.