

CASE NO.:
Appeal (civil) 947 of 1995

PETITIONER:
Union of India

RESPONDENT:
Shiv Dayal Soin & Sons Pvt. Ltd. and others

DATE OF JUDGMENT: 26/02/2003

BENCH:
CJI & ASHOK BHAN

JUDGMENT:

JUDGMENT

KHARE, CJI

By lease deed dated December 10, 1952 executed by the appellants herein, a plot of land at A/25, Nizamuddin West, New Delhi was leased out for 99 years to the predecessor in-interest of Respondent No. 1. The aforesaid land was demised by the appellant herein under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter referred to as 'the Act').

The said lease was executed on terms and conditions stipulated in Appendix XIII of Rule 40(3) of the Rules framed under the Act. Clause 1(vii) of the lease deed runs as under:

"1. The lessee doth to the intent that the burden of the covenants may run with the said land and may bind any permitted assignee thereof hereby covenant with the lessor as follows:

"(vii) not to use the said land and buildings that may be erected thereon during the said term for any purpose other than the purpose of constructing a house without the previous consent in writing of an officer appointed by the lessor in this behalf; 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 said officer."

It is not disputed that respondent No.1 herein constructed a house over the leased land. However, respondent No.1 let out the ground floor, the first floor and the second floor of the house to various tenants. The first floor of the house was leased out to the Life Insurance Corporation of India for non-residential purpose. Since the first floor was let out to Life Insurance Corporation of India, the appellant herein sent a notice dated July 3, 1970 to respondent no. 1 herein pointing out that the lease of first floor of the house to the Life Insurance Corporation of India being for a non-residential purpose, the respondent no. 1 has contravened clause 1 (vii) of the lease deed. By the said notice, the appellants demanded payment of penal charges for the contravention of terms of lease deed. By another letter dated December 14, 1972, for the aforesaid violation of the terms of the lease deed the charges were quantified by the appellant at a sum of Rs. 39,039.92. Respondent no. 1 herein replied to the aforesaid notice stating that he had not committed any breach of the terms of the lease deed and, therefore, was not obliged to pay any penal charges. Since no penal charges were paid by respondent no. 1

as demanded, the appellant withdrew the offer of the penal charges and respondent no. 1 was informed that further action to re-enter in the house or otherwise would be considered as per the relevant terms of the lease deed without any further notice. The appellant thereafter on August 18, 1973 sent a notice to respondent no. 1 informing him that since he has committed the breach of Clause 1 (vii) of the lease deed, therefore the appellant was constrained to exercise the right of re-entry. By the said notice, the respondent no. 1 was also informed that his right, title and interest in the premises are extinguished and the said premises stands vested in the President of India on account of the breach of the terms of lease deed committed by him. Respondent no. 1 was further asked to deliver the physical possession of the premises to the appellant. It is in this context respondent no. 1 filed a petition under Article 226 of the Constitution challenging the notice dated August 18, 1973 issued by the appellant. Before the High Court, respondent no. 1 inter alia contended that he has not contravened the terms of the lease deed, that he admittedly has constructed a house over the leased land and that its use for non-residential purposes is not a contravention of the terms of lease deed. These contentions of respondent no. 1 herein were accepted by the High Court. Consequently, the Writ Petition was allowed and the impugned notice was set aside. Aggrieved by the judgment of the High Court, the appellant has preferred this appeal by means of a special leave petition.

Learned counsel, appearing for the appellant, urged that the land having been leased for construction of house namely for residential purposes, the same could not have been used for non-residential purpose and, therefore, respondent no. 1 has contravened the terms of Clause 1 (vii) of the lease deed and, therefore lessee's right, title and interest in the land had extinguished and the view taken by the High Court is erroneous. After we have heard the counsel for the parties, we do not find merit in the contention. It is not disputed that under the terms of Clause 1 (vii) of the lease deed, the predecessor in-interest of respondent no. 1 was required to construct a house on the leased land. It is also not disputed that respondent no. 1 herein did construct a house over the land. The question that arises for consideration is whether the letting out of first floor of the house to the Life Insurance Corporation of India for non-residential purpose was contravention of Clause 1 (vii) of the lease deed? Under the Rules framed under the Act, various types of leases are set out in Appendix XI, XII and XIII to Rule 40(3) of the Rules. Admittedly, the predecessor-in-interest of respondent no. 1 was granted lease in terms of Appendix XIII to Rule 40(3). Clause 1 (vii) of the Appendix XIII, the breach of which is alleged to have been committed, required the lessee of the leased land to construct a house. No further embargo or limitation was placed on lessee under the aforesaid lease. The lease deed nowhere stipulated that the house constructed by the lessee would be used exclusively for residential purpose or would not be used for non-residential purposes. A house, unless prohibited by the terms of lease deed or any statutory provisions, can be used for residential as well as for non-residential purposes. In this context, we would look into the other forms of leases statutorily provided under the Rules. One of the different forms of leases is contained in Appendix XI. A perusal of Appendix XI and XII shows that terms of lease deed in Appendix XIII are different from the terms of lease stipulated in Appendix XI. The relevant sub-clauses (ii) and (v) of clause (1) of Appendix XI are as under :

"(ii) .Lessee shall..erectone building single storeyed containing one residential flat or double storeyed consisting of one or two residential flats."

"(v) not to erect more than one building single storeyed containing one residential flat or double storeyed consisting of one or two residential flats.."

The above sub-clauses 1 (ii) and (v) pertain to actual construction or absence of construction by the lessee. They further demonstrate that residential flat signifies its use exclusively for the residential purposes. No such expression finds place in Clause 1 (vii) of Appendix XIII. Further Sub-clause (vi) of Clause 1 of Appendix XI which runs as under shows that the lease prohibits the use of building for any other purposes excepting for residential purpose:-

"(vi) not without the written consent of the Chief Commissioner, Delhi to carry on or permit to be carried on, on the said land and buildings erected thereon during the said lease and trade or business whatsoever or use the same or permit the same to be used for any purpose other than that of a single storeyed building of one residential flat or a double storeyed building consisting of one or two residential flats in all, with a barsati on top, as may be approved for the locality or as provided in the building already erected on the said land"(emphasis supplied).

The lessee under the abovesaid terms of lease deed is in fact precluded from using the house for any purpose other than residential purpose. This interpretation would be further supported by the phraseology of the relevant clause 1 (vii) of Appendix XIII, cited above, which contains no reference to the word 'residential'. As a canon of statutory interpretation, *expressio unius est exclusio alterius*, what is expressly mentioned in one place but not in another must be taken to have been deliberately omitted. The argument raised by the learned counsel for the appellant proceeds on assumption that a house by its meaning and definition is capable of being used exclusively for residential purposes and not for non-residential purposes which is not a correct interpretation of sub-clause (vii) of Clause I of Appendix XIII.

For the aforesaid reasons we are of the view that respondent no. 1 after having constructed a house, did not contravene the terms of the lease merely because he let out the building for non-residential purpose.

It was then urged on behalf of the appellant that since under Clause 1 (ii) of lease deed an obligation was placed on lessee to comply with the municipal rules, regulations and bye-laws and since the use of building for non-residential purpose is contrary to Master Plan, Zonal Plan or other plans prepared under the Delhi Development Act, the right and title of respondent no. 1 in respect of the land stood extinguished. We are not deposed to go into this submission as the impugned action has been taken against respondent no. 1 under the lease deed, the terms of which are said to be violated by respondent no. 1. However, it would be open to the appellant to take such action as may be permissible under the other provisions of law against respondent no. 1.

For the aforesaid reasons, the instant appeal is accordingly dismissed. There shall be no order as to costs.

JUDIS