REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.5117-5118 OF 2021
(Arising out of SLP(Civil) Nos. 879-880/2016)

The State of Kerala & Ors. ....Appellant(s)

Versus

M/s Joseph & Company .... Respondent(s)

With

CIVIL APPEAL NO.5120/2021 @ SLP(C) No.9661/2017

CIVIL APPEAL NO.5119/2021 @ SLP(C) No.18760/2016

J U D G M E N T

A.S. Bopanna,J.

1. Leave granted.

2. The appellant-State of Kerala is assailing the order dated 10.07.2015 passed by the High Court of Kerala at

Ernakulam in W.A. No.369/2011 and W.A. No. 375/2011. The said appeals had arisen out of the proceedings in Writ Petition No.1207/2005 wherein through the order dated 17.01.2011, the petition was disposed of to the extent of quashing the order declining value of usufructs (Ex.41). The order (Ex.39) by which the lease in favour of Respondent had been terminated was upheld. It is in that view, the writ petitioner-M/s. Joseph & Company as also the respondent-State of Kerala had filed the Writ Appeals to the extent they were aggrieved. The learned Division Bench of the High Court through the impugned order dated 10.07.2015 has allowed the appeal filed by M/s. Joseph & Company, thereby setting aside the order terminating the lease and the appeal filed by State of Kerala was dismissed. It is in that light, the appellant-State of Kerala claiming to be aggrieved is before this court.

3. The genesis of the case is that erstwhile Travancore-Cochin Government had by a notification in the year 1953 auctioned certain abandoned portions of Beatrice estate. One Mr. P.I. Joseph-responded to the said notification and offered his bid to an extent of 246.26 acres out of the South

Block and took possession on 10.05.1955. However, no lease agreement was entered into between him and the government. In the meanwhile, the said Mr. P.I. Joseph assigned the said property in favour of Mr. K.K. Joseph. Pursuant to such transaction dated 28.02.1974 between Mr. P.I. Joseph and Mr. K.K. Joseph, the Government of Kerala, executed a lease deed dated 15.12.1979 in favour of Mr. K.K. Joseph. Though the lease deed was executed in favour of Mr. K.K. Joseph, it is contended by the lessee that Mr. K.K. Joseph was representing the partnership firm registered in the name and style M/s. Joseph & Company, of which he was the Managing Partner.

4. The said Mr. K.K. Joseph thereafter executed a registered sale deed dated 16.12.1983 transferring an extent of 50 acres from the land leased in his favour, to one Mr. Raghavan. Subsequent thereto, Mr. K.K. Joseph is stated to have retired from the partnership firm after which Ms. Meera Scaria had become the Managing Partner representing the firm. The said Ms. Meera Scaria as the Managing Partner had addressed a letter dated 26.06.1990 seeking leave to rectify the defect of transferring a portion of the lease land to

Mr. Raghavan. The said request had not been considered since the government through their letter dated 27.05.1989 had indicated the intention to terminate the lease. Subsequent thereto the notice dated 19.02.1992 intimated the lessee about the order to terminate the lease and to prepare the inventory to take over possession.

5. But the same was kept in abeyance as certain events of a general consideration regarding regularisation of all leases in the area was under process. However, said process had come to an end on 26.02.1999 whereby the government had cancelled its earlier proposal of a general regularisation which was under consideration. In that background, the notice dated 15.11.1999 was issued to Mr. K.K. Joseph to show cause why the lease in respect of the whole area of 246.50 acres should not be terminated as contemplated under clause 14 of the lease deed. Mr. K.K. Joseph replied to the same on 29.11.1999 indicating that he has retired from the partnership firm and that Ms. Meera Scaria is the present Managing Partner who is to be notified. In the said process, the first round of litigation commenced challenging the action of the State Government to terminate the lease.

The Writ Petitions bearing O.P. No. 20508/2002 and O.P. No. 30224/2002 filed by M/s. Joseph & Company and Mr. Raghavan respectively were set in motion. The said process after the Writ Appeal had resulted in the proceedings before this Court in C.A. No. 4169/2004. This Court through the order dated 16.07.2004 permitted the appellant-State of Kerala to issue fresh show cause notice regarding proposed termination of lease and the respondents were permitted to file their reply to the show cause notice. In the above background, the present round of proceedings commenced with the issue of the notice dated 29.07.2004 and conclusion of the process.

6. In the said notice the appellant-State of Kerala referred to two aspects to allege breach of terms of the lease. The main aspect alleging breach is in relation to entire leased property. It is alleged that Mr. K.K. Joseph had transferred his leasehold right to M/s. Joseph & Company without the approval of the lessor with the intention to nullify the effect of clause 14 of the lease deed and he has thereafter retired from the firm in 1988. The other aspect alleging breach of the term is that an extent of the leased land measuring 50 acres has

been sold without consent of the lessor, to one Mr. Raghavan. It is in the said premise, the lease was sought to be terminated. The respondent-M/s. Joseph & Company submitted a detailed reply dated 14.08.2004 seeking to justify their action and to contend that they had not committed breach of the terms of lease deed. The respondent was also provided the opportunity of hearing, pursuant to which an order dated 26.11.2004 was passed whereby the termination of the lease in respect of the entire extent measuring 246.26 acres of reserve forest land was confirmed.

7. The respondent being aggrieved by the same had preferred the Writ Petition as indicated supra. The learned Single Judge did not interfere with the order terminating the lease and the writ petition was dismissed to that extent. Insofar as the aspect relating to the breach alleged regarding the transfer of lease to M/s. Joseph & Company by Mr. K.K. Joseph, the various circumstances were referred more particularly the documents which were at exhibits P10, P11, P12, P13 and P16 to P20 to indicate that the government had for all intents and purposes treated M/s. Joseph & Company as the lessee under the lease deed which was Exhibit P7 to

the Writ Petition. However, in respect of the transfer of 50 acres in favour of Mr. Raghavan, the learned Judge was of the opinion that the finding relating to breach due to such transaction being a finding of fact, did not call for interference in the Writ Petition.

8. The learned Division Bench had negatived the challenge to the first part by the State of Kerala and the conclusion of the learned Single Judge that M/s Joseph & Company is the lessee was held to be valid and was not interfered. Further, insofar as the sale in favour of Mr. Raghavan, the learned Division Bench had taken note of Clause 12 contained in the lease deed between the appellant-State of Kerala and M/s Joseph & Company which provided that the default if any committed could be remedied if the lessee is put on notice. The default can be confirmed only if the same is not remedied despite notice. It is in that view, the learned Division Bench was of the view that the requirement in Clause 12 of the lease agreement had not been complied with by the appellant-State of Kerala. Therefore, the learned Division Bench set aside the order terminating the lease.

9. We have heard Mr. Jaideep Gupta, learned senior counsel for the appellant-State of Kerala, Mr. Joseph Markos, learned senior counsel and Mr. Thomas P Joseph, Learned Senior Advocate on behalf of the respondents and perused the appeal papers including the writ appeal records which had been secured from the High Court.

10. On the first aspect relating to the breach alleged in view of the transfer of lease in favour of M/s Joseph & Company by Mr. K.K. Joseph-the lessee, Mr. Jaideep Gupta, learned senior counsel has taken us through the documents to indicate the sequence that the property in fact was auctioned in favour of Mr. P.I. Joseph who had transferred the lease in favour of Mr. K.K Joseph through the sale deed dated 28.02.1974. Though the government has subsequently validated the said transaction by executing a lease deed in favour of Mr. K.K. Joseph, the subsequent transfer by Mr. K.K Joseph to M/s Joseph & Company, a new lessee without prior consent of the government would constitute breach is his contention.

11. Having noted the contention, we find that the said issue need not detain us for long. At the outset, a perusal of

the lease deed dated 15.12.1979 would no doubt disclose that Mr. K.K. Joseph in his individual name is referred to as the lessee of the other part. The recital in the lease deed however depicts that the earlier transaction in favour of Mr. P.I. Joseph and the document executed by Mr. P.I Joseph in favour of Mr. K.K Joseph to assign the lease is referred in the document. In that backdrop, a reference to the sale deed dated 28.02.1974 by which the sale was made by Mr. P.I. Joseph to Mr. K.K. Joseph indicates that the purchaser Mr. K.K. Joseph has been described as the Managing Partner, M/s Joseph & Company, a registered partnership firm. The said aspect would *ex-facie* indicate that the contention of the appellant that M/s Joseph & Company had come into existence subsequently as a ploy to overcome and defeat the bar contained in Clause 14 to the lease deed cannot be accepted. Further, as already taken note, the learned Single Judge as also the learned Division Bench has referred to the various other documents more particularly at Exhibits P10, P11, P12, P13 and P16 to P20 in the writ proceeding records to indicate that the Government, for all intents and purposes had treated M/s. Joseph & Company as the lessee. Therefore,

to the said extent on the first aspect, the same does not constitute breach. Hence the conclusion reached by the High Court on that aspect does not call for interference.

12. The next aspect which arises for consideration is as to whether the sale to an extent of 50 acres from out of the lease area would amount to breach of clause 14 of the lease deed. For better appreciation, it would be appropriate to take note of Clause 12 and 14 in the lease deed dated 15.12.1979, which have been referred. The same read as hereunder: -

> "12. In the event of the lessee making default in the observance of fulfillment of any of the covenants herein contained the Lessor shall be at liberty at any time, thereafter, after giving notice to the lessee and hearing him in person or through his agent or vakil duly appointed about the failure of the lessee to remedy such default that may be reported to the Lessor from time to time by the Chief Conservator of Forests, to terminate the lease and lessee shall forthwith vacate the land hereby leased and demised and notwithstanding such termination of this lease, the lessee shall be liable for any loss which the lessor may sustain by reasons of such default and all such improvements made by the Lessee on the land hereby leased and demised as exist at the time of vacating the same must be left intact and no compensation can be claimed by the lessee for such improvements."
>
> "14. The lessee shall not be entitled to sublet or assign his interest in the said lease except with the previous permission in writing of the lessor."

13. From a perusal of the relevant clauses in the lease deed it is seen that clause 14 thereof provides that the lessee shall not be entitled to sublet or assign his interest in the said lease except with the previous permission in writing obtained from the lessor. In that backdrop, the breach alleged against the respondent is that the lessee has assigned the interest in the leased land to an extent of 50 acres in favour of Mr. Raghavan without the previous permission of the lessor. The fact that such sale has taken place cannot be in dispute nor is it in dispute. The said assignment has been made under the registered sale deed dated 16.12.1983. The question therefore is; whether the same would constitute breach of the terms in the lease deed so as to entail termination of the lease.

14. Mr. Joseph Markos, learned senior counsel contended, though such sale deed was executed, the possession of the property had not been handed over to Mr. Raghavan and the lessee M/s. Joseph & Company had continued to pay the lease rentals in respect of the entire property. It was next contended that even assuming that the execution of the document had constituted default, the lessee ought to have

been notified to remedy such default and only if the same was not done, the lease could be terminated. In that regard, the learned senior counsel contended that the lessee had submitted a letter to the government on 17.03.1990 seeking to rectify the default and if the same was accepted in terms of Clause 12, the breach contemplated in Clause 14 would not survive. It is his further contention that the right to forfeit the lease, in the present circumstance, would fall under Section 111(g) of the Transfer of Property Act ('TP Act' for short) which calls for strict construction against the lessor. In that event the termination of the entire lease would not be sustainable for breach in respect of a portion of the leased land. Reference is also made to Section 112 of the T.P. Act to contend that the acceptance of lease rentals by the lessor, including for the said extent of 50 acres sold to Mr. Raghavan would constitute waiver of forfeiture.

15. While taking note of the contention on behalf of the respondent-M/s. Joseph & Company regarding the benefit available to them under Clause 12 of the lease deed which had not been complied by providing an opportunity to remedy the default, it is necessary to note as to whether

such benefit is available to rectify the breach alleged under Clause 14 of the lease deed as well and whether Clause 12 makes it mandatory to issue notice to rectify before action is taken. In order to, gather the intention of the parties, the nature of the transaction and the document as a whole is necessary to be considered. While on this aspect, what is striking to be noted is that the word employed in Clause 12 is 'default' and not breach. If this aspect is taken note and the remaining terms contained in the lease deed are taken note, keeping in view the admitted position that the leased land is situate in a reserve forest, the clauses in the agreement commencing from clause No. 5 to 11 indicates that the right reserved by the lessor and the obligations imposed on the lessee are with regard to the compliance, to retain the characteristics of forest area and continue such other activities including collection of minor forest produce and the forest officials have been granted the right to regulate the same notwithstanding plantation was the permitted use.

16. If in that context, Clause 12 is taken note, it indicates that the issue of notice is contemplated in the event of the

lessee committing default and the liberty to terminate the lease is exercised. The concession provided is to rectify the default before the notice is issued. If there is failure of the lessee to remedy such default that may be reported to the lessor from time to time by the Chief Conservator of Forests. Before termination of the lease a notice is to be issued and be heard about the default if the default has not been remedied. The same would clearly indicate that the default referred to, the issue of notice there for and the fact that the same is based on the report to the lessor (State of Kerala) from Chief Conservator of Forests is that the rectification permitted is in respect of the default relating to deviation from the obligations contained in the covenants relating to maintaining the nature of the property and default should be of rectifiable nature. The Dictionary meaning of **'default'** is; failure to fulfil an obligation, while the meaning of **'breach'** is an act of breaking a law, agreement or code of conduct. If the said distinction is kept in view, the breach if committed by subletting or assigning as provided in Clause 14, the same would lead to its consequences and the liberty to remedy the same is not mandatory. All that Clause 12

signifies is that if default is reported and if such default is not remedied then termination can be made after issue of notice and hearing. The cause for termination will be the default and permitting to remedy the same is only an indulgence to be shown. Therefore, the learned Division Bench was not justified in its conclusion that the non-issue of notice and not providing opportunity to remedy the default is fatal. In the instant facts, the reading of the lease deed as a whole would indicate that the right reserved to the lessor under Clause 14 is independent of Clause 12 and if the breach of that nature occurs, it is irreversible and it will have to be taken to its logical conclusion unless the lessor waives the right thereunder.

17. For better appreciation on the legal contention, we take note of Section 111(g) and Section 112 of the T.P. Act which was referred. They read as hereunder: -

> "**111. <u>Determination of lease</u>** — A lease of immoveable property determines—
> (a) xxxxxxx
> (b) xxxxxx
> (c) xxxxxx
> (d) xxxxxxx
> (e) xxxxxxx
> (f) xxxxxxxx

> **(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**; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; [or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event]; and in [any of these cases] the lessor or his transferee [gives notice in writing to the lessee of] his intention to determine the lease;
>
> **112. <u>Waiver of forfeiture</u>** —A forfeiture under section 111, clause (g) is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting:
>
> Provided that the lessor is aware that the forfeiture has been incurred:
>
> Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture; such acceptance is not a waiver."

18. The contention of the learned senior counsel for the respondent that a question of law could be raised at any stage is well taken and we do not see the reason to refer to the precedents relied on that proposition. Even that be so, the provisions contained in Sections 111 and 112 of the T.P. Act though taken note, in our opinion, the same cannot be considered in abstract without reference to the factual foundation. So far as the contention that the lessee had continued to pay the lease rentals in respect of the entire property despite the sale of 50 acres to Mr. Raghavan, whether such acceptance of the lease rentals by the lessor

was with knowledge of default by condoning the breach, is a question of fact which will have to be urged in the original proceedings and the material will have to be placed on record so as to enable the original authority to take a decision on that aspect and render a finding on fact so that the Court at a later stage in the process of judicial review can reassess the same and determine as to whether the benefit of Section 112 T.P.Act will be available. Therefore, in the instant case, the contention that the lease rentals were being paid in respect of the entire extent cannot be accepted outright as no contention was urged and details were not laid in the original proceedings. Further, in a matter of the present nature when the entire lease area measured vast extent of 246.26 acres and the allegation is of parting with the lease hold right of 50 acres from such lease area and in that circumstance when the lease rental in any event was being paid to the remaining extent of 196.26 acres, the lumpsum payment of lease rental cannot be taken advantage of to contend that the lease rental was continued to be paid and seek waiver of forfeiture.

19. When there was breach providing the right to terminate the lease in respect of the entire leased land, even if the lease rental paid by the lessee has been accepted by the appellant-lessor, it has not been shown that the requirement of the conditions in the proviso to Section 112 of the T.P. Act is satisfied. In the present situation, the land is leased by the government and when the breach had occurred the competent authority had issued the notice and the proceedings was initiated. Once the proceedings had been initiated even if the lease rental was received the same is saved under the second proviso. Further the situation is also that the payment of the rental made to the government would in any event be accepted as different functions are performed by different offices and any amount tendered will be received. That cannot give any advantage to the lessee merely because the rent has been tendered in the government office and the same has been innocuously accepted without there being specific reference to waiver.

20. On the question of waiver, it would be profitable to refer to the decision of this court in the case of ***Sarup***

Singh Gupta vs. S. Jagdish Singh and Others (2006) 4 SCC 205 wherein the contention relating to waiver due to acceptance of rent was considered, though in the context of Sections 111(h) and 113 of the T.P. Act, wherein it was held as hereunder: -

> "6. Learned Senior Counsel also relied upon a decision of a learned Single Judge of the Calcutta High Court, reported in AIR 1926 (Calcutta) 763, wherein It was held that where rent is accepted after the notice to quit, whether before or after the suit has been filed, the landlord thereby shows an intention to treat the lease as subsisting and, therefore, where rent deposited with the Rent Controller under the Calcutta Rent Act is withdrawn even after the ejectment suit is filed, the notice to quit is waived. In our view, the principle laid down in the aforesaid judgment of the High Court is too widely stated, and cannot be said to be an accurate statement of law. **A mere perusal of Section 113 leaves no room for doubt that in a given case, a notice given under Section 111, Clause (h), may be treated as having been waived, but the necessary condition is that there must be some act on the part of the person giving the notice evincing an intention to treat the lease as subsisting. Of course, the express or implied consent of the person to whom such notice is given must also be established. The question as to whether the person giving the notice has by his act shown an intention to treat the lease as subsisting is essentially a question of fact. In reaching a conclusion on this aspect of the matter, the Court must consider all relevant facts and circumstances, and the mere fact that rent has been tendered and accepted, cannot be determinative.**
>
> 7. A somewhat similar situation arose in the case in Shanti Prasad Devi v. Shankar Mahto. That was a case where the landlord accepted rent even on expiry of the period of lease. A submission was urged on behalf of the tenant in that case that Section 116, Transfer of Property Act was attracted and there was a deemed renewal, of the

lease. **Negativing the contention, this Court observed that mere acceptance of rent for the subsequent months in which the lessee continued to occupy the premise even, after the expiry of the period of the lease, cannot be said to be a conduct signifying his assent to the continuing of the lease even after the expiry of the lease period. Their Lordships noticed the conditions incorporated in the agreement itself, which provided for renewal of the lease and held that those conditions having not been fulfilled, the mere acceptance of rent after expiry of period of lease did not signify assent to the continuance of the lease."**

(Emphasis supplied)

In that view, the waiver as contended by the learned senior counsel for the respondent-lessee is unsustainable.

21. That apart, the contention that the lessee- M/s. Joseph & Company had continued in possession of the said extent of 50 acres even after sale and therefore there is no default cannot be accepted for more than one reason. To decipher this aspect, a perusal of the sale deed dated 16.12.1983 which was produced as exhibit R3(b) in the writ proceedings would indicate the relevant recitals as follows: -

"I have absolute right to sell the property in the schedule. ***I have decided to sell you 50 acres of the land in the schedule below along with the right to travel through the rest of the land in my possession.*** *The amount decided as the price of he said land is Rs. 45000.* ***Having received the full payment of Rupees forty five thousand, I give you absolute right and possession over the aforesaid land in the schedule***

along with the rights of transportation through the rest of the property.

The property described in the schedule below belongs to the Cochin Government and I have leasehold right over the same.

From today on I have no objection in you keeping in possession and enjoying the absolute right of the property described in the schedule together with the right of transport. ***Hereon you shall pay the lease rent directly to the Government. All taxes to the Government may henceforth be paid by you.*** **Myself, the company or any of our successors may have no right over schedule property.**

I affirm that I will not obstruct your travelling through the rest of Beatrice Estate. By this deed you have the right to avail yourselves of the right to such transport.

I hereby assure you that I have the right for the sale of this property and that there are no arrears of lease rent due to the Government as any other dues or attachment of civil or revenue nature relating to the property and in case any loss is sustained by the purchaser against this assurance. I shall be responsible for such loss."

(Emphasis supplied)

22. A perusal of the extracted portion from the sale deed dated 16.12.1983 would indicate the outright nature of sale of a portion of the leased land. It is sold for a sale consideration despite knowing that the property belonging to the government is granted under lease. The recital in fact, categorically indicates that the absolute right and possession has been given and it has also been stated therein that henceforth the purchaser, Mr. Raghavan is to pay the lease rent directly to the government and all taxes to the

government are also to be paid by him. Further, neither Mr. K.K. Joseph nor the partnership firm has retained any right over the property sold under that document. Therefore, the document itself would indicate the intention of the parties and also the fact that possession was parted without consent of the lessor which was a clear breach of Clause 14 in the lease deed.

23. In addition, in the reply dated 29.11.1999 from Mr. K.K. Joseph, to the notice dated 15.11.1999 from the Divisional Forest Officer, he has stated that even after he had retired from the firm, the firm was pursuing its efforts to get the said 50 acres assigned to Mr. Raghavan, reassigned to the firm and thereby remedy the default as contemplated in Clause 12 of the lease deed. Therefore, the fact that there was a breach committed was also within the knowledge of the lessee though they were seeking to take shelter under Clause 12. That apart, the letter dated 26.06.1990 addressed to the government by M/s. Joseph & Company through Ms. Meera Scaria, *inter-alia* states as follows: -

> "If this reconveyance is effected, **the entire property included in the lease deed** executed by Sh. K.K. Joseph and registered as document No.1983 of 1979 of Nenmara, Sub

Registry Office **will come back to the possession of M/s. Joseph & Company which is the original lessee**."

(Emphasis supplied)

The said statement would clarify that the possession had been parted and it was only being indicated that on re-conveyance being made, the possession would come back to the lessee. Therefore, the contention put forth by the learned senior counsel for the respondent that the possession had not been parted and the lease rental was being paid by them cannot be accepted as a mitigating factor in the facts and circumstances of this case.

24. Though an attempt is made to contend that an opportunity ought to have been granted to remedy the default in view of the provision contained in Clause 12 of the lease deed in which event the default would stand remedied, the same cannot come to the aid of the respondent for the reason stated supra. Further, factually also it is to be noted that except addressing the letter dated 26.06.1990, the lessee-M/s. Joseph & Company did not take any concrete steps to either cancel the sale deed or to physically indicate that the possession is back with the lessee and the transaction has

been nullified. Be that as it may, even otherwise in the instant facts the breach was not of the nature which was contemplated for rectification as provided under Clause 12 of the lease deed. Therefore, it is too late in the day for the respondent to contend that there was non-compliance of Clause 12 before the right of the lessor to terminate the lease as provided under Clause 14 is exercised.

25. The alternate contention urged by the learned senior counsel for the respondent-lessee is that even if the breach is held against the lessee, the entire lease cannot be forfeited in view of the provision in Section 111(g) of T.P. Act. The learned senior counsel in order to persuade us on this aspect has referred to certain decisions which will be adverted to here below.

26. Having noted the contention, firstly, a perusal of clause 14 no doubt does not state 'a part thereof' as contended by the learned senior counsel. However, that does not mean that a breach committed in respect of a part of the leased land cannot be construed as breach and would disentitle the lessor to exercise the right thereunder. Secondly, Section 111(g) does not suggest that in respect of the lease as a

whole, the forfeiture should be limited only to the portion regarding which the breach is alleged. The breach is of not adhering to the assurance given to lessor in respect of the property belonging to the lessor, be it the whole or a part of it. In this regard, the decision relied on in the case of ***Sh. Shiam Behari Lal Gour and Others vs. Madan Singh*** AIR (32) 1946 Allahabad 298 is a circumstance where the suit was decreed for a declaration that the lease rights of the defendants in the leased land have been determined and the plaintiff is entitled to possession. In that circumstance, the point which arose for consideration is, whether the plaintiff is in the events which have happened, entitled to such declaration and whether in that circumstance there has been forfeiture. No-doubt as contended by the learned senior counsel, the issue that was settled is that the law leans against forfeiture. Such consideration in the said suit was after noting the nature of right that was claimed to the property by the lessor wherein there was rival claims of succession to the property.

27. In the case, ***A. Venkataramana Bhatta and Ors. vs. Krishna Bhatta and Ors*** AIR 1925 Madras 57, the High Court no doubt considered the case against forfeiture of the entire lease when there was partial alienation by taking a leaf from the construction adopted in England, based on the general principles of equity and the same was followed in India. In the said case, the equitable principle was applied in a circumstance where the lessee himself in fact was the owner of the property. He had mortgaged the same and had obtained lease of a portion of the mortgage property from his mortgagee. From such property which was obtained on lease, a portion thereof was again mortgaged by him to a different mortgagee which was termed as breach of the terms of lease. In that circumstance, the forfeiture was limited only to the portion which was mortgaged to a third-party mortgagee after obtaining on lease from the first mortgagee.

28. In the case, ***Grove vs. Portal*** 1902 1 CH 727, the lease given was of fishing in certain portions of the river but with the condition not to sublet without the consent of the lessor in writing. When breach was alleged, the lessee contended that he granted authority to another person only to the extent

as provided in the lease. The lessor, however, contended that it constituted breach as the lessee assigned it to third person. In that situation, it was held that the covenant did not expressly apply to any part of the premises as well as to the whole since the lessee was not precluded from granting license to another person (limited to two rods) to fish in the river during the residue of the term. The consideration therein would not be relevant in the instant case. In the case, ***Cook vs. Shoesmith*** (1951) 1 KB-752, it was the case where the dwelling house was let to the tenant wherein, he agreed that he will not sublet. However, the tenant had sublet two rooms of the house due to which the landlord filed the suit for possession alleging breach of the agreement. The court relied on the dictum of Lord Elson in Church vs. Brown wherein it was held that the principle of an undertaking not to sublet the premise was not broken since 'the premise' described the whole of what is demised and there are no words such as a tenant had agreed not to sublet any part of it. In that circumstance, it was held that there was no breach of the agreement.

29. In, ***Swarnamoyee Debya vs. Aferaddi and Ors.*** AIR 1932 Calcutta 787, it was a case where ejectment was sought for unauthorised transfer by the defendant which was contended to have broken the condition in the document creating the tenancy. In that circumstance, it was held that the usufructuary mortgage was not of the entire holding and upon the covenant in the lease, no forfeiture was incurred by the transaction. The question which was considered therein was with regard to the construction of the lease which had arisen in that case and a decision to that effect was taken. In the case, ***Keshab Chandra Sarkar and Ors. vs. Gopal Chandra Chanda*** AIR 1960 Calcutta 609, the plaintiff had sued for recovery of possession contending unauthorised transfer of the leased land without the consent of lessor which amounted to breach of condition of the lease. The general principles relating to forfeiture as had been laid down was taken note and in that circumstance by strictly construing the right of forfeiture against the lessor in the absence of express stipulation had arrived at the conclusion that the transfer made of the entire extent, though consent

had been obtained to transfer a part would not amount to breach. Certain other decisions relied on by the learned senior counsel are also to the same effect and we see no need to refer to each of them. But, what is necessary to be taken note is that the general principles of equity as laid down in ***Grove vs. Portal*** (supra) has been the basis for the conclusion reached in almost all the noted cases.

30. In contradistinction to the facts which arose for consideration in the cited cases where essentially the dispute was inter-se between the private owners of the property and their lessees and the nature of transaction, in the instant case, the leased land is the property which belong to the government and the leasehold right has been auctioned so as to earn revenue for the state, which is to the interest of its citizens and one citizen or a group is permitted to exploit the land to the exclusion of all others. Additionally, such government property is located in an area notified as reserve forest. In such circumstance, when the lessee is given the benefit of such property and the breach of the condition imposed is alleged, the strict construction of the forfeiture clause against the lessor in all circumstances would not arise

as otherwise it would render the clause in the lease deed otiose. The principle contained in Section 111(g) of the T.P. Act though noticed, the parties are governed by the terms in the contract and as such the lessee cannot claim benefit under the said provision. Further, as already noted the consideration under Section 111(g) is based on equitable principles which will have to be applied depending on the facts and circumstances obtained in each case. While applying the equitable principles, the maxim *he who seeks equity must do equity* cannot be lost sight of. It is said, a court will not assist a lessee in extricating himself or herself from the circumstances that he or she has created, in the name of equitable consideration. In the instant facts as already noted when public largesse is bestowed on certain terms and conditions, a term of the lease deed is to be strictly adhered to and when Clause 14 provides that the lessee shall not be entitled to sublet or assign his interest in the lease except with the previous permission in writing of the lessor, it does not matter as to whether the breach committed is by assigning a portion of the leased land or the whole when such interest of the lessee has been transferred without previous

permission of the lessor. Further, in all the cases referred to by the learned senior counsel, the breach alleged was either of creating mortgage or subletting the property. In the instant case, despite being a lessee the respondent has executed an absolute sale deed in respect of the leased land which belongs to the government and such breach cannot be condoned.

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31. The Appellant-State of Kerala in both these appeals are assailing the interim orders passed by the learned single judge in W.P. No.35832/2015. The said order had been confirmed by the learned Division Bench through the orders dated 11.01.2016 and 25.01.2017. Considering that the learned single judge had made an interim arrangement protecting the interest of both the parties which will be subject to ultimate result in the writ petition and also taking note that this Court while directing notice in SLP No.9661/2017, on 21.04.2017 had directed the parties to maintain status quo as it existed on that day and the said order has continued till this day, it would be appropriate that the said position shall continue and the High Court shall

dispose of the writ proceedings in accordance with law, if already not considered and disposed of. We make it clear that we have refrained from interfering with the impugned orders since they are interim in nature. We have also not adverted to the merits of the rival contentions arising in these proceedings. As such the High Court shall consider the case on its own merits.

32. For all the aforestated reasons, the following order;

(i) The order dated 10.07.2015 passed by the learned Division Bench in W.A.No.369/2011 and W.A.No.375/2011 is set aside.

(ii) The order dated 17.01.2011 passed by the learned Single Judge in W.P.No.1207/2005 is restored.

(iii) The appeals arising out of SLP(C) Nos.879-880/2016 are allowed in part with no order as to costs.

(iv) The appeals arising out of SLP (C) No.9661/2017 and SLP(C) No.18760/2016 are disposed of.

(v) Pending application, if any, shall stand disposed of.

.....J.
(HEMANT GUPTA)

.....J.
(A.S. BOPANNA)

New Delhi,
September 03, 2021