
O N A P P E A L
 FROM THE COURT OF APPEAL OF
 THE REPUBLIC OF SINGAPORE

B E T W E E N :

MOH SENG REALTY (PRIVATE) LIMITED	<u>Appellant</u> (Respondent)
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- and -

HIRENDRA LAL BANNERJI	<u>Respondent</u> (Appellant)
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CASE FOR THE RESPONDENT

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1. This is an appeal from a judgment of the Court of Appeal of the Republic of Singapore (Wee Chong Jin, C.J., and T.S. Sinnathuray and A.P. Rajah, JJ.), dated 15th April 1983, allowing with costs the Respondent's appeal from a judgment of Chua, J., in the High Court of the Republic of Singapore dated 3rd August 1982.

Record
 p.112, 1.13 -
 p.126, 1.9

 p.68, 1.11 -
 p.78, 1.8

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2. The basic issue on this appeal is whether the Respondent is entitled to the decree of specific performance granted to him by the Court of Appeal, requiring the Appellant to execute a lease under seal in favour of the Respondent in respect of No. 322-F, Changi Road, Singapore ("the Property") for a term of 10 years from the 1st August 1977 on the terms and conditions contained in a Lease under seal dated 23rd July 1957 ("the Lease") and made between Chin Cheng Realty Limited ("the Original Lessor") (1) and the Respondent (2).

p.111,
 11.13-18

 pp.302-304

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3. Before the Court of Appeal, it was common ground that the 1957 Lease was a perpetually renewable Lease, as Chua, J., had held below. (There is no statutory equivalent in Singapore of section 145 of, and paragraphs 1 and 2 of Schedule 15 to, the English Law of Property Act

p.120,
 11.3-8
 p.70, 1.44 -
 p.74, 1.38

Record

1922, which convert perpetually renewable leases into terms of a specified length).

4. That finding was based on Clause 3 (c) of the 1957 Lease, which was in the following terms :-

"That the landlords will on the written request of the Tenant made three calendar months before the expiration of the term hereby created and if there shall not at the time of such request be any existing breach or non-observance of any of the covenants on the part of the Tenant hereinbefore contained at the expense of the Tenant grant to him a lease of the demised premises for a further term of TEN years from the expiration of the said term at the same rent and containing the like covenants and provisoes as are herein contained including the present covenant for renewal".

p.303,
ll.19-33

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5. The 1957 lease having been granted for a term of 10 years from 1st August 1957, and being thus due to expire on 31st July 1967, the Respondent made the written request envisaged by Clause 3 (c) to the Original Lessor by letter dated 3rd January 1967.

p.302,
ll.27-28

p.158

6. Despite numerous reminders from the Respondent and his then Solicitors, the Original Lessor failed to grant the new lease, but wrote to the Respondent on 12th November 1970 offering a new agreement for 5 years, and stating :

pp.159-163

p.175

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p.175,
ll.19-20

"With the new agreement being signed the old agreement is no more binding"

pp.176-180
p.182

7. After further inconclusive correspondence, the Original Lessor wrote to the Respondent, on 15th March 1974, notifying him that the Comptroller of Property Tax had increased the Annual Value of the Property from \$1,320 to \$2,880, and stating, in particulars :-

p.182,
ll.13-20

"In accordance with the terms under Clause 1 of [the 1957 Lease] the rent will be increased to £240-00 per month with effect from the 11th March 1974"

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p.182,
ll.23-30

pp.302-4

8. Clause 1 of the 1957 Lease provided, so far as material, as follows :-

" PAYING THEREFOR monthly during the said term the rent of Dollars ONE HUNDRED

AND TEN (\$110-00) PROVIDED however that if the assessment on the said premises shall at any time within the said period be increased or decreased then in such event the said rent shall also be proportionately increased and decreased accordingly"

p.302,
11.28-38

10 9. On 23rd March 1974, the Respondent, by his Solicitor, replied to the Original Lessor's said letter of 15th March, accepting that an increase in rent was payable by reason of the change in the Annual Value of the Property, but contending that the correct increase was of the order of \$46.80 per month to a total of \$156.80 per month (as the Court of Appeal has held), as against the \$240 per month claimed by the Original Lessor, and enclosing the Respondent's cheque for \$31.70 in respect of the admitted increase.

pp.183-4

p.122,
11.1-3
p.182,
11.23-30
p.184,
11.7-9

20 10. The Original Lessor's Solicitors replied on 4th April 1974, stating that they were looking into the question of the increase in rent and that they were holding the Respondent's said cheque for \$31.70.

p.185
p.185,
11.18-19
p.185,
11.22-23

11. The increased rent of \$156.80 in respect of the Property was thereafter regularly paid by the Respondent

p.186,
11.18-24

30 12. The Respondent respectfully submits that, by reason of the Original Lessor's said demand for an increase in rent and the Respondent's payment of an increase in rent, the Original Lessor became estopped from denying that the Respondent held the Property for a term of 10 years from 2nd August 1967 as argued in the Respondent's written submissions to the Court of Appeal.

p.96, 1.34 -
p.97, 1.13

40 13. By written notice dated 22nd April 1977, the Respondent requested the Original Lessor to grant him a further 10 year term of the Property, but the Original Lessor and subsequently the Appellant (who acquired the Property by virtue of an Indenture dated 4th August 1978 and made between the Original Lessor (1) Prime Realty Private Limited (2) and the Appellant (3)) failed to grant such term.

p.192

pp.223-228

50 14. On 29th July 1977, the Respondent commenced proceedings in the High Court claiming specific performance of the agreements to grant him 2 successive terms of 10 years in respect of the Property and the Original Lessor on 29th

pp.1-3

Record

- pp.17-19 September 1977 commenced proceedings in the Subordinate Courts, claiming possession of the Property.
- p.26 15. By Order dated 23rd January 1978, the latter proceedings were transferred to the High Court and consolidated with the Respondent's said proceedings.
- p.28 16. The consolidated proceedings came before Chua, J. on 12th November 1981.
17. The case against the Respondent was based upon 4 different submissions :- 10
- p.69, 11.45-49 (A) He was in breach of covenant, by failing to pay the increased rent, which, it was said against him, became \$240 per month from 11th March 1974
- p.70, 11.44-46 (B) Clause 3 (c) of the 1957 Lease did not create a perpetually renewable lease
- p.74, 11.39-42 (C) In any event, the Respondent's claim for specific performance was statute-barred 20
- p.76, 11.39-45 (D) Further, the Planning Act (Cap. 279) rendered performance of the agreements relied upon by the Respondent illegal.
- p.74,11.36-38 18. Chua, J. held that the 1957 Lease was per-
p.120,11.3-8 petually renewable, and this finding was accepted
p.70,11.37-44 before the Court of Appeal. However, he accepted
p.76,11.31-38 the remaining 3 submissions made against the Res-
p.77,1.43 - pondent.
p.78,1.4
- p.110, 11.33-34 19. On the Respondent's appeal, which was heard
p.122,11.1-13 on 14th, 15th and 16th March 1983, the Court of
p.125,11.41-49 Appeal reversed Chua, J. and found in the Res-
p.125,11.28-40 pondent's favour in respect of submissions (A),
(C) and (D) supra. 30
20. In support of the decision of the Court of Appeal, the Respondent respectfully makes the following submissions in relation to the 3 surviving issues raised by the Appellant. For ease of reference, the issues are respectively referred to as "the Rent Point", "the Limitation Point" and "the Illegality Point". 40
- p.182 21. On the Rent Point, 2 separate questions arise. First, what rent did the Respondent actually pay or tender after 15th March 1974 (when he was notified of the increase in the Property's Annual Value)? Secondly, what is the

proper construction of the relevant provisions of Clause 1 of the 1957 Lease, set out in paragraph 8 of this Case?

- 10 22. On the first question, from 15th March 1974 the Respondent tendered what he believed to be the correct increased rent, viz., \$156.80 per month, and when, after a silence of 3 years, the Original Lessor, by its Solicitors, renewed its claim for an increased rent of \$240 per month on 1st July 1977 (i.e., after the Respondent's written request for a further renewal dated 22nd April 1977) the Respondent paid the rent claimed by the Original Lessor under protest and subject to recovery. pp.193-4
p.192
p.198
p.203
p.208
- 20 23. It is true that the Original Lessor did not accept the Respondent's tendered payments, but it is respectfully submitted that by reason of such tender, the Respondent was at no material time guilty of any breach of covenant, which would have disentitled him to exercise his option to renew his lease of the Property.
24. As regards the true construction of Clause 1, the Respondent respectfully adopts in toto the reasoning of the Court of Appeal. In essence, the Court of Appeal relied on the following matters :-
p.120, 1.15 -
p.122, 1.13
- (i) the word "assessment in Clause 1 bears the same meaning as it does in Clause 3 (b) p.302, 1.34
- 30 (ii) the 2 provisions read together irresistibly lead to the inference that the proviso in Clause 1 fulfils the role of an indemnity to the landlord and p.303, 1.15
- (iii) in consequence, the monthly rent falls to be increased, or decreased, by the amount (divided by 12) of any increase or decrease in the tax actually payable from time to time in respect of the Property.
- 40 25. On the Limitation Point, the Appellant has conceded, as was inevitable, that the Respondent's claim for specific performance in respect of a term from 1977 to 1987 (the sole such claim which he now makes) cannot be statute-barred. p.124,
11.27-31
26. As regards the Illegality Point, the Respondent again respectfully invokes what the Court of Appeal said on the subject. In essence, the Court of Appeal relied on the following matters :-
p.122, 1.14 -
p.124, 1.9

Record

pp.302-304

pp.294-296

p.123,11.38-44

(i) Both the 1957 Lease and its predecessor of 30th July 1953 had been validly registered.

p.123,11.13-20

(ii) The Planning Act (Cap. 279), [a copy of which has been made available to Their Lordships] does not forbid the granting of a lease of a term exceeding 7 years, but merely subjects the "subdivision" to conditions: section 9(3)

p.123,11.44-47

(iii) The Planning Act broke no new ground, so far as relevant to the present case

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p.124,11.4-9

(iv) In any event, the requirements of section 9(3) have been fulfilled in respect of the Property, so that there is no longer any legal obstacle to subdivision and registration

p.127,11.30-39

27. On 18th April 1983, the Court of Appeal of the Republic of Singapore made an order granting leave to Her Majesty in Council and on 9th April

p.130,11.15-30

1984, made a further Order substituting the Appellant for the Original Lessor. The Appellant, by its Solicitors, had written to the Respondent's Solicitor on 24th July 1981, agreeing to be bound by the decision of the Court in relation to the Respondent's claim against the Original Lessor.

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p.273,11.19-24

28. The Respondent accordingly respectfully submits that the judgment of the Court of Appeal was right and ought to be upheld, and that this appeal should be dismissed with costs, for the following (among other)

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R E A S O N S

1. BECAUSE the Respondent fulfilled all the conditions for the renewal of his lease of the Property for a further term of 10 years from 1st August 1977.
2. BECAUSE the Respondent's claim for specific performance, in respect of such renewal, is not statute-barred.
3. BECAUSE such renewal does not involve any illegality and is not contrary to statute.
4. BECAUSE the Appellant has not established any sustainable defence to the Respondent's claim for specific performance.

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5. BECAUSE the Court of Appeal was correct in rejecting the submissions of the Original Lessor and the Appellant.

ALAN SEBESTYEN

IN THE PRIVY COUNCIL

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 (Appellant)

CASE FOR THE RESPONDENT

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