

A MUNICIPAL COUNCIL, UDAIPUR

v.

MAHENDRA KUMAR  
(Civil Appeal No. 2546 of 2004)

MARCH 27, 2008

B (DR. ARIJIT PASAYAT AND LOKESHWAR SINGH  
PANTA, JJ.)

*Leave and Licence:*

C *Enhancement of licence fee – Shop belonging to  
Municipal Council – Given for 11 months under an agreement  
– After expiry period, notice to occupant offering him to occupy  
premises on higher amount – Suit for perpetual injunction by  
D occupant to restrain the owner from enhancing the amount  
and from getting him evicted – HELD: Property being of local  
authority, High Court wrongly considered the agreement to be  
a lease overlooking the provisions of Rajasthan Municipality  
Act, 1959 – Besides, in view of s.38 of Specific Relief Act, after  
E contract is determined, suit for specific performance is not  
maintainable – In the interest of justice rent enhanced as  
specified in judgment – Rajasthan Municipality Act, 1959 –  
Specific Relief Act, 1963 – s.38 – Deeds and Documents –  
Interpretation of.*

F **The appellant-Municipal Council gave a shop to the  
respondent for 11 months on a monthly payment of  
Rs.175/- under an agreement dated 8.11.1980. The  
appellant issued a notice dated 6.6.1986 making an offer  
to the respondent to occupy the suit premises on  
G payment of Rs.6,000/- per year. The respondent filed a suit,  
*inter alia*, for perpetual injunction restraining the appellant  
from enhancing the rent and getting the premises vacated.  
The trial court decreed the suit. The first appellate court  
modified the decree by allowing a one time 10% increase  
of the amount, and enhancement, if any, thereafter by**

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consent of the respondent. The High Court dismissed the second appeal. A

In the appeal filed by the Municipal Council, it was contended for the appellant that the property being of the local authority and the Rajasthan Rent and Premises (Control of Rent and Eviction) Act, 1950 not being applicable to the suit premises, the High Court erred in enlarging the scope of the dispute as to whether the agreement was a licence or lease and holding that the appellant unilaterally increased the rent. B

Disposing of the appeals, the Court C

HELD: 1.1 The property being of the local authority, the Rent Control Act did not have any application. The High Court considered the agreement to be a lease overlooking the fact that under the Rajasthan Municipality Act, 1959, no lease could be made without following the procedure prescribed under the Rules made hereunder. [para 13-14] [558-F, G] D

1.2 It is significant that validity of the notice dated 6.6.1986 fixing the rent was not challenged in the suit. The said notice contained a reference and was said to have been based on the order No.F5(293)LB/77/2183-2730 dated 10.8.83 of the Local Self Government which permitted fixing of rent in a particular manner. It was not the stand of the respondent that the order of the Local Self Government was not binding and/or that the same was without any authority. [para 9-10] [557-B, G] E F

1.3 It is to be noted that even the original agreement in clause 8 permitted the Council to issue such orders from time to time in relation to the conditions. Once there is no dispute about the power of enhancement, the question of enhancing the rent once by 10% and thereafter to enhance it on consent of both the parties is clearly without any foundation. Since the power of enhancement has been considered on the basis of clause G H

A 8, the question of restraining it to a one-time exercise is clearly without any foundation as the clause itself permits issue of orders “from time to time”. [para 16-17] [559-B, C, D, E]

B 2. In the background of the scope of Section 38 of the Specific Relief Act, the first appellate court and the High Court were not justified in granting relief to the respondent. There is no dispute that the plaintiff can seek for performance only of an agreement which is subsisting. The plaintiff cannot maintain a suit for  
C specific performance after the contract is determined. [para 12,17] [559-E, F; 558-B-C]

*Percept D'mark (India) (P) Ltd. v. Zaheer Khan and Anr.*  
2006 (4) SCC 227 – relied on.

D 3. The controversy can be looked at from another angle. The agreement was for a period of 11 months. For continuance, a fresh agreement was required to be entered into. If no agreement existed between the parties, the question of unilateral possession does not arise.  
E [para 15, 17] [559-A, D-E]

F 4. In the normal course, fixation of rent would have been left to the authorities; but, considering the long passage of time while deciding the question of law, interest of justice would be best served if the rent is enhanced to Rs.1,000/- from 1.1.2007 and Rs.700/- for the previous three years. An agreement on the aforesaid terms shall be duly entered into by the parties. [para 17] [559-F, G]

G CIVILAPPELLATE JURISDICTION : Civil Appeal No. 2546 of 2004.

From the final Judgment and Order dated 03.08.2000 of the High Court of Judicature of Rajasthan at Jodhpur in S.B. Civil Regular Second Appeal No. 393 of 1999.

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WITH

Civil Appeal No. 2547 of 2004.

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Sushil Kumar Jain, Puneet Jain, Sarad Singhania and  
Christi Jain for the Appellant.

Arun K. Sinha for the Respondent.

The Judgment of the Court was delivered by

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**DR. ARIJIT PASAYAT, J.** 1. Challenge in these appeals  
is to the judgment rendered by a learned Single Judge of the  
Rajasthan High Court in two second appeals. The appeals were  
preferred by the appellant questioning correctness of the  
conclusions arrived at by the Courts below.

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2. Factual position which is almost undisputed in both the  
cases needs to be noted in brief and is as follows:

3. For the sake of convenience the facts situation in Civil  
Appeal No.2546 of 2004 (Municipal Council, Udaipur v.  
Mahendra Kumar) is reflected.

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4. The respondent as plaintiff filed a suit against the  
appellant seeking following reliefs:

“a) That a decree for permanent injunction be passed in  
favour of the plaintiff and against the defendant to the  
effect that the defendant should recover rent at the rate of  
Rs.175/- (rupees one hundred seventy five) per month  
from the plaintiff fixed before coming into being of the  
relationship of lessee and lessor between the plaintiff and  
the defendant and apart from this not to increase the rent  
unilaterally, not to recover the late fee, nor recover the rent  
by increasing the same, nor get the shops vacated forcibly  
from the plaintiff, nor dispossess him from the disputed  
shops nor create any sort of obstacle in his business,  
neither do such acts itself nor through its servants, agents  
or any officer nor allow them to do the same.”

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5. For the purpose of the claim respondent relied on an  
agreement dated 8.11.1980. The agreement had been executed  
describing that it was based on a license and was for a limited  
period of 11 months. According to the appellant the license

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A automatically stood terminated on expiry of the period. Thereafter  
no time was extended by the defendants. Plaintiffs claim that  
the defendants were accepting the rent regularly. By notice dated  
6.6.1986 which was challenged in the suit an offer was made to  
occupy the property on payment of Rs.6,000/- per year. Stand  
B of the respondent was that he was entitled to occupy the  
premises by payment of rent or license fee of Rs.175/- as  
agreed to in the agreement dated 8.11.1980 and which stood  
terminated by time. The Trial Court decreed the suit. However,  
the First Appellate Court allowed the appeal to enhance once  
C by 10% and thereafter to seek the consent of the respondent if  
there was to be any enhancement.

6. High Court dismissed the second appeal. The order of  
the High Court is challenged in this appeal.

D 7. According to the learned counsel for the appellant-  
corporation the High Court enlarged the scope of dispute and  
went on to decide as to whether the agreement was a license  
or lease. It is submitted that property was that of the local authority  
and, therefore, Rajasthan Rent and Premises (Control of Rent  
Eviction) Act, 1950 (in short 'Rent Control Act') unilaterally does  
E not apply to the facts of the present case. It was pointed out that  
the respondent can be evicted from the suit premises by giving  
notice under Section 106 of the Transfer of Property Act, 1882  
(in short 'TP Act') where the lease did not subsist and the  
respondent had not occupied or continued the same property.  
F The High Court and the First Appellate Court erroneously came  
to the conclusion that the appellant again increased the rent  
unilaterally. There was no question of any bilateral agreement  
for fixation of new rent as a person occupying property would  
never agree to enhance and would continue to remain in the  
G property for any length of time at a rate fixed years back. The  
conclusion that it can be enhanced once is without any legal  
foundation. It was pointed out that even if it is assumed that the  
agreement subsists, clauses 3 and 8 permitted the appellant to  
unilaterally alter the conditions by way of orders which have to  
H be complied with by the respondent and for a period of 11

months renew for further fresh term.

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8. Learned counsel for the respondent on the other hand submitted that the respondent is willing to pay at such rate as may be fixed in accordance with law.

9. At the outset has to be noticed that the validity of the notice was not challenged in the suit. Notice dated 6.6.1986 contained a reference to the order No.F5(293)LB/77/2183-2730 dated 10.8.83 of the Local Self Government which permitted fixing of rent in a particular manner. According to the learned counsel, the notice for fixing of rent was based on the aforesaid order of the Local Self Government of the State.

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10. It was not the stand of the respondent that the order of the Local Self Government was not binding and/or that the same was without any authority. Clauses 3 and 8 of the agreement are also relevant. They read as follows:

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“3. That the said agreement shall be deemed to have been executed for eleven months and for further renewal the licensee shall have to move an application one month before, which shall be considered by the Council and if found property further renewal shall be made. The shop shall be handed over in the same condition in which it has been taken and shall not make any alterations therein nor shall cause any damage.”

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8. That apart from the said conditions in connection with this shop the Council shall also issue other orders from time to time, which shall also be complied with by the licensee.”

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11. The suit was for permanent injunction, in terms of Section 38 of the Specific Relief Act, 1963 (for short ‘Specific Relief Act’). Section 38 reads as under:

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“38. Perpetual injunction when granted – (1) subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.

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A (2) When any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II.

(3) xxx xxx xxx

B 12. An interesting question arises as to whether in the absence of the subsisting agreement a decree for specific performance can be granted. There is no dispute that the plaintiff can seek for performance only an agreement which is subsisting. As was noted by this Court in *Percept D'mark (India) (P) Ltd. v. Zaheer Khan and Anr.* (2006 (4) SCC 227), the plaintiff cannot maintain a suit for specific performance after the contract is determined. In the aforesaid case it was noted as follows:

D “60. We have perused the contract in detail. The terms of the contract were expressly limited to 3 years from 30.10.2000 to 29.10.2003, unless extended by mutual agreement, and all obligations and services under the contract were to be performed.

E 61. Clause 31(b) was also to operate only during the term i.e. from the conclusion of the first negotiation period under clause 31(a) on 29.7.2003 till 29.10.2003. This Respondent 1 has scrupulously complied with. So long as clause 31(b) is read as being operative during the term of the agreement i.e. during the period from 29.7.2003 till 29.10.2003, it may be valid and enforceable. However, F the moment it is sought to be enforced beyond the term and expiry of the agreement, it becomes prima facie void, as rightly held by the Division Bench.”

G 13. It is to be noted that the property being of the local authority the Rent Control Act did not have any application.

H 14. The High Court considered the agreement to be a lease overlooking the fact that under the Rajasthan Municipality Act, 1959 (in short 'Municipal Act') no lease can be made without following the procedure prescribed under the Rules made hereunder.

15. The controversy can be looked at from another angle. For a period of 11 months there was no attempt to modify the rent fixed under the contract. On the expiry of the period a fresh agreement has to be entered into. That has to be on agreed terms. In that view of the matter the question of enhancement of rent unilaterally does not arise.

16. It is to be noted that even the original agreement in clause 8 permitted the Council to issue such orders from time to time in relation to the conditions. If the view expressed by the First Appellate Court and the High Court is accepted then the power to issue orders from time to time in relation to the conditions becomes redundant. Once there is no dispute about the power of enhancement, the question of enhancing the rent once by 10% and thereafter to enhance it on consent of both the parties is clearly without any foundation.

17. In the circumstances it is to be held that the agreement was for a period of 11 months. For continuance a fresh agreement was required to be entered into. If no agreement existed between the parties, the question of unilateral possession does not arise. Since the power of enhancement has been considered on the basis of clause 8, the question of restraining it to a one-time exercise is clearly without any foundation as the clause itself permits issue of orders "from time to time". Additionally, in the background of the scope of Section 38 of the Specific Relief Act, the First Appellate Court and the High Court were not justified in granting relief to the respondent. In the normal course we would have left fixation of rent to the authorities. Considering the long passage of time while deciding the question of law, we feel interest of justice would be best served if the rent is enhanced to Rs.1,000/- from 1.1.2007 and Rs.700/- for the previous three years. The agreement on the aforesaid terms shall be duly entered into by the parties.

18. The appeals are accordingly disposed of without any order as to costs.