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Present : Bertram C.J. and Schneider J.

SILVA *et al. v.* BANDA *et al.*

457—D. C. Kandy, 30,855

Lease—Claim for compensation for improvements.

A lease by a trustee of a Buddhist temple provided that "the lessee shall not have any claim for compensation against the lessor for or on account of any alleged expenses or on any account whatsoever at any time, but in the event of his having put up any additional buildings of a permanent nature, he shall have the option of a renewal for another ten years." The lessee built tenements in place of those condemned by the Municipal Council. Plaintiff claimed compensation in respect of these buildings. The District Judge awarded compensation Rs. 2,500, and a further sum of Rs. 80 per month as damages till payment of compensation, on the ground that the lessee was entitled to retain possession till payment, but that he had lost possession by the act of the defendant.

Held, (1) that the lessee had no *jus retentionis*, and was not entitled to claim damages.

(2) That as the lessee was not given the right of exercising the right of option of renewal of the lease, he was entitled to claim compensation.

(3) The lessee was entitled to claim compensation, although the buildings put up by him were not additional buildings.

"The lessee is not restricted in his right to recover compensation by the terms of his covenant. His right is a general one. He is entitled to recover compensation in respect of improvements which were acquiesced in by his lessor."

THIS action was founded on a deed of lease dated September 30, 1912 (P 1), granted by the first defendant as trustee of the Nata Dewale in Kandy to the plaintiff's testator, D. C. de Silva, for an allotment of land. The term of this lease was ten years, subject to the condition that the lessee should not, at any time, make any claim for compensation on account of any expenditure incurred by him, or on any other account whatsoever, and coupled with a covenant that the lessee should be entitled to a renewal of the lease for a further term of ten years, on the same terms as to rent, in the event of his putting up additional buildings of a permanent nature.

The case for the plaintiffs was that the lessee put up additional buildings of a permanent nature at a cost of Rs. 6,000, but that the first defendant had, in contravention of his convenant, executed a new lease in favour of the second defendant. The plaintiffs

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asked for a decree compelling the first defendant to grant a renewal of the lease for a further term of ten years at the same rate of rent as that reserved by the former lease, which expired on July 31, 1922, namely, Rs. 210 per annum, and for the ejectment of the defendants with damages at the rate of Rs. 1,000 per annum from August 1, 1922. In the alternative, the plaintiffs prayed that in the event of a renewal of the lease being refused, the first defendant may be decreed to pay to them a sum of Rs. 5,000 as the value of the buildings erected by the lessee, together with damages at the rate of Rs. 1,000 per annum.

The first defendant took exception to the covenant for renewing the lease as being *ultra vires* of his powers as trustee, on the ground that such a covenant contravenes section 27 of the Buddhist Temporalities Ordinance of 1905. The first defendant further denied that the lessee put up additional buildings of a permanent nature on the leasehold premises. On the contrary, the first defendant alleged that the lessee erected only a row of four small additional buildings which are insanitary and in a ruinous condition.

The learned Judge of the Court below has rightly held that the covenant in the deed of lease for renewal was *ultra vires* and cannot be enforced. But the learned Judge found as a fact, that the lessee had pulled down ten of the old tenements and built six new ones on the site of those which were pulled down, and that the lessee also built eight tenements on the site of the old tenement which bore assessment No. 102.

On these findings the learned Judge decided that the plaintiffs were entitled to recover from the first defendant a sum of Rs. 2,500 as compensation, and also damages at the rate of Rs. 80 per mensem.

The District Judge (P. E. Pieris, Esq.) held as fallows:—

> I hold that fourteen tenements, such as were contemplated in the lease bond, were built by the lessee within the period of his lease, and that he thereby became entitled to the option of renewal which is mentioned in the lease.
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> The lease was due to expire on July 31, 1922, and on October 31, 1918, the lessee sub-let the tenements to the second defendant for a period of five years on the informal document P 6. The rent reserved on this was Rs. 1,500 a year, whereas the lessee on P 1 was only paying Rs. 210 a year. It is obvious that the lessee contemplated a renewal of the lease, and also that it was very much to his advantage to obtain such a renewal, for, in addition to the rent, the sub-lessee was to pay rates, taxes, conservancy fees, and for repairs. The lessee, therefore, approached the trustee and demanded a renewal, but this the trustee refused. . . . . It must be conceded that the covenant was *ultra vires*, and that it is open to a trustee to plead that his act was *ultra vires* and that he cannot be bound down by it. I must hold that the trustee cannot be compelled to renew the lease, and the prayer of the plaintiffs to that effect is dismissed.

The matter, however, cannot end there. The trustee by his deliberate and formal act invited the late lessee to erect buildings on the leased land. The latter did so, and the trustee cannot take the benefit of those improvements without reimbursing the party improving the land.

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I value the fourteen tenements built by the late lessee at Rs. 2,500, which sum I order the first defendant to pay to the plaintiff. There is also a claim to damages. The plaintiffs were entitled to retain possession till payment of compensation. They were in possession through their sub-lessee, and by the act of the first defendant in giving the second lease, they have been deprived of the benefits of that possession to the advantage of the first defendant. . . . I order the first defendant to pay damages to the plaintiffs at the rate of Rs. 80 a month from August 1, 1922, up till day. He will further pay legal interest on the total from this day till payment in full, as well as the plaintiff's costs.

The lease P 1 was as follows:—

This indenture of lease made the Third day of September, One thousand Niue hundred and Twelve, between Madugalle Tikiri Banda, Basnayake Nilame of Udispattu in Uda Dumbara, in the Kandy District of the Central Province of the Island of Ceylon, Trustee of the Kandy Nata Dewale, acting for and on behalf of the said temple, and hereinafter called the lessor of the one part, with the sanction and concurrence of the District Committee of Kandy under the Buddhist Temporalities Ordinance, No. 8 of 1905, a copy of which said sanction and concurrence is annexed to the original hereof, and Panditaratna Gamage Don Charles de Silva of New Home, Welata, in the Gangawata korale of Yatinuwara, in the District of Kandy aforesaid, and hereinafter called the lessee of the other part, witnesseth:

That for and in consideration of the sum of Rupees Two thousand and One hundred, being the rent for the whole of the term hereby granted, and of the covenants, conditions, and agreements hereinafter contained on the part of the lessee, the lessor doth hereby let, demise, and lease unto the lessee, his heirs, &c., the land and premises following, to wit:—[Property described]

To hold the said premises unto the lessee, his heirs, &c., for the term of ten years commencing from the First day of August, One thousand Nine hundred and Twelve, and to be fully completed and ended yielding and paying therefore the yearly rent or sum of Rupees Two hundred and Ten, to be paid in advance without any deduction on the First day of August in every year, the first payment for two years having been made at the execution of these presents, the next payment to be made on the First day of August, 1914, and of each succeeding year. . . . .

The said lessee or his foresaids shall, from time to time, during the said term, when and so often as needs shall require at his own cost, well and substantially repair and maintain the boundary marks and hedges, mounds, banks, fences, drains, and ditches which indicate the boundaries of the premises hereby demised.

The said lessee or his foresaids shall not have or make any claim for compensation against the lessor or his successor or successors for or on account of any alleged expenses, or on any account whatsoever at any time, but in the event of his having put up any additional buildings of a permanent nature, he shall have the option of a renewal for another ten years at the same rate of rent.

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That the foregoing covenants, conditions, and agreements shall be binding on the lessor and his successor or successors in office and the heirs, &c., of the lessee hereto.

H. J. C. Pereira, K.C. (with him *H. V. Perera*), for the appellants.

Drieberg, K.C. (with him *D. B. Jayatilleke* and *Vathavanam*), for the respondents.

August 1, 1924. BERTRAM C.J.—

This is a case arising out of the Buddhist Temporalities Ordinance. A lease for ten years was granted to the plaintiffs' testator with an option for a further period of ten years in the event of his putting up any additional buildings of a permanent nature on the property leased. As a matter of fact, certain permanent works were done upon the premises; but, at the expiration of ten years, the trustee of the temple leased the property to another person, alleging that the original lease and option were *ultra vires*. The legal position so assumed appears to have been accepted by the plaintiffs. I am by no means sure that they were right in accepting it. But it is not now necessary to discuss that position. They claim compensation in respect of improvements executed by them in their capacity as lessees.

The learned Judge has entertained their claim, and has given them Rs. 2,500 as compensation for improvements. But he has also awarded them a further sum of Rs. 80 per month as damages. This appears to be based upon a supposed *jus retentionis*. There is, however, in the circumstances of this case, no *jus retentionis*. See *Punchirala v. Mohideen*.[1] One does not understand why this authority was not brought to the attention of the learned Judge. So much of his judgment as grants the plaintiffs damages at Rs. 80 a month cannot stand.

On the other hand, the appellants challenged the right to compensation on two grounds. First of all they draw attention to the covenant (paragraph 7 of the lease) under which the lessee renounced any claim for compensation. That renunciation, however, must be read in conjunction with the terms of the whole paragraph. That paragraph consists of mutually interdependent conditions. The lessee renounced his right to compensation in consideration of the condition of the option for a renewal if he puts up any permanent buildings. The trustee cannot now refuse the renewal and insist on the renunciation.

Another ground taken up by the appellants is that the buildings in this case were not additional buildings of a permanent nature. They contend on the facts that the operations, which are referred to as the erection of buildings of a permanent nature, were merely repairs, and that all that the lessee did was to erect four buildings

[1] *(1911) 13 N. L. R. 193.*

of a worthless description. The learned Judge has found against them on the facts, and I see no reason to disturb the learned Judge's finding.

What happened was that fourteen tenements were built in place of the fourteen tenements which had been condemned by the Municipal Council and which were demolished; the appellants contend that these are not buildings of the nature referred to in the covenant. But the lessee is not restricted in his right to recover compensation by the terms of his covenant. His right is a general one. He is entitled to recover compensation in respect of improvements which were acquiesced in by his lessor. The terms of the covenant may be looked at as showing an expectation that additions would be made to the buildings, and an invitation in effect to the lessee to make additions to the buildings. In fact it appears that the trustee was cognizant of the building operation that were going on. He asserts that they consisted merely of the worthless tenements above referred to. The learned Judge, however, accepted the fact that the trustee must have seen the operations, but rejects his account of the facts. It appears, however, that there were these improvements, and that the trustee was cognizant of what was going on and acquiesced in it. In these circumstances, I think that the lessee was entitled to compensation in respect of the improvements made. The contention of the appellants, therefore, fail on that point.

With regard to the amount of compensation, however, it seems to me that the calculations of the learned Judge are open to criticism. He has accepted the figures of Mr. Spaar. Mr. Spaar values the fourteen tenements in their present condition at Rs. 120 each. It is quite true that he says that the value of all the tenements was from Rs. 4,000 to Rs. 5,000, and the learned Judge has proceeded on that figure. I think he has overlooked the fact that Mr. Spaar is here speaking of all the tenements, including tenements other than the fourteen, in respect of which compensation is payable. We must therefore, adopt the other figure mentioned by Mr. Spaar, namely, Rs. 120 per tenement.

To this Mr. Drieberg objects that this low valuation is attributed by Mr. Spaar to a period of long neglect, and that Mr. Spaar only saw the building a year after his client had relinquished possession. It is quite clear, at any rate, that a considerable portion of the neglect is attributable to the lessee. No doubt he is entitled to some small allowance in respect of the last year. It would be reasonable, I think, therefore, to make him an allowance of Rs. 120. Adding that to the total, according to Mr. Spaar's calculation Rs. 1,680, the amount of compensation which the lessee may claim works out at Rs. 1,800.

No doubt the appellants have succeeded in substantially reducing the amount adjudged against them, but they have failed on certain other contentions. In the circumstances, I think the fairest order

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as to costs will be that order of the Court below should be left undisturbed, and that in this Court each party should pay its own costs.

I am of opinion that the judgment should be varied, and that the amount awarded be reduced to the figure I have indicated.

SCHNEIDER J.—I agree.

Varied.