

# A CASE ANALYSIS OF BACHULAL SHAH V M/S GITA TIMBER CO, AIR 1996 ORI

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## INTRODUCTION

The subject matter pertains to the tenancy provisions outlined in the Transfer of Property Act, as presented before the High Court of Judicature at Orissa. The case was presided over by a single judge bench, namely Justice Pradipta Ray. The judgment, with a total of 2463 words, was rendered in this matter.

## FACTS

The contested lease was granted to the defendant-respondent by a lease agreement dated August 30, 1973. The lease for four years began on September 1, 1973. The Gregorian calendar had a monthly rental fee of Rs. 70. Leasing allowed the lessor to regain ownership at the end of the tenure. This right required a 15-day notice for late rent payment. If this notice is neglected, the lease will expire in one month.

The lease supported a sawmill north of the property. The plaintiff agreed to the defendant's request to negotiate additional terms with a tenant-at-will after the lease expired.

Section 106 of the Transfer of Property Act<sup>1</sup> required a 15-day lease termination notice if the defendant refused to vacate. According to the lawsuit, the defendant did not pay rent. A defendant responded to the complaint. After renewing and paying rent, the defendant entered

a continued plea. Despite periodic requests, the defendant asserts that the plaintiff ceased paying rent after May 1988.

The defendant has not specified in their written statement that the notice of tenancy termination or lease termination was inadequate or improper. The individual confirmed receipt of the notice of termination. There were no notice issues because the defendant did not contest the legitimacy or legality of the notification. However, the judgments of the two lower courts demonstrate that an exhaustive investigation into appropriate notification was conducted. The factory lease was upheld by the trial court. After the initial term, the lease continued month-to-month pending rent payment and affirmation and required a six-month notice to terminate. Without explanation, it demanded six months.

The trial court presumed termination of the lease. Appealing has submitted a petition. The First Appellate Court affirmed the lower court's determination that the lease was for manufacturing and that Section 106 of the Transfer of Property Act (the "Act") required a six-month notice period. The lawsuit for lease termination was dismissed after the First Appellate Court reversed its previous judgment that the six-month notice was inadequate.<sup>1</sup>

## **ISSUES**

Whether property in question was for manufacturing purpose or not and the required notice period for the same.

## **RULES**

1. Transfer Of Property Act, 1882 - Section 106, Duration of certain leases in absence of written contract or local usage.
2. M/s. Larsen and Toubro Ltd. v. State of Orissa
3. Ravi Shankar Sharma v. State of Rajasthan

## **RATIO**

The ratio emphasizes the importance of the court's duty to provide well-grounded and legally solid justifications for its rulings, especially when assessing the sufficiency and legitimacy of a notification.

When determining the sufficiency and legality of a notice in this specific circumstance, the court must exercise extreme caution. The court must guarantee that its decision is supported by sound legal reasoning and principles. It is essential for the court to avoid reaching a decision that is erroneous or based on misunderstandings or interpretation errors of legal principles.

In the present case, the court asserts that the lower court's reasoning in determining that the notice was sufficient and valid was erroneous and misguided.

The preceding assertion emphasizes the need for courts to correctly interpret and apply the law, as well as provide sensible justifications for their rulings, particularly in cases involving the notification requirements in judicial proceedings. Incorrect or flawed logic has the potential to produce inequitable outcomes and undermine the integrity of the legal system. Therefore, it serves as a powerful reminder of the importance of maintaining legal precision and accuracy in judicial decisions.

## **ANALYSIS**

Section 106 of the Act mandates a six-month notice period for manufacturing and agricultural leases. It is essential to keep in mind that this rule applies annually. According to the provisions of the contract, a lease for "manufacturing purposes" is typically a monthly or periodic lease, not an annual lease. In the current circumstances, a six-month notice period is not required.<sup>ii</sup>

In *Idandas*<sup>iii</sup>, the Supreme Court clarified how Section 106 of the Act defines "manufacturing purpose." Based on the preceding remark, it is unnecessary to cite 'manufacturing process' regulations from multiple statutes.

Although timber logs undergo multiple transformations to produce commercial wood products, it would be inaccurate to state that the original raw material has lost its fundamental characteristics. The judgment by the First Appellate Court that the conduct described in the ruling constitutes a manufacturing process under Section 106 is without merit. In its landmark decision in Kortda Venkateswarlu<sup>iv</sup>, the prestigious Andhra Pradesh High Court adopted a consistent stance. It has been established that the tenant-defendant received and acknowledged a 15-day notice.

In this instance, a recorded deed formalized a four-year-long rental agreement. The payments were scheduled to be made monthly based on the Gregorian calendar. Notably, the agreement stipulated that if the rent was not paid on time, the lessor could terminate the lease and reclaim possession of the property with a 15-day notice. Based on the enumerated conditions, it is evident that the lease in question does not conform to the characteristics of an annual lease.

The defendant-respondent argued that, after the expiration of the initial four-year lease term, they maintained possession of the property by continuing to pay the proprietor rent on a monthly basis. According to Section 106 of the law, the lease agreement did not include provisions for manufacturing activities, and there were no industrial operations taking place on the property. Therefore, staying on the property after the lease term expired did not transform the lease into an annual agreement.

The court ultimately determined that the contested lease was not intended for manufacturing purposes and did not follow the standard format for annual leases. In this case, the standard six-month notice period associated with month-to-month leases did not apply.

Accordingly, the defendant-respondent's tenancy was lawfully terminated. Allegedly, the First Appellate Court committed an error by dismissing the lawsuit.

The appeal is granted, nullifying the decision and decree of the First Appellate Court. This decision upholds the Trial Court's ruling.

In the case of Shanthi P. Devi<sup>v</sup>, The appealing party, also known as the lessee, obtained legal possession of the land through a duly registered lease agreement in order to use the property to operate a petroleum outlet. The length of the relevant lease agreement is fifteen years. Despite the inclusion of a clause in the lease agreement implying a one-year term, it is essential to acknowledge that consistent monthly payments were made. In accordance with Section 106 of the Transfer of Property Act of 1882, the lessee sent a formal notice after the expiration of a fifteen-year lease term, indicating their intent to pursue a lease renewal. The party occupying the property, referred to as the lessee, continued to fulfill their rental obligations by making regular payments after the lease expired. This action was properly acknowledged and accepted by the property owner, also known as the lessor. Upon receipt of the rent acknowledgement, the lessee consented to the notice and elected to continue occupying the property. According to the decision of the esteemed Supreme Court, it has been determined that Section 106 of the Transfer of Property Act of 1882 is not applicable to the renewal of the aforementioned deed. Consequently, the appellant has been ordered to vacate the premises within two months, while also being required to maintain the current state of the property.

In the case of Sky Land International Pvt. Ltd.<sup>vi</sup>, A legal precedent has established that a monthly tenancy is pertinent to a lease of non-manufacturing-related real property. Since manufacturing activities are excluded, this is the case. Consequently, in accordance with Section 106 of the Transfer of Property Act of 1882, it may be terminated upon notice if it so chooses. The amendments made to Section 106 by Act 3 of 2003 eradicated all technical objections to the notice of termination. Consequently, the argument that the notice terminating the tenancy was issued illegally cannot be used to have a lawsuit dismissed. Prior to the revision of Section 106 brought about by Act 3 of 2003, the notice was required on the last day of the month to terminate the tenancy. This provision gave tenants the right to contest legal actions on the grounds that their tenancy had not been lawfully terminated with a notice that had expired at the end of the tenancy month. In order to satisfy the requirements of Section 106 of the Transfer of Property Act of 1882, a written notice of lease termination must be provided. This notice must be mailed to the tenant, or if that is not possible, it must be conveyed or given to the tenant in person. Alternately, if neither tendering nor delivering the notice is feasible, it must be posted in a highly visible location on the property.

## CONCLUSION

A lease is an agreement whereby property is conveyed from the owner to the tenant in exchange for a predetermined sum of money or rent for a predetermined period of time. The agreement can be made verbally or in writing. The tenant has access to the property for a specified duration. Personal property rights are inviolable. He appears identical to the previous owner.

The lessee may be evicted without a documented lease agreement for manufacturing and agricultural uses if they provide a six-month notice. A 15-day notice is required to terminate the lease for any other reason. Both are governed by Section 106 of the Transfer of Property Act of 1882. The law will take effect the day following receipt of the notification. Even after the deadline for notification has passed, the lawsuit or proceeding can be initiated. The notice must be in writing, signed by the lessor, and hand-delivered or mailed to the family members or household employees of the lessee at the lessee's residence.

## ENDNOTES

<sup>i</sup> Bachulal Sah vs. Gita Timber Co. (21.04.1995 - ORIHC) : MANU/OR/0002/1996

<sup>ii</sup> The Transfer of Property Act, 1882, §106.

<sup>iii</sup> Idandas, AIR 1982 SC 127.

<sup>iv</sup> Kortda Venkateswarlu v. Venkadari Venkata Subba Rao (1980) 1 ALT 166.

<sup>v</sup> Shanthi Prasad Devi and Anr. v. Shankar Mahto and Ors. SC (2005).

<sup>vi</sup> Sky Land International Pvt. Ltd. vs Kavita P Lalwani on 25 May, 2012