

MOHAMMED RASUL

A

v.

JEET SINGH AND HAZARA SINGH

[SUPREME COURT, 1964 (Hammett Ag. C.J.) 18th, 19th November
1963, 21st January 1964]

B

Civil Jurisdiction

Landlord and tenant—Crown lands—"protected lease"—consent of Director of Lands to being "dealt with" by court of law—time at which consent may be obtained—Crown Lands Ordinance (Cap. 138) s.15(1).

C

Interpretation—"protected lease"—when dealt with by court—Crown Lands Ordinance (Cap. 138) s.15(1).

There is nothing in the express wording of section 15 (1) of the Crown Lands Ordinance, which makes it necessary to obtain the consent of the Director of Lands before an action concerning a "protected lease" is initiated. The consent can be obtained at any time before the land is actually "dealt with" by the court, which is not the case until an order has been made or a judgment of the court delivered.

D

Semble: An order could be made "subject to the consent of the Director of Lands, with liberty to apply for further orders should that consent not be granted".

E

Action by the mortgagor of a "protected lease" for relief in relation to the sale of the security by the mortgagee (the second defendant) to the first defendant in exercise of his power of sale. A preliminary objection was taken on behalf of the defendants that the proceedings were instituted without the previous consent of the Director of Lands as provided by section 15 (1) of the Crown Lands Ordinance and that the court had therefore no jurisdiction to grant any of the relief sought. The action was dismissed and a counter-claim by the first defendant allowed on the merits. The judgment is reported only in relation to the preliminary objection.

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F. M. K. Sherani for the plaintiff.

G

Abdul Lateef for the first defendant.

A. I. N. Deoki for the second defendant.

HAMMETT Ag. C.J.: (in part) [21st January, 1964]

I will now deal with the first preliminary objection by Counsel for the first Defendant that this Court has no jurisdiction because the written consent of the Director of Lands was not obtained by the Plaintiff before he instituted this action.

H

This objection is based on Section 15 (1) of the Crown Lands Ordinance, which reads:

- A "15. (1) Whenever in any lease under this Ordinance there has been inserted the following clause :—

"This lease is a protected lease under the provisions of the Crown Lands Ordinance"

- B (hereinafter called a protected lease) it shall not be lawful for the lessee thereof to alienate or deal with the land comprised in the lease or any part thereof, whether by sale, transfer or sublease or in any other manner whatsoever, nor to mortgage, charge or pledge the same, without the written consent of the Director of Lands first had and obtained, nor, except at the suit or with the written consent of the Director of Lands, shall any
- C such lease be dealt with by any court of law or under the process of any court of law, nor, without such consent as aforesaid, shall the Registrar of Titles register any caveat affecting such lease.

- D Any sale, transfer, sublease, assignment, mortgage or other alienation or dealing effected without such consent shall be null and void."

- E It is agreed that the lease in this case is a "Protected Lease" and that the consent of the Director of Lands was not obtained before the Plaintiff instituted this action. The Director of Lands was however asked on 16th November, 1963, i.e. 2 days before the hearing of this case, for his consent to prosecute this case which it was disclosed had already been initiated in the Supreme Court. On 18th November, 1963, the Director of Lands gave his written consent to the Plaintiff "to initiate legal proceedings against Hazara Singh and Jeet Singh". This is not what was sought however, and I doubt if it is strictly a sufficient consent. It is clear however that the Director of Lands was informed that the action had already
- F been initiated by 16th November, 1963, and that he did not object thereto. The preliminary objection is not based so much on the form of the consent but the stage at which it was given, i.e. after the issue of the writ.

- G There is nothing in the express wording of Section 15 (1) which makes it necessary to obtain the consent of the Director of Lands before an action concerning a Protected Lease is initiated. All section 15 (1) provides, in this connection, is that no Court of Law may deal with any such lease without the consent of the Director of Lands. It appears to me that the consent of the Director can therefore be obtained up to any time before the land is actually "dealt with" by the Court, which in my view is certainly not the
- H case at any time before an order has been made by the Court or a Judgment of the Court has been delivered. I can also see no reason why a Judgment of the Court dealing with the land could not properly be made "subject to the consent of the Director of Lands, with

liberty to apply for further orders should that consent not be granted." For these reasons I did not consider there was any merit in the first preliminary objection. For reasons which will appear, I do not consider it necessary for me to give rulings on the remaining preliminary objections. **A**

Preliminary objection overruled.