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DELHI DEVELOPMENT AUTHORITY

v.

DURGA CHAND KAUSHISH

August 28, 1973

[K. K. MATHEW AND M. H. BEG, JJ.]

B *Deed--Construction of.*

The Secretary of State for India had entered into a lease with the respondent in 1931. The lease was for a term of ninety years. The leased land was entrusted for management on behalf of the Government of India to the Delhi Improvement Trust and thereafter after abolition of the Trust to the appellant, the Delhi Development Authority. The lessee had paid a permium in consideration of the lease and had agreed to pay an annual rent of Rs. 465/- for the duration of the
C lease.

Covenant 9 of the deed provided that "the lessor will at the request and cost of the lessee at the end of the term hereby granted and so on from time to time thereafter at the end of each such successive further term of years as shall be granted" execute to the lessee a new lease of the premises demised by way of renewal for 20 years at the first renewal and 20 years for the second renewal and 30 years for the third renewal. The proviso to covenant 9 stipulated "that of each such renewed term of years as shall be granted shall not with the original
D term of the years and any previous renewals exceed in the aggregate the period of ninety years." Covenant 10 made the rent subject to enhancement on the second renewal. The appellant enhanced the rent during the period of ninety years and demanded arrears of rent. The respondent then sued for a declaration that the annual rent payable by him could not be enhanced during the subsistence of the lease. The High Court decreed the suit. In the appeal to this Court it was contended that the proviso to covenant 9 made the enhancement clause operative within the admitted period of the lease of ninety years because the "original term" mentioned therein not only stood for the initial ninety years but
E after the expiry of the first period of ninety years. [541F]

Dismissing the appeal,

HELD : That on an interpretation of the lease deed on its own language and terms the enhancement clause could only operate upon the grant of a fresh lease after the expiry of the first period of ninety years. [541F]

F The initial term of lease of ninety years could not exist with the renewal of that very lease within ninety years. A renewal of a leaese is really a grant of a fresh lease. If as the words in covenant 9 clearly signify enhancement of rent is made conditional upon grant of a fresh lease, it could only take place on the expiry of the initial lease and not before that time. [538G]

The meaning of the words "original term" as used in the proviso could not be the initial term of 90 years because if that is added to the periods of renewal
G of lease the total must obviously and necessarily exceed 90 years. It is quite natural to restrict this expression used in the context of renewals to a term of renewal. This would be a logical course to adopt as the whole covenant 9 deals with renewals of leases. The difficulty in tearing the few words in the proviso away from the context of the rest of the covenant as well as from all other parts of the deed is that it could, if that were done override not merely the words of the demise, giving the duration of the initial lease as ninety years, but would also conflict with the contents of covenant 9 itself. Nothing in the proviso to covenant 9 could reasonably be used to destroy the meaning of the unambiguous
H opening words of the covenant showing that the whole covenant is meant to operate only "at the end of the term hereby granted". The meaning of a document or of a particular part of it is to be sought for in the document itself. This rule follows from the literal rule of construction which, unless its application produces absurd results must be resorted to first. [542E, H]

Monypenny v. *Monypenny* 1861 9 H.L.C. 114 and *Re Meredith ex. p. Chick* [1879] 11 Ch. d 731, referred to. A

The proviso to covenant 9 could be said to suffer from the vice of an uncertainty which can only be removed by ignoring the words creating this uncertainty. In such a case the ambiguous words can be disregarded so that the terms of the earlier operative part of the demise, which are clear, must prevail. [544B]

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Smt. Bina Das Gupta and Others v. *Sachindra Mohan Das Gupta,* [1968] S.C. p. 39 at 42 and *Glynn and Ors.* v. *Margetson & Co.,* [1893] A.C. p. 351 at p. 357, referred to.

If the ambiguity created by the words used in the proviso to covenant 9 can be resolved, assuming that two interpretations of it are reasonably possible, as it seems possible, the principle to apply would be that the interpretation favouring the grantee as against the grantor should be accepted. The English rule that a grant should be construed most favourably to the sovereign was subject to the exception that, in case of grants made for valuable consideration, the sovereign's honour must take precedence over the sovereign's profit. A lease granted by the Secretary of State for India could not be interpreted today by relying upon any special rule of construction applicable to leases by or on behalf of the British sovereign. It is not the ordinary rule of construction applicable to grants capable of two constructions which could be obsolete today but it is the reversal of that rule in the case of grant by the sovereign which would more aptly be said to be inapplicable today. In the present case the lease was for valuable consideration. [544D-F, 545F-H] C D

Dahebzada Mohd. Kamgar Shah v. *Jagdish Chandra Rao Dhabal Deo* [1960] 3 S.C.R. 604 and *Raja Rajendra Chand v. Mst. Sukhi* A.I.R. 1957 S.C. 286 referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 298 of 1973.

From the Judgment and Decree dated the 26th May, 1971 of the Delhi High Court in Civil Regular First Appeal No. (O.S. 16 of 1970). E

L. M. Singhvi, Sardar Bahadur Saharya, Keshar Dayal, Vishnu B. Saharya and *Yogendra Khushalani,* for the appellant.

V. M. Tarkunde, B. Dutta and *Ramesh Chandra,* for respondent No. 1.

The Judgment of the Court was delivered by— F

BEG, J.—This is a defendant's appeal, on a certification of the case, under Article 133(1)(a) and (c) of the Constitution, granted by the Delhi High Court.

The plaintiff-respondent had sued for a declaration that the annual rent of Rs. 365/- payable on a piece of land situated in Basti Ara Kashan, Paharganj, New Delhi, leased to him from 1-4-31 for a period of 90 years on behalf of the Secretary of State for India could not be enhanced during the subsistence of the lease for the grant of which he had paid a premium of Rs. 18,054/-. The plot of land leased was entrusted for management on behalf of the Government of India to the Delhi Improvement Trust, and, thereafter, after the abolition of the Delhi Improvement Trust in 1957, to the Delhi Development Authority under Section 60 of the Delhi Development Act of 1957. The plaintiff also claimed refund of Rs. 5,935.25 ps. which had been retrospectively demanded and realised from him as arrears of enhanced rent from 1.1.52 to 30.6.63 after issuing a warrant of arrest dated 2.6.64 against G H

A him. Furthermore, the plaintiff prayed for an injunction to restrain the appellant, acting on behalf of the lessor, from realising an annual rent in excess of Rs. 365/- for the duration of the lease claimed to be for 90 years.

The defendant-appellant pleaded, *inter-alia*, that the suit was barred by the provisions of Sec. A53(B)(2) of the Delhi Development Act. B Want of notice under Sec. 80 C.P.C., upon the Union of India, a co-defendant, was also pleaded. These questions were decided against the defendants by a learned judge of the Delhi High Court, who tried the case and dismissed the suit on merits, as well as by the Division Bench which had allowed the plaintiff's appeal and decreed by the suit on merits. Questions decided against the defendants at both stages in the Delhi High Court are not before us for decision. The only question C argued before us was whether the interpretation of the lease deed (Ex. P2), dated 17-9-31, between the Secretary of State for India and the appellant, by the learned judge who tried the case and held that rent could be enhanced within the period of 90 years, was correct, or the interpretation adopted by the Division Bench, which allowed plaintiff's appeal after holding that the enhancement clause could only operate upon the grant of a fresh lease, after the expiry of the first period of 90 D years under the lease, was correct.

We think that the most significant feature of the case is that the assertion, in paragraph 1 of the plaint, that the lease commencing on 1-4-31 was for the term of 90 years, is admitted to be correct in paragraph 1 of the replies on merits in the written statement on behalf of both the defendants, namely, the Union of India and the Delhi Deve- E lopment Authority. It was, however, not admitted by the defendants that the yearly ground rent of Rs. 365/- could not be enhanced within a period of 90 years. Paragraph 4 of the joint written statement of the defendants shows that the real dispute between the parties was whether the deed dated 17-9-31, under which the lease commenced from 1-4-31, provided for an enhancement of the rent within the period of 90 years by reason of covenants numbered 9 and 10 of the lease F deed, or, the power of enhancement was to be exercised only on the grant of a fresh lease after the determination of the initial period of 90 years. In paragraph 12 of the plaint, the plaintiff asserted :

> "12. "That according to the terms of the Lease dated 17th September, 1931 the land has been leased to the plaintiff for a term of 90 years at the rate of rent of Rs. 365/- per year. The rent during the said term of the lease cannot be enhanced G and has not in fact been enhanced by defendant No. 1 or defendant No. 2."

The reply in the written statement in paragraph 12 on merits was :

> "12. That para 12 of the amended plaint is not admitted as stated. The lease dated 17th September, 1931, was grant- H ed to the plaintiff for a total period of 90 years at the rate of ground rent of Rs. 365/- per annum, subject to the renewal of the lease and at enhanced rate as provided under terms of the lease."

The difficulty in which the defendants were placed, possibly due to a defective drafting of the lease deed which failed to bring out whatever may have been the real intention, was that they could not get out of the categorical statement in the lease deed of 17-9-31 that it was for a total period of 90 years at Rs. 365 per annum. Hence, the defendants admitted this to be correct. But, immediately thereafter, the defendants were faced with the problem that a natural interpretation of covenant 9 of the lease deed, dealing with both with the enhancement and renewal of the lease, laid down that the renewal was to take place only "at the end of the term hereby granted" (*i.e.* 90 years), and covenant 10 made it clear that the right of enhancement could be exercised, as is naturally to be expected, only when the lease is renewed. Hence, to meet this difficulty, the defendants, immediately after admitting that the lease was for a period of 90 years, asserted, in paragraph 12 of replies on merits in the written statement, that it was "subject to renewal of the lease at the enhanced rate as provided under the lease". In other words, the "renewals" were also covered by the initial period of ninety years; but, this makes no sense according to law as explained by us below.

It is also clear that the issues framed did not indicate that the defendants' case anywhere was that the initial lease was for a period less than 90 years. In fact, there could be no issue on that point because the defendants had admitted the plaintiff's statement to be correct that the lease was for a period of 90 years. Therefore, the issues framed on merits indicated that the dispute between the parties was confined to the question whether the defendants could exercise a right of enhancement within the period of 90 years. The relevant issue No. 5 was framed as follows :

> "Whether on the construction of paras 9 and 10 of the lease deed dated 17-9-1931 the defendants are entitled to enhancement of rent as claimed by them and if so, whether any such enhancement has been lawfully made by them ?"

If the plaintiff was not entitled initially to a lease of 90 years for the rent agreed upon but the rent was liable to be increased within that period, as appeared to be the real case of the defendants in the High Court, there was no question of grant of a fresh lease. A renewal of a lease is really the grant of a fresh lease. It is called a "renewal" simply because it postulates the existence of a prior lease which generally provides for renewals as of right. In all other respects, it is really a fresh lease. Thus, the initial term of a lease of ninety years could not co-exist with the renewals of that very lease within ninety years. Hence, the appellant's counsel was compelled to argue that the initial period of the lease must be deemed to be 20 years. If the argument advanced by the appellant is correct, the plaintiff-respondent would be merely a tenant "holding over" after expiry of twenty years. But, that is not the defendants' case in their written statement. If, as the words used in covenant No. 9 clearly signify, enhancement of rent is made conditional upon grant of a fresh lease, it could only take place on the expiry of the initial lease and not before that time. That could be either ninety years or twenty years but not both simultaneously.

A If the initial lease was for a period of 20 years only subject to rights of renewal and liability to enhancement of rent on a renewal, there was nothing to prevent the grantor from saying so in the lease deed. Again, if the period of lease of 90 years on payment of an annual rent of Rs. 365/- was subject to a periodic increase of rent within this initial period of 90 years, the grantor could have easily said so and would B have done it. We all know that, in such cases, a grantee has little choice if he really wants to obtain a lease. The terms and conditions are really laid down by the grantor, which is the Sovereign or the State in such cases, and these terms are generally of a uniform type. If the language adopted in granting the lease is defective, so as to fail to bring out the real intention of the grantor, whatever that intention may have been, the grantee cannot be made to suffer for the defect.

C Before actually dealing with the principles of construction involved, we will set out the relevant terms of the lease deed so as to indicate what the grantor did here. The operative part of the deed containing the words of demise reads as follows :

> "Now this indenture witnesseth that in consideration of the rent hereinafter reserved and of the covenants on the part D of the said Lessee hereinafter contained the said Lessor *does hereby demise* unto the said Lessee all that plot of land containing by measurement 5444 square yards situated at Ara Kashan, Paharganj, in the Municipality of Delhi which said plot of land is more particularly described in the schedule hereunder written and with the boundaries thereof has, for greater clearness, been delineated on the plan annexed to E these presents and thereon coloured blue, together with all rights, easements and appurtenances whatsoever to the said Lessee *for the term of* 90 *years* commencing from the 1st day of April, 1931 rendering therefore *during the said term the yearly rent of Rs.* 365/- *only* clear of all deductions, by equal half yearly payments on the first day of January and first day of July at Rs. 182/8/- each at the Nazul Office of the Deputy F Commissioner of Delhi or of such officer as may from time to time be appointed by the Local Government in this behalf. The first of such payments to be made on the first day of July next."

Thereafter, begins a fresh paragraph with the words : "Subject always to the exceptions, reservations and conditions and covenants G hereinafter contained". These covenants contain the obligation of the lessee to pay Rs. 18,154/- in 4 instalments on or before 30-9-32, a provision for forfeiture of the lease on a breach of the condition relating to payment of premium, the right of the lessor to recover the outstanding amount as arrears of land revenue, the reservation of mineral rights by the lessor, an undertaking by the lessee to pay "*during the said term*" all rates, taxes, charges and assessments of every description H "which are now or may at any time hereafter *during the said term* be assessed.....in respect thereof", the other duties of the lessee during the subsistence of the lease, the obligations of the lessee to deliver the land on "*the determination of the said term*", and, if the

land is required for a public purpose *"during the period of the lease"*, to accept compensation only for the buildings on the value of which the decision of the Deputy Commissioner of Delhi was to be final and conclusive.

After detailing the conditions, mentioned above, applicable for the duration of the lease, to which references are repeatedly made, follow the controversial conditions or covenants 9 and 10 which read as follows :

> "9. The Lessor will at the request and cost of the Lessee *at the end of the term hereby granted and so on from time to time thereafter at the end of each such successive further term of years as shall be granted,* execute to the Lessee a new Lease of the promises herby demised by way of renewal for a further term as follows :—
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> (a) At the first renewal .. Twenty years.
> (b) At the second renewal .. Twenty years.
> (c) At the third renewal .. Thirty years.

Provided always that each such renewed term of years as shall be granted shall not with the original term of the years and any previous renewals exceed in the aggregate the period of ninety years."

> "10. The rent of the said premises hereby demised is hereby expressly made subject to enchancement on the second renewal shall not exceed one hundred per cent of that reserved at the first renewal. Leases renewed for the third period provided for in the last preceding clause may be granted at the then prevailing market rate of rents for building land in the vicinity."

The appellant's contention is that the proviso to covenant No. 9 makes the enchancement clause operative within the admitted period of the lease of 90 years because the "original term" mentioned there not only stands for the initial 90 years but also includes the periods of renewals within it. It is pointed out that the total period cannot exceed 90 years. This means that the "original term" is to be equated with the total period for which the initial lease and the renewed leases could be granted. The language, if interpreted in this way, lends to patent absurdities mentioned above.

The plaintiff contends that the appellant's construction of the proviso would completely nullify the most essential part of the lease contained in the words of demise for a period of 90 years at a yearly rent of Rs. 365/- It was emphasized that the right of the lessee to a renewal accrues only "at the end of the term hereby granted", and that the right to enhanced rent was to be a condition in the renewed or fresh lease 'thereafter". The period of demise is repeatedly referred to throughout the deed, and, as already pointed out, is actually admitted by the defendants to be 90 years. Hence, it is contended that the proviso to covenant No. 9 could not possibly be so interpreted

A as to destroy the effect of the demise itself and reduce the initial lease from one for 90 years to a lease for 20 years only initially. This seems to us to be the more reasonable view.

The learned counsel for the appellant has contended : that, words of demise in the ealier part of the deed are made expressly subject to the reservations, conditions and covenants in the subsequent parts; that, covenant No. 9 does not destroy the character of the demise but only qualifies it by subjecting it to liability for enhancement; that, repeated references to the "term hereby granted" must be read in the context of the whole deed; that, there are no words indicating that the lease is not terminable before 90 years, or, in other words, not renewable after 20 years; that, the word "with" in the proviso to covenant 9 has been wrongly interpreted by the Division Bench to mean "placed side by side" instead of signifying an aggregation as it ordinarily does; that, the words "hereby granted" used in the lease cannot be equated with "hereinbefore granted"; that, a document (Ex. P4) dated 27.5.55 containing an agreement between the Delhi Improvement Trust and the plaintiff merely relates to development and betterment charges which have nothing to do with the initial lease so that it D should not have been used by the Division Bench to interpret the terms of the lease; that, in view of the terms of the lease, taken as a whole, it would be incorrect to say that the appellant's interpretation involves that the plaintiff becomes a tenant holding over after the first 20 years. The last mentioned argument conflicts with the earlier argument that the lease is renewable after 20 years. Reliance was also placed on a judgment of a learned Judge of the Delhi High Court interpreting a E similar lease in the same manner as the lease before us was interpreted by the learned Judge who tried the plaintiff's suit.

After having considered all the arguments advanced on behalf of the defendant-appellant, we are quite unconvinced that covenant 9 could apply before the termination of the initial period of 90 years. It is by reading the lease deed as a whole that we find it impossible to concur with a view based upon the decisive effect to be given to a few words in the proviso to covenant 9 torn away from the context of the deed read as a whole. We think that convenant No. 9 operates only at the end of the terms of 90 years because it says so.

The problem of interpreting the proviso was solved by the Division Bench largely by giving the word "with", used in it, one of its several G meanings given in the Webster's 3rd New International Dictionary. This was: "alongside of". We do not think that this meaning helps the respondent more than the ordinary meaning suggested by the appellant which is also given there. It is: "inclusive of". Other meanings possibly more helpful to the respondent, are: "(1) (a) in opposition to or against"; "(b) away from, so as to be separated or detached from". We are unable to say in what exact sense the word "with" was really H used in the proviso. It is used to contrast and compare or oppose, by placing side by side, as well as to add up or include what is indicated as so placed. In either case, if the "original term" were really to stand for the period of ninety years, the aggregation would carry us

beyond ninety years and make the limitation to that period appear quite absurd. So, the meaning of "with" suggested by the appellant is also quite unhelpful. A

The meaning of the word "with" generally gathered from the context and has to be considered in conjunction with word which precede and these which follow it. It is the exact meaning of the words "original term", as used in the proviso, which is far more important. It is not unlikely that the draftsman, due to an imperfect knowledge of a foreign language, which English is for us, used the expression in some special sense of his own. Its meaning could not, as pointed out above, be the initial term of ninety years, because, if that is added on to the periods of renewal of leases the total must obviously and necessarily exceed ninety years. Hence, we are compelled to resort to guesswork to make some sense out of the expression "original terms" as used in the proviso. It may be that the draftsman described the period of the first renewal as the "original term". Or, perhaps he used it to describe the actual period of a renewal as constrasted with subsequent or previous renewals. It is quite natural to restrict this expression used in the context of renewals to a term of a renewal. This would be a logical course to adopt as the whole of covenant 9 deals with renewal of leases. In any case, this is the only way in which we can make the proviso intelligible, and, therefore, unless the expression is discarded as incomprehensible or meaningless in the context, we have to read it in that sense. B C D

The difficulty in tearing the few words in the proviso away from the context of the rest of the covenant as well as from all other parts of the deed is that it would, if that were done, override not merely the words of demise, giving the duration of the initial lease as 90 years, but would also conflict with the contents of covenant 9 itself. As we have said earlier this covenant clearly says that it will operate only at the end of the first 90 years. If, according to covenant No. 9 itself, the provisions relating to the renewal of the lease and enhancement of rent are to come into effect only at the end of ninety years' grant, how can we shorten it, without ignoring the most essential part of the lease, and give effect to some merely presumed or guessed intention in such way as to override the plain meaning of the language used? Nothing in the proviso to onvenant 9 could reasonably be used to destroy the meaning of the unambiguous opening words of the covenant showing that the whole covenant is meant to operate only "at the end of the term hereby granted" (*i.e.* after 90 years). E G

Both sides have relied upon certain passages in Odgers' "Construction of Deeds and Statutes" (5th ed. 1967). There (at pages 28-29), the First General Rule of Interpretation formulated is : "The meaning of the document or of a particular part of it is therefore to be sought for in the document itself". That is, undoubtedly, the primary rule of construction to which Sections 90 to 94 of the Indian Evidence Act give statutory recognition and effect, with certain exceptions contained in Sections 95 to 98 of the Act. Of course, "the document" means "the document" read as a whole and not piecemeal. H

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The rule stated above follows logically from the Literal Rule of Construction which, unless its application produces absurd results must be resorted to first. This is clear from the following passages cited in Odgers' short book under the First Rule of Interpretation set out above:

Lord Wensleydale in *Monypenny* v. *Monypenny*(1) said:

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> "the question is not what the parties to a deed may have intended to do by entering into that deed, but what is the meaning of the words used in that deed: a most important distinction in all cases of construction and the disregards of which often leads to erroneous conclusions."

Brett, L.J., in *Re Meredith, ex p. Chick*(2) observed:

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> "I am disposed to follow the rule of construction which was laid down by Lord Denman and Baron Parke... They said that in construing instruments you must have regard, not to the presumed intention of the parties, but to the meaning of the words which they have used."

Another rule which seems to us to be applicable here was thus stated D by this Court in *Radha Sunder Dutta* v. *Mohd. Jahadur Rahim & Others*(3):

> Now, it is a settled rule of interpretation that if there be admissible two constructions of a document, one of which will give effect to all the clauses therein while the other will render one or more of them nugatory, it is the former that E should be adopted on the principle expressed in the maxim ut res magis valeat quam pereat".

Assuming, however, that there is some conflict between an earlier part of the deed containing a demise of land clearly for a period of 90 years on an annual rent of Rs. 365, and the proviso of covenant No. 9, annexed to the demise, in a later part of the deed, which cannot be resolved without discarding or disregarding some word or words, the respondent's counsel contended that the earlier words of demise, consistently supported by the contents of other parts of the deed, should prevail over the inconsistency found in the proviso to one of the conditions in the later part of the deed. He relied for this proposition on: *Sahebzada Mohd. Kamgar Shah* v. *Jagdish Chandra Rao Dhabel Deo* (4); *Ramkishore Lal* v. *Kamal Narian*(5); *Forbes* v. *Git*(6).

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He also relied on *Smt. Bina Das Gupta and Others* v. *Sachindra Mohan Das Gupta*(7), where the following statement of law in *Savill Eros., Ltd.* v. *Bethell*(8), by Sterling L.J., was cited with approval by this Court:

> "It is a settled rule of construction that where there is a grant and an exception out of it, the exception is to be taken

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(1) (1861) 9 H. L. C. 114 at p. 146.
(2) [1879] 11 Ch. D. 731 at p. 739.
(3) A. I. R. 1959 S. C. 24 at p. 29.
(4) [1960] 3 S. C. R. 604 at p. 611.
(5) [1963] Supp. 2 S. C. R. p. 417 at p. 425.
(6) [1922] 1 A. C. p. 256 at p. 259.
(7) A.I.R. 1968 S. C. p. 39 at p. 42.
(8) [1902]-2 Ch. p. 523 at pp. 537-538.

> as inserted for the benefit of the garntor and to be construed in favour of the grantee. If then the grant be clear, but the exception be so framed as to be bad for uncertainty, it appears to us that on this principle the grant is operative and the exception fails."

We think that the proviso to covenant No. 9 could be said to suffer from the vice of an uncertainty which can only be removed by ignoring the words creating this uncertainty. We think that, in such a case, the ambiguous words can be disregarded so that the terms of the earlier operative part of the demise, which are clear, must prevail.

Learned Counsel for the respondent also relied on the following passage from *Glynn and Ors. v. Margetson & Co.*(1) in the judgment of Lords Halsbury :

> Looking at the whole of the instrument, and seeing that one must regard, for a reason which I will give in a moment, as its main purpose, one must reject words, indeed whole provisions, if they are inconsistent with what one assumes to be the main purpose of the contract."

If the ambiguity created by the words used in the proviso to the 9th covenant can be resolved, assuming that two interpretations of it are reasonably possible, as it seems possible, the principle to apply would be that the interpretation favouring the grantee as against the grantor should be accepted. This was also one of the grounds for the decision of this Court in *Kamgar Shah's* case (supra).

Learned counsel for the appellant, however, contends that this principle itself is out of date and inapplicable in this country today. He submitted, at the same time, that the deed must be construed in favour of the appellant, representing the grantor, on grounds of public interest. No authority is cited to substantiate such a proposition. But, learned counsel relied, for this submission, on the British rule regulating grants by the Sovereign : a grant should be construed in favour of the Soveregin and against the subject when it is susceptible of two meanings.

We think that the argument that the rule that a grant, capable of two interpretations should be construed in favour of the grantee, is obsolete and that we should employ some test of public interest amounts to a plea that we should depart from established cannons of construction of deeds containing grants on grounds of public policy which has been described as an "unruly horse." It is more appropriate to address arguments based on public interest and public policy to a legislature where such policies are given legal expression. Our task, as we conceive it in the present case, is merely to construe an agreement embodied in a lease, in which the lessor is the grantor, according to ordinary well recognised rules of construction one of which is found stated in *Smt. Bina Das Gupta's* case (supra).

(1) [1893] A. C. p. 351 at p. 357.

A We may also cite here *Raja Rajendira Chand* v. *Smt. Sukhi*(1), where it was pointed out that the English rule a grant should be construed most favourably to the Sovereign was subject to the exception that, in cases of grants made for valuable consideration, as is the position in the lease before us, the Sovereign's honour must take precedence over the Sovereign's profit. This Court said (at page 292) B there :

> "It is, we think, well settled that the ordinary rule applicable to grants made by a subject does not apply to grants made by the Soveregin authority : and grants made by the Sovereign are to be construed most favourably for the Sovereign. This general rule, however, is capable of important relaxations in favour of the subject. It is necessary to refer C here to such only of these relaxations as have a bearing on the construction of the document before us; thus, if the intention is obvious, a fair and liberal interpretation must be given to the grant to enable it to take effect; and the operative part, if plainly expressed, may take effect not with standing qualifications in the recitals. In cases where the grant is for valuable consideration, it is construed in favour D of the grantee, for the honour of the Sovereign; and where two constructions are possible, one valid and the other void that which is valid ought to be preferred, for the honour of the Sovereign ought to be more regraded than the Sovereign's profit (see para 670 at p. 315 of Halsbury's Laws of England Vol. VII, S.12, Simonds Editon)."

E We doubt whether a lease granted by the Secretary of State for India even before 1950 could be interpreted today by relying upon any special rule of construction applicable to leases by or on behalf of the British Sovereign. Indian citizens are now governed by the Indian Constitution on matters relating to Sovereignty. It may be that a rule of construtions traceable to the prerogatives of the Sove- F reign, in the feudal age, is no longer applicable in a Democratic Republican State, set up by our Constitution, when dealing with its citizens. There appears to be no just and equitable ground why the State as the lessor grantor, with all its resources and experienced draftsmen and legal advisers and enjoying a practically invincible bargaining position as against citizen lessee grantee, should enjoy the benefit of some nebulous and unjust rule of construction so as to enable Courts to G rewrite its defectively drafted deeds in its favour. We think that it is not the ordinary rule of construction, applicable to grants capable of two constructions, which could be obsolete in this country today, but, it is the reversal of that rule in the case of the grant by the Sovereign— a feudal relic—which could more aptly be said to be inapplicable here today. And, as we have already pointed out, even that feudal relic was subject to the exception that it could not stand in the way of H evenhanded justice where the Sovereign had received valuable consideration. The lease before us was for valuable consideration.

(1) A. I. R. 1957 S. C. p. 286.

It may be mentioned here that not only was consideration in the form of premium of Rs. 18,154/- received at the time of grant of the lease, but a further sum of Rs. 10,888/- was paid by the lessee to the Delhi Improvement Trust under an agreement to which both President of India and the Improvement Trust were parties as lessors. As already mentioned earlier, this agreement (Ex. P4), headed a 'lease agreement', was, in fact, intended for the payment of development and betterment charges for building according to a plan sanctioned by the Improvement Trust. But, the document gives the history of the lease from 1931, and, in paragraph 6 of the agreement goes on to provide :

> "In spite of this agreement, the parties hereto shall have the same rights as heretofore under the aforesaid lease dated the 17th September, 1931."

The plaintiff-respondent had, in paragraph 4 of the plaint, laid defendants who had accepted consideration and an yearly rent at Rs. 365/- per annum without enhancement until after Ex. P4 was executed in 1955. No mention of any liability to pay enhanced rent is found in the deed of 1955. It was only in June, 1962, that somebody in the appellant's office seems to have suddenly thought of taking advantage of the ambiguous proviso on behalf of defendant-appellant so that an enhancement of annual rent from Rs. 365/- to Rs. 730/- with retrospective effect from 1-4-51 was demanded. This amount was paid by the respondent under protest and after a warrant of arrest had been issued against him. As the plaintiff had not relied upon an estoppel even though facts, which may give rise to it, were stated, that question need not be considered by us here.

The learned counsel for the defendant-appellant had, however, contended that the agreement (Ex. P4) of 27-5-55 was wrongly used by tne Division Bench of the Delhi High Court in interpreting the lease deed of 1931. We do not think that it had really so used it although it had considered the conduct of the defendants in accepting rent on the basis that it was a 90 years lease on a rent of Rs. 365/- per year until after 1955, without mentioning a right of enhancement of rent in the deed of 1955 to be circumstances indicating that the defendants themselves had put an interpretation upon the original lease which the Division Bench accepted as correct by finding out the meaning of the deed of 1931 first. We have not found it necessary to rely upon anything in the agreement of 27-5-55 either for interpreting the terms of the lease of 17-9-31

A or as an admission on any question or as providing a basis for an estoppel or as a circumstance supporting our views. As indicated above, we have reached our conclusion, quite apart from the contents of the subsequent agreement or the conduct of the parties, by interpreting the lease deed B of 17-9-31 on its own language and terms. We think that, on the language of the lease itself, the interpretation adopted by us is the only one which could give effect and meaning to all its parts read as a whole.

We, therefore, affirm the decision and decree of the Division Bench, and dismiss this appeal with costs.

C

P.B.R. *Appeal dismissed.*