Kanaiyalal Chandulal Monim

Vs

Indumati T. Potdar and Another

Criminal Appeal No. 65 of 1956

(B. P. Sinha, Syed Jafar Imam, K. Subha Rao JJ)

20.02.1958

JUDGMENT

SINHA J. -

The only question for determination in this appeal, is whether an offence punishable under s. 24(1)(4) of the Bombay Rents Hotel and Lodging House Rates Control Act LVII of 1947 (hereinafter referred to as the Act), has been brought home to the appellant.

The facts of this case are short and simple. The appellant is the owner, by purchase in 1945, of certain premises situate in Vile Parle, Bombay. Under the predecessor-in-title of the appellant, was a tenant, named Thirumal Rao Potdar, in respect of a room in those premises, at a monthly rent of Rs. 20 including water rate of Rs. 2. After the appellant's purchase, the tenant aforesaid continued to hold the tenancy on those very terms. The said premises used to enjoy the amenity of water supply from a municipal tap. As the appellant's predecessor-in-title had made default in payment of municipal taxes, the water supply had been cut off by the Municipality early in May, 1947. Since after that, the tenants including the said Thirumal Rao, had the use of well water only from a neighbouring tenant. Thirumal Rao died in or about the year 1950, and his widow, the first respondent, continued in occupation of the premises, without having the use of municipal water supply though she continued to pay the original rent plus annas 10 more by way of 'permitted increase'. Thus, the landlord - the appellant - went on receiving the monthly rent of Rs. 20-10-0 from the first respondent without giving her the benefit of water supply from the municipal tap. The Act came into force on February 13, 1948. The tenancy appears to have been recorded in her name some time in 1951. Nothing appears to have happened until April, 1954, when the first respondent brought it to the notice of the Municipal authorities that the supply of water from the municipal tap had been stopped since 1947. The Municipality answered the first respondent's complaint by a letter dated May 24, 1954, saving that the water connection could be restored on payment of Rs. 11-4-0 only, being the fee for doing so, if the owner's consent was produced. Before receiving this answer from the Municipality, the tenant got a letter written to the appellant, through a pleader, asking him to refund Rs. 72 being the amount charged for water supply at Rs. 2 per month, which was included in the total rent aforesaid for three years after the tenancy had been mutated in her name. The letter also stated that the supply of water had been withheld by the landlord by allowing the Municipality to disconnect the water connection for non-payment of municipal dues. The landlord was also called upon to get the water connection restored, and if he failed to do so, prosecution under s. 24 of the Act, was threatened. As the appellant had refused or neglected to have the water connection restored, the tenant filed a petition of complaint on June 14, 1954, for the prosecution of the appellant under s. 24 of the Act. The appellant was convicted after a trial by the 7th Presidency Magistrate, Dadar, by his judgment and order dated March 24, 1955. He was sentenced to undergo

one day's simple imprisonment, and to pay a fine of Rs. 150, and in default of payment, to undergo one month's simple imprisonment. The appellant moved the High Court of Bombay in revision against the order of conviction and sentence aforesaid. The matter was heard by a judge sitting singly, who summarily rejected the application by an order dated April 22, 1955. The appellant moved the High Court for a certificate that this was a fit case for appeal to this Court, which was refused by a Division Bench on May 16, 1955. Thereafter, the appellant moved this Court for special leave which granted on October 10, 1955. Hence, this appeal.

The learned counsel for the appellant raised a number of contentions against the conviction and sentence imposed upon the appellant, but in the view we take of the provisions of s. 24 of the Act, it is not necessary to pronounce upon all those contentions. The most important question which we have to determine in this appeal, is whether the constituent elements of an offence under s. 24(1), have been made out on the facts found in this case. Section 24 is in these terms :

> "24. (1) No landlord either himself or through any person acting or purporting to act on his behalf shall without just or sufficient cause cut off or withhold any essential supply or service enjoyed by the tenant in respect of the premises let to him.
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> (2) A tenant in occupation of the premises may, if the landlord has contravened the provisions of sub-section (1), make an application to the Court for a direction to restore such supply or service.
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> (3) If the Court on inquiry finds that the tenant has been in enjoyment of the essential supply or service and that it was cut off or withheld by the landlord without just or sufficient cause, the Court shall make an order directing the landlord to restore such supply or service before a date to be specified in the order. Any landlord who fails to restore the supply or service before the date so specified shall for each day during which the default continues thereafter be liable upon a further direction by the Court to that effect to fine which may extend to one hundred rupees.
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> (4) Any landlord, who contravenes the provisions of sub-section (1) shall, on conviction, be punishable with imprisonment for a term which may extend to three months or with fine or with both.

Explanation I. - In this section essential supply or service includes supply of water, electricity, lights in passages and on staircases, lifts and conservancy or sanitary service.

Explanation II. - For the purposes of this section, withholding any essential supply or service shall include acts or omissions attributable to the landlord on account of which the essential supply or service is cut off by the local authority or any other competent authority."

The explanation II was inserted by s. 16(2) of the Amending Act, namely, Bombay Act 61 of 1953, and the explanation I, as it now stands, was the only explanation before the amending Act was passed. It has not been denied before us that supply of tap water is an essential supply, and that is beyond controversy in view of explanation I. What has been argued, is that the supply of municipal water had been cut off by the Municipality as a result of the default in payment of municipal dues, by the appellant's predecessor-in-title. It may be that the appellant was not to blame for the default in payment of municipal dues, but it was open to him to pay Rs. 11-4-0 and have the water connection restored. He may not have been directly responsible for the cutting off of the supply of

municipal water, but is was within his power to get the supply restored by the Municipality on payment of the prescribed fee. Hence, in so far as the appellant omitted to do so, such an omission is attributable to him within the meaning of explanation II which was inserted into the Act in 1953. There can, therefore, be no doubt that the appellant was continuing to withhold an essential supply within the meaning of s. 24, as it stood in 1953.

But that is not the only essential ingredient of the offence created by s. 24. In order to attract the provisions of that section, it is also necessary that the second ingredient of the offence, should be there, namely, that that essential supply - tap water supply by the Municipality - should have been enjoyed by the tenant. Is it enough that this essential supply should have been "enjoyed" by the tenant at any past time, however remote, or that it should have been "enjoyed" at any time after the coming into effect of the Act ? We are assuming for the purposes of this decision that the first respondent was the tenant at all material times. In our opinion, the section makes it essential that the particular essential supply should have been available for the use of the tenant at some time when the Act was in force. If, on the other hand, the section were construed in the sense that the supply should have been "enjoyed" at some time in the remote past, that is, before the Act was enforced, the act of the landlord, when it was committed, may not have been penal; but the same act would become penal on the coming into effect of the Act. In that sense, it would amount to ex post facto legislation, and we cannot accede to the argument that such was the intention of the Legislature - an intention which would come within the prohibition of Art. 20(1) of the Constitution.

But it has been said that the expression "enjoyed by the tenant" in s. 24, does not necessarily mean that the tenant should have physically made use of the essential supply, and that the requirements of the section are satisfied if the tenant had the right vested in him to call for such a supply. In other words, the argument is that the word "enjoyed" does not import physical use of the amenity in question, but the juridical aspect of it in the sense that the supply of the water, was one of the rights vested in the tenant. On this construction, if the tenant had, as in this case the first respondent had, the right to enjoy the supply of water, that would amount to her having "enjoyed" the supply, and, thus, both the requirements of s. 24 would be fulfilled. In our opinion, it would be straining the language of the section to say that "enjoyed" should mean "had the right to enjoy". If that was the intention of the Legislature, those words would have been different. That this was not the intention of the Legislature, becomes clear on an examination of the terms of sub-s. (3) of that section. It speaks of "the tenant has been in enjoyment of the essential supply or service and that it was cut off or withheld by the landlord" which imports recent "enjoyment" until the supply was cut off, and not "enjoyment" in the remote past. If the intention was that "enjoyment" should have been at any time in the past, irrespective of the consideration when the Act came into force, the Legislature would have used some other words to indicate that intention, even assuming that the Legislature could have done so. But it was suggested that sub-s. (1) of s. 24, was self-contained, and that it was not necessary to construe its terms in the light of the provisions of sub-ss. (2) and (3) which go together. But it is clear from the terms of sub-s. (2) that it cannot come into operation without the landlord having contravened the provisions of sub-s. (1). Therefore, the provisions of s. 24 have to be construed as a whole, in order to find out the true intention of the Legislature.

It may also be pointed out that it is doubtful whether, before the second explanation was inserted into the section, as aforesaid, in 1953, the cutting off of the water supply by the Municipality, or the omission of the landlord to take steps to have the connection restored, would have come within the mischief of the penal section. Supposing the second explanation was not there, could the prosecution attribute the cutting off of the connection by the Municipality, and the subsequent refusal of the landlord to get the connection restored, as an act or omission of the landlord within

the meaning of s. 24(1) ? It has got to be remembered that the provisions of s. 24 are meant to be an additional guarantee to the tenant, of his continued enjoyment of the rights created in his favour by the contract of tenancy a part from his rights under the general law. The landlord could not only be penalized for having interrupted the enjoyment of any one of these essential rights, the tenant could approach the court under sub-ss. (2) and (3) of the section, to issue a mandate to the landlord to restore the supply or the service before a specified date, the infringement of which would entail the liability to recurring fines until the mandate had been carried out by the landlord. These are provisions of an exceptional character, meant to be in force for a specified period during which the Legislature thought it advisable and expedient to provide for such extra-ordinary remedies. Such remedies which are inroads upon the landlord's freedom of action, have to be construed strictly in accordance with the words actually used by the Legislature, and they cannot be given an extended meaning.

In view of these considerations, it must be held that the complainant - the first respondent - has not shown that she had enjoyed the amenity of the supply of tap water from the Municipality at any time after the Act came into force, and as that is one of the two essential conditions for the application of the section, it must be held that the offence under s. 24(1) of the Act, has not been brought home to the appellant. The appeal is, accordingly, allowed, and the conviction and sentence are set aside.

Appeal allowed.

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