

Kanji Manji

Vs

The Trustees of the Port of Bombay

Civil Appeal No. 302 of 1961

(S. K. Das, M. Hidayatullah, J. C. Shah JJ)

27.02.1962

JUDGMENT

HIDAYATULLAH, J. –

This appeal arises out of a suit tried in the Bombay City Civil Court at Bombay, filed by the respondents, the Trustees of the Port of Bombay, for the ejectment of the appellant, Kanji Manji, and one Rupji Jeraji who had died even before the suit was filed, from a plot situated at Haji Bunder Mazgaon, Sewri Reclamation Estate, Bombay. and for possession of the land. There was a claim for Rs. 10,871-14-0 being the arrears of water charges and property taxes, with which we are not concerned. The suit was decreed by the Bombay City Civil Court, and the appellant was ordered to vacate the suit premises and to deliver vacant possession thereof. An appeal was filed against the decree in the High Court of Judicature at Bombay, but it was dismissed summarily on September 24, 1959. The High Court also refused an application for a certificate, but the appellant applied for special leave, and having obtained it, filed the present appeal.

In 1924, the Trustees of the Port of Bombay granted a lease of the said land of five persons, who were trading in partnership under the name and style of Mancherji Vadilal and Company. This lease was for a term of 10 years commencing from December 14, 1923. For the first six months, the conventional rent of pepper corn, if demanded, was payable, and thereafter for the remainder of the terms, a monthly rent of Rs. 633-5-4 was payable on the first day of every month. The lessees were also to pay all rates, taxes, assessments, etc. One of the covenants of the lease was that the lessees would, at their own expense and during the first six months period, construct upon the said piece of land buildings for us as bullock stables and offices according to the specification given to them by the said Trustees and to be approved by them. It was provided, inter alia, that upon the expiration of the term, if the lessees had observed and performed all the covenants, they would be at liberty, at their own expense, to remove the buildings erected by them upon the demises on condition that the removal would be completed within three months after the expiration of the term. During this period of three months, the lessees were to pay the monthly rent and also to pay all rates and taxes etc. and if they failed to remove the buildings within the period of three Calendar months from the expiration of the term and within like period of fill up all excavations and to level up and restore the land, the right to remove the buildings would stand determined, and the buildings would belong to the Trustees, who would be entitled to remove them and to clear, level and restore the land and recover the costs from the lessees.

It is not clear from the record as to what happened actually after the expiry of the term. But on August 11, 1942, the Trustees of the Port of Bombay granted to Moreshwar Narayan Dhotre and Dinshaw Rustomji Ogre, carrying on business under the name and style of Messrs. Dinshaw and

Company and their respective heirs, executors administrators and assigns, a monthly tenancy of the land together with the buildings standing thereon and all the rights, easements and appurtenances belonging to the premises on payment of monthly rent of Rs. 300/-, clear of all deductions on the first day of each Calender month and payment of all rates, taxes etc. The lessees covenanted not to add to, or alter the said buildings and conveniences etc., without previous consent, in writing, of the Trustees and to maintain the property in good repair at their own cost. They further agreed :

"to peacefully leave and yield up the demised premises together with all buildings thereon as prepared and kept at the expiration or sooner determination of the tenancy hereby created or in the event of the Tenants becoming entitled to remove the buildings standing on the demised land at the expiration or sooner determination of the tenancy hereby created pursuant to the proviso in that behalf hereafter contained to peaceably leave and yield up the demised land cleared and levelled to the satisfaction in all respects of the Trustees."

The provisos, inter alia, include the following covenants binding the lessees :

"(2) Either party to these presents may terminate the tenancy hereby created by giving to the other of them one calendar month's notice in writing to expire on the 1st day of any calendar month.

(4) The Tenants may during the period of notice for determination of tenancy hereby created in accordance with proviso No. 2 hereinbefore contained remove such buildings as have been standing upon the demised land provided that the Tenants shall have paid all rent hereby reserved up to the determination of this tenancy and shall have performed and observed all the covenants on the part of the Tenants and the conditions herein contained or referred to."

On February 28, 1947, Moreshwar Narayan Dhotre and Dinshaw Rustomji Ogra assigned their rights in the lease to Rupji Jeraj and Kanji Manji who, according to the deed of assignment (Ex. D) paid Rs. 22,250/- to the assignors, and this assignment appears to have been accepted by the lessors. On January 25, 1956, the Trustees of the port of Bombay sent a notice to Rupji Jeraj and Kanji Manji requiring them to vacate the premises and deliver vacant and peaceful possession of the land on February 29, 1956. This notice was not complied with, and the suit was filed for their ejectment, as stated already. In the plaint, the first relief claimed was that "the defendant be ordered and decreed to forthwith deliver vacant and peaceful possession of the demised premises situate at Mazagaon Sewri Reclamation Estate and more particularly described in Ex. A hereto." Exhibit A mentioned the following :

"All that piece or parcel of land situate at Haji Bunder, Mazgaon Sewri Reclamation Estate, Bombay, admeasuring 5066 6/9 square yards or thereabouts bearing Cadastral Survey No. 272/145 of Parel-Sewree Division."

The suit, as stated was filed against both Rupji Jeraj and Kanji Manji, but later, the plaint was amended by striking out the name of Rupji Jeraj, who had died much earlier.

The appellant, as defendant, raised a number of pleas. His main contention was that the notice dated January 25, 1956 was invalid, inasmuch as it had been served only upon one of the lessees (Kanji Manji) and not upon the heirs and legal representatives of Rupji Jeraj. He also contended that the

suit was bad for non-joinder of the heirs and legal representatives of Rupji Jeraj, who were necessary parties. He raised a plea of jurisdiction, alleging that the suit had to be filed in the Court of Small Causes, Bombay, inasmuch as it was governed by the Bombay Rents, Hotel and Lodging Houses Rates (Control) Act, 1947. He further claimed the protection of s. 4, sub-s. 4(a) of this Act which, he said, applied to him and not sub-s. (1) of the same section. He contended that, in view of the prohibition contained in the Act, he could not evict his sub-tenants and that the contract that he must deliver vacant possession was impossible of performance, and the said impossibility rendered the claim of the plaintiffs incompetent.

All these pleas were found against the appellant. It was held that the tenancy was a joint tenancy that a notice to one of the joint tenants was sufficient, and that the suit also was not bad for non-joinder of the legal representatives of Rupji Jeraj. The trial Judge held that the present agreement was enforceable, inasmuch as this case was governed by sub-s. (1) and not sub-s. 4(a) of s. 4 of the Act. For the same reason, the trial Judge also held that the suit was properly laid in the Bombay City Civil Court at Bombay. The same contentions were raised before us, and we shall deal with them in the same order.

The arguments about notice need not detain us long. By the deed of assignment dated February 28, 1947, the tenants took the premises as joint tenants. The exact words of the assignment were that "..... the Assignors do and each of them doth hereby assign and assure with the Assignees as Joint Tenants..... ". The deed of assignment was approved and accepted by the Trustees of the Port of Bombay, and Rupji Jeraj and the appellant must be regarded as joint tenants. The trial Judge therefore, rightly held them to be so. Once it is held that the tenancy was joint, a notice to one of the joint tenants was sufficient, and the suit for the same reason was also good. Mr. B. Sen, in arguing the case of the appellant, did not seek to urge the opposite. In our opinion, the notice and the frame of the suit were, therefore, proper, and this argument has no merit.

The real controversy in this case centres round the applicability of the Bombay Rents, Hotel and Lodging Houses Rates (Control) Act, 1947 (shortly called the Rent Control Act in the judgment) to the present suit, and from that also arises the question of the jurisdiction of the Bombay City Civil Court. The latter argument about the jurisdiction of the Court can only arise, if the Rent Control Act applies to the present facts. We shall, therefore, consider these two points together.

It must not be overlooked that the suit was for eviction from the land only. Under the Rent Control Act, the word "premises" is defined by s. 5(8) inter alia, as follows :

"Premises" means -

(a) any land not being used for agricultural purposes.

The Act, prior to its amendment in 1953 by the Bombay Act IV of 1953, provided by s. 4(1) as follows :

"This Act shall not apply to any premises belonging to the Government or a local authority or apply as against the Government to any tenancy or other like relationship created by a grant from the Government in respect of premises taken on lease or requisitioned by the Government; but it shall apply in respect of premises let to the Government or a local authority....."

This sub-section was considered by the Bombay High Court in a case, which was brought up in

appeal to this Court by special leave. The judgment of this Court is reported in *Bhatia Co-operative Housing Society Ltd. v. D. C. Patel* ((1953) S.C.R. 185.). In that case, building sites were auctioned in 1908 by the City Improvement Trust, Bombay. One of the conditions of the sale was that the bidder should construct a building, on the site, of a certain value and according to a plan approved by the City Improvement Trust. One Sitaram Laxman was the highest bidder, and he constructed a building, as agreed. He was then granted a lease of the land together with the building for 999 years. Subsequently in 1925, the Bombay Municipality succeeded the City Improvement Trust, and the Bhatia Co-operative Housing Society Ltd. acquired the lessee's interest. A suit was filed by the Co-operative Society against its own tenants in the Bombay City Civil Court. The plea was that the suit ought to have been filed in the Court of Small Causes, as required by the Rent Control Act. The plaintiff relied upon sub-s. (1) of s. 4 to show that the Act did not apply to such a suit. This contention of the plaintiff was accepted by the Trial Judge, who decreed the claim. The Bombay High Court, however, on appeal, held that sub-s. (1) of s. 4 did not apply, and that as between the Co-operative Society and its sub-tenants, the suit was governed by the Rent Control Act and ought to go before the Court of Small Causes. The High Court, therefore ordered that the plaint be returned for presentation to the proper Court.

This Court, on appeal by special leave, reversed the decision of the High Court, and restored that of the Trial Judge. This Court pointed out that sub-s. (1) of s. 4 had three parts, viz.

"(1) this Act shall not apply to premises belonging to the Government or a local authority;

(2) this Act shall not apply as against the Government to any tenancy or other like relationship created by grant from the Government in respect of premises taken on lease or requisitioned by the Government; and

(3) this Act shall apply in respect of premises let out to the Government or a local authority."

This court further held that the first part of the sub-section mentioned as part No. (1) above had no reference to any tenancy or other like relationship as in the latter part, and was general in character. In framing it in that way, the intention was obviously different, and it was to exempt premises of a particular type from the operation of the Act altogether, and the exemption attached to the premises. Reasons were given by this Court why it thought that this exemption was general and the immunity absolute. Into these reasons we are not now required to go. As between the Bombay Municipality and the lessee, it was held that the land and the buildings belonged to the former as owners and not to the lessee. This Court, therefore, observed at p. 196 :

"The truth is that the lessor after the building was erected became the owner of it and all the time thereafter the demised premises which include the building have belonged to him subject to the right of enjoyment of the lessee in terms of the lease."

The Act was thus held not to apply to such suits, and the order of the High Court was reversed.

At first, an Ordinance and later, an Act were passed to nullify the effect of this ruling by the addition of sub-s. 4(a). That sub-section now reads as follows :

"(4)(a). The expression "premises belonging to the Government or a local authority" in sub-section (1) shall, notwithstanding anything contained in the said sub-section or

in any judgment, decree or order of a Court, not include a building erected on any land held by any person from the Government or a local authority under an agreement, lease or other grant, although having regard to the provisions of such agreement, lease or grant the building so erected may belong or continue to belong to the Government or the local authority, as the case may be; and

(b) notwithstanding anything contained in section 15, such person shall be entitled to create a tenancy in respect of such building or a part thereof."

The amendment achieved two different things. It enabled the lessee of the particular kind of building described in cl. (a) to create sub-tenancies in spite of the ban against sub-tenancies contained in s. 15. It also excluded from the operation of sub-s. (1) the buildings specified in cl. (a) of the sub-section. The amendment said nothing about the relationship of the Government or the local authority, on the one hand, and the lessee, on the other, in respect of the land. The word "premises" in sub-s. (1) could mean the land or the buildings or both. Sub-section (4)(a) dealt only with the buildings, and did not deal with the land, because it used the word "buildings" and not the more general word "premises". The import of sub-s. (4)(a) of s. 4 was thus limited to buildings, and did not extend to land. The sub-section, however, was drafted somewhat inartistically, and the obscurity of the language presents some difficulty. The Trial Judge followed a decision of the Bombay High Court reported in *Ram Bhagwandas v. Bombay Corporation* (A.I.R. 1956. Bom. 364.). In that case, one Khudabaksh Irani had taken lease of certain plots some 30 years back, and constructed some structures upon the open plot, and rented them out as tenements. In 1947, Irani sold them to one Tyaballi. In 1951, the Municipal Corporation filed a suit to eject Tyaballi from the plots, and by a consent decree, Tyaballi agreed to deliver up vacant and peaceful possession of the plots clear of all structures. Tyaballi failed to remove the structures, and the Municipal Corporation sought to execute the decree. The tenants thereupon filed a suit under O.21, r. 103 of the Civil Procedure Code against Municipal Corporation, but the suit was dismissed. In the appeal which was filed in the High Court, it was conceded that the Municipal Corporation was the owners of the plots in question, but protection was claimed on the basis of sub-s. (4)(a) of s. 4 of the Rent Control Act. Chagla, C.J. in dealing with the history of the amending Act, pointed out that the legislature was seeking to protect by that subsection tenants who occupied buildings put upon land belonging to a local authority, if the buildings occupied by them were constructed under an agreement under which the lessee was under an obligation to construct buildings. He pointed out that the protection of sub-s. (4)(a) was to buildings and not to land, and that the phrase "under an agreement, lease or other grant" modified not only "held by any person from Government or local authority" but also "erected on any land". He, therefore, held that the words "erected on any land held by any person from a local authority" were descriptive of the building and did not emphasise the point of time when the building was erected. By that phrase, what was emphasised was "that the nature of the building must be such as to satisfy the test that it was erected on land held by a person from a local authority and the test must be applied at the time when the protection is sought."

In this case, it is contended, as it was contended in the Bombay High Court, that so long as a building was erected under an agreement with Government or a local authority, the benefit of sub-s.

(4)(a) of s. 4 would be available, no matter how many hands the property might have changed. This argument was considered by the learned Chief Justice, and was rejected.

In our opinion, though the section is far from clear, the meaning given by the learned Chief Justice is the only possible meaning, regard being had to the circumstances in which this sub-section came to be enacted. Those circumstances were : In a case in which the holder of the land from a local authority was seeking to evict his sub-tenants, it was held by the Bombay High Court that the matter was governed by the Rent Control Act. This Court held that sub-s. (1) applied and the suit was not governed by the Rent Control Act. The amendment was enacted to cut down by a definition the operation of the words "any premises belonging to the Government or a local authority", by excluding only buildings which were occupied by sub-tenants even though the buildings belonged to the Government or continued to belong to it. Clause (b) of sub-s. (4) excluded also s. 15, which prohibited subletting by a tenant. That, however, was limited to the case of buildings only, and did not apply to the case of land. In this situation, any action by the Government or the local authority in respect of land falls to be governed by sub-s. (1) and not sub-s. (4)(a), and sub-s. (1) puts the case in relation to land entirely out of the Rent Control Act. The net result, therefore, is that if Government or a local authority wants to evict a person from the land, the provisions of the Rent Control Act do not come in the way. For the same reason, the suit for ejectment does not have to be filed in the Court of Small Causes, as required by the Rent Control Act but in the City Civil Court, as has been done in this case.

There is one more reason in this case for reaching the same conclusion, because at the time of the lease in 1942, the lessees, from whom the appellant claims assignment, were given a lease not only of the land but of the buildings. The whole tenor of the agreement shows that the title of the lessees was precarious. It was a monthly tenancy liable to be terminated with a notice under the Transfer of Property Act, and there was only a grace that the lessees, when evicted, might remove buildings within one month of their eviction. This precarious interest was obtained by the assignee by an assignment, and the same thing applies to them. If the original lessees took on lease not only the land but also the buildings, it is not open to their assignees to claim that the ownership of the Government extended only to the land and not to the buildings. By the admissions in the deed of lease and the various clauses, it is quite clear that these buildings cannot now be described as buildings constructed under an agreement with the Government, but rather as buildings belonging to Government which were leased out with the land but in respect of which by a concession, the lessees were entitled to remove the buildings within one month after eviction. In our opinion, the suit as laid for vacant possession of the site and in the City Civil Court was competent.

It was contended that the contract was incapable of being performed, because at least between the present appellant and his sub-tenants the provisions of the Rent Control Act would apply, and he would not be able to evict them in his turn. It was, therefore, argued that this impossibility on the part of the appellant to fulfil his obligations to deliver vacant possession rendered that portion of the lease deed unenforceable and void. It is to be noticed that the appellant does not claim that by reason of the impossibility the whole of the lease deed becomes void, because if he did so, the suit of the Port Trust authorities would be perfectly justified without any more. He only seeks to show that that portion of the deed dealing with delivery of vacant possession has become impossible of performance. Such a situation has also arisen in the case of the Bombay High Court in *Ram Bhagwandas v. Bombay Corporation* (A.I.R. 1956 Bom. 364), and the assignee of the lessee was unable to deliver vacant possession. Whether or not the Port Trust authorities would be able hereafter to evict the sub-tenants of the appellant is a matter, on which we need not express any opinion. If the appellant cannot evict his subtenants so as to be able to remove the buildings, in

exercise of the right conferred on him, that is an unfortunate circumstance, which does not serve to entitle him to defeat the rights of the Port Trust authorities. They are only claiming vacant possession of the site, and under the agreement, if the appellant does not remove the buildings within one month, then they would be entitled to take possession of the land with the buildings, whatever might be the right of the sub-tenants, and as to which, as we have pointed out already, we say nothing.

In our opinion, the appeal must fail, and is dismissed; but in the circumstances of the case, we do not make any order about costs.

Appeal dismissed.

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