Bathutmal Raichand Oswal

Vs

Laxmibai R. Tarta and Another

Civil Appeal No. 1867a of 1973

(P. K. Goswami, K. K. Mathew, N. L. Untwami, M. H. Beg JJ )

11.02.1975

JUDGMENT

BHAGWATI, J. –

1. This litigation has had a chequered career covering a period of about ten years and we hope that this judgment will ring the final curtain upon it. It is a litigation between landlord and tenant and as is usual with this type of litigation, it has been fought to a bitter end. Much of the agony to which the tenant has been subjected in this litigation would have been spared if only the High Court kept itself within the limits of its supervisory jurisdiction and not ventured into fields impermissible to it under Article 226 or 227 of the Constitution.

2. The dispute in this appeal relates to a shop consisting of four compartments on the ground floor of a building situate formerly in Reviwer Peth, but now in Budhwar Peth, Poona. The appellant was admittedly a tenant of the shop since 1949 and the standard rent and permitted increases in respect of the shop are Rs. 20,12 per month. There was at one time a dispute between the parties as to what was the purpose for which the shop was let to the appellant, but having regard to the finding given by the first appellate Court, which is the ultimate court of fact, it must be taken that the shop was let out to the appellant only for the purpose of business. The respondents were not the original landlords of the shop but they purchased the building, of which the shop forms part on December 12, 1963 and after purchasing it, they gave a notice dated November 12, 1964 to the appellant terminating his tenancy in respect of shop. The appellant declined to hand over possession of the shop and the respondents thereupon filed a suit in the Court of Small Causes, Poona for recovering possession of the shop from the appellant. There were several grounds on which the possession of the shop was sought by the respondents but barring one, the remaining grounds do not survive as they were negatived by the trial Court and also in appeal, by the first appellate Court. The one ground which still survived is that relating to recovery of possession Order clauses (a) and (k) of sub-section (1) of Section 13 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the Bombay Rent Act) and that is the ground which has evoked the most serious controversy between the parties and led to the filing of the present appeal. Clause (a) of sub-section (1) of Section 13 provides that a landlord shall be entitled to recover possession of the premises if the Court is satisfied that the tenant has committed any act contrary to the provisions of clause (c) of Section 108 of the Transfer of Property Act, 1882 and one of the acts prohibited by that clause is use of the premises for a purpose other than that for which they were leased. The respondents alleged that though the shop was let to the appellant for the purpose of business, the appellant started using the shop also for the purpose of residence since July, 1961 and the respondents were, therefore to recover possession of the shop from the appellant under clause (a) of sub-section (1) of Section 13. Clause (k) of sub-section (1) of Section 13 also confers a right on a

landlord to recover possession of the premises from the tenant if the court is satisfied that the premises have not been use, without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit. The respondents claim to recover possession of the shop under this clause on the plea that the appellant had, without reasonable cause, not used the shop for the purpose for which it was let, namely, business, since July, 1961 when he started using it for the purpose of residence. The appellant admitted that he started residing in the rear portion of the shop from July, 1961 as his toe had to be operated upon on account of gangrene and he found it difficult to walk to the shop from his residence, but his contention was that he never ceased to use the shop for the purpose of business; he carried on business in the name of M/s. India Hardware in the shop upto about 1965 and since about October 1963, business of sole selling agency of M/s. Bharat Sanitary Stores in the name of his son and this business was also carried on by him in the shop. The appellant submitted that in the circumstances it was not correct to say that he used the shop for the purpose for which it was let for a continuous period of six months immediately preceding the date of the suit so as to attract the applicability of either clause (a) or clause (k) of sub-section (1) of Section 13. The appellant thus disputed the right of the respondents to recover possession of the shop both under clause (a) and clause (k) of sub-section (1) of Section 13.

3. The trial Court found, on a consideration of the oral as well as documentary evidence led in the case, that though the shop was let to the appellant for the purpose of business, he was using a portion of it for his residence as well and the respondents had, therefore, made out a case for recovery of possession of the shop under clause (k) of sub-section (1) of Section 13. The trial Court accordingly passed a decree for eviction against the appellant. The appellant preferred an appeal to the District Court but the appeal was unsuccessful and the District Court confirmed the decree for eviction passed by the trial Court. The appellant thereupon preferred a petition in the High Court of Bombay under Article 227 of the Constitution challenging the validity of the decree for eviction passed by the trial Court and confirmed by the District Court.

4. The special civil application came up for hearing before Mr. Justice Chasme. The learned Judge found that this was not a case where the tenant had ceased altogether to use the premises for the purpose for which they were let and started using them wholly for a different purpose. Here the tenant continued to use the premises for the purpose for which they were let, but also started using them for some other additional purpose. It was a case where the tenant used the premises for the purpose for which they were let as also for some other different purpose. How would clauses (a) and (k) of sub-section (1) of Section 13 apply in such a case ? The learned Judge observed that where such is the case

the Court will have to decide whether the additional purpose constitutes the primary or dominant use. The Court will have to consider the dominant or primary use to find out whether there is a change of use so as to attract the provisions of either of the two clauses.

Now, it appears that before the trial Court there was no issue as to what was the dominant or primary user to which the shop had been put by the appellant - business or residence, nor was any evidence led directed to the determination of this issue. The only evidence adduced before the trial Court related to the question as to what was the purpose for which the shop was let and whether the appellant had started using the shop for the purpose of residence in addition to business. There was no evidence to show that the dominant or primary user of the shop by the appellant was for the purpose of residence and not business. And a fortiori there was also no finding of the trial Court or the District Court on this issue. In this state of affairs, the learned Judge ought to have allowed the

special civil application and set aside the decree for eviction passed against the appellant. The burden was on the respondents to make out a case under clause (a) or clause (k) of sub-section (1) of Section 13 by establishing that the dominant or primary user of the shop for a purpose different from that for which it was let. It was for the respondents to lead proper and sufficient evidence directed towards establishing their case under clause (a) or clause (k) of sub-section (1) of Section 13, and if they did not do so, their claims for possession would be liable to fail. The learned Judge should, therefore, have held that there being no evidence to show that the dominant or primary user of the shop by the appellant was residence and not business, the respondents had failed for possession under clause (a) or clause (k) of sub-section (1) of Section 13 and no decree for eviction could accordingly be passed against the appellant. The learned Judge, in the circumstances, should have quashed and set aside the decree for eviction. But instead the learned Judge framed the following two issues, namely :

> (1) Whether the plaintiffs prove that the defendant has changed the use of the premises in such a manner that the dominant or primary use is, residence and not business ?
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> (2) Whether the plaintiffs further prove that they are entitled to eject the defendant either under Section 13(1)(a) or Section 13(1)(k) of the Bombay Rent Act ?
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> and remitted these two issues to the trial Court with a direction to give opportunity to both the parties to amend their pleadings and adduce oral evidence to the High Court through the District Court. This was indeed a most unusual order made which hardly justified the exercise of the extraordinary, but limited jurisdiction possessed by the High Court under Article 227 of the Constitution. The learned Judge seems to think that while exercising the power of superintendence under Article 227 of the Constitution he could make any order he though fit, including an order of remand which properly belonged to a court of appeal.

5. When the case came back to the trial Court on remand, the respondents, with leave of the Court, amended the plaint and in reply to the amendment a supplemental written statement was filed on behalf of the appellant. The amendment to the plaint and the supplemental written statement brought to the fore the issue as to the dominant or primary user of the shop by the appellant. The respondents and the appellant thereafter examined several witnesses, three on behalf of the respondents and seven on behalf of the appellant. The trial Court, after considering the entire evidence, both before and after remand, came to the conclusion that since July, 1961, when the appellant shifted his residence to the rear portion of the shop, the dominant or primary user of the shop by the appellant was for residence and not business and the respondents were, therefore entitled to evict the appellant from the shop both under clause (a) and (k) of sub-section (1) of Section 13. The trial Court accordingly answered in the affirmative both the issues remitted by the High Court. The findings of the trial Court on these two issues thereafter came up before the District Court. The District Court, on meticulous and careful examination of the evidence, found that though the appellant started residing in the rear portion of the shop from July, 1961, the dominant or primary purpose for which the shop was used was business and it was, therefore, not possible to say that the appellant had changed the user of the shop as to attract the applicability of either clause (a) or clause (k) of sub-section (1) of Section 13. The District Court was thus of the view that the two issues remitted by the High Court should be answered in the negative and it accordingly certified its findings to the High Court.

6. Now, these findings certified by the District Court were obviously findings of fact and being given by the District Court, which was the ultimate court of fact, they were binding on the parties and their correctness could not be questioned in the special civil application but Mr. Justice Sapre, before whom the special civil application came up for hearing after the certification of findings by the District Court, allowed himself to be persuaded to examine the correctness of these findings under the guise of the argument that the District Court in reaching these findings misread a part of the evidence, ignored certain other part of it and drew inferences and conclusions which were wholly unjustified and the findings were in any event, unreasonable and perverse. The learned Judge went through the entire evidence on record and taking the view that a part of it was misread and a part ignored, he in effect and substance reappreciated the whole evidence in an elaborate judgment running over sixty pages and on such reappreciation, set aside the findings of fact reached by the District Court and held that the dominant or primary user of the shop by the appellant was for residence and not business and on this view confirmed the decree for eviction passed against the appellant under clause (k) of sub-section (1) of Section 13. The appellant being aggrieved by the judgment of the learned Judge preferred the present appeal after obtaining special leave from this Court. There were two contentions urged on behalf of the appellant in support of the appeal. The first contention was that in disturbing the findings of fact reached by the District Court, the High Court arrogated to itself the powers of a court of appeal and clearly overstepped the limits of its jurisdiction under Article 227. It was not competent to the High Court, contended the appellant to reappreciate the evidence on record for the purpose of deciding whether any errors of fact were committed by the District Court and correcting such errors of fact. That was not a function which properly belonging to the exercise of jurisdiction under Article 227 which was limited merely to examining whether the District Court had kept itself within the bounds of its authority in reaching the findings of fact. The appellant also contended and that was the second contention urged on his behalf that in any event the findings of fact reached by the District Court were not based on misreading or disregard of any evidence and were neither unreasonable or perverse and the High Court had, therefore, in any event no power to interfere with them. We were taken through the judgment of the District Court as also through the judgment of the High Court and it was contended before us that the judgment of the District Court was based on a close and careful appreciation of the evidence and there was no justification at all for the High Court to set it aside on the assumption that it misread or ignored any part of the evidence of or drew any inferences and conclusions which were unwarranted or unjustified. The consideration of this second contention would require us to examine the large mass of evidence on record and scrutinise the judgments of the District Court as well as the High Court, but it is necessary to go through this long and tedious exercise since we are of the view that the first contention raised on behalf of the appellant is well founded and the High Court plainly acted outside the limits of its jurisdiction under Article 227 in disturbing the findings of fact reached by the District Court.

7. The special civil application preferred by the appellant was admittedly an application under Article 227 and it is, therefore, material only to consider the scope and ambit of the jurisdiction of the High Court under that article. Did the High Court have jurisdiction in an application under Article 227 to disturb the findings of fact reached by the District ? It is well settled by the decision of this Court in Waryam Singh v. Amarnath ((1954) SCR 565 : 1954 SC 215) that the

. . . power of superintendence conferred by Article 227 is, as pointed out Harries, C.J., in Dalmia Jain Airways Ltd. v. Sukumar Mukherjee (AIR 1951 Cal 193) to be exceeded most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors.

This statement of law was quoted approval in a subsequent decision of this Court in Nagendra Nath Bora v. Commissioner of Hills Division ((1958) SCR 1240 : AIR 1958 SC 398) and it was pointed out by Sinha, J., as he then was, speaking on behalf of the Court in that case :

It is thus, clear that the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the power under Article 226 of the Constitution. Under Article 226 the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Article 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority.

It would, therefore, be seen that the High Court cannot, while exercising jurisdiction under Article 227, interfere with findings of fact recorded by the subordinate court or tribunal. Its function is limited to seeing that the subordinate court or tribunal functions within the limits of its authority. It cannot correct mere errors of fact by examining the evidence and reappreciating it. What Morris, L. J. said in Rex v. Northumberland Compensation Appeal Tribunal (1952) 1 KB 338)) in regard to the scope and ambit of certiorari jurisdiction must apply equally in relation to exercise of jurisdiction under Article 227. That jurisdiction cannot be exercised

as the cloak of an appeal in disguise. It does not lie in order to bring up an order or decision for rehearing of the issues raised in the proceedings.

If an error of fact, even though apparent on the face of the record, cannot be corrected by means of a writ of certiorari it should follow a fortiori that it is not subject to correction by the High Court in the exercise of its jurisdiction under Article 227. The power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal. The High Court cannot in guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the Legislature has not conferred a right of appeal and made the decision of the subordinate court or tribunal final on facts.

8. Here, when we turn to the judgment of the High Court, we find that the High Court has clearly misconceived the scope and extent of its power under Article 227 and overstepped the limits of its jurisdiction under that article. It has proceeded to reappreciate the evidence for the purpose of correcting errors of fact supposed to have been committed by the District Court. That was clearly impermissible to the High Court in the exercise of its jurisdiction under Article 227. The District Court was the final court of fact and there being no appeal provided against the findings of fact reached by the District Court, it was not open to the High Court to question the propriety or reasonableness of the conclusions drawn from the evidence by the District Court. The High Court could not convert itself into a court of appeal and examine the correctness of the findings of fact arrived at by the District Court. The limited power of interference which the High Court possessed under the Article 227 was to see that the District Court functions within the limits of its authority and so far as that was concerned, there was no complaint against the District Court that it transgressed the limits of its authority. It is true that the High Court claimed to interfere with the findings of fact reached by the District Court on the ground that the District Court had misread a part of the evidence and ignored another part of it but that was clearly outside the jurisdiction of the High Court to do under Article 227. This is precisely what the High Court did in Nagendra Nath Bora's case (supra) while setting aside the orders of the appellate authority under the Excise Act and that was disapproved by this Court in the clearest terms. The exercise of the power of interference in that case was sought to be justified by reference both to Articles 226 and 227. So far as the exercise

of jurisdiction under Article 226 is concerned, this Court pointed out that a writ or order of certiorari could be issued by the High Court only if there was an error of law apparent on the face of the record an no error of fact, howsoever apparent on the face of the record, could be a ground for interference by the High Court exercising its writ jurisdiction. It was observed by this Court, while applying this principle to the facts of appeals before it :

In the judgments and orders impugned in these appeals, the High Court has exercised its supervisory jurisdiction in respect of errors which cannot be said to be errors of law apparent on the face of the record. If at all they are errors, they are errors, they are errors in appreciation of documentary evidence of affidavits, errors in drawing inferences or omission to draw inferences. In other words, those are errors which a court sitting as a court of appeal only, could have examined and, if necessary, corrected.

The High Court, in its several judgments and orders has scrutinised, in great detail, the order passed by the Excise Authorities under the Act. We have not thought it fit to examine the record or the orders below in any detail, because, in our opinion, it is not the function of the High Court or of this Court to do so. The jurisdiction under Article 226 of the Constitution is limited to seeing that the judicial or quasi-judicial tribunals or administrative bodies exercising quasi-judicial powers, do not exercise their powers in excess of their statutory jurisdiction but correctly administer the law within the ambit of the statute creating them or entrusting those functions to them. The Act has created its own hierarchy of officers and appellate authorities as indicated above, to administer the law. So long as those authorities function within the letter and spirit of the law, the High Court has no concern with the manner in which these powers have been exercised. In the instant cases, the High Court appears to have gone beyond the limits of its powers under Article 226.

This Court also held that the High Court was not justified in interfering with the orders of the appellate authority in exercise of its jurisdiction under Article 227, since this jurisdiction was limited only to seeing that the District Court functions within the limits of its authority and did not extend to correction of mere errors. What this Court said in that case applies with equal force in the present case and we must hold that the High Court acted beyond the limits of its jurisdiction under Article 227 in interfering with the findings of fact reached by the District Court. Even if the special civil application had been under Article 226 that would have made no difference and the High Court would still have had no jurisdiction to disturb these findings of fact. Now, if these findings of fact stand, as they must, it is obvious that the dominant or primary user of the shop by the appellant was for business and not residence and there was accordingly no change of user of the shop, and if that be so, the respondents were not entitled to recover possession of the shop from the appellant either under clause (a) or clause (k) of sub-section (1) of Section 13.

9. We, therefore, allow the appeal, set aside the judgment of the High Court and reverse the decree for eviction passed against the appellant. The suit filed by the respondents against the appellant will stand dismissed. The respondents will pay the costs of the appellant throughout.

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