

Raghunath Gopal Manjire and Another

Vs

The Competent Authority and Others

Civil Appeal No. 1750 of 1975

(N. L. Untwalia, P. S. Kailasam JJ )

16.11.1977

JUDGMENT

UNTWALIA, J. -

1. Special leave in this appeal from the judgment of the Bombay High Court was granted restricted only to the question as to whether the enhancement of rent could be made with retrospective effect. We are, therefore, concerned to decide the said question only.

2. In the year 1946 the Government of India drew up a scheme for construction of houses for industrial workers and to let them out to them at a subsidised rent. The then State of Bombay (now Maharashtra) passed Bombay Housing Board Act, 1948 - hereinafter to be referred to as the Act, to provide for measures to be taken to deal with and satisfy the need of housing accommodation. In accordance with Section 3, the Maharashtra Housing Board, a Statutory corporate body was constituted. Chapter III of the Act provided for the making of the housing schemes by the Board in accordance with the provisions of the Act and subject to the control of the State Government. Elaborate machinery was provided for the framing and the implementing of the schemes. Section 66 empowered the State Government to make rules for carrying out the purposes of the Act. Subject to the overall control and power of the State Government as provided for in sub-section (2) of Section 67, sub-section (1) thereof states :

The Board may from time to time, with the previous sanction of the State Government, make regulations consistent with this Act and with any rules made under this Act -

(2) for the management and use of buildings constructed under any housing scheme;

(b) the principles to be followed in allotment of tenements and premises;

(c) the remuneration and conditions of service of the Housing Commissioner and other officers and servants of the Board under Section 13;

(d) for regulating its procedure and the disposal of its business.

The Board was also empowered to make bye-laws under Section 68. We shall not be concerned in this case with the Bombay Housing Board Rules, 1949 framed by the State Government. But the relevant Regulations framed by the Board will have to be referred to.

3. At the outset we may state the necessary facts in relation to the two appellants - Shri R.G. Manjire and Shri A.L. Raghavan Nair, appellants 1 and 2 respectively. Although the said two appellants had purported to file the writ petition and the writ appeal in the High Court on behalf of themselves and other industrial worker tenants of the Board residing in Tilak Nagar, Chembur, Bombay, and they purported to follow up the matter by filing the special leave petition in a representative capacity, the appeal was, however, argued, as it appears, due to non-compliance of some stay order passed by this Court by the other workers, as if it was an appeal by the said two appellants only. Any way that will not be of any material consequence because our decision in this appeal, obviously, will govern the rights and liabilities of the other industrial workers similarly situated.

4. The first appellant who was an industrial worker employed with Premier Automobiles Ltd., Kurla was allotted tenement 54/1916 as per the tenancy agreement dated January 19, 1959, executed in Form II appended to the Regulations. The subsidised rent fixed was Rs. 27 per month plus the monthly service charges of Rs. 6. Similarly appellant 2 who was an industrial worker employed with Indian Rare Earths Limited was allotted tenement 26/921 in Tilak Nagar at the same subsidised rent of Rs. 27 per month plus the monthly service charges of Rs. 7.50. The allotment to him was also made sometime in the year 1959 on the basis of a similar agreement. Such allotments are said to have been made in respect of about 4000 tenements.

5. A notice dated October 10, 1972 was given to appellant 2 by the Board stating therein :

Tenements constructed under the Subsidised Industrial Scheme are allotted to the Industrial Worker whose monthly income does not exceed Rs. 350 on payment of subsidised rent only. Those who have crossed the wage limit of Rs. 350 p.m. subsequently are not entitled to retain the tenements, nor are they entitled to get subsidy in rent. The question of eviction of workers who had crossed the prescribed wage limit of Rs. 350 p.m. has been considered sympathetically and the Government have been pleased to order that such tenants who have exceeded wage limit of Rs. 350 should be allowed to retain the tenements by charging them graded increase w.e.f. April 20, 1966 as under :

(1) Wage group of workers between Rs. 351 to Rs. 425 p.m. - 40% of the interest charges on the subsidy for construction of the house.

(2) Wage group of workers between Rs. 426 to Rs. 500 p.m. - 80% of the interest charges on the subsidy for construction of the house.

(3) Persons who are exceeding the limit of Rs. 500 shall be charged full economic rent.

(4) In partial modification of the above, the Government have been pleased to charge w.e.f. November 28, 1959, 50% of the interest charges on the subsidy for construction of the house from industrial worker tenants whose monthly income is in the range of Rs. 350 to Rs. 500.

(5) On enquiry from your employers M/s Indian Rare Earths Ltd. it is learnt that your income exceeded Rs. 350 p.m. w.e.f. November 1, 1967. You are as such allowed to avail the concession to pay the subsidised rent for 3 months from that date, and you are liable to be charged graded rent from February 1, 1968.

In view of the above orders of the Government, you have been assessed graded rent/economic rent

as detailed below :

# Rs.(1) Income between Rs. 350 to Rs. 425 - from February 1,1968 to April 30, 1969 at the rate of 40% i.e. Rs. 3.20 p.m. .. 48.00(2) Income between Rs. 425 and Rs. 500 - from May 1, 1969to September 30, 1969 at the rate of 80% i.e. Rs. 6.40 p.m. .. 32.00(3) Income above Rs. 500 - from October 1, 1969 to June 30,1972 as per difference between standard and economic rent E.C.dated December 6, 1971 and November 23, 1971 at the rate of 50%i.e. Rs. 27.02 .. 891.66 ----- Total .. 971.66 ----  
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The total amount thus payable by you for the period from February 1, 1968 to June 30, 1972 works out to Rs. 971.66; you are requested to pay the above arrears within 10 days from date of issue of this letter.

You are further advised to start paying rent from July 1, 1972 onward at increased rate of Rs. 55.68 p.m. inclusive of service charges as your monthly income is in the range of Rs. 351 to Rs. 425, Rs. 426 to Rs. 500 and above Rs. 500 p.m. If you fail to pay the increased amount as intimated, it will be presumed that you are not accepting the increase and are not interested to retain the tenement and further action as permissible will be pursued to effect the recovery of amount and to take vacant possession of the tenement from you.

6. A similar notice dated January 30, 1973 was given to appellant 1 stating therein that in his case the income limit had exceeded prior to April 20, 1966 and he was liable to be charged graded rent, w.e.f. that date. Accordingly arrears of rent to the tune of Rs. 2145.91 were demanded from him for the period April 20, 1966 to December 31, 1972 and he was asked to pay on and from January 1, 1973 an increased rate of rent of Rs. 56.26 per month inclusive of service charges.

7. The appellants filed a writ petition in the High Court challenging the enhanced demand of rent from them both for the past and the future periods. Their writ petition was dismissed by a learned single Judge of the High Court and their writ appeal failed before the Division Bench in view of another Division Bench decision of the High Court given a few months earlier in an identical matter in the case of some other industrial workers. Hence this appeal in which the only question to be decided is about the demand for the arrears of enhanced rent.

8. Regulation 3 says :

All residential tenements constructed or reconditioned under the Housing Programme approved by the Government shall be classified in accordance with Government's direction into (i) those exclusively reserved for Industrial Workers, and (ii) those open to the general public for the low income groups (including Industrial Workers).

9. The relevant portion of Regulation 4 runs thus :

Tenements in class (i) shall be let at such subsidised rents as Government may, by special orders fix, while tenements in class (ii) shall be let at the economic rent calculated in accordance with the formula decided by Government from time to time.

Eligibility for the unreserved tenements as per Regulation 6 was limited by the maximum total income of all the earning members of the applicant's family proposing to lodge together. As per Regulation 7 "the maximum limit of family income in relation to subsidised rents shall be Rs. 350

per mensem and in relation to economic rent Rs. 500 per mensem". In accordance with Regulation 19 the successful applicants were required to execute an agreement in Form II appended to the Regulations. As already stated, the two appellants executed the agreement in Form II and over and above that on the date of the execution of the agreement also gave an undertaking in writing which to all intents and purposes forms part of the agreement. It may, in passing, be stated here that some forms of undertaking are also appended to the Regulations but the relevant undertaking with which we are concerned in this appeal was of a different nature, yet undoubtedly was binding on the appellants.

10. We may refer to some relevant clauses of the agreement executed by the appellants. They are :

2. To pay such increase in the said monthly rent and other charges as the Board may consider it fit or expedient to impose on account of any increase in such rates, taxes, cesses or other service charges or on account of any additions and/or alterations to or any conveniences provided at the said premises or the building in which the same are situate.

17. The tenancy will be terminable by either side giving to the other, one clear calendar month's notice . . . .

18A. As the said premises have been let out to me at a subsidised rent by reason of my being an industrial worker governed by the Factory Act, 1948 the tenancy shall cease forthwith as soon as I cease to be an industrial worker.

B. In June and December every year necessarily and at any other time if and when required by the Board I shall supply a certificate that I continue to be an industrial worker and other detailed information about the total monthly income i.e., pay, allowances, etc. of myself and all the earning members of my family residing with me together with necessary certificates from the respective employers of each such earning member.

20. The tenancy shall be subject to the provisions of the Maharashtra Housing Board Act, 1948 and the Rules, Regulations and bye-laws thereunder for the time being in force.

22. I agree that the undertakings in the application form and other undertakings signed by me this day and attached to the Tenancy Agreement form part of this tenancy agreement.

11. The relevant words of the undertaking read as follows :

This is to record that I, R.G. Manjire have been allotted by the Maharashtra Housing Board tenement 1916 in Block 54 at Government Housing Colony, Chembur with effect from January 9, 1959 by virtue of my being an Industrial Worker and that the subsidised rent for the above tenement inclusive of service charges has been provisionally fixed at Rs. 27 per month and the service charges have also been provisionally fixed at Rs. 6 per month and are liable to be increased. I record that I have agreed and undertaken to pay the rent and service charges including water tax and other charges as may be from time to time be levied and/or fixed by or on behalf of the Board to accept its decision as final and binding. I have also agreed and bound myself to pay to the Board the excess being the difference between the present and the revised rate of rent and service charges from the date of allotment on receipt of such intimation from or on behalf of the Estate Manager, Maharashtra Housing Board, Bombay and to accept the revised rate of rent and service charges for the

future as well.

12. Initially the question which was canvassed before us and falls for our determination is whether the Board was entitled to charge enhanced rent as per the terms of the Regulations, the agreement and the undertaking on the ground that on the crossing of the wage limit mentioned in Regulation 7 the tenant became liable to pay enhanced rent as soon as he crossed the maximum wage limit. The High Court has taken the force as such. But this seems to be contrary to the decision of this Court in *Sukhdev Singh v. Bhagatram Sardar Raghuvanshi* [(1975) 3 SCR 619 : (1975) 1 SCC 421 : 1975 SCC (L & S) 101]. For the decision of the point at issue, however, it will not make any difference. No Regulation clearly provides the effect of crossing the maximum limit of family income. As per Regulation 4 tenements in class (i) or in class (ii) can be let out at such subsidised rents as Government may by special orders fix or at the economic rent calculated in accordance with the formula decided by Government from time to time. Different subsidised rents reducing or enhancing the amount of subsidy can be fixed by the Government from time to time. But one thing is clear, even in absence of any specific Regulation in that regard, that on the crossing of the maximum wage limit, the industrial worker shall not be entitled to continue in the tenement let out to him on the subsidised rent fixed on the basis of the income limit as per Regulation 7. Out of the consequences mentioned hereinafter, either one or the other may follow. He may cease to be a tenant unless and until the tenement is allotted to him on the basis of the increased wage limit or he may be liable to pay the economic rent or full economic rent on the crossing of the wage limit. Even assuming that this result does not automatically follow, on the general principles of law in absence of a clear Regulation being there, the tenancy could be terminated by one month's notice as per clause (17) of the agreement.

13. The terms of the agreement and the undertaking are also ambiguous and not clear enough to entitle the Board to claim enhanced rent from an industrial worker on his crossing the particular wage limit. The terms are capable of an interpretation which may be favorable either to the Board or to the industrial worker. The High Court has interpreted them in favour of the former. Although we are not prepared to say that the interpretation put by the High Court is necessarily wrong, because of the ambiguity of the language, as we shall presently show, we do not propose to rest our judgment on such interpretation of the terms only. Clause (2) of the agreement is concerned with increase in the monthly rent and other charges as the Board may consider fit or expedient to impose "on account of any increase in such rates, taxes, cesses or other service charges or on account of any additions and/or alterations to or any conveniences provided at the said premises or the building in which the same are situate". The said clause does not cover a case of increase of rent by reduction of subsidy on the ground of increase in the wage limit. Clause (18A) provides that the tenancy shall cease as soon as the tenant ceases to be an industrial worker. But then clause (18B) requires him to give certain information including a detailed information about his total monthly family income. The purpose of this requirement obviously is to find out whether a particular industrial worker has crossed the wage limit, if so, when. Yet, as a follow-up action, no clear clause is to be found in the agreement providing for reduction of subsidy and increase of rent on the crossing of a particular wage limit.

14. Similarly the phraseology of the undertaking which we have extracted above is also too vague and ambiguous to enable us to say that by itself can undoubtedly lead to the conclusion that the Board could enhance the rent on the crossing of the wage limit by an industrial worker. It is no doubt true that the undertaking mentions that the rent fixed was provisional and that the worker undertook to pay the rent and service charges as may from time to time be levied and fixed by and on behalf of the Board. But in the sentence following the said words the use of the expression "date

of allotment" created the difficulty in our straightway accepting the interpretation put by the High Court as correct. It appears to us that the wordings in the undertaking are capable of the meaning that the subsidised rent originally fixed was a provisional one. It could be increased and enhanced by the Board even from the date of allotment and the industrial worker would be liable to pay the same. But we remained curious to know as to why a clear provision was not made either in the Regulations or in the agreement and the undertaking to say, as obviously it could be done, as to what will be the consequences which would follow when an industrial worker crossed the maximum wage limit. Mr. Sanghi for the appellants and M/s S.T. Desai and V.S. Desai for the respondents Board and State of Maharashtra endeavoured to put interpretations which were favorable to their respective clients. But feeling some difficulty in accepting either of the two rival contentions to our satisfaction, we proceeded to examine further the additional submissions made on behalf of the Board. And that to our mind put the matter beyond any doubt.

15. Our attention was drawn to letter 5/24/62-HI, dated April 20, 1966 written by the Government of India, Ministry of Works, Housing and Urban Development to the Housing Secretaries of all Governments drawing their attention to the earlier letter dated January 19, 1966 of the Government of India, the relevant portion of which says -

that the recommendation of the Housing Minister's Conference held at Chandigarh in December, 1964, regarding retention of houses built under the subsidized Industrial Housing Scheme by allottees on their crossing the wage-limit of Rs. 350 per month, has been considered further by the Government of India and the following decisions have been taken :

(i) An eligible worker, so long as he remains as industrial worker, may be allowed to retain the house allotted to him even after crossing the prescribed wage limit of Rs. 350 p.m. till he reaches the wage limit of Rs. 500 p.m.

(ii) No worker who has crossed the wage limit of Rs. 500 p.m. should be allowed to retain the house from the date his wages exceed the above mentioned limit.

(iii) Workers, who cross the wage limit of Rs. 350 p.m. should not be allowed to retain the houses on the full subsidized rent. In their case the element of subsidy in rent should be gradually reduced and they should be required to pay additional charges over and above the subsidized rent as follows :

# Wage group of workers Additional charges (1) Rs. 351 to Rs. 485 per 40 and 80% of the interest charges month on the month subsidy for construction of the house, respectively. (2) Rs. 426 to Rs. 500 per month##

Paragraphs (3) and (5) of the letter dated April 20, 1966 state further as follows :

(3) These workers, who having crossed the wage limit of Rs. 350 p.m. are entitled to pay subsidized rent for a period of three months in accordance with the instructions contained in this Ministry's letter 5/1/1964-HI, dated April 30, 1964, may be allowed to avail of this concession for the above mentioned period of three months only and thereafter they will be required to pay additional charges as indicated in sub-para 1(iii) above.

(5) The State Governments are requested to take further action in pursuance of the above decision.

16. Pursuant to the letter aforesaid the State Government wrote to the Board, a letter dated July 8, 1967 stating therein :

I am directed to state that tenements constructed under the Subsidized Industrial Housing Scheme are allotted to industrial workers whose monthly income does not exceed Rs. 350. It was however pointed out by the Accountant General, Maharashtra, Bombay, that certain industrial workers who had crossed the income limit of Rs. 350 per month were being charged subsidized rent by the Board. In the absence of any clear and specific provisions it was all along assumed that the income limit laid down under the Scheme is to be enforced only at the time of initial allotment.

2. The question of eviction of workers who had crossed the prescribed wage limit of Rs. 350 per month was discussed in the eighth Housing Minister Conference held at Chandigarh in December, 1964 and as a result the Government of India directed the State Government of India have directed the State Government to take action in pursuance of the decision contained in their letter 5/24/62/HI, dated April 20, 1966 (copy enclosed).

3. The instructions contained in the Government of India's letter referred to above, have been examined and it has now been decided by Government as follows :

(i) The industrial workers who have crossed the wage limit of Rs. 350 but whose wages do not exceed Rs. 500 should be charged additional rent over and above the subsidized rent in accordance with the decisions contained in the Government of India letter from the said date, as follows, after giving them due notices as required under the Regulations.

# Wage group of workers Additional charges (1) Rs. 351 to Rs. 425 per 40 and 80% of the interest charges month the month subsidy for construction of the house, respectively.(2) Rs. 425 to Rs. 500 per month##

(ii) The industrial workers who have crossed income limit of Rs. 500 p.m. on April 20, 1966, or from a subsequent date, should be charged economic rent from this date. Arrangements may however, be made to provide them accommodation under the Middle Income Group Housing Scheme, to the extent possible and in the event of their refusing to pay economic rent or agreeing to shift to the tenements provided for them under the Middle Income Group Housing Scheme, necessary steps for eviction should be taken.

17. It appears pursuant to the direction of the State Government contained in their letter dated July 8, 1967, notices started being given to the various industrial workers. Of Course, the notices which were given to the appellants were after great delay of about more than five years. Nonetheless the demand made in the notices is in accordance with the said direction of the State Government.

18. Section 73A of the Act provides :

The State Government may give the Board such directions as in its opinion are necessary or expedient for carrying out the purposes of this Act. It shall be the duty of the Board to comply with such directions.

It is manifest that the directions given by the State Government in their letter dated July 8, 1967 would be squarely covered by the provision of law aforesaid and the Board was obliged to comply with it. The direction was in no sense either contrary to the Regulations or to the terms of the agreement and the undertaking. On the other hand, it was for the purpose of removing the ambiguity which had remained in them. It was quite fair and reasonable to reduce the subsidy and demand the enhanced or the economic rent, as the case may be, on the crossing of a particular wage limit. Appellant 1 had crossed that wage limit before April 20, 1966. Demand of enhanced rent on and from that date was in no way contrary to the law, the Regulations and the terms of the agreement and the undertaking. It was within the power of the State Government to give the direction charging the enhanced rent from a back period as and when the maximum wage limit had been crossed by a particular industrial worker, of course, giving him the concession of three months period. Mr. Sanghi's contention that no demand for enhanced rent or economic rent in respect of a period prior to the giving of the notice could be made is not sound and hence not acceptable to us. It must be emphasised, as we have already indicated above, that the industrial worker was not entitled to insist to continue in the tenancy on a particular subsidized concessional rate of rent which had been initially fixed on the basis of his being below the wage limit of Rs. 350 per month in relation to his family income.

19. For the reasons stated above, we affirm the decision of the High Court although on a somewhat different basis and dismiss this appeal. In the circumstances, however, we shall make no order as to costs.

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