

Shivram Anand Shiroor

Vs

Mrs. Radhabai Shantram Kowshik and Another

Civil Appeal No. 2906 of 1981

(O. Chinnappa Reddy, E. S. Venkataramiah, R. B. Misra JJ)

31.01.1984

JUDGMENT

CHINNAPPA REDDY, J. -

1. The appellant in this appeal by special leave under Article 136 of the Constitution was a member of the armed forces of the Union from August 1942 until August 17, 1970 when he retired from the Army. In 1964, he became the owner of a flat in a co-operative society in Tardeo, Bombay having inherited the same from his brother. The respondent was already the tenant of the premises when the appellant inherited it as the owner. Soon after his retirement, the appellant filed a suit for ejectment, against the respondent on the grounds of default in payment of rent, bona fide personal requirement and unlawful subletting. This was 1971. While the suit was still pending, the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 was amended in 1975 by the introducing of Section 13-A1. This was a special provision aimed at enabling a member of the armed forces of the Union or a retired member of the said armed forces to recover possession of premises bona fide required by him for his occupation or the occupation of members of his family on the production of a certificate from the Head of the Service or the Commanding Officer. The certificate was to specify that the individual concerned was presently a member of the armed forces of the Union or that he was such a member and was now a retired ex-servicemen and that he did not possess any other suitable residence in the local area where he or any member of his family could reside. It was further provided that the certificate was to be conclusive evidence of the facts stated therein. An important distinction between the general provision contained in Section 13(1)(g) and the special provisions section 13-A1 is that under the special provision a tenant is disabled from taking advantage of Section 13(2) which provides that no decree for eviction shall be passed on the ground specified in Section 13(1)(g) if the court is satisfied that having regard to all the circumstances of the case, greater hardship would be caused by passing the decree than by refusing to pass it. The appellant, therefore preferred to file a fresh suit for eviction of the respondent under Section 13-A1 of the Bombay Rent Act rather than pursue the suit filed in 1971. He filed a fresh suit under the new provision. He produced the certificate required to be produced under Section 13-A1. The Rent controller and the Appellate Authority concurrently found that the appellant bona fide required to flat for his own occupation and decreed the suit. The tenant moved the High Court of Bombay under Article 227 of the Constitution. A learned Single Judge of the High Court while not interfering with the concurrent finding of the subordinate tribunals that the landlord bona fide required the premises for his own occupation nevertheless set aside the decree for eviction on the ground that Section 13-A1 did not enable a member or a retired member of the armed forces to seek the remedy provided by Section 13-A1 of the Bombay Rent Act if the premises were already in the occupation of the tenant when he became the landlord while being a member of the armed forces. The landlord has appealed under Article 136 of the Constitution.

2. Section 13-A1 of the Bombay Rent Act is as follows :

13-A1. Notwithstanding anything contained in this Act, -

(a) a landlord, who is a member of the armed forces of the Union, or who was such member and is duly retired (which term shall include premature retirement), shall be entitled to recover possession of any premises, on the ground that the premises are bona fide required by him for occupation by himself or any member of his family (which term shall include a parent or other relation ordinarily residing with him and dependent on him); and the court shall pass a decree for eviction on such ground if the landlord, at the hearing of the suit, produces a certificate signed by the Head of his Service or his Commanding Officer to the effect that -

(i) he is presently a member of the armed forces of the Union nor he was such member and is now a retired ex-servicemen;

(ii) he does not possess any other suitable residence in the local area where he or the members of his family can reside;

(b) where a member of the armed forces of the Union dies while in service or such member is duly retired as stated above and dies within five years of his retirement, his widow, who is or becomes a landlord of any premises, shall be entitled to recover possession of such premises, on the ground that the premises are bona fide required by her for occupation by herself or any member of her family (which term shall include her or her husband's parent or other relation ordinarily residing with her; and the court shall pass a decree for eviction on such ground, if such widow, at the hearing of the suit, produces a certificate signed by the Area or Sub-Area Commander within whose jurisdiction the premises are situated to the effect that -

(i) she is a widow of a deceased member of the armed forces as aforesaid;

(ii) she does not possess any other suitable residence in the local area where she or the members of her family can reside.

Explanation 1. - For the purpose of clause (a) of this section, the expression "the Head of this Service" in the case of officers retired from the Indian Army includes the Area Commander, in the case of officers retired from the India Navy includes the Flag Officer Commanding-in-Chief, Western Naval Command, and in the case of officers retired from the India Air Force includes the Station Commander.

Explanation 2. - For the purpose of this section, any certificate granted thereunder shall be conclusive evidence of the facts stated therein.

3. It is true, as pointed out by the learned single Judge, the Bombay Rent Act is a welfare legislation designed among other matters, to protect tenants from harassment and unreasonable eviction by landlords and it should, therefore be interpreted in a broad and liberal spirit so as to further and not to constrain the object of the Act. We also agree that the exclusionary provisions in the Act should be construed strictly so as to give a wide amplitude to the principal object of the legislation and to prevent its evasion on deceptive grounds. But this does not mean that the intention of the Legislature, expressed with sufficient vocabular clarity or gathered by reference to permissible

sources, may be bypassed to accommodate individual versions of what may appear reasonable. The task of all interpreters is to ascertain intention, It is often said, where the words of a statute are clear and unambiguous, there can arise no question of construction. Such words ordinarily speak for themselves. Since the words must have spoken as clearly to legislators as to Judges, it may be safely presumed that the legislature intended what the words plainly say. This is the true basis of the so-called golden rule of construction that "Where the language of an Act is clear and explicit, we must give effect to it, - for in that case the words of the statute speak the intention of the Legislature". A court shall give effect to plain words, not because there is any charm or magic in the plainness of such words but because plain words may be expected to convey plainly the intention of the Legislature. Bearing these general principles in mind, if we look at Section 13-A1 against the background and in the light of the object and the remaining provisions of the Act, what do we find ? As we said earlier one of the principle objects of the Act is to protect the tenant against unreasonable eviction by a landlord. So, the Act stipulates the grounds on which a landlord may seek eviction of a tenant. Section 13(1)(g) in particular enables a landlord to recover possession of any premises if the court is satisfied "that the premises are reasonably an bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held" So solicitous indeed is the Legislature about protecting the tenant the Section 13(2) contains a further stipulation that :

"No decree for eviction shall be passed on the ground specified in clause (g) of Sub-section (1) if the court is satisfied that, having regard to all the circumstances of the case including that question whether other reasonable accommodation is available for the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it" and "Where the court is satisfied that no hardship would be caused either to the tenant or to the landlord by passing the decree in respect of a part of the premises, the court shall pass the decree in respect of such part only".

Notwithstanding the expressed legislative bias in favour of the tenant, the Legislature itself made a serious departure from the general rule so as to lean in favour of landlords who are or were members of the armed services, and who because of the exigencies of their service were not able to occupy their own premises during the course of their service. Section 13-A1 was enacted, relaxing the rigour of Section 13 in favour of a landlord who is or was a member of the armed forces. It is now provided that if he produces a certificate in the manner prescribed it shall be taken as established, without further proof that he is presently a member of the armed forces of the Union or that he was such member and is now a retired ex-servicemen and that he does not possess any other suitable residence in the local area where he or any member of his family can reside. All that he has to further prove is that he bona fide requires the premises for occupation by himself or any member of his family. the certificate is conclusive proof that he does not possess any suitable residence in the local area, but not that he bona fide requires the same for occupation by himself or any member of his family. There may be cases where he does not possess any other suitable residence in the local area and yet he does not bona fide require the premises for occupation by himself or any member of his family, being comfortably settled elsewhere with no need or pressure to move. But so soon as he establishes that he bona fide requires the premises for occupation for his family, he is entitled to recover possession and does not have to further prove that greater hardships would be caused to him that to the tenant if a decree for possession is not granted. It is of course, implicit that the person producing the certificate is the landlord. It is further implicit that the person mentioned in the certificate presently or previously a member of the armed forces was at a simultaneous point of time both landlord and member of the armed forces. This has been laid down recently by this Court in *Winifred Ross v. Ivy Fonseca* ((1984) 1 SCC 288) where it was observed : (SCC pp. 292, 295, paras

5, 10)

... Having regard to the object and purposes of the Act and in particular Section 13-A1 it is difficult to hold that Section 13-A1 can be availed of by an ex-member of the armed forces to recover from a tenant possession of a building which he acquires after his retirement....

Since a liberal interpretation of Section 13-A1 of the Act is likely to expose it to a successful challenge on the basis of Article 14 of the Constitution, it has to be read down as conferring benefit only on those member of the armed forces who were landlords of the premises in question while they were in service even though they may avail of it after their retirement. Such a construction would save it from the criticism that it is discriminatory and also would advance the object of enacting it, namely, that members of the armed forces should not while they are in service feel worried about the difficulties of a long drawn out litigation when they wish to get back the premises which they have leased out during their service...

But we find it impossible on the plain language of Section 13-A1 to further read down the provision as enabling a member or a retired member of the armed forces to recover possession when he was a member of the armed forces and not if the tenancy had commenced before he became the landlord of the premises either by inheritance, partition, or any other mode of transfer of property. To place such an interpretation would be to virtually rewrite the provision. The language of Section 13-A1 which is sufficiently plain does not warrant or invite such an interpretation. Nor is there anything elsewhere in the Act which compels such a construction. The statement of objects and reasons was read to us. It says :

Defence services personnel are liable to transfers and to be stationed in different parts of the country. They are often posted at non-family stations. Some of these personnel, who possess their own premises either in their home towns or elsewhere have necessarily to hire them out to other persons temporarily while they are away on duty. It has been represented to the State Government by the military authorities that on their retirement or transfer to non-family stations the serving and ex-service personnel find it extremely difficult to regain possession of their premises which they badly require for personal occupation permanently or for housing their families for the duration of their posting at non-family stations. In case of death of a service personnel while in service or death of ex-service personnel shortly after the retirement, the widow also finds it extremely difficult to regain possession of their premises for her personal occupation or occupation of her family.

The cases of defence services personnel due to their special obligations and disabilities do need different treatment from that accorded to other landlords and in fact special provisions have been made for them in some of the States, whereby processes for each personnel to regain possession of their premises have been simplified and made more effective.

It is considered necessary to make a special provision in the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 to enable a member or retired member of the armed forces of the Union or a widow of such a member who dies while in service, or who dies within five years of his retirement to regain possession of their premises, when bona fide required for occupation by them or members of their families and to provide that the court shall be bound to pass a decree for eviction on such ground if such member or widow, as landlord, produces at the hearing of the suit,

the necessary certificate signed by the Head of his Service or his Commanding Officer or the Area or Sub-Area Commander within whose jurisdiction the premises are situated.

The Bill is intended to achieve these objects.

It was said that the use of the words 'regain possession' in the statement of objects and reasons indicated that the member of the armed forces must have himself given possession, that is, he must have himself let the tenant into possession. We cannot read so much into the statement of objects and reasons and into the statute, via the statement of objects and reasons. The words 'regain possession' in the context, are merely meant to convey 'obtain possession'. To our mind, the intention of the Legislature is expressed with sufficient clarity, by the language of Section 13-A1 and there is nothing either in the statute or in the statement of objects and reasons to suggest that the intention of the Legislature was other than what we have said. We therefore, allow the appeal, set aside the judgment of the High Court and restore those of the Rent Controller and the appellate authority. The parties will bear their respective costs. The respondents are given time till September 30, 1984 to vacate the premises subject to their filing within four weeks from today an undertaking which shall be in the form usually adopted in the Court.

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