

Karam Chand Thapar and Bros. Private Ltd.

Vs

A. B. Gujral

Civil Appeal No. 1940 (N) of 1974

(K. N. Singh, O. Chinnappa Reddy JJ)

09.04.1986

JUDGMENT

CHINNAPPA REDDY, J. –

1. Mohini Sugar Mills Limited is one of the Thapar Group of Companies. In the days when the Managing Agency System prevailed, Karam Chand Thapar and Bros. Private Limited were the managing agents of Mohini Sugar Mills Limited. The Managing Director of Karam Chand Thapar and Bros. Private Limited is Karam Chand Thapar. On January 1, 1984 A. B. Gujral was appointed as an assistant in the office of Mohini Sugar Mills Limited by Karam Chand Thapar, for and on behalf of Karam Chand Thapar and Bros. Private Limited, for Mohini Sugar Mills Limited. A memorandum of agreement was signed by A. B. Gujral and Karam Chand Thapar on behalf of Karam Chand Thapar and Bros. Private Limited who were the managing agents of Mohini Sugar Mills Limited. The agreement stipulated that the assistant would be employed at any of the offices of the company, wherever situate, as the company or its Managing Director might specify from time to time. It was stipulated that the Assistant would be entitled to "a rent free quarters or where quarters be not available the actual house rent not exceeding 15 per cent of his salary". It was also agreed by the Assistant that his services may be transferred at any time and from time to time by the company or its managing agents to any other company under the Managing Agency of Karam Chand Thapar and Bros. Private Limited and that in the event of such transfer the same terms and conditions of service would continue to be effective. Flat No. 18 in Mohini Mansions was allotted for the occupation of A. B. Gujral by Karam Chand Thapar, owner of Mohini Mansions. Some time in 1946, A. B. Gujral was transferred from the employment of Mohini Sugar Mill Limited to that of Karam Chand Thapar and Bros. Private Limited. He also moved from flat No. 18 to flat No. 29 in Mohini Mansions. He executed a letter in favour of Karam Chand Thapar and Bros. Private Limited confirming that he would remain in occupation of flat No. 29 so long as he was in their service and that he would vacate the flat within 15 days if he ceased to be in the employment of Karam Chand Thapar and Bros. Private Limited or a company of their management. It appears that some time in 1948 Karam Chand Thapar sold Mohini Mansions to Indian City Properties Limited, also a company of the Thapar Group. Karam Chand Thapar and Bros. Private Limited formally wrote to Indian City Properties Limited acknowledging the ownership of the latter of the building and intimating the arrangement made with Karam Chand Thapar that the flats which were in their tenancy and the occupation of their employees would continue to be so. M/s Indian City Properties Limited also wrote to Karam Chand Thapar and Bros. Private Limited acknowledging the arrangement between Karam Chand Thapar and Bros. Private Limited by which the employees of Karam Chand Thapar and Bros. Private Limited were allowed to occupy the flats in the tenancy of Karam Chand Thapar and Bros. Private Limited. So long as A. B. Gujral was in the employment of Karam Chand Thapar and Bros. Private Limited, rent of the flat was deducted from the salary every

month. In August, 1950, A. B. Gujral resigned from the service of the company. He, however, did not vacate the flat. Karam Chand Thapar and Bros. Private Limited filed a suit under the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 but that suit was dismissed. Thereafter West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 was repealed and the West Bengal Premises Tenancy Act, 1956 was enacted. The new Act made provision by Section 13(g) for the eviction of erstwhile employees who had been let into premises by reason of their service or employment. Karam Chand Thapar and Bros. Private Limited filed a suit for eviction of A. B. Gujral alleging that flat No. 29 of Mohini Mansions had been let to A. B. Gujral as their employee and, that as he had ceased to be in their employment, they were entitled to obtain possession of the flat from A. B. Gujral. The suit was dismissed by the trial court, and the dismissal of the suit was confirmed in appeal and second appeal by the lower appellate court and the High Court. The suit was dismissed by the three courts primarily on the ground that Section 13(1)(g) of the West Bengal Premises Tenancy Act, 1956 was not attracted as the employer and the landlord were different persons. According to the lower courts while the respondent was let into possession by Karam Chand Thapar, his employer was either Mohini Sugar Mills Limited or Karam Chand Thapar and Bros. Private Limited. It was also held by the trial court and the appellate court, though not by the High Court, that the letter addressed by the respondent to Karam Chand Thapar and Bros. Private Limited was taken from him by undue influence. Karam Chand Thapar and Bros. Private Limited have preferred this appeal by special leave of this court.

2. Section 13(1)(g) of the West Bengal Premises Tenancy Act reads as under :

Notwithstanding anything to the contrary in any other law, no order or decree for the recovery or possession of any premises shall be made by any court in favour of the landlord against a tenant except on one or more of the following grounds, namely :

(g) where the premises were let to the tenant for use as residence by reason of his being in the service or employment of the landlord and the tenant has ceased before or after coming into operation of this Act to be in such service or employment.

The memorandum of agreement between Mohini Sugar Mills Limited and A. B. Gujral was signed, as mentioned by us already, by Karam Chand Thapar, Managing Director of Karam Chand Thapar and Bros. Private Limited, managing agents, for and on behalf of Mohini Sugar Mill Limited. It is to be remembered that Mohini Sugar Mills Limited is a company of the Thapar group of Companies and it is also to be remembered that at the time of the agreement, Karam Chand Thapar was the owner of Mohini Mansions. One of the express recitals in the agreement was that A. B. Gujral had agreed to the transfer of his service to any other company under the managing agency of Karam Chand Thapar and Bros. Private Limited. In fact some time subsequent to his joining service under Mohini Sugar Mills Limited, A. B. Gujral's services appear to have been transferred to Karam Chand Thapar and Bros. Private Limited. The whole arrangement appears to have been that A. B. Gujral should be an employee of one of the Thapar group of companies and that as such employee, he should be permitted to occupy a flat in Mohini Mansions belonging to Karam Chand Thapar. A. B. Gujral became a tenant of flat No. 18 on his becoming an employee pursuant to the agreement. In his evidence, A. B. Gujral stated : "I was not in occupation of any flat in Mohini Mansions before I joined services under the plaintiff-company". This is a very significant admission showing that the occupation of the flat by the respondent was coincidental with and incidental to his joining service under the plaintiff company, that is, Karam Chand Thapar and Bros. Private Limited. It looks as if the respondent always treated Karam Chand Thapar and Bros. Private Limited as his employer and as the person who let the flat to him. In fact, it does not appear that the respondent ever made any

distinction between Karam Chand Thapar, Karam Chand Thapar and Bros. Private Limited and Mohini Sugar Mills Limited. So far as he was concerned, it was Karam Chand Thapar and Bros. Private Limited alone that was employer as well as landlord. The letter executed by him also makes this clear. In the letter addressed to Karam Chand Thapar and Bros. Private Limited, he stated in the first paragraph : "So long as I shall remain in your service, I will occupy your flat No. 29 at the above premises for my personal residence." In regard to his letter, he stated in the evidence that he refused to sign it at first but later he met Mr. Karam Chand Thapar and on his asking him to do so, he put his signature on it. At that time, he said, he was in the service of the company and he thought that his service might be jeopardised if he did not sign the letter. This evidence can hardly be the basis for a finding that the writing of the letter was vitiated by undue influence. Such a letter as that written by A. B. Gujral and addressed to Karam Chand Thapar and Bros. Private Limited is one which may be taken by any employer from any employee who has been provided with accommodation by the employer. To say that such a letter is vitiated by undue influence merely because the employee was in the service of the employer at the time of writing the letter would be going too far. We find that even after the respondent left the employment of Karam Chand Thapar and Bros. Private Limited, he continued to address correspondence to them whenever he wanted any repairs to be made in the flat, treating Karam Chand Thapar and Bros. Private Limited as his landlord. On December 18, 1951, under his instructions, a lawyer wrote to Karam Chand Thapar and Bros. Private Limited stating that A. B. Gujral was their tenant in respect of flat No. 21 and calling upon them to repair the commode and the wash-basin in his flat. The facts of the case speak for themselves and we do not have any doubt that so far as the respondent is concerned, he never made any distinction between Karam Chand Thapar and Karam Chand Thapar and Bros. Private Limited and he always found sufficient and complete identity between his landlord and employer. He successfully out-manoeuvred the appellant for over 35 years. But we think the time has come to recognise the facts for what they are. The appeal is allowed with cost throughout and there will be an order for eviction of the respondent.

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