

Maneklal and Sons

Vs

Trustees of Port of Bombay and Others

Special Leave Petition (Civil) No. 9887 of 1987

(Sabyasachi Kukharji, G. L. Oza JJ)

14.10.1987

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. This petition is for leave to appeal against the judgment and order of the Division Bench of the Bombay High Court dismissing Letters Patent appeal from the order of the learned Single Judge. Respondent 1 being the Trustees for the Port of Bombay are the owners of plot of land bearing Plot No. 62 admeasuring 576 sq. yards lying and situate in Poona Street, Elphinstone Estate, Bombay-3. In or about 1945 the trustees of the Port of Bombay granted lease of the said plot of land to one Mustafa Husein for the purpose of erecting a godown for carrying on commercial activities at a monthly rent of Rs. 925 which later on was increased to Rs. 1465. In or about 1946 Mustafa Husein being the lessee of respondent 1 erected a permanent godown of brick, mortar and cement. The said Mustafa Husein in 1958 granted lease of the said godown to the petitioners the area of the godown is about 3000 sq. ft. It is alleged that petitioners have since been carrying on their business in the said godown. The Trustees of the Port of Bombay filed suit against the heirs of Mustafa Husein for eviction from the lease granted to Mustafa Husein for termination of the tenancy. The ground for eviction was termination of tenancy. The Trustees of the Port of Bombay in July 1977 obtained a decree on admission against the heirs of Mustafa Husein in the said suit. In or about May 1985 warrant of possession in execution of decree dated July 20, 1977 was sought to be executed against the petitioners. The petitioners obstructed the execution of the decree. Thereupon in or about June 1985, the Trustees of the Port of Bombay took out a Chamber Summons in the High Court of Bombay for removal of obstruction under Order 21 Rules 97 to 101 of the Code of Civil Procedure. Petitioners contended that they were lessees under the said Mustafa Husein and as such they were entitled to the protection of the Bombay Rent, Hotel and Lodging Houses Rates (Control) Act, 1947 hereinafter called the Bombay Rent Act, as the Bombay Rent Act applied to the building erected by a lessee from the local authority and as such the petitioner's right of possession was protected under the provisions of the Bombay Rent Act. The learned trial court allowed the Chamber Summons and rejected the petitioner's contentions. He observed that it was not necessary to record evidence in this case. The petitioners being aggrieved preferred a first appeal. The learned Single Judge of the High Court dismissed the first appeal holding that the petitioners were not entitled to the benefit of the Bombay Rent Act and negatived the contentions arising out of the Easement Act and also arising out of the alleged acquiescence of the Trustees of the Port of Bombay. The petitioners preferred Letters Patent appeal which was also dismissed by the Division Bench of the Bombay High Court. The High Court observed that if the contentions of the petitioners were accepted then the provisions of Section 4(1)(a) of the Bombay Rent Act would become nugatory. Being aggrieved therefrom the petitioners seek leave to appeal to this court under Article 136 of the Constitution.

2. The question is, whether the petitioners are entitled to protection under Section 4(1)(a) of the Bombay Rent Act. The answer will depend upon the question whether there was any building lease granted to the original tenant Mustafa Husein. There was none, at least no such evidence was adduced before the learned trial judge or before the Division Bench of the High Court. When the matter came before this Court for admission by our order dated September 17, 1987 as the question involved was whether there was any agreement or lease with the lessor that they will have to construct building on the land demised to them, but as no such lease had been produced so far, time was granted for production of such evidence.

3. Pursuant to the same today we have been shown two letters, one dated April 16, 1951 written by the architect of the lessor forwarding the plans in triplicate to the Bombay Port Trust for approval, and the other letter dated June 14, 1951 written by the Manager, Land and Bunders to the architect of the lessor on the following subject :

Elphinstone Estate Reconstruction of a Shed on Monthly Tenancy Plot at Poona Street.

The petitioners were informed that the plan was approved subject to the compliance with the municipal regulations.

4. This question arose in the Bombay High Court in Ram Bhagwandas v. Municipal Corporation of the City of Bombay (AIR 1956 Bom 364). There interpreting the Bombay Rent Act and Sections 4(1) and 4(4)(a) thereof Chief Justice Chagla speaking for the Division Bench held that the proper interpretation to put upon Section 4(4)(a) was that "under an agreement, lease or grant" must qualify both "building erected" and "land held". In other words, the building must be erected by the lease pursuant to the agreement, lease or grant given to the person who held the land under that agreement, lease or grant. Therefore, where a building was erected by the lessee not pursuant to any agreement with the lessor or not under any agreement with the lessor then the case did not fall under Section 4(1)(a).

5. What Section 4(1) does is to give immunity to the local authority in respect of the land which it has let out to the lessee and that immunity cannot be taken away merely because the lessee on his own volition and without being under any obligation under any agreement chooses to put up structures on that land.

6. Section 4 deals with exemptions and sub-section (1) provides 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.

7. Therefore, if we have premises which belong to government or a local authority, then the Act would not apply. The land here belongs to the local authority but the structures were put on by the lessees of the Port not under any building lease, and such protection cannot be claimed in respect of these premises. Sub-section (4)(a) of Section 4 is also relevant. It says :

The expression premises belonging to the government or 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.

8. Chief Justice Chagla considered the historical background under which Section 4(4)(a) was enacted by the Bombay Act 4 of 1953. This decision was approved by this Court in *Kanji Manji v. Trustees of the Port of Bombay* (1962 Supp 3 SCR 461 : AIR 1963 SC 468). Sub-section (4)(a) and (b) read 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.

9. This Court observed at pages 471-72 of the report that this was introduced by amendment and the purpose of the amendment was as follows :

The amendment achieved two different things. It enabled the lessee of the particular kind of building described in clause (a) to create sub-tenancies in spite of the ban against sub-tenancies contained in Section 15. It also excluded from the operation of sub-section (1) the buildings specified in clause (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-section (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-section (4)(a) of Section 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* (AIR 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 Order 21, Rule 103 of the Civil Procedure Code against Municipal Corporation, but the suit was demised. In the appeal which was filed in the High Court, it was conceded that the Municipal Corporation was the owners of the plots in questions, but protection was claimed on the basis of sub-section (4)(a) of Section 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 sub-section 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 the under an obligation to construct buildings. He pointed out that the protection of sub-section (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 so "erected on any land". He, therefore, held that the words "erected on any land held by any land held by any person from a local authority" were descriptive of the building and did not emphasis 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.

10. In that case, it was contended before this Court, 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-section (4)(a) of Section 4 would be available, no matter how many hands the property might have changed. This Court accepted the interpretation of the High Court in the aforesaid decision.

11. In our opinion, in the instant case, in view of the fact that the original lease was only a monthly tenancy and not a building lease, the High Court was right in dismissing the objections on behalf of the petitioners. We find no reason, therefore, to interfere with the order of the High Court. The special leave petition therefore, fails and is accordingly dismissed without any order as to costs.

12. Since the petitioners have been in possession of the premises for some time, in the interest of justice it is desirable, in our opinion, that the petitioners should have time to vacate the premises in question. In the premises, we allow the petitioners to continue to remain in the premises up to September 15, 1988 provided they file the usual under-taking in this Court within four weeks.

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