

Sardar Mohan Singh Ahluwalia (Dead) By Lrs

Vs

Maitrai Park Co-Operative Housing Society Ltd. and Another

Civil Appeal No. 1399 of 1986

(A. P. Sen, B. C. Ray JJ)

19.09.1988

JUDGMENT

B. C. RAY, J. –

1. This Maitrai Park Co-operative Housing Society Ltd. has filed a dispute before the first Co-operative Court, Bombay stating inter alia that the opposite party 1 Smt. Mohini R. Adwani who is a member of the society and was allotted flat No. 15 in Societies 'F' building in scheme No. 1 at Chembur Bombay-71 inducted the appellate opposite party 2 without obtaining the prior written consent of the society in May 1969, on the basis of a leave and license agreement for a period of 11 months. The said society Maitrai Co-operative Housing Society Ltd. was divided into two units that is Maitrai Park Co-operative Housing Society Ltd., Chembur which is the owner of the building in scheme No. 1 including Building No. F and the Maitrai Bijoy Co-operative Housing Society Ltd. Chembur-74 scheme No. 2, by order of the Assistant Registrar Co-operative Housing Society Ltd. Bombay. By virtue of the division of the society the assets and liabilities so far as scheme No. 1 were taken over by the present disputant society, that is Maitrai Park Co-operative Housing Society Ltd. and the members in respect of the said building in scheme No. 1 automatically became members of the society by the Order No. BCM/HSG/4633 of 1970 from August 6, 1971. The respondent opponent 2 automatically became a member of the disputed society in respect of the said flat No. 15 in 'F' building. The opposite party appellant who was occupying the premises unauthorisedly after the expiry of the period of the license was asked to vacate the flat by the member of the society that is respondent 2. As he did not accede to the request respondent 1 society had to take steps for evicting the appellant from the said flat so that respondent 2 can occupy the same for her residence. The society served a notice on the appellant for vacating the flat. But the appellant did not vacate the flat. Respondent 1, the housing society, filed a dispute before the Co-operative Court for eviction of the appellant who was in unauthorised occupation of the flat and who had been using the said residential flat by opening a canteen therein in violation of the by-laws framed by the society. The appellant questioned jurisdiction of the Co-operative court to entertain the dispute on the ground that the dispute does not come within purview of Section 91 of the Co-operative Societies Act as he has been continuing in possession as license till the date of filing of the dispute and respondent 1, the member of the society, has been receiving license fees from him. It has also been stated that in one of the receipt issued by the member the word 'rent' has been used. the appellant also pleaded that continuing as a licensee he has become a tenant under Section 15-A of the amended Bombay Rent Act on the from February 1, 1973. The dispute is as such beyond the jurisdiction of the Co-operative court. The Co-operative Court after hearing the parties made an award holding that the dispute fell within the purview on Section 91 of the Maharashtra Co-operative Societies Act, 1960 as the appellant is claiming to be in possession of the flat as licensee through a member of the society. It also held that there was no subsisting agreement

of license in favour of the appellant on the date of the enforcement of Section 15-A of the Bombay Rent Act and so the appellant had not become a deemed tenant.

2. Against this award an appeal was filed before the Maharashtra State Co-operative Appellate Court. The appeal was dismissed and the award of the co-operative court directing eviction of the petitioner from the flat No. 14 was affirmed. the appellant thereafter moved the High Court of Bombay in Writ Petition No. 4802 of 1984. The said writ petition was dismissed with costs. The appellant thereafter filed the instant special leave petition. The facts of the case are more or less similar to the facts of M/s. A. V. R. & Co. v. Fairfield Co-operative Housing Society Ltd.

3. We have already held that the dispute in question comes within purview of Section 91 of the Co-operative Act as the appellants claim to be in possession of the flat through a member of the society which is a Co-operation Housing Society and Section 15-A of the Bombay Rent Act does not apply as there was no subsisting agreement of license on February 1, 1973. Therefore, the judgment rendered by us in M/s A. V. R. & Co. v. Fairfield Co-operative Housing Society Ltd. will also govern this case. The appeal is, therefore, dismissed without any order as to costs. The decree will not be executed for a period of four months from the date of this order subject to the appellant's filing an usual undertaking within a period of two weeks from today to the effect that the appellant will not transfer, assign or encumber the flat in question in any manner whatsoever and on undertaking that he will hand over peaceful possession of the flat in question to the respondent on or before the expiry of the aforesaid period and he will go on paying the occupation charges equivalent to the amount he had been paying for each month by the 7th of succeeding month. In default of compliance of any of these terms, the decree shall become executable forthwith.

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