

Haji Ismail Valid Mohmad and others

Vs

Sports Club in the name of Union Sports Club and others

Civil Appeal No.1214 of 1978

(M. H. Kania, M. M. Punchi, Yogeshwar Dayal JJ)

22.11.1991

JUDGEMENT

YOGESHWAR DAYAL, J.:-

1. This appeal by way of special leave is directed against the judgment of the learned single Judge of the Gujarat High Court dated 10-1-1978 passed in Civil Revision Application No. 904 of 1975.
2. The short question which is required to be considered in this appeal is whether the respondent/tenant is entitled to get the benefit or protection of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the Act) in view of the provisions contained in S. 6 of the said Act, which provides as follows:-

"6(i) In areas specified in Schedule I, this part shall apply to premises let for residence, education, business, trade, or storage and also open land let for building purposes....."
3. A few relevant facts giving rise to the present appeal may be shortly stated.
4. The appellant filed a regular civil suit in the Court of learned Civil Judge, J.D. Dhoraji on allegation that the members of respondent No. 1 club were playing cards on stakes and were carrying on illegal activities. They also claimed that the appellants wanted the suit premises for their bona fide personal requirement.
5. The suit was resisted by the opponents on various grounds. It is not necessary to set out the various contentions raised by the respondents in the written statement for disposal of the present appeal.
6. Initially the suit was decreed by the learned trial Judge and the respondents appeal was also dismissed by the learned Assistant Judge, Gondal. Aggrieved by the judgment and decree of the learned Assistant Judge the respondents/tenant preferred a second appeal before the High Court and the learned single Judge of the High Court remanded the matter to the trial Court to consider as to whether the respondents were entitled to protect their possession having regard to the provisions contained in the aforesaid Act.
7. After the remand order the trial Court took the view that the Act did not apply to the facts of the case and decreed the suit for eviction. The tenant aggrieved by the decree and judgment passed by the trial Court preferred an appeal in the Court of the learned Assistant Judge, Rajkot, district

Gondal and the learned Assistant Judge allowed the appeal filed "by the tenant and dismissed the suit. The learned lower appellate Court took the view that the premises were let for business and, therefore, the tenants were entitled to protection of the Act.

8. The appellants preferred a second appeal before the High Court and Mr. Thakkar who appeared for the tenant readily agreed that the tenant was not carrying on its own business in the suit premises, therefore, the protection granted on that ground was not available to the tenant.

9. Before the High Court argumenents were advanced that the premises were let for education. The High Court while dealing with this plea took the view that the premises were let to the tenant also with a view to promoting cultural activities or the cultural education of the members of the Club/tenant. It took the view that by club life, one may effectively project his personality powerfully and this itself will amount to receipt of cultural education and one's own development having regard to day to day life and the High Court, in this view of the matter, took the view that the respondent-tenant was entitled for protection of S. 6 of the Act as the premises were let for purposes of education.

10. After going through the judgment of the Courts below, it appears to us that the tenant/respondent has been pleading practically all the purposes of letting of the premises for claiming protection of S. 6 of the Act. The learned trial Court had examined the constitution of the tenant/club (Exhibit-95) and noted the 8 purposes mentioned therein. The trial Court noticed as follows:

"The first is to hold entertainment programmes, the second is to hold music concerts, the third is to keep library and subscribe newspapers and books. The fourth is to subscribe the members, the fifth is to promote indoor and outdoor games. The sixth is to promote brothership. The seventh purpose is to hold tournaments with other teams for indoor and outdoor games. The last purpose is a general purpose to do other works."

11. After considering the purposes the trial Court took the view that the club was not meant exclusively or otherwise for purposes of education, trade, business, storage or residence. It negatived the plea that the letting was for residence, business or storage.

12. On the consideration of the evidence the trial Court found that the suit premises had been taken for running the Club and its various activities and the main object and purpose of the Club is to conduct sports activities for their members or their guests. The trial Court also held that keeping of sports instruments or materials for running the canteen or keeping servants, peons, watchmen and allowing them temporary residence are merely adjunct and ancillary things in order to run the Club and the premises were basically let for running of the Club. The trial Court held that the premises were not let for education purpose and there was no real impartation of educational knowledge.

13. Before the learned lower appellate Court the plea was taken that the premises were let out to the tenant/ club for purposes of business. This contention found favour with the lower appellate Court and the lower appellate Court accordingly reversed the judgment of the trial Court and dismissed the suit.

14. Before the High Court the plea that the premises were let to the tenant for business purposes was specifically given up by learned counsel appearing for the tenant. The High Court, however,

accepted the plea that the premises were let for purposes of education and consequently the tenant was entitled for protection of the Act.

15. It may be noticed that the only activities found by the Courts below relate to playing of indoor games like cards in the Club. The High Court found that the cards were not played by way of stakes and the said activities like playing indoor games is education in the meaning of S. 6(1) of the Act.

16. We regret, we cannot agree with this conclusion of law. The activities of the Club are more in the nature of cultural activities or recreational activities. They are certainly not for education. In our view, in the context in which the term 'education' appears, it does not refer to such cultural activities or recreational activities as amounting to education. The basic purpose of the club activities relate to fraternising among the members by playing indoor or outdoor games or otherwise. Such activities cannot lead to the conclusion that the premises were let for purposes of education and consequently the respondent-tenant was not entitled to the protection of the Act. We are thus constrained to set aside the impugned judgment of the High Court as well as the judgment of the lower appellate Court and restore the judgment dated 30th August, 1974 passed by the learned trial Court. The appeal is allowed with costs.

Appeal allowed.

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