

ALLAHABAD HIGH COURT

Sita Ram Sharan

Vs.

Johri Mal

S.A. No. 3498 of 1965 with S.A. No. 3500 of 1965

(G.C. Mathur, J.S. Trivedi and Gopi Nath, JJ.)

03.02.1972

JUDGMENT

G.C. Mathur, J

1. There are two second appeals arising out of two suits filed by the appellants against the Respondents for their eviction from two shops numbered 278 and 279.

2. The appellants are owners of a row of shops numbered 277, 278, 279, 280 and 281 which are single storeyed. The respondents are tenants of shop Nos. 278 and 279. Apparently the tenancies were created different times. The appellants filed the two suits out of which these two appeals arise for the eviction of the respondents from these two shops, *inter alia* on the ground that the respondents had made certain constructions over all the five shops without the consent of the appellants and had thereby materially altered the accommodation. In the plaint, the appellants alleged that roofs of the two shops were not included in the tenancy of the respondents. The respondents admitted having made the constructions but pleaded that they had done so with the consent of the appellants. They further pleaded that the roofs of shops Nos. 277, 280 and 281 were included in the tenancy of shop No. 279. It was also denied that the constructions materially altered the accommodation.

3. Admittedly, the constructions are what have been described as sheds of *tapras*. These have been made by constructing certain walls with a tin roof thereon and the fixing of doors and windows. A part of the constructions has been used as a temple and the remaining part as a school. Apparently, they are substantial constructions. The trial Court decreed both the suits. It held in the

suit relating to shop No. 278 that the roof of this shop was not included in the tenancy of shop No. 279 and in the suit relating to shop No. 279 it held that the roofs of the other shops were not included in the tenancy of shop No. 279. It further held that no written consent of the appellants was obtained for making these constructions and that the constructions amounted to material alterations in the accommodation. On appeal by the respondents, the lower appellate Court allowed the appeals, set aside the decrees of the trial Court and dismissed the suits for eviction. It held that, since the appellant's case was that the roofs of the shops were not included in the tenancy the constructions on the roofs, could not be said to be alterations in the accommodation let out. It further held that the constructions did not amount to material alterations in the accommodation as the constructions were of a temporary nature and could easily be removed at any time. In its opinion, the constructions did not make any change in the form or structure of the accommodation for the reason that the construction was made on the roof which was not a part of the accommodation let out to the respondents. Against the judgments and decrees of the lower appellate Court, two second appeals were filed in this Court.

4. The only question, which arises for determination in these appeals, is whether the appellant's case was covered by the provisions of Section 3(1)(c) of the U.P. (Temporary) Control of Rent and Eviction Act, that is to say, whether the appellants have succeeded in establishing that the tenants had without their permission in writing, made any such construction as, in the opinion of the Court, had materially altered the accommodation. Admittedly, no written consent of the appellants had been taken by the respondents before making the constructions. Therefore, the question for consideration was whether the constructions made by the respondents had materially altered the accommodation. The learned Single Judge, before whom these two appeals came up for hearing before a Bench consisting of Gupta and Kirty, JJ. Gupta, J., was in favor of allowing the appeals. In his opinion, even though the respondents were not entitled to use the roof of the shop, the material constituting the walls and roofs etc, must be treated as part of the structure let out to the respondents and that he could not conceive of a grosser case of material alteration in the accommodation let out to the respondents. He observed :

"There is no controversy that over the roof of the shop, the respondents have built a superstructure consisting of walls with a roof thereon together with doors and windows, and have no doubt that such a structure has brought about considerable change in the form and structure of the accommodation let out to the respondents".

Kirty, J. was for dismissing the appeals as, in his opinion, the applicability of Section 3(1)(c) depended essentially on the question as to whether the constructions complained of had been made in the accommodation let out to respondents which was the subject-matter of the suits for ejection. He observed :

"If they had made any construction not in the accommodation which had been let out to them but on some other part of the building with which they had no concern as tenants, the provisions of clauses (b) and (c) of Section 3(1) would not be attracted".

In view of this difference of opinion, the Bench referred the appeals to a Full Bench. That is how these appeals have come before us.

5. The decision of the appeals depends upon the proper interpretation of Section 3(1)(c) of the Act. This section reads thus :-

"3(1) - Subject to any order passed under sub-section (3), no suit shall without the permission of the District Magistrate, be filed in any civil Court against a tenant for his eviction from any accommodation, except on one or more of the following grounds :-

(a)

(b)

(c) that the tenant has, without the permission in writing of the landlord, made or permitted to be made any such construction as, in the opinion of the Court, has materially altered the accommodation or is likely substantially to diminish its value;"

Clause (c) thus lays down one of the grounds on which a suit can be filed for the eviction of the tenant without the permission of the District Magistrate. For the application of clause (c) three conditions have to be satisfied, namely,

- (i) the tenant has made a construction;
- (ii) the construction has been made without the permission in writing of the landlord; and
- (iii) such construction has materially altered the accommodation.

or

such construction is likely substantially to diminish the value of the accommodation. There is no dispute that the second condition is satisfied as no permission in writing of the appellants was taken by the respondents. The dispute relates to the fulfillment of the first and the third conditions.

6. So far as the first condition is concerned, there is no doubt that the tenants have made some constructions. The main argument of learned counsel for the respondents is that the construction contemplated by clause (c) is a construction in the accommodation and, since the construction in the present case is on the roof which, according to the plaint case itself, is not part of the accommodation let out the construction is not in the accommodation. His further argument is that, since the respondents were not entitled to use the roof, their action in making constructions on the roof is not an action as a tenant but as a trespasser and such action is not contemplated by clause (c).

'Accommodation' is defined in Section 2(a) thus :-

"2(a) - 'Accommodation' means residential and non-residential accommodation in any building or part of a building and includes,

(i) gardens, grounds and outhouses, if any, appurtenant to such building or part of a building;

(ii) any furniture supplied by the landlord for use in such building or part of a building;

(iii) any fitting affixed to such building or part of a building for the more beneficial enjoyment thereof.

But does not include any accommodation used as a factory or for an industrial purpose where the business carried on in or upon the building is also leased out to the lessee by the same transaction".

This definition uses the very word which it seeks to define. The definition is partly restrictive in that excludes certain types of accommodation from the

definition and is partly inclusive inasmuch as it includes certain things within the word 'accommodation'. But considering the definition as a whole, it is clear that accommodation means a building or part of a building which is used for residential or non-residential purposes but not as a factory or for an industrial purpose. Accommodation is a unit for allotment under Section 7 of the Act and for letting out. Therefore, the two shops let out to the respondents were 'accommodation' as contemplated by the Act. These shops consist of the flooring, the walls and the roof.

7. There are no qualifying words attached to the word 'construction' in clause (c) of Section 3(1) but it is clear that the construction, must have some connection with the accommodation or the premises that have been let out. Such construction may be inside the demised premises or on the outside or over it. It is not confined to constructions in the demised premises. Therefore, the constructions made on the roof of the demised premises are within the mischief of Section 3(1)(c). It is immaterial for this purpose whether the tenant was or was not entitled to use the roof as a part of the premises let out to him. Therefore, in our opinion, the constructions made by the respondents are contemplated by clause (c) of Section 3(1).

8. The next question, which then arises for determination, is whether these constructions amount to material alteration of the shops which were let out to the respondents. What amounts to material alterations has now been laid down by the Supreme Court in *Manmohan Dass Shah v. Bishun Das*,¹ In this case, the tenant had lowered the level of the ground floor of the shops in his tenancy by excavating earth there from and putting up a new floor and consequently lowering the front door and putting up instead a larger door, lowering correspondingly the height of the *chabutra* so as to bring it on the level of the new doorstep. He had also lowered the base of the staircase which entailed the addition of new steps thereto and cutting the plinth band on which the door originally rested so as to bring the entrance to the level of the new floor. A suit by the landlord for the eviction of the tenant on the ground contained in Section 3(1)(c) of the Act was decreed by the trial Court and the lower appellate Court. In second appeal, though the High Court agreed with the two Courts below that the constructions made by the tenant materially altered the accommodation, it dismissed the suits on the ground that the constructions were not likely substantially to diminish the value of the accommodation. The Supreme Court

held that the landlord was entitled to a decree for eviction of the tenant under Section 3(1)(c) if he established that the constructions made by the tenant materially altered the accommodation and he was not required further to prove that they were likely to diminish substantially the value of the accommodation. The considering the question whether the constructions made by the tenants amounted to material alteration, it observed :-

"The expression 'material alterations' in its ordinary meaning would mean important alterations, such as those which materially or substantially change the front or the structure of the premises. It may be that such alterations in a given case might not cause damage to the premises or its value or might not amount to an unreasonable use of the leased premises or constitute a change in the purpose of the lease".

The Supreme Court then cited with approval two English cases, *Wates v. Rowland*,² and *Bickmore v. Dimmer*,³ In the first case, it was held that the laying down of an additional concrete bed provided the house with a better substratum than it had before and was an improvement or a structural alteration of the house. In the second case, it was held that the word 'alteration' could not be applied to a change in the wall paper of a roof or in the putting up of a gas bracket or to the fixing of an electric bell, though, in fixing it, some holes might have to be made in the wall and that it should be limited to something which alters the form of structure of the building.

9. It is in the light of the principles laid down by the Supreme Court that we must judge whether the constructions in the present case have or have not materially altered the shops let out to the respondents. It appears to us that the constructions, which have been made by the respondents, are substantial in nature and they have converted the single storeyed shops in double storeyed structures. In our opinion, the constructions have materially and substantially changed the front as well as the structure of the shops. The mere fact that the constructions can be removed does not alter the situation as almost any construction, permanent or temporary, can be removed. Whether a construction is permanent or temporary is only a question of the intention of the person making it. It does not affect the question whether the construction materially alters the accommodation or not.

10. Since the Supreme Court has now laid down the tests for judging whether a construction materially alters the accommodation or not for purposes of Section 3(1)(c), it is not necessary for us to consider the decisions of two learned Single Judges of this Court *Sardar Bahadur Mathur v. Kali Prasad Gupta*,⁴ and *Kishan Lal v. Ram Baboo*,⁵ Learned counsel for the respondents placed some reliance on the decision of a Division Bench of this Court in *Dr. Jai Gopal Gupta v. Bodh Mal*,⁶ In this case, the accommodation let out was a house. The tenant added two rooms in a small portion of the courtyard, these being a kitchen and a bath-room. They had no foundations although they were built of *pucca* bricks and had been plastered with cement. Applying the test laid down by the Supreme Court, the Bench held that it could not be said that these constructions changed the front or the structure of the house let out to the tenant and that it was difficult to say on the facts of this case that the constructions had materially altered the accommodation. The Bench took this view as it found that the constructions were essentially of a temporary nature which was evinced by the fact of the tenant using the side of a bed as a support for the roof of one of the rooms. But the constructions in that case were of a very different nature from those in the present case. We do not think that this decision will help the respondents in any way.

11. In our opinion, since the constructions made by the respondents materially altered the accommodation let out to them and constructions were made without the consent of the appellants in writing, the appellants have succeeded in establishing all the conditions necessary for the applicability of Section 3(1)(c). They were, therefore, entitled to obtain a decree for eviction of the respondents without obtaining the permission of the District Magistrate. We accordingly allow both the appeals, set aside the judgments and decrees of the lower appellate Court in the two suits and restore those of the trial Court. The appellants will be entitled to their costs in these appeals as well as in the appeals before the lower appellate Court.

Appeals allowed.

Cases Referred.

1. AIR 1967 SC 643
2. 1952 2 QB 12
3. 1903 1 Ch. 158
4. 1961 ALJ 137
5. 1970 ALR 1154
6. 1969 A.L.J. 477