

MYSORE HIGH COURT

John Augustine Peter Miranda

Vs

N. Datha Naik

CRP 683 of 1970

(Datar, J.)

02.06.1971

ORDER

Datar, J.

1. Petitioners in the revision petition are the tenants. Respondent is the landlord. Respondent filed an application for eviction of the petitioners under Section 21(1)(c),(h) and (j) of the Mysore Rent Control Act, 1961 (hereinafter called the Act), for eviction of the tenants. The case of the landlord was that the premises are reasonably and *bonafide* required for his own occupation; for reconstruction, and also on the ground that the tenant without the consent of the landlord has erected a permanent structure. The claim arising under Section 21(1)(c) and (j) does not arise for consideration before this Court, inasmuch as, that even in the trial Court the claim made under Section 21(1)(c) has been given up and before this Court the learned Counsel appearing for the respondent-landlord has clearly stated that he is not making any case based under Section 21(1)(j) of the Act. The only claim that he is making is that he wants the premises for his reasonable and *bonafide* need and he will occupy it after reconstructing the building. Therefore, the question that arises for consideration is the claim made by the landlord under Section 21(1)(h) of the Act.

2. Several contentions have been raised by the tenants and I do not propose to consider any one of the other contentions excepting the one i.e. as to whether the notice issued in the present case is varied or not. Before instituting the proceedings for eviction, the landlord gave a notice dt. 17.3.1966 which is marked as Ext. A3 terminating the tenancy of the petitioners with effect from 5.5.1966 on the ground that the tenancy was a monthly tenancy and notice given was a valid notice.

3. The learned trial Judge upheld the claim of the landlord and passed an order for eviction. This order passed by the learned trial Judge has been confirmed by the lower appellate Court.

4. It is the correctness of these orders that are challenged in this revision petition.

5. As already stated, I have heard the learned Advocate for the parties only on the aspect of the

question relating to the validity of the notice as in my view the entire proceedings are liable to set aside on this ground. The relevant provisions with which we are concerned are Sections 106 and 107 of the Transfer of Property Act.

6. Section 106 of the Transfer of Property Act reads as under :

"106. In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall do deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice expiring with the end of a year, of the tenancy; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days notice expiring with the end of a month of the tenancy."

Section 107 of the Transfer of Property Act provides that :

"107. A lease immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.

All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession." It is necessary to note that the provision of Section 107 of the T.P. Act does not control Section 106 of the Act. Notwithstanding what is contained in Section 107, the provisions of Section 106 will apply to manufacturing lease whether the lease-deed is registered or unregistered so as to make it a lease from a year to year for the purpose of that section i.e., to control duration of the period of notice. This is also the view taken by the High Court of Calcutta in the case of *Krishna Das v. Bidhan*¹,

7. The word 'manufacture' has been explained in Wharton's Law Lexicon as "Anything made by art". The dictionary meaning of the word and the very provision which I am considering in this revision petition were considered by a Division Bench of the Calcutta High Court in *Joyanti Hosiery Mills v. Upendra Chandra Das*². In that case the question was as to whether the termination of tenancy was valid. Dealing with that question this is what B.K. Mukherjea, J. (as he was) has stated :

".....The learned Subordinate Judge seems to be of opinion that as the raw materials are not worked up into hosiery articles in the disputed premises, it cannot be said that the lease was taken of manufacturing purposes even though the knitting and cutting were done in that building. We do not think that we can accept this view as sound. To manufacture, according to its Dictionary meaning, means to work up materials into forms suitable for use. The word 'material' does not necessarily mean the original raw material, for a finished article may have to go through several manufacturing processes before it is fit and made ready for the market. What is itself a manufactured commodity may constitute a 'material' for working it up into a different product. Thus, for example, for the

tanner, the material would be the raw hide, but the leather

¹ AIR 1959 Cal 181

² AIR 1946 Cal 317

itself a manufactured article would constitute the material for the shoe-makers business and we cannot say that the shoe-makers are not manufactures because they do not work on raw hides.

So far as the hosiery manufacture is concerned, undoubtedly articles have got to be made from raw cotton as it is picked from the bush. From the cotton, certain yarn or sheets are prepared and they are knitted into hosiery goods. It is immaterial that the yarn is not produced in the premises in suit. It is enough to make the House a manufacturing house if knitting and cutting operation are gone through in this premises, and that is an essential part of the manufacturing business. We are, therefore, of the opinion that the lease was really taken for manufacturing purposes and consequently it must be deemed to be a lease from year to year terminable by six months notice expiring with the end of year of the tenancy. The result therefore is that we allow this appeal..'' It may be seen that the Court has fully explained in that case as to what would constitute manufacture. The question again came up for consideration before the Calcutta High Court in *Rupeswari Ibbi v. Lokhnath Hosiery Mills*³, and the Court held that "where the lessee is running a hosiery factory in the premises the mere fact that one of the rooms is being occupied by one of his officers for residence would not make the purpose of the tenancy a residential purpose. It would still be a manufacturing purpose". It was further stated that "though the original purpose may be a manufacturing purpose, if the premises are required and used for manufacturing purposes to the knowledge of the landlord or the lessor, six month's notice would be necessary". In common parlance "to manufacture goods" means "to bring goods into being" The essence of manufacture is the changing of one object into another for the purpose of making it marketable. Therefore, the proper approach for ascertaining the meaning of expression of the word 'manufacture' is to see in the context in which it is used. The learned Counsel appearing for the respondent cited before me two judgements of the Calcutta High Court; one is the judgment reported in *Brohmanada Das v. Nagendra Chandra Sarkar*⁴, in that case the question was as to whether the premises used for the purpose of running sweetmeat shop to sell sweets by manufacture either at the spot or brought elsewhere would be manufacturing purpose. It was held by the Calcutta High Court in the said case that whatever the meaning of the word "manufacture" may be, the lease in question was at least as much for sale of sweets as for preparing the same, and therefore, it was not solely for manufacturing purposes, and therefore, the lease was brought in the category of a lease for any other purpose. I am of the view that this decision does not hold the respondent. Similarly, the decision of the Calcutta High Court in *Rameshchandra Dutta v. Surya Properties Ltd*⁵. is not of much assistance in the present case, as in that case, the lease was for a multiple purpose and therefore, the Court held that the benefit of notice of six months was not available. 7A. For deciding the question it is necessary to determine whether the lease in the present case is for a manufacturing purpose, and if it is for a manufacturing purpose, whether the notice given in the present case is valid.

8. In the present case, it cannot be disputed that the petitioners have been carrying on Bakery and Saw Mill business and it is their case that the lease is for manufacturing

³ AIR 1962 Cal 608

⁵ AIR 1957 Cal 198

⁴ AIR 1954 Cal 224

purpose. The learned trial Judge has stated as under:

" In this case, a bakery is being run. Of late they have installed a saw mill. The installation of a saw Mill is not covered under the lease deed executed by the respondents in favor of the previous landlord. But permission has been granted for them to install a motor pump for the purpose of running a saw mill. But that by itself is not sufficient to come to the conclusion that the premises is used for manufacturing purposes."

The learned appellate Judge also discussed this question in paragraph 7 of his judgment and held as under :

"The onus of proving it to be a manufacturing lease is on the tenant. Whether it is for a manufacturing purpose or not, it must be ascertained in the usual way. In the case on hand, it has been in evidence that the premises were taken on lease for the purpose of running of bakery shop and a fire wood depot. All that is meant by running a bakery shop is that bread and other articles of confectionery are in that particular premises. The running of a fire wood depot in the ordinary sense means that some firewood is stored in that particular place and sold to the customers. The running of a firewood depot or a bakery shop would not in the ordinary course suggest that there is any process of manufacturing."

Therefore what is required to be found not is as to whether the lease in the present case, as on the date of its termination was admitted to be a lease for a manufacturing purpose or manufacturing was carried on with the consent of the landlord and it is found that the manufacturing was by consent of the landlord, then it has to be held that the lease in the present case is for a manufacturing purpose, and therefore notice is invalid.

9. The evidence on record discloses that the lease is for manufacturing purpose and that licenses for the said purposes were obtained and that was done with the permission of the predecessor in title of the present landlord. This is clear from Exts. A18 and B2 Ext. B1 as a letter of consent by the previous owner to the Commissioner of the Mangalore Municipality as far back as 27th December, 1957 saying that he has permitted Mrs. Presc Machede for installation of 5 HP for the purpose of Bench Saw in T.S. No. 208/B of 20th Ward and Door No. 621. A Commissioner was also appointed in the present case to report whether the saw mill building in the petition premises is only an open shed of stone pillars and sagging bamboo, roof, and whether the bakery shop building has walls of mud and tiles. The report has been given by the Commissioner stating that "the saw mill building in the petition premises is an open shed. The roof of the shed is supported by stone pillars. There are altogether 11 pillars supporting the roof..." Similarly, the Commissioner has noticed that the walls of the bakery building has been constructed with the mud and tiles. The Commissioner has also clarified by his further report that he is not in a

position to say as to whether it is a parkka one or an old one. Photographs were filed before the Court showing the saw mill and the bakery building and they are marked as Ex.s.A6, A7, A8 and A9. Having regard to the material on record, I am of the view that in the premises in dispute the petitioners are carrying on manufacturing of bakery products and also saw mill. If such work is carried on in the premises. it would amount, according to me, manufacturing purpose. In view of my finding that the lease is for a manufacturing purpose that notice required was of six months duration. In the present case the notice given is for only 15 days. Therefore, it is invalid. The result therefore is, this revision application is allowed and orders of the Courts below set aside and the application for eviction filed by the respondent-landlord is dismissed. In the circumstances of this case, the parties are directed to bear their costs. Revision Application allowed.