BOMBAY HIGH COURT

Nippon Menkwa Kalmshiki

Vs

F. Portlock

(Pratt, J.)

05.07.1921

JUDGMENT

Pratt, J.

1. The plaintiffs in this case, the Japanese Cotton Trading Company, purchased, on the 29th July 1920, the remainder of a sub-lease of Gool Mansion, Mayo Road. The building comprises eight flats, of which one is in the occupation of the defendants as tenants. The plaintiffs purchased the building in order to provide residence for their Japanese staff, and the day after the purchase gave the defendants notice to quit on the 1st of October 1920. The defendants attorned to the plaintiffs and paid rent which was accepted up to the 1st of October, but as they pleaded the Bombay Rent Act and declined to quit, the plaintiffs have filed this suit.

2. The following issues were raised :-

(1) Whether the purchase of the property in suit by the plaintiffs is not ultra tires of the Company, and if so, whether the plaintiffs are entitled to maintain this suit?

(2) Whether the plaintiffs require the premises in suit reasonably and bona fide for their own use and occupation within the meaning of Section 9(2) of the Bent Act?

(3) Whether there is satisfactory cause within the meaning of Section 9(2) of the Rent Act?

3. I disallowed the first issue, as the defendants having attorned the plaintiffs are estopped from denying the title of their landlord. Further, it can make no difference to them, whether the suit is brought by the Company itself or by the purchasing directors.

4. As to the reasonableness and bona fides of the plaintiffs requirements, there can be no doubt. The Japanese staff consists of six married couples, ten children and twenty-nine bachelors. Of these five bachelors are on leave and twelve bachelors, one wife and five children are to arrive in a few months. The remainder of five married couples, five children and thirteen bachelors, are

housed in a bungalow at Malabar Hill, a flat at Rafaya Manzil, and two temporarily in a boarding house. The occupants of Rafaya Manzil are under notice to quit. The Company, therefore, propose now to divide their staff between the Malabar Hill bungalow and Gool Mansion. The Managing Director for Bombay with his wife and five children and eight bachelors in the former, and the rest of the staff in the latter. This allotment is fully set out in Exh. A, and the accommodation thus provided errs, if at all, on the side of economy of space.

5. It is faintly suggested that the allotment of one room in the flats to an "office" is a contravention of the head-lease from the improvement trust forbidding the use of any part of the premises without the consent of the trust "for any business, trade or occupation or any purpose whatsoever other than a dwelling house." But the so-called office is merely a room where the Code book is kept, where telegrams are received after office hours and de-coded, and where transactions thus made are recorded. No outsiders visit this room for business, and it is therefore no different to the room in a dwelling house in which a barrister reads his briefs at night. This use of the room is not inconsistent with its occupation as a dwelling house, and in any case the only person who can raise the objection is the lessor or the sub-lessor.

6. The second issue raises the question whether the occupation of the servants of the Company is in law the occupation of the landlord. Under Section 9(2) of the Bombay Rent Act the landlord must show that the premises are required reasonably and bona fide "for his own occupation". Is the occupation of the Company's staff equivalent in law to the landlord's own occupation ?

7. Now, the section only recognises two grounds founded on the occupation of the premises: (1) for the landlord's own occupation, and (2) for the occupation of any person for whose benefit the premises are held. The effect of the word "own" is no doubt to emphasize the personality of the subject, as for instance, the phrase "every man is his own lawyer". Here it emphasizes the personality of the landlord. But I think this emphasis is used merely to contrast the occupation of the landlord with the occupation of the cestui que trust or beneficial owner. It is not intended to exclude the rule of law that the occupation of a servant is the occupation of the master. Optimus interpres rerum usus and the section has always been so construed. In deciding on the requirements of landlords, it has always been the practice to consider the space required for the accommodation of servants.

8. Mr. Taleyarkhan relies upon the words "some other person in his employ" in the corresponding section of the English Act, and argues that their omission in the Indian Act shows that the Indian Legislature declined to recognise the occupation of a servant. But the occupation of a servant may be either qua servant that of his master or qua tenant of his master. The English section refers to the latter and does not touch the former. It allows the landlord to substitute another tenant if that tenant be in his employ; but it in no way affects the rule that the occupation of the

servant qua servant is the occupation of the master.

9. The question then is whether the staff were occupying the premises as servants of the landlord Company or as their tenants. The test is whether this occupation is necessary to or ancillary to the performance of the servants' duties. In the case of Dobson v. Jones (1844) 5 Man. & G. 112, a surgeon who resided in a hospital so that he might be able more readily to perform the services required of him was held to occupy as a servant. Tindal C.J. in that case said (p. 120):-

The coachman who is placed in rooms of his master over the stable, the gardener who is put into a house in the garden, or the porter who occupies the lodge at a purk gate, cannot be considered to occupy as tenanta, but as servants merely whose possession and occupation is strictly and properly that of their masters.

10. So, also, in the case of *Bent v. Roberts*[1] constable occupying quarters in the Police Station building was held to occupy as a servant.

11. But where the occupation is by way of remuneration or part payment for services, the servant occupies not as a servant but as a tenant. In *Martin v. Assessment Committee of West Derby*[2] a Police Superintendent was held to be a tenant of quarters which were at some distance from the Police Station.

12. The Company's staff will pay no rent for the premises they occupy, but that will make no difference if their occupation is part of their remuneration and not necessary and subservient to the performance of their services. This is illustrated by the case of The *Queen v. Spurrell*[3], where Cockburn C.J. said :-It may be that it happens to ho convenient both to the master and to the servant, that the servant requiring some place of habitation shall, by agreement with the master, instead of receiving so much for his wages, out of which wages he would have to find himself a separate habitation, inhabit some premises of the master as part of the remuneration for his services; hut it is only an equivalent for wages. He would he receiving in the one instance the whole amount of his wages, out of those wages he would have to find himself a habitation, for which he would have to pay rent; in the other he inhabits premises of his master, and instead of paying the master the rent the master deducts it from the wages.

13. Now the Company's place of business is not at Mayo Road, and the residence of the staff in this building is not necessary to the performance of their services. Any other residence in Bombay would do equally well. In fact, some of the staff are residing at Malabar Hill, further, it is clear that their occupation is by way of remuneration. The Company's Director produces the rules of the Company regulating its dealings with the employees. It is a compilation as comprehensive and far more lucid than the Civil Service Regulations. Rule 118 is as follows:-

Persons, who are serving in the branches or agencies abroad, are to be provided with house accommodation and are also payable foreign service allowance within the limit of the following table.

14. The Japanese staff, when serving out of Japan, are entitled to foreign service allowance and house accommodation as part of their remuneration. Therefore, although they pay no rent, their occupation will be not as servants but as tenants.

15. I must, therefore, decide the second issue in the negative as the occupation of the staff will not be the occupation of the landlord Company.

16. But there is another ground on which the plaintiffs rely, and that is the general ground of any cause which may be deemed by the Court to be sufficient. This point arose last year in the case of the Hongkong & Shanghai Banking Corporation Ltd. v. Boyagis (1920) Suits, 582 and 583 of 1920 decided by my brother Marten J. The case went off on other grounds, but Marten J., though not called upon to decide it, referred to the recent English cases of *Stovin v. Fairbrass*[4] and *Stephens v. Tatham*[5]. Stephens v. Tatham merely follows the decision of the Court of Appeal in Stovin v. Fairbrass, and the latter is the only case that requires consideration. It was based upon the corresponding section of the English Act Section 1(3) of the Increase of Rent and Mortgage Interest (War Restrictions Act) 1915 (5 & 6 Geo. V, c. 97). In that section, there are three instances of grounds founded on the landlord's requirements in reference to occupation followed by the general words "some other ground which may be deemed satisfactory to the Court." This part of the section is as follows:-

Or that the premises are reasonably required by the landlord for the occupation of himself or some other person in his employ, or in the employ of some tenant from him, or on some other ground which may be deemed satisfactory by the Court making Such order.

17. The three instances founded on the landlord's requirements as to accommodation are (1) occupation by the landlord himself, (2) occupation by the employee, and (3) occupation by the tenants' employee and then follow the general words as to satisfactory cause.

18. In Stovin v. Fairbrass, the landlord required the premises in order to give vacant possession to his vendee. This was not one of the three specified cases and the Court hold that it would not come under the general cause, because the exercise by the Court of its discretion in favour of the occupation of a person not so specified would be inconsistent with the particular specification of three cases of occupation. The Court held in effect that the general words "some other cause" are restricted to cases not sui generis with the three causes specified. Scrutton L.J. differed on this point, and indeed the word "other" is usually construed to be either unrestricted in its generality

or limited to cases sui generis with the particular words that precede it.

19. But it is not necessary to consider whether Stovin v. Fairbrass was correctly decided, for the scheme of the section of the Indian Act is different. For the words "some other ground which may be deemed satisfactory by the Court" the words "any cause which may be deemed satisfactory by the Court" are substituted. The word "any" is as wide as possible: *Beckett v. Sulton*[6] The word "any" excludes limitation or qualification: *Duck v. Bates*[7] They place no limit on the discretion of the Court, and it seems to me, therefore, that the ratio decidendi of Stovin v. fairbrass is not applicable to the Indian section. Under the Indian Act the discretion of the Court in determining what is a satisfactory cause is unfettered.

20. Then I have to ask myself the question whether the cause shown by the plaintiff Company regarding the accommodation of their staff is satisfactory. Under the English Act this is a specified ground. Does its omission in the Indian Act lead to an inference that it is not so in India ? I think not. The particular cases of accommodation of an employee of a landlord or the employee of a tenant are omitted in the Indian Act, merely because they are superfluous in view of the very wide terms of the last clause, I think the accommodation of a staff of employees is sufficient cause under Section 9(2) of the Bombay Rent Act. I am fortified in this opinion by the fact that express provision is made for such a case in the English Act.

21. The plaintiffs have spent four lacs in the purchase of the leasehold of the property in order to accommodate their staff, and it would be grossest injustice to prevent them from putting it to the use for which they purchased it. This Would tantamount to expropriation, and the object of the Bombay Rent Act is not the expropriation of the landlord but the prevention of profiteering.

22. Decree, therefore, that the defendants do deliver vacant possession to the plaintiffs on or before the 19th of July 1921 or in case an appeal is filed before that day on or before the 14th of September 1921. Defendants to pay plaintiffs compensation at the rate of Rs. 275 per mensem from 1st October 1920 to the date of delivery of possession and to pay plaintiffs' costs of this suit.

Cases Referred.

1(1877) 3 Ex. D. 66
2(1883) 11 Q.B.D. 145
3(1865) L.R. 1 Q.B. 72, 75
4[1919] W.N. 216
5[1919] W.N. 334
6(1882) 51 L.J. Ch. 432
7(1883) 12 Q.B.D. 79 : 53 L.J.Q.B. 338, 344