

BOMBAY HIGH COURT

Ram Bhagwandas

Vs

Municipal Corporation

(Chagla, C.J. Dixit, J.)

02.12.1955

JUDGMENT

Chagla, C.J.

1. These three appeals raise a common question and can be disposed of by a common judgment. The premises in question belong to the Bombay Municipality and they were open plots of land and they were let out to one Khudabaksh Irani about 30 years ago, and in 1947 this Irani sold this land to Tyaballi. Irani erected structures on this open plot of land and let out tenements in those structures to various tenants, and the three appellants before us are tenants to whom the tenements were let out by Irani. In August 1951 the Bombay Municipality filed a suit for ejecting Tyaballi and on 30-1-1952 a consent decree was arrived at between the Municipality and Tyaballi. Under this decree the defendant was to deliver up vacant and peaceful possession of the plot clear of all structures standing thereon, and the decree further provided that in the event of the defendant failing to remove the structures on or before 29-2-1952, the defendant was to give up possession of the said plot, together with the structures standing thereon, to the plaintiff.

Tyaballi failed to remove the structures and, therefore, the Municipality sometime in 1954 started execution proceedings, and the appellants in these appeals offered obstruction under Order 21, Rule 98, Civil P. C. The Court held against the appellants and thereupon they filed these suits under Order 21 Rule 103. The Court has dismissed the suits from which these appeals arise, and the appellants have now come before us.

2. Two points have been raised before us as they were raised in the Court below. One is that by reason of the provisions of Section 109 T. P. Act, the appellants have become tenants of the Municipality and, therefore, the decree passed in favour of the Municipality against Tyaballi cannot be executed against them. Turning to Section 109 It provides.

"If the lessor transfers the property leased, or any part of his interest therein, the

transferee, in the absence of a contract to the contrary, shall possess all the rights, and if, the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of It....."

What is contended by Mr. Jethmalani is that the lessor, as far as the appellant is concerned, was Tyaballi and he transferred these structures by the consent decree, having agreed that if he did not remove the structures by a particular date structures would belong to the Municipality. He further contends that his client elected that the transferee should be subject to all the liabilities or me lessor and on election of the appellant he became the tenant of the Municipality and he cannot be ejected by a decree passed against Tyaballi. This contention has not been pleaded, nor has any evidence been taken as to the election by the tenant as required under Section 109. But the learned Judge, inasmuch as no oral evidence was sought to be adduced and as the arguments were advanced, permitted the appellant to argue this case without a formal amendment of the plaint, and the election relied upon by Mr. Jethmalani is that as soon as the decree was sought to be executed he filed a suit in the Small Cause Court being Suit No. 6935 of 1954, putting forward the contention that he had become the tenant of the Municipality. We will assume in favour of the appellant that there was a proper election as required by Section 109 and we will also assume, without deciding in favour of the appellant, that the transfer contemplated by Section 109 is not merely a transfer by act of parties but also by operation of law, and we will further assume in his favour that the consent decree on which Mr. Jethmalani relies constitutes a transfer by operation of law. With all these assumptions in favour of the appellant, we have still to consider whether Section 109 has any application to the facts of this case.

3. What Section 109 requires is that the lessor must transfer the property leased, and the question is, what was the property that was leased by the lessor to the lessee, viz., the appellant. Obviously, the lessor transferred to the appellant the land which the lessor had obtained from the Municipality along with the structures which he had erected on the land. If that be the true position, then the lessor did not transfer to the Municipality the property leased at all. The tenancy of the lessor had been terminated and the lessor was no longer entitled to the land and no question, therefore, of the lessor transferring the land to the Municipality arose. Section 109 clearly and obviously deals with cases where a lessor while there is a subsisting lease in his favour transfers his interest in the land to a third party, and in that case the third party or the transferee takes it subject to certain liabilities if the lessor's tenants or lessees so elect. But here we have a case where at the date of the so-called transfer the lessor had no interest left in the property leased, and, therefore, it is difficult to understand how any question can arise of the lessor transferring the property to the transferee. The effect of the lease terminating was not a transfer from Tyaballi to the Municipality, but the effect was that of reversion vesting in the Municipality

as the owner of the property.

4. It was then sought to be argued that whatever may be the position with regard to the land, with regard to the structures there was a transfer by Tyaballi to the Municipality under the provisions of the consent decree and as soon as that transfer took place the Municipality became the transferee of those structures from the lessor of the appellant and if the appellant elected, the Municipality must hold those structures subject to the liabilities of Tyaballi as to this property. We find it rather difficult to conceive how a structure can be transferred divorced from the land on which it stands. Mr. Jethmalani says that his clients were the tenants only of the structures and not of the land and, therefore, whatever the position may be with regard to the land, as far as the structures were concerned there was clearly a transfer to the Municipality. Now, a tenancy or a lease is the right to enjoy property and what Tyaballi leased to the appellant was not merely the right to enjoy the structures but also the right to enjoy the land on which the structures stood. The structures would not have been very stable if there was no land underneath on which they could have stood and it is clearly a fantastic proposition to put forward that a tenant can have the right to enjoy a structure as it were in vacuo without necessarily having the right to enjoy the land, on which the structure stands.

5. Therefore, in our opinion, on the facts of this case Section 109 does not apply because the lessor, who we will assume in this case is Tyaballi did not transfer the property leased to appellants.

6. The second contention put forward by Mr. Jethmalani is that the appellants are protected under the Rent Act and, therefore they cannot be ejected under the consent decree. It cannot be disputed that under the ordinary law the appellants could have been ejected under a decree passed against Tyaballi because they claim under the judgment-debtor and the decree against Tyaballi' would be binding upon the appellants. Undoubtedly, if the Rent Act applied, then the position would be different because an independent right would be conferred upon the appellants to claim protection under the Rent Act and to claim that they were entitled to remain in possession notwithstanding the decree passed against Tyaballi.

The claim that is put forward is the claim under Section 14, Rent Act and the argument is that even though the interest of the tenant i.e. Tyaballi, might have been determined, the appellants being sub-tenants to whom the premises were lawfully sublet, they must be deemed to become the tenants of the Municipality, and therefore, they are protected. The premises in question undoubtedly belong to the Municipality, a local authority, and it is necessary to repeat that the suit of the Municipality was for possession of the open plot of land which was let out originally to Irani. The Municipality was not interested in the structures; it did not claim possession of

them. Tyaballi was entitled in law and under the consent decree to remove those structures, and all that the consent decree provided was that in default of Tyaballi removing the structures by a particular date, the structures would belong to the Municipality. It is in the light of these facts that we must construe the relevant sections on which reliance has been placed.

7. Section 4 deals with exemptions and Subsection (1) provides:

"This Act shall not apply to any premises belonging to the Government or a local authority or apply as against the Government to any tenancy or other like relationship created by a grant from the Government in respect of premises taken on lease or requisitioned by the Government; but it shall apply in respect of premises let to the Government or a local authority". Therefore, if we have premises which belong to Government or a local authority, then the Act would not apply and no protection can be claimed by a local authority. The land here belongs to the local authority and, therefore, no protection can be claimed in respect of these premises. Sub-section (4) (a) of Section 4 is also relevant. "The expression 'premises belonging to the Government or local authority' in Sub-section (1) shall, notwithstanding anything contained in the said sub-section or in any judgment decree or order of a Court, not include a building erected on any land held by any person from the Government or a local authority under an agreement, lease or other grant, although having regard to the provisions of such agreement, lease or grant the building so erected may belong or continue to belong to the Government or the local authority, as the case may be".

Therefore, having given exemption with regard to premises belonging to Government or a local authority Sub-section (4) (a) restricted that exemption in the manner laid down in that sub-section, and what Mr. Jethmalani contends is that he falls within the ambit of Sub-section (4) (a) and on the facts of this case the premises do not belong to the local authority in the sense in which that expression has been restricted by reason of Sub-section (4)(a).

8. This sub-section (4) (a) was enacted by Bombay Act 4 of 1953 and we must look at the historical setting in which this amendment came to be enacted. The question of the proper construction of Section (4)(1) came to be considered by the Supreme Court in Bhatia Co-operative Society v. D.C. Patel, and the judgment of the Supreme Court was delivered on 5-11-1952, and Bombay Act 4 of 1953 was passed after the Supreme Court gave its decision interpreting Section 4(1). In the case before the Supreme Court, the Bombay Port Trust had let certain plots of land to the lessee for erection of a building, therefore there was a building lease. Under the terms of this lease the lessee had to put up buildings, maintain them, insure them, but the effect of the various rights conferred upon the Port Trust was that the ownership of these

buildings was in the Port Trust and not in the lessee. The lease was for 999 years and was subsisting. The plaintiff filed a suit in the City Civil Court to eject one of the tenants who was residing in the building which were put up by the original lessee under the terms of the lease, and the Supreme Court held that the plaintiff had acquired the lessee's interest in the demised premises. The defendant's contention was that he was protected, that the premises belonged to the plaintiff and not to the local authority and therefore he was entitled to the protection of the Act. His contention was rejected by the Supreme Court on the ground that the primary object of the Act to give immunity from the operation of the Act to premises belonging to the Government or a local authority was to protect the interests of the Government or a local authority and that the protection requires that the immunity should be held to attach to the premises itself and the benefit of it should be available not only to the Government or a local authority, but also to the lessee deriving title from it. One important thing to note about the judgment of the Supreme Court is that it was not a suit by the Port Trust or a local authority, but it was a suit filed by a person in whom the rights of the lessee of the Port Trust had vested and the relief sought was not against the local authority but against the lessee. It was the effect of this Judgment that the Legislature wanted to nullify and for that purpose the amending Act 4 of 1953 was passed.

9. Mr. Jethmalani concedes that as far as the land is concerned, the local authority is the owner and therefore under Section 4(1) the appellants cannot claim protection under the Rent Act. Therefore, the local authority is entitled to possession of the land.

But curious contention is put forward that whatever may be the position with regard to the land, the appellants are entitled to protection with regard to the buildings. If this contention were to be accepted, this anomalous position would arise that whereas the Municipality, by virtue of Section 4(1) and by virtue of the immunity given to it which has been emphasised by the Supreme Court, would be entitled to possession of the land, by reason of Section 4(4)(a) the Municipality would lose the right to obtain possession of the land because the appellant is protected under the Rent Act in respect of premises which he occupies as a subtenant. If the language of Sub-section (4) (a) is clear and we are compelled to come to that conclusion, of course we must give effect to the clear language used by the Legislature. But if Sub-section (4) (a) can be construed so as to bring it in conformity with the obvious intention of the Legislature, then it will be our duty to do so. The Legislature was seeking to protect tenants who occupied buildings put up on the land belonging to the Municipality and in respect of which the lease between the Municipality and the lessee was subsisting. It is also clear that the Legislature intended only to protect those premises which had been constructed under an agreement under which the lessee was under an obligation to construct a building. It is clear that the Municipality having compelled the lessee under the agreement to put up structures and the lessee having let out these buildings, it would be unjust

and unfair to deny those tenants protection on the ground that technically the buildings belonged to the Municipality,

10. If that was the object of the Legislature, let us see whether Sub-section (4) (a) can be construed in order to give effect to that object. What is excluded from the expression "premises belonging to the Government or a local authority" used in Section 4(1) is a building erected on any land held by any person from the Government or a local authority under an agreement, lease or other grant, although! having regard to the provisions of such agreement, lease or grant the building so erected may belong or continue to belong to the Government or the local authority, as the case may be. What is contended by Mr. Jethmalani is that if you have a building erected on a land held by any person from a local authority, then Section 4(4)(a) applies to the premises and those premises do not fall within the ambit of Section 4(1), He contends that the expression "although having regard to the provisions of such agreement, lease or grant the building so erected may belong or continue to belong to the Government or the local authority, as the case may be" does not in anyway confine the application of Sub-section (4) (a) to this particular case, but the meaning of the expression "although" is "even if the building so erected may belong to Government".

He further contends that the building may be erected without there being any obligation upon the lessee to erect a building and without there being any stipulation with regard to the erection of the building under the agreement arrived at between the local authority and the lessee.

11. In our opinion; although undoubtedly the drafting is very unsatisfactory, the proper interpretation to put upon section 4(4)(a) is that "under an agreement, lease or grant" must qualify both "building erected" and "land held". In other words, the building is erected by the lessee pursuant to the agreement, lease or grant given to the person who holds the land under that agreement, lease or grant. This construction receives considerable support from the language used in the subsequent part of the sub-section, viz. "although having regard to the provisions of such agreement, lease or grant the building so erected may belong or continue to belong to the Government or the Local authority, as the case may be". Therefore, "such agreement" and "so erected" clearly suggest that the building is erected under an agreement and pursuant to the agreement. Therefore, when you have a case where a building is erected by the lessee not pursuant to any agreement with the Municipality, then the case does not fall under Section 4(4)(a), and there is good reason and principle underlying this restricted exemption given to tenants in respect of premises belonging to Government. If a lessee chooses to put up a building without even any obligation to do so under an agreement with a local authority, or the building is not constructed pursuant to the agreement, then the tenants of that building occupy the premises at their own risk because the land is let out by the local authority and the land would be resumed;

when the tenancy expires, or, as in this case, which is a case of monthly tenancy when proper notice is given by the local authority. What Section 4(1) does is to give immunity to the local authority in respect of the land which it has let out to the lessee and that immunity cannot be taken away merely because the lessee on his own volition and without being under any obligation under any agreement chooses to put up structures on that land. What the local authority wants back is the land which it has let out and the law says that, the tenant or the lessee of that land cannot claim, protection under the Rent Act. It would be wholly unreasonable to suggest that the immunity given to the local authority should disappear merely because the lessee chooses to put up structures on the land. The result would be that if a lessee does not put up structures he would have no answer to the claim of the local authority; if he chooses to put up structures unauthorisedly or without any obligation to do so under any agreement his tenants would have a right to claim protection of the Rent Act and in effect and in substance deprive the local authority of the right to obtain possession of the land.

It is difficult to accept the contention that the Legislature deliberately contemplated such a situation and deprived the local authority of immunity in the case where the lessee puts up a structure and gave immunity to the local authority when no structure is put up.

12. There is also another aspect of Section 4(4)(a) to which reference might be made. As the Supreme Court has laid down, the protection attaches to the premises and the question must always be whether at the relevant date the protection given under the Rent Act attaches to the premises in question. In this case, when the tenancy of Tyaballi was terminated and the Municipality became entitled to take possession of the land, the building in respect of which protection is sought by the appellant was not a building which was erected on a land held by any person from a local authority. Mr. Jethmalani says that the expression "a building erected on any land held by any person from a local authority" must mean a building originally erected, and the test is whether when the building was erected it was on the land held by any person from a local authority. Though there is some force in this contention, we find it difficult to accept it. A building "erected on any land held by a person from a local authority" is descriptive of the building. It does not emphasise the point of time when the building was erected. What is emphasised is that the nature of the building must be such as to satisfy the test that it is erected on a land held by a person from a local authority, and the test must be applied at the time when protection is sought. When the appellants say that the building in which they reside and in which they are tenants is erected on a land held by Tyaballi from the Municipality, the simple answer is that the building is not erected on a land as described in Section 4(4)(a). The land is no longer held by Tyaballi from a local authority and although there may be a building erected on it, as the land does not satisfy the description given in Section 4(4)(a) no protection attaches to that

building.

13. Therefore, whether one looks at it from one point of view or the other, it is clear that on the facts of this case where the Municipality has become entitled to claim possession of the land, where the Municipality is undoubtedly the owner of the land, and where the Municipality is not interested in the structures put up on this land it is no answer by the appellants that the lessee of the Municipality put up structures and let them out to tenants. If they have no answer to the claim of the Municipality with regard to the land on which these structures stand, much less can they have an answer with regard to the structures which have been erected on this land as those structures were not erected under any agreement, lease or grant between the Municipality and the lessee.

14. In our opinion, therefore, the learned Judge below was light in coming to the conclusion that the appellants had failed to make out any title under Order 21, Rule 103, Civil P. C. The result is that these appeals fail and must be dismissed with costs.

15. On the appellant agreeing and undertaking to hand over quiet and vacant possession of the premises in these three appeals on or before 31-5-1956, the respondent Municipality agrees not to execute the consent decree passed by the City Civil Court on 30-1-1952. Mr. Jethmalani also agrees and undertakes to withdraw the appeal preferred by him against the decision in suit No. 6935 of 1954.

16. No order as to costs.

17. Appeals dismissed.