BOMBEY HIGH COURT

Morarji Goculdas Deoji Trust

Vs.

Madhav

Letters Patent Appeal No.7 of 1979

(S.C. Pratap and Sharad Manohar, JJ.)

23.11.1982

JUDGEMENT

S.C. Pratap, J.

1. Arising for determination in this appeal by the original plaintiffs is a question of some importance under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter the Act).

2. Since the year 1950 or so the defendant (respondent) herein has been plaintiffs' tenant of room No. 18 on the first floor of a building known as Morarji Goculdas Deoji Trust Building situated at Kennedy Bridge in the city of Bombay. In or about October 1968, the defendant purchased a car which he commenced parking in the open space of the compound of the said building. The plaintiffs objected. As many as three notices were issued to remove the car from the said compound and cease parking it there. The defendant did not comply nor did he reply to any of these notices. The plaintiffs thereupon filed the instant suit for a declaration that the defendant, by parking his car in the compound, was committing trespass and for permanent injunction restraining him from doing so. The defendant raised two defenses viz., (a) he was parking the car under express permission from one of the trustees; and (b) in any event, he had, under the Act, a statutory right to do so. The Trial Court negatived both these defenses, held the defendant's action to constitute a trespass and decreed the suit.

3. The defendant appealed to this Court. At the hearing, the Trial Court's finding that the defendant had failed to prove permission to park was not challenged. The learned single Judge hearing the appeal, however, held that the ground floor open space in the compound of the building was "appurtenant" to the leased room on the first floor within the meaning of Section 5 (8) (b) of the Act and, therefore, "premises" as defined therein. It was also held that parking car was an essential service within the meaning of Section 24 (1) of the Act and the plaintiffs'

therefore, cannot cut off or withhold the same. The defendant was consequently held to have a statutory right to park his car without any permission from the plaintiffs. The appeal was thus allowed, the Trial Court's decree was set aside and the suit dismissed. Hence, this appeal therefrom under the Letters Patent.

4. The plaintiffs are represented by their learned Counsel Mr. K.J. Abhyankar. The defendant, though served, has not chosen to appear.

5. Hearing the learned Counsel Mr. Abhyankar and going through the impugned judgment and the relevant provisions of the Act, we find ourselves unable to agree with the reasoning and conclusion reached by the learned single Judge. The question first arising for determination is: Is the open space on the ground floor in the compound of the suit building "appurtenant" to the leased premises viz., the room on the first floor within the meaning of Section 5 (8) (b) of the Act? To the extent relevant, the said provision runs thus:

> " 'Premises' means -
> ....
> (b) any building or part of a building let or given on licence separately (other than a farm building) including -
> (i) the garden, grounds, garages and out-houses, if any, appurtenant to such building or part of a building.
> .... "

Now, though one wishes that on the question here the law was certain and succinct, it would, in the very nature of things, not be possible to formulate a precise and singular test or a principle of universal application for determining what is appurtenant. The diversity and the indeterminate nature of the term "appurtenant" and color, form and shape it can take from case to case can be very interesting indeed. It is a term of variable import, scope and ambit. There can, therefore, be no fixed, invariable or strait-jacket approach or formula in this regard. Besides, whether a thing is appurtenant and if so, to what extent, would be a mixed question of fact and law. The resultant answer must, in each case, turn and depend upon the facts and circumstances of that case and the context in which the question arises. Nevertheless, a lock at the standard references should be useful.

6. In Words and Phrases Judicially Defined (Butterworth and Co.) it is stated thus:

> "The word 'appurtenances' has a distinct and definite meaning, and though it may be enlarged by the context, yet the burden of proof lies on those who so contend. Prima facie, it imports nothing more than what is strictly appertaining to the subject-matter of the devise or grant, and which would, in truth, pass without being specially mentioned."

On this aspect, a statement of the law in Halsbury's Laws of England (Fourth Edition, Volume 27, page 103, paragraph 130) can also assist:

> "Meaning of 'house', 'messuage' and "appurtenances'.
> "By a lease of a 'house' outbuildings occupied with and necessary for the convenient occupation of the house will pass, and also a courtyard, garden and orchard. 'Messuage' has the same meaning as 'house'. In the expression 'house and premises', 'premises' refers only to matters intimately connected with the house. The words 'with the appurtenances' do not extend the demise so as to include land or buildings which are used with the demised property, but are not parcel of it; nor do they include a part of the building which has been separated from it and has not been occupied with it for many years previous to the demise. The words 'lands appertaining to' or 'lands belonging to' are more easily extended to land usually occupied with the demised premises."

Yet another inkling in this field can be had from Woodfall's Law of Landlord and Tenant (Twenty eighth Edition, Volume 1, 1978). Firstly at page 195:

> "According to the current at of the most recent decisions it would seem that nothing will pass under the word 'appurtenances' which would not equally pass by a conveyance of the principal subject-matter, without the word 'appurtenances'.

And then at page 197:

> "The word 'appurtenances' is not properly apt for the creation of a new right; but the word easily admits of a secondary meaning, where the circumstances require, as equivalent to 'usually occupied'. Where a strip of ground formed a convenient means of access to the back doors of a row of cottages which were in common ownership, and the cottages were sold to different purchasers, each grant being of a cottage 'with the garden, outbuildings and appurtenance' and including the part of the strip adjoining that cottage, it was held that the right of way de facto enjoyed by the tenants up to the date of the conveyances passed by way of express grant under the word 'appurtenances', although there was no made road over the strip."

The Oxford English Dictionary explains "appurtenance" as follows :-

> "A thing that belongs to another, a 'belonging'; a minor property, right, or privilege, belong to another more important, and passing in possession with it; an appendage."
> "A thing which naturally and fitly forms a subordinate part of, or belongs to, a whole system; a contributory adjunct, an accessory."

And the word "appurtenant" is explained thus:

"belonging as a property or legal right; constituting a property or right subsidiary to one which is more important."
"Appertaining as if by right; proper, suited, or appropriate to; relating, pertinent."
"A thing appertaining; a 'belonging'." The New Webster's Dictionary of the English Language explains the two terms "appurtenance" and "appurtenant" as follows:-
" 'appurtenance' - .....a belonging. That which appertains, belongs, or is subordinate to something else; an adjunct; an appendage. A right or feature belonging to a property and passing with it if the property is sold."
" 'Appurtenant' - ..... Appertaining or belonging; having the effect of a legal accompaniment."

7. In the context of Section 5 (8) (b) of the Act, the term "appurtenant" has to be construed not in its primary sense but in its secondary, non-technical sense such as "usually enjoyed with." The concept indicates something appurtenant to the lease and not the lease itself. So construed, it would mean 'relating to", "adjoining", "an adjunct or an accessory" to the premises let. Plain meaning of the provision simpliciter indicates a nexus between the premises leased and the premises appurtenant thereto. There has to be a fair and rational correlation between the two. Premises to be appurtenant must be premises inevitably implied in and essential to the use and enjoyment of the premises let. Not a constituent part of the lease, but necessary for the convenient enjoyment of the lease and, therefore, intended to be "premises" within its definition in Section 5 (8) (b) of the Act.

8. Considered in this context, what would be the position here? Is it possible, reasonably speaking, to hold that the open space in the compound on the ground floor of the suit building is appurtenant to the leased room on the first floor? The obvious answer is no. The very location of the leased premises on the first floor negatives the defendant's case. After all, to what extent can the term "appurtenant" go? Can it here be extended to the open space in the compound on the ground floor? We think not. Is this ground floor space necessary for the convenient enjoyment of the room on the first floor? Once again, our answer is no. It would be a misnomer to describe the ground floor area as appurtenant to the first floor room. The ground floor area neither pertains nor relates to nor adjoins the first floor room. Nor can it legitimately be said that the ground floor area is usually enjoyed or occupied with the first floor room. It is neither an adjunct nor an accessory nor an appendage *qua* the first floor room.

9. Coming to the authorities cited before the learned single Judge, we feel, with great respect, that it would not be correct to infer and conclude therefrom in favor of the defendant. Apart from the position that altogether different were the facts as also the context in which the question arose in those cases, even the broad ratio emerging there from does not help the defendant here. Indeed, it supports the plaintiffs. If the "appurtenant" premise is actually let out, then, of course, irrespective of whether it is or is not appurtenant, it obviously is part and parcel of the lease itself.

That was precisely the position in ***Trim*** *v. Sturminster Rural District Council*[1], where the ten acres of grass land had been actually let out for years past along with the cottage, garden and orchard as one unit initially to a dairy farmer and thereafter to a poultry farmer. Yet, even so, when later on apparently after the expiry of the lease - question arose whether these ten acres were appurtenant to the cottage, garden and orchard, it was held that:

> ".....The learned county judge was wrong in holding that the word 'appurtenances' included the ten acres. How much of the adjacent land ought to be included in the word 'appurtenances,' depends on the facts of the particular case."

It is difficult, therefore, to see how this case can be of any help to the defendant. On the contrary, the ruling goes to show that in any event the entire ten acres of land was not appurtenant to the cottage, garden and orchard in question. And to determine on the facts and circumstances of that case how much of the adjacent land could be legitimately called
appurtenant, the matter was sent back to the county judge.

[1](1938) 2 KB 508

10. In the Madras ruling *J.H. Irani v. Chidambaran Chettiar*[2], the plaintiff had obtained a lease of the suit land excluding the theatre thereon known as Gaiety Theatre which was owned by defendant No. 1. The land lease in favour of the plaintiff was to come into effect after termination of the subsisting lease in favour of defendant No. 1. As defendant No. 1 did not remove the theatre structure and did not give vacant possession of the land, the plaintiff filed suit to recover vacant possession after removal of the theatre structure. Defendant No. 1 contended that the plaintiff was not entitled to evict him because what was leased to him (defendant No. 1) viz., the suit land, was a "building" within the meaning of Section 2(1) of the Madras Buildings (Lease and Rent Control) Act, 1946 and he (defendant No. 1) was, therefore, protected by the said Act and not liable to be evicted by way of such a suit. In that case, the definition of "building" in Section 2(1) of the aforesaid Act meant not only any building as such but also included the garden, grounds and outhouses, if any, appurtenant thereto. Thus, ground or land appurtenant to a building was also itself a building under the Act. The learned trial Judge dismissed the suit holding (at p. 652):

> "Having regard to the wide connotation that was given to the word 'building', the purpose for which the Madras Buildings (Lease and Rent Control) Act was enacted the nature of the structures in the suit premises and the manner in which the entire premises were being let out and used for a number of years, at any rate, from 1914, and the purpose for which the building was taken on rent by the lessee from time to time leave no doubt in my mind that the suit premises come within the meaning of the word 'building' under the Madras Buildings (Lease and Rent Control) Act, 1946".

In plaintiff's appeal, the Division Bench affirmed this finding and conclusion. It was held that a building consisted not only of the superstructure (theatre) but also the site on which it stood and

in which its foundation is erected. Therefore, what in substance was let to defendant No. 1 was the entire property including the land on which the theatre stood and which land formed part of the building. (See paragraph 13 of the ruling). It was further held that the ground, if any, appurtenant to a building was included in the definition of "building" in the Act. Consequently, if the entire ground was occupied for continuing the superstructure (theatre) along with the lessor's building and the whole treated as one unit, the site may be treated as an appurtenance in the secondary sense of the word. (See paragraph 15 of the ruling). Again, in paragraph 26 of the ruling, it was observed thus:

> "In my opinion the word 'appurtenant' occurring in the definition of 'building' in the Act with which we are concerned is used in the broad secondary and non-technical sense of 'relating to', 'usually enjoyed or occupied with' and 'adjoining' just noticed by me. The idea of the legislature seems to be that if grounds appurtenant to the building in this sense are let along with the building they should stand attracted to the operation of the Act."

11. As in Trim's case (1938) 2 KB 508, so also in this case, it is difficult to see how it supports the defendant. On the contrary and shorn of factors and elements not relevant hereto, the decision and ratio thereof favors the plaintiffs. There is, indeed, a world of difference between a land adjoining or adjacent to or underneath a structure as in the

[2] AIR 1953 Mad 650

Madras ruling and land on the ground floor in relation to a room on the first floor as in the present case. The former is a clear instance of land being appurtenant to the structure and the latter equally so a clear instance but to the contrary viz., the land on the ground floor by no stretch being appurtenant to the room on the first floor. Again, as in the Madras ruling, here also the word "appurtenant" is used in the secondary sense. Thus, the authorities sought to be relied upon by the defendant do not really help him but rather aid the plaintiffs. The principle of both these authorities runs counter to his case. His case is also not based on any recognized principle of law. It also stands unsupported by any binding authority. It also cannot be reconciled with justice. We, therefore, conclude this aspect against him and hold that the open space in the compound of the suit building is not appurtenant to the leased suit room on the first floor and, therefore, does not constitute "premises" within the meaning of Section 5 (8) (b) of the Act.

12. Yet another ground on which the defendant claimed right to park his car - and which claim also was upheld by the learned single Judge - was that car parking was an essential service within the meaning of Section 24 (1) of the Act. We are afraid, here also, with great respect, we are unable to agree, Section 24 (1) reads thus:

> "No landlord either himself or through any person acting or purporting to act on his behalf shall without just or sufficient cause cut off or withhold any essential supply or service enjoyed by the tenant in respect of the premises let to him."

Now, to attract the said provision, the supply or service must be essential; it must have been, without just and sufficient cause, cut off or withheld; it must have been enjoyed by the tenant; and it must be in respect of the premises let to him. It is only on the fulfilment of these minimum ingredients that a case under Section 24 (1) can be said to have been made out. The defendant has failed to establish these conditions. In the first place, car parking is itself not an essential supply or service. In objecting thereto, there is no question, therefore, of cutting off or withholding any essential supply or service. What is more, on the facts here, car parking cannot be said to be a service or a supply:

> ".....enjoyed by the tenant in respect of the premises let to him."

within the meaning of Section 24 (1) of the Act. The said provision has thus no application to the present case. Reliance placed thereon by the defendant can, therefore, be of no avail.

13. The defendant thus fails to prove that he has, as a result of either Section 5(8)(b) or Section 24(1) of the Act, a statutory right to park his car in the suit compound. Even under the general law, we see no such right in him. And finally, his plea of permission to park has also rightly stood rejected. The suit, being an action in trespass, had been rightly decreed. Its reversal in appeal would, therefore, have to be rectified.

14. In the result, this appeal under the Letters Patent succeeds and is allowed. The impugned, judgment and decree in First Appeal No. 449 of 1971 is set aside and the decree passed by the Trial Court in Suit No. 8776 of 1968 is restored and confirmed. In the circumstances of the case, however, there will be no order as to costs of this appeal.
Appeal allowed.