
(1962) 11 BOM CK 0013

In the Bombay High Court

Case No : Civil Reven. Application No"s. 409 and 618 of 1960

Appellants: Merwanji Fardoonji Sethna

APPELLANT

Vs

Respondent: Antelo Custodio Correa

RESPONDENT

Date of Decision : 20-11-1962

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(3B), 17, 5(12)

Citation : AIR 1967 Bom 191 : (1963) 65 BOMLR 412 : (1964) ILR (Bom) 61 : (1963) MhLj 582

Hon'ble Judges : Patel, J;K.K. Desai, J

Bench : Division Bench

Advocate : F.S. Nariman, instructed by Golwalla and Co, for the Appellant; N.S. Giradkar, for C.J. Sawant, for the Respondent

Judgement

Patel, J.—These two revisional applications arise out of a proceeding commenced by the tenant u/s 17B of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The short facts are as below.

2. There was a two storied building in Mazgaon belonging to the defendants, the four petitioners. The ground floor of that building, which consisted of a hall, one room, one kitchen, one passage, one bath-room, two W.Cs. and two verandahs were let out to the plaintiff, which is a club. In or about 1958 the defendants wanted to demolish the building and re-erect the same. They, therefore, obtained a certificate from the Tribunal under the provisions of the Rent Act and thereafter instituted an ejectment suit against the plaintiff. The Court, on the defendants" giving the statutory undertakings, passed a decree in ejectment. The defendants thereafter completed the building by about the month of August 1958. There was some dispute between the parties about the allotment of a flat, but on the 6th of May 1958 the defendants offered one flat on the ground floor to the Plaintiff. As the area offered was about one-fifth of the area originally occupied by it, the plaintiff insisted on being assigned the entire floor area on the first floor which the defendants refused to do. Consequently the plaintiff instituted the suit u/s

17B of the Rent Act for possession of four flats on the first floor. The flats are still vacant.

3. The defendants resisted the suit and contended that the plaintiff was entitled only to one tenement, that they had offered one tenement to him but he did not avail himself of the same and that he was not entitled to more than one tenement. The Trial Court granted two tenements on the first floor. Both the parties appealed and the Bench of the Small Court granted the plaintiff four flats on the first floor. The defendants now come in revision before this Court.

4. u/s 13 of the above Act a landlord could evict his tenant only on limited grounds. In 1950 to meet accommodation shortage, amendments were made to the Act enabling the landlord to obtain possession for demolishing and rebuilding the premises and conditions were imposed for safeguarding the actual tenants. For effectively achieving the object, clause (hh) in section 13(1) was added, and sub-clause (3A) and (3B) were added to section 13. Under clause (hh) of sub-section (1) of section 13 the landlord became entitled to recover possession of premises consisting of not more than two floors for the purpose of demolishing and rebuilding the same Sub-section (3A) prohibited the Court from passing the decree unless the landlord produced a certificate from the Tribunal granted under sub-section (3B) and the landlord gave certain undertaking. Under sub-section (3B) (b) the Tribunal had a discretion to grant a certificate after satisfying itself amongst other things that-

"(ii) the plans provide that the new building shall include tenements equivalent to the tenements which are proposed to be demolished. For the purpose of this paragraph, a tenement shall be deemed to be equivalent if the floor space of the tenement is not greater or less than the floor space of the corresponding tenement proposed to be demolished by more than ten per cent."

5. Section 17A enables the tenant to give the landlord a notice of his intention to occupy the premises from which he had been evicted if the landlord did not commence to build after eviction and gave him a right to make an application to the Court if the landlord failed to deliver possession of the premises to him. In this sub-section the word "premises" has been used which must necessarily mean premises which were actually let to the tenant and from which he was evicted. It is not necessary to refer to sub-sections (2) and (3) of that section since they are not pertinent to the present discussion. Section 17B enables the tenant after the landlord had demolished the original building or premises and commenced erection of the new building to give notice of his intention to occupy a tenement in the new building on its completion of certain conditions. It is not necessary to refer to those conditions as they are not relevant for the present purpose. Section 17C prescribes what the landlord must do on the receipt of notice and requires him to intimate to the tenant the date on which the erection would be complete and on the said date the tenant would be entitled to occupy the tenement. Sub-section (2) of section 17C provides for consequences on the failure of the tenant to occupy the tenement and provides that the tenancy shall

stand terminated and entitled the landlord to recover a sum equal to three times the amount of the monthly standard rent in respect of the tenement. Sub-Clause (b) of sub-section (2) provides that if the landlord fails to comply with the provisions of sub-section (1) or to place the tenant in vacant possession of the tenement he shall be liable on conviction to be punished with imprisonment for a term which may extend to three months or with fine or with both in addition to his liability to place the tenant in vacant possession of the tenement. Originally when the word "tenement" was used in section 17B, it effectively assured the tenant of allotment to him in the new building of almost the same area, for under the terms of section 13(3B)(b) before the Tribunal gave certificate it had to be satisfied by clause (ii) (the now omitted clause) that the tenements were of comparable sizes with the original tenements. By added section 5(12) a "tenement" was defined to mean "a room or group of rooms rented or offered for rent as a unit."

6. Now in 1953 by Act 61 of 1953 certain amendments were made to Section 13, Section 13 (3A) (a) was amended with a desire to make it more workable by enabling compliance with the municipal rules and bye-laws and section 13(3B)(b) was amended by deleting sub-section (ii) reproduced above on the ground that amendment envisaged modern standards as to sizes of rooms, halls etc. The present question arises because of this deletion. It is obvious that under the original amendment of 1950 the intention was to get again to the tenant almost the same area as he first occupied in the new building. By the omission of clause (ii) of sub-section (3B) (b) of Section 13 to some extent the restriction imposed as to similar areas is deleted though it was never intended that the tenant should lose the right to equal premises. It is obvious that when the Legislature deleted the clause (ii) it did not intend that unscrupulous landlords may instead of larger flats build single room tenements for which the tenant has no use or instead of single room tenement may build palatial tenements which poorer class of tenants could not possibly afford. Even so, the Legislature deleted clause (ii) to give reasonable latitude to the owners of buildings in the erection of a new building. But effect of the deletion of clause (ii) is to deprive the tenant either intentionally or unintentionally, to say the least, of the benefit to which he was entitled under the deleted clause. We are not prepared to accept Mr. Nariman's argument that merely by the deletion of the clause above referred to the Legislature intended to enable owners of buildings to create such large modifications in the construction so as to frustrate the provisions of the Rent Act and throw out their tenants by constructing in such a way as to see that they are not in a position to accept the tenancy or to get rights equal to that in the demolished premises. Yet the fact remains that by deletion of the clause in section 13(3B)(b) without a corresponding amendment of section 17B what the tenant is entitled to occupy is "a tenement" i.e., a tenement as defined by section 5(12) which means a room or group of rooms which are either already rented as a unit or offered for rent as a unit.,

7. The learned Counsel for the opponent contended that in view of the object of

the Act and a clear intention on the part of the Legislature to safeguard the interest of the tenant we should disregard the words "a tenement" or so modify their meaning as to include not only such unit but several units and hold that the tenant is entitled to possession of as many units as are equivalent in area from which the tenant is evicted. He has relied upon Maxwell's Interpretation of Statutes, 11th Ed., at p. 221, where the learned author says:

"Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice presumably not intended a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, by altering their collocation, or by rejecting them altogether, under the influence, no doubt, of an irresistible conviction that the legislature could not possibly have intended what its words signify and that the modifications thus made are mere corrections of careless language and really give the true meaning.

If it were possible for us to do so in fairness to the legislature we would indeed have not hesitated to do so. Unfortunately, however, we cannot forget the genesis of the use of the word and its definition in the definition clause. It is an accepted rule that ordinarily a word should carry the meaning given to it by the definition unless the context negatives that meaning. Now, in the present case it is difficult to say that the context negatives that meaning. Originally when the expression "a tenement" was used in this and the cognate sections it carried the defined meaning. Thereafter nothing has happened from which it can be inferred that that meaning was not intended. Apart from this, though it is possible to say that in a legislative enactment the word "tenement" is capable of meaning more than one units or flats, in its present context it is not possible to do so. It introduces obvious difficulties. Supposing we were to omit the article "a" and instead of "tenement" read "Tenements" then what are the limitations which must be observed by the Court in making a decree? We would not therefore be only required to change the meaning of the word but we would also be further required to introduce qualifications to the jurisdiction of the Court in the making of the decree, adding the words "making a total area equal to that which was occupied by the tenant before eviction." Even though in such cases the approach should be liberal. It is doubtful if the Court while construing a section is entitled to so tamper with it as to make out a meaning which it thinks was meant by the legislature without using those words. It may be that in a given case a evicted tenant was occupying more than one tenements under his old tenancy though the tenancy may be single. It is possible for him in such a case to demand more than one tenement in the reconstructed building for the obvious reason that though he had a single tenancy in the old building, he was still a tenant in respect of several tenements and therefore would be entitled u/s 17B to demand more than one tenement in the new building. The present case, however, is not

of that type. In the present case it is an admitted fact that the plaintiff was a tenant of only one tenement and the plaintiff therefore could only demand a tenement as provided by the section. In this view of the matter, therefore, it is not possible to sustain the interpretation of the section by the two courts below.

8. The learned appellate Judges said that the rights afforded to the tenant even after deletion of clause (ii) of section 13(3B)(b) must be regarded to have been meant by the legislature to be reasonably substantial and as section 17B enables the tenant to specify the particular tenement which he intends to occupy and S. 17C gives him a right to occupy the same plaintiff must be given four tenements. Practical difficulties are bound to arise if section 17B and 17C are construed to give the tenant the choice of the particular tenement. Where large number of tenements are built, it is more than likely that several tenants might choose to have only one particular tenement. One fails to see how all of them can occupy one tenement. Though, therefore, the words used in section 17C are "the tenement", reference to section 17-B under which he is required to give notice of his intention to occupy "a tenement" would suggest that his is not the final choice. If such a final choice were to be intended to be given to a tenant, the Legislature in section 17B would have said that the tenant "may give notice to the landlord of his intention to occupy a particular tenement" or "tenement of his choice" which words are not in the section. It would seem therefore that the tenement that he has asked for and expects the landlord to give him is a tenement which is practically similarly situate as far as possible with the tenement which he vacated. The words employed in section 17C are not so must relevant for enabling the Court to get over the language of section 17B regarding the meaning of the words "a tenement". It is also not possible to substitute the word "the" for the word "a" because there is not tenement to which the word "the" could apply. On the whole, therefore, we must hold that the plaintiff is entitled to one tenement only.

9. It is, however, urged that his would frustrate the very purpose of the Act and would enable an owner of a building to get his tenants evicted and make it impossible for them to occupy any of the tenements. We do not, think that this fear is justified. S. 12 disentitles a landlord to recovery of possession of the rented premises. Section 13(1)(hh) enables the landlord to sue for possession but the Court has to be satisfied that the demand is bona fide and reasonable. Before filing his suit landlord is required to obtain a certificate from the Tribunal. It is true that before the Tribunal grants the certificate it is not required to issue a notice to the tenants and is not required to see that the areas of the tenements are similar to the areas of tenements to be demolished. Even so if the Court finds that the landlord is so constructing his building that the tenements cannot be suitable to the tenants intended to be evicted the Court would be entitled to hold that the requirements of the landlord are not reasonable and bone fide. This inference is justified if one considers the whole scheme of the Act which does show that the rights that are given by the Act to the tenants are not intended to be illusory. It is true that the undertaking to be given is that the new premises

shall not contain "not less than two times the number of residential tenements and not less than two times the floor area". Yet the intention is clear that as far as possible the tenants' right should not be prejudiced and that subject to the rules of the Municipal Corporation within whose area the proposed building is to be built the floor area of the tenement to be allotted to the tenant should be similar to the area from which the tenant is being evicted. This construction is supported by the provisions of section 17, 17-B and 17-C in which care is taken to safeguard the tenant in all possible respects. The only object in omitting sub-clause (ii) of sub-section (3B) (b) of section 13 was to make matters consistent with modern ideas of residential flats and not to give the owner of the building a free hand. Having regard to the previous history of the legislation and all the other provisions of the Rent Act we will be justified in holding that in deciding the reasonableness and bona fides of the owner the Court must take the nature of new tenements into account. The Court must require the production of plans for the proposed building and if it decides to evict the tenants one of the undertakings that must be insisted upon is that the landlord shall not deviate from the plans approved by the Court except for reasons of convenience. The Court would be justified in seeing that the tenant gets the protection as is intended to be given by the scheme of the Act.

10. It was argued before us by the learned Counsel for the opponent that this is a revisional application, and at best question of construction of a section, and therefore we should not interfere. If it were so simple as that, we would not have hesitated to dismiss this application. The question, however, is one which involves the jurisdiction of the Court to award possession of the property in dispute to the plaintiff. In view of this fact and in view of the importance of the question involved we could not in fairness refuse to entertain this application.

11. In the result the rule is made absolute and it is declared that the plaintiff is entitled to a tenement in premises, which the plaintiff chooses to be flat No. 5 having an area of 478.5 sq.ft. on the first floor of the building of the defendants. We further direct that the defendants do place the plaintiff in possession of the same. The monthly rent of the flat in question will be Rs. 57 subject to the right of the landlord to have the standard rent determined under the provisions of section 17B. The rest of the decree of the lower Court is set aside. There will be no order as to costs throughout.

12. Order accordingly.