
(1988) 09 GUJ CK 0006
In the Gujarat High Court

Chhotalal Girdharlal Gheewala

APPELLANT

Vs

District Panchayat

RESPONDENT

Date of Decision : 13-09-1988

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 4(4)(a),
4(4)(a), 5(11)(c)
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 103

Citation : (1989) 1 GLR 376

Hon'ble Judges : M.B. Shah, J

Bench : Single Bench

Judgement

M.B. Shah, J.—Being aggrieved and dissatisfied by the judgment and decree dated 12th August, 1988 passed by the Assistant Judge, Surat in Regular Civil Appeal No. 36 of 1984 the petitioner-original tenant has filed this revision application. The learned Judge has allowed the appeal and remanded the matter to the trial Court for being tried in accordance with law.

2. It is the contention of the petitioner who is a tenant of the premises belonging to the respondent-District Panchayat, Surat, that the petitioner is entitled to get the benefit of the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, hereinafter referred to as the "Bombay Rent Act", u/s 4(4)(a) and that the Civil Court has no jurisdiction to decide the suit.

3. In my view, this contention is rightly appreciated by the learned Judge by relying upon the decision of the Supreme Court in the case of Kanji Manji Vs. The Trustees of The Port of Bombay, . In that case the Trustees of the Port of Bombay granted a lease of the suit premises for a term of 10 years. It was provided, inter alia, in the lease deed that upon the expiration of the term, if the lessees had observed and performed all the covenants, they would be at liberty, at their own expense, to remove the buildings erected by them upon the demised premises on condition that the removal would be completed within three months after the expiration of the term. Thereafter in 1942 Trustees of the Port of Bombay

granted lease of the premises to other persons. The Court in that case considered the provision of Section 4(4)(a) of the Bombay Rent Act and held that if Government or a local authority wants to evict a person from the land the provisions of the Rent Control Act do not come in the way and for the same reason the suit for ejectment does not have to be filed in the Court of small causes, as required by the Rent Control Act but in the City Civil Courts as has been done in this case. The Court further dealt with, the aspect that when on the basis of agreement a building is constructed, what is the effect of Section 4(4) (a), and the Court held as under:

It was contended that the contract was incapable of being performed, because at least between the present appellant and his sub-tenants the provisions of the Rent Control Act would apply, and he would not be able to evict them in his turn. It was, therefore, argued that this impossibility on the part of the appellant to fulfil his obligations to deliver vacant possession rendered that portion of the lease deed unenforceable and void. It is to be noticed that the appellant does not claim that by reason of the impossibility the whole of the lease deed becomes void, because if he did so, the suit of the Port Trust authorities would be perfectly justified without any more. He only seeks to show that that portion of the deed dealing with delivery of vacant possession has become impossible of performance. Such a situation had also arisen in the case of the Bombay High Court in AIR 1956 Bom. 364, and the assignee of the lessee was unable to deliver vacant possession. Whether or not the Port Trust authorities would be able hereafter to evict the sub-tenants of the appellant is a matter, on which we need not express any opinion. If the appellant cannot evict his sub-tenants so as to be able to remove the buildings, in exercise of the right conferred on him, that is an unfortunate circumstance, which does not serve to entitle him to defeat the rights of the Port Trust authorities. They are only claiming vacant possession of the site, and under the agreement, if the appellant does not remove the buildings within one month, then they would be entitled to take possession of the land with the buildings, whatever might be the rights of the sub-tenants, and as to which, as we have pointed out already, we say nothing.

The aforesaid decision is considered and relied upon by the Supreme Court in the case of *Maneklal and Sons Vs. Trustees of Port of Bombay and Others*, . In that case the trustees of Bombay Port Trust had granted lease of land admeasuring 576 sq. yards in 1945 to Mustafa Husein for the purpose of erecting a godown for carrying on commercial activities. In 1946 Mustafa Husein erected a permanent godown. In 1958 he granted lease of the said godown to the petitioners of that case. The trustees of the Port of Bombay filed a suit against the heirs of Mustafa Husein for eviction after termination of the tenancy. Decree was obtained in 1977. The petitioners obstructed the execution of the decree by contending that they were lessees protected under the Bombay Rent Act. Finally the obstruction application was dismissed by the Bombay High Court. The Supreme Court considered the question whether the petitioners are entitled to protection u/s 4(1) (a) of the Bombay Rent Act. The Court observed that the answer will depend

upon the question whether there was any building lease granted to the original tenant Mustafa Husein. The Court held that no such lease was there. The Supreme Court held that if the premises belong to Government or a local authority, then the Act would not apply. Further, where the land belongs to local authority but the structures were put on by the lessees not under any building lease, then such protection cannot be claimed in respect of these premises. The Court relied upon the following observations from Kanji Manji's case (supra):

The amendment achieved two different things. It enabled the lessee of the particular kind of building described in Clause (a) to create sub-tenancies in spite of the ban against sub-tenancies contained in Section 15. It also excluded from the operation of Sub-section (1) the buildings specified in Clause (a) of the sub-section. The amendment said nothing about the relationship of the Government or the local authority, on the one hand, and the lessee, on the other, in respect of the land. The word "premises" in Sub-section (1) could mean the land or the buildings or both. Sub-section (4)(a) dealt only with the buildings, and did not deal with the land, because it used the word "buildings" and not the more general word "premises". The import of sub-sec, (4)(a) of Section 4 was thus limited to buildings and did not extend to land. The sub-section, however, was drafted somewhat inartistically, and the obscurity of the language present some difficulty. The trial Judge followed a decision of the Bombay High Court reported in *Ram Bhagwandas Vs. Municipal Corporation of the City of Bombay*, . In that case, one Khudabaksh Irani had taken lease of certain plots some 30 years back, and constructed some structures upon the open plot and rented them out as tenements. In 1947, Irani sold them to one Tyaballi. In 1951, the Municipal Corporation filed a suit to eject Tyaballi from the plots and by a consent decree, Tyaballi agreed to deliver up vacant and peaceful possession of the plots clear of all structures. Tyaballi failed to remove the structures, and the Municipal Corporation sought to execute the decree. The tenants thereupon filed a suit under Order 21, Rule 103 of the CPC against Municipal Corporation, but the suit was dismissed. In the appeal which was filed in the High Court, it was conceded that the Municipal Corporation was the owners of the plots in question, but protection was claimed on the basis of Sub-section (4)(a) of Section 4 of the Rent Control Act. Chagla, C.J. in dealing with the history of the amending Act, pointed out that the legislature was seeking to protect by that sub-section tenants who occupied buildings put upon land belonging to a local authority, if the buildings occupied by them were constructed under an agreement under which the lessee was under an obligation to construct buildings. The pointed out that the protection of Sub-section (4)(a) was to buildings and not to land, and that the phrase "under an agreement, lease or other grant" modified not only "held by any person from Government or local authority" but also "erected on any land". He therefore, held that the words "erected on any land held by any person from a local authority" were descriptive of the building and did not emphasise the point of time, when the building was erected. By that phrase, what was emphasised was that the nature of the building must be such as to

satisfy the test that it was erected on land held by a person from a local authority and the test must be applied at the time when the protection is sought.

Thereafter both the aforesaid decisions were considered by the Supreme Court in the case of Nagji Vallabhji and Company Vs. Meghji Vijpar and Company and Another, , the Court held that the plain reading of Sub-section (1) of Section 4 makes it clear that the provisions of the Bombay Rent Act are not applicable to premises belonging to the Government or a local authority. Sub-section (4)(a) only takes out from the scope of the exemption conferred by Section 4(1) a building erected on any land held by any person from the Government or a local authority under an agreement, lease, licence or other grant, although having regard to the provisions of such agreement, lease, licence or grant the building so erected may belong or continue to belong to the Government or the local authority, as the case may be. The Court further held that the language of Sub-section (4)(a) and Sub-section (1) of Section 4 of the Bombay Rent Act read together suggests that it was only in respect of a building put up by the lessee on the Government land or land belonging to a local authority under a building agreement that sub-lessees were taken out of the exemption contained in Sub-section (1) of Section 4 and allowed the benefit of the provisions of the Bombay Rent Act. The Court thereafter dismissed the appeal.

4. In view of the aforesaid decisions of the Supreme Court, in my view, the contention of the learned Advocate for the petitioner has no substance. It is not necessary to consider the decision upon which the learned Advocate relies viz. Ram Bhagwandas Vs. Municipal Corporation of the City of Bombay, , wherein the Court dealt with a claim of tenancy rights by virtue of provision of Section 5(11) (c) of the Rent Act. As the question was clearly required to be dealt with by the Court under the Rent Act, the Court held that the City Civil Court had no jurisdiction to decide the said question. The learned Judge has "discussed the rent-note Ex. 65 which provides that the suit property was let out to the defendant on yearly rent of Rs. 130/- for the purpose of Petrol Pump and other business and as per the said lease-deed the defendant was entitled to make necessary construction for business purpose. Hence it can be said that the petitioner is not under an obligation to construct a building on land which is let out to them. It is not a lease of land under a building agreement.

5. In this view of the matter, the appellate Court has rightly held that only the Civil Court has jurisdiction to decide the suit. The provisions of the Bombay Rent Act would not be applicable to the lease of land granted by the District Panchayat i.e. local authority. Hence there is no substance in this revision application and is rejected. Further, as the suit is filed in the year 1971, the trial Court is directed to dispose of the suit at the earliest.

As the point, is decided by the Supreme Court, there is no question of granting the prayer of the learned Advocate for the petitioner that the operation of this order be stayed for a period of six weeks so as to enable the petitioner to approach the Supreme Court. The prayer is, therefore, rejected.