
(1970) 11 GUJ CK 0015
In the Gujarat High Court

Heirs of Decd. Darji Mohanlal Lavji

APPELLANT

Vs

Muktabai Shamji

RESPONDENT

Date of Decision : 03-11-1970

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 5(11)(c), 5(11)(c)

Citation : (1971) 12 GLR 272

Hon'ble Judges : S.H. Sheth, J;A.D. Desai, J

Bench : Division Bench

Judgement

A.D. Desai, J.—This revision application is directed against the judgment and decree passed by the Assistant Judge, Jamnagar holding that the petitioners, who are the heirs of deceased Darji Mohanlal Lavji, are not the tenants within the meaning of the word "tenant" as defined in Section 5(11)(c) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the Act) in respect of the suit premises which was let for the purpose of business and directing them to vacate the suit premises.

2. Shortly stated the facts are that the respondent is the owner of the suit premises. The suit premises was let to one Darji Mohanlal Lavji, who was using the premises for the purpose of his tailoring business. The respondent had terminated his tenancy by giving a notice in the year 1958. After termination of the tenancy, the respondent had filed a civil suit against Mohanlal Lavji for possession of the suit premises on the ground that he was in arrears of rent. In the said suit the respondent had also prayed for fixation of the standard rent. The suit with regard to the possession was dismissed and the sifter rent of the suit premises was fixed. Mchanlal Lavji died on June 1, 1964. The petitioners are the heirs of said Mohanlal Lavji and the respondent filed Civil Suit No. 455 of 1955 in the Court of the 2nd Joint Civil Judge, Junior Division, Jamnagar against the petitioners to recover the possession of the suit premises alleging, that the tenancy of Mohanlal Lavji was terminated and after the termination he remained in possession of the premises as a statutory tenant. The right of statutory

tenancy was personal to Mohanlal Lavji and on his death the petitioners had no right to remain in possession of the suit premises as the petitioners are not the tenants within the meaning of the word "tenant" as defined in Section 5(11)(c) of the Act. It was alleged that the petitioners as heirs and legal representatives of deceased Mohanlal Lavji are bound to hand over possession of the premises to the respondent together with the arrears of rent. In the alternative the respondent claimed possession of the suit premises on the ground that she bona fide required the suit premises for carrying on the business of silk dying and printing works. The petitioners filed their written statement and contended that Mohanlal Lavji was not the only tenant in respect of the suit premises; that it was not true that his tenancy was terminated and that he was a statutory tenant; that it was not true that after his death the petitioners had not acquired tenancy rights in respect of the suit premises; that the petitioners were carrying on the business in the suit premises during the life time of Mohanlal Lavji and carried on the business in the said premises even after his death; that the respondent had accepted rent from the petitioners after the death of Mohanlal Lavji and thus they have been accepted as tenants, and it is not open to the respondent to contend that the petitioners are not the tenants in respect of the suit premises. The learned trial Judge came to the conclusion that the petitioners were the tenants in respect of the suit premises and the plaintiff-respondent failed to prove that the premises were required for her bona fide personal requirements. Being aggrieved by the said judgment and decree the respondent filed Regular Civil Appeal No. 212 of 1967 in the Court of the District Judge, Jamnagar. The appeal was heard by the learned Assistant Judge, who came to the conclusion that the petitioners were not the tenants as defined in Section 5(11)(c) of the Act and, therefore, were not entitled to the protection of the provisions of the Act. The learned appellate Judge confirmed the binding of the trial Court that the plaintiff-respondent failed to prove that the suit premises was required by her for her personal bona fide requirement. The learned appellate Judge allowed the appeal and passed a decree of eviction against the petitioners. This revision application came up for hearing before a single Judge of this Court who has referred the same to the Division Bench.

3. Mr. Shah appearing for the petitioners raised the following contentions:

(1) That the petitioners are the tenants and entitled to the protection of the provisions of the Act.

(2) The present suit for eviction was filed in rent Court and the appeal was filed in the District Court u/s 29 of the Act. The learned appellate Judge having come to the conclusion that the petitioners were not the tenants erred in law in passing a decree of eviction as it had No. jurisdiction to pass such a decree against the petitioners who were held not to be the tenants.

(3) That the order of the lower appellate Court rejecting an application for additional evidence to prove that the original tenant in respect of the suit premises was the joint family consisting of the petitioners and deceased Mohan

Lavji was erroneous.

4. The answer to the first question depends upon the construction of Section 5(11)(c) of the Act as it stood before its amendment by Act 18 of 1965. It is necessary to refer to certain well established principles of law before trying to construe the provisions of amended Section 5(11)(c) of the Act which defines the word "tenant". Section 105 of the Transfer of Property Act defines lease as a transfer of right to enjoy the property leased for a certain time expressed or implied or in perpetuity, in consideration of a price paid or promised, or of money. The contractual tenancy is governed by the provisions of the Transfer of Property Act. A lease is determined in a manner provided u/s 111 of the Transfer of Property Act. Whether the lease enures for the benefit of the heirs of the tenant or not depends upon the nature of the lease. In *Bavasaheb Walad Mansursaheb Kotri and Another Vs. West Patent Press Co. Ltd. and Others*, a Division Bench of the Court observed as follows:

If the lease is for a definite period and before the period is over, the lessee dies, during the remainder of the period, the lease-hold rights enure For the benefit of his heirs, unless the document clearly stipulates that in case of the lessee's death before the expiration of the period the rights of the lessee are not to enure for the benefit of his successors. If the lease is for an indefinite period, it does not enure for the benefit of his heirs. It is usually for the life-time of the lessee himself, unless again it clearly appears from the contract that the benefit of the lease is intended to accrue to the successor of the lessee.

The law as to who is a statutory tenant and what are his rights is now well established. The Supreme Court in *Anand Nivas (Private) Ltd. Vs. Anandji Kalyanji Pedhi and Others*, as under:

A person remaining in occupation of the premises let to him after the determination of or expiry of the period of the tenancy is commonly though in law not accurately, called "a statutory tenant". Such a person is not a tenant at all; he has no estate or interest in the premises occupied by him. He has merely the protection of the statute in that he cannot be turned out so long as he pays the standard rent and permitted increases, if any and performs the other conditions of the tenancy. His right to remain in possession after the determination of the contractual tenancy is peisonal; it is not capable of being transferred or assigned, and devolves on his death only in the manner provided by the statute.

In the instant case the finding of the Courts below are that Mohanlal Lavji was a tenant in respect of the suit premises and was carrying on business of tailoring therein. His tenancy was terminated in the year 1958 and thereafter he remained in possession of the suit premises as a statutory tenant. Mohanlal Lavji died on June J, 1964. The provisions of the Amending Act of 1965 came into force in June 1964. The present suit was filed on November 5,1965. So in the present case we are concerned with the rights of the members of the family residing with

statutory tenant, and it is in this light that we consider the unamended provisions of Section 5(11)(c) of the Act. There cannot be any dispute that the provisions of Section 13 of the Act are enacted to protect the tenants and would come into operation after the termination of the tenancy. We shall now turn to the provisions of Section 5(11) of the Act which were as follows:

Section 5(11): "tenant" means any person by whom or on whose account rent is payable for any premises and includes-

(a) such sub-tenants and other persons as have derived title under a tenant before the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959.

(aa) any person to whom interest in premises has been transferred under the proviso to Sub-section (1) of Section 15;

(b) any person remaining, after the determination of the lease, in possession, with or without the assent of the landlord, of the premises leased to such person or his predecessor who has derived title before the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959;

(c) any member of the tenant's family residing with him at the time of, or within three months immediately preceding his death as may be decided in default of agreement by the Court.

This definition of word "tenant" can be divided into two parts. The first or the main part of the definition provides that a "tenant" means any person by whom or on whose account rent is payable for any premises,. The second part of the definition is enumerative and begins with the word "includes". The word "include" is a term of extension. It imports addition. It adds to the subject matter already comprised in the definition. It enlarges or widens the meaning the word used in the statute. Now the first part of the definition of the word "tenant" is that any person by whom or on whose account rent is payable for any premises is a tenant. The expression any premises is important and to understand its meaning reference to Section 6 of the Act is inevitable. Section 6 of the Act provides that in area specified in Schedule 1, the provisions of part two shall apply to premises let for residence, education, business, trade, storage and also open land let for building purposes. The inclusive part of the definition refers to classes of persons who are included within the word "tenant". This part of the definition is an inclusive one and the sub-clauses indicate the Classes of persons who in addition to those that are included in first or main part of the definition, are entitled to become tenants. Sub-clauses (a), (aa), (b) and (c) of Section 5(11) of the Act make no reference to the nature of the premises leased. The said sub-clauses only refer to the classes of persons who are entitled to become tenants. Clause (c) of Section 5(11) of the Act provides that any member of the tenant's family residing with him at the time of, or within three months immediately preceding his death, as may be decided in default of agreement by the Court, is a tenant.

The words "residing with him" control the expression "any member of the tenant's family" and the said words do not refer to the nature of the leased premises. There are no words of limitation such as "in respect of premises let for residence"-which we now find in the Amending Act which require the sub-clauses to be restricted imperatively to residential premises in which the tenant was residing at the time of his death. The main part of the definition refers to any premises. Similarly in Sub-clauses (a), (aa) and (b) there is nothing to indicate that the said provisions do not apply to all the premises. There are no words of limitation in Sub-clause (c) to indicate that the benefit of the said provisions is to accrue only in respect of residential premises. The Legislature enhanced the provisions of Section 5(11)(c) of the Act for the purpose of protecting the members of the tenant's family residing with him at the time of, or within three months immediately preceding his death. The protection was not extended to any and every member of the family but only to such member of the tenant's family who was residing with him at the time of, or within 3 months immediately preceding his death. In a case where the statutory tenant dies, his tenancy would come to an end. In order to protect the members of the family residing with such a tenant, the provisions of Section 5(11)(c) of the Act were enacted. The said provisions lay down the manner of devolution of the statutory tenancy and it devolves on the death of the statutory tenant on any member of the tenant's family residing with him at the time of, or within three months immediately preceding his death. In many cases, maintenance of members of tenant's family residing with him depend on the income derived from the business and in order that such members of the tenant's family may not be thrown on the street but continue to maintain themselves by carrying on business in the premises, the Legislature seems to have enacted the provisions of Section 5(11)(c) of the Act. For the reasons aforesaid the true construction of the provisions of Section 5(11)(c) of the Act is that any member of the tenant's family residing with him at the time of, or within three months immediately preceding his death is a tenant within the meaning of the said provisions irrespective of the purpose for which the premises were let. On the death of a statutory tenant any member of his family residing with him at the time of, or within three months immediately preceding his death is entitled to become a tenant.

5. Much reliance was sought to be placed on the decision in *Parubai Manilal Brahmin and Ors. v. Baldevdas Zaverbhai Tapodhan* V G.L.R. 563 Bhagwati J. as he then took the view that by enacting the provisions of Section 5(11)(c) of the Act the intention of the Legislature was to protect the members of the tenant's family residing with him at the time of his death from being thrown out from the premises in which he was residing. In construing the section the learned Judge observed:

This requirement clearly has reference to the premises which were occupied by the tenant and in which the member of the tenant's family was residing with the tenant at the time of his death. Section 5(11)(c) cannot possibly apply to the

case of premises which were used by the tenant as business premises and in respect of which it could not be said that the member of the tenant's family was residing with the tenant at the time of his death. It is difficult to appreciate why if the Legislature wanted to protect a member of the tenant's family in respect of business premises, the Legislature should have prescribed the requirement that the member should be residing with the tenant at the time of his death. There is no nexus between the requirement of residence of the tenant's family with the tenant at the time of his death and the creation of a statutory tenancy in respect of business premises in favour of such member.

With great respect it is difficult to agree with the said reasoning. A plain reading of the provisions of Clause (c) of Section 5(11) of the Act indicates that the words "residing with him" control the expression "any member of the family" and the said word do not refer to the nature of the premises which are let out. The main part of the definition of the word "tenant" refers to any premises. Sub-clauses (a), (aa) and (b) also apply to all premises. There are no words in the provisions of Section 5(11)(c) of the Act which limit the application of the clause to residential premises. The Legislature intended to give protection to the member of the tenant's family residing with him, possibly with a view to permit continuance of the business which in many cases is the only or main source of maintenance for such person. Thus there is obviously a nexus between the requirement of residence of the tenant's family with the tenant at the time of his death or immediately three months prior to it and the creation of statutory tenancy in respect of business premises in favour of such member. The factum of residence provides a nexus between the deceased and the members of the family who are entitled to the benefit of the protection under the Act.

6. Reliance was also sought to be placed on the decision in *Mustafa Is mail and Ors. v. Manishanker Maheshekumar Keshavlal Vyas and Anr.* 8 G.L.R. 641 where Sarela J. took the view that he saw no sufficient reasons to differ from the view taken by Bhagwati J. (as he then was) in *Parubafs case* (supra). It is significant to note that no argument was advanced either in *Parubai's case* or *Mustafa Is mail's case* that the words "residing with him" control the expression "any member of the tenant's family" and that the said Sub-clause made no reference to the nature of the leased premises. The learned Judge further observed as under:

In fact the Legislature appears to have endorsed that interpretation by the manner in which the said Sub-clause (c) was amended by the Gujarat Act 18 of 1965. Under that amendment, in respect of the business premises the protection is extended not to a member of the family who resided with the tenant but a member of the family carrying on the business with the tenant at the premises. The condition of residence which appeared in the original Sub-clause (c) was, therefore, rightly construed by this Court as indicating that sub-clause referred to residential premises.

With great respect, it is not possible to agree with this reasoning of the learned

Judge. It is well-established that it is the function of the judiciary to interpret the law and it is its exclusive jurisdiction. The function of the Legislature is to enact a law. It is not the function of the Legislature to interpret or to endorse an interpretation put by the Court on any provision of law. To say, therefore, that "the Legislature appears to have endorsed the interpretation by the manner in which the said clause was amended by Gujarat Act 18 of 1965" is contrary to the well established principles of law and the basis of our Constitution, which clearly lays down the respective functions of the judiciary and Legislature. The true aspect is that the Legislature having found that the protection which the Legislature intended to give to the members of the tenant's family residing with him at the time of, or within three months immediately preceding his death had not been carried out in view of the interpretation of Section 5(11)(c) of the Act in Parubai's case (supra), it amended the section so as to give the said benefit or protection to such members.

6.1 In the instant case Mohanlal Lavji, who was the tenant in respect of the suit premises died on June 1, 1964. Girdharlal, Mohanlal, Ex. 33, stated in his evidence that his father Mohanlal Lavji was sick 4 years prior to his death and that he was working with his father in the tailoring shop since last 15 years before the date of his deposition. He further deposed that his brother Kantilal was also working in the shop since 8 or 9 years. He stated that he and his brothers resided with his father as members of undivided Hindu family. This part of the evidence remains unchallenged. Muktabai Shamji, Ex. 25, landlady, deposed that she had no knowledge whether Mohanlal Lavji and the present petitioners were living together as the members of undivided Hindu family. The evidence on the record, therefore, is sufficient to show that the present petitioners were residing with the statutory tenant, namely, Mohanlal Lavji, at the time of his death. That being so the petitioners are the tenants within the meaning of word "tenant" as defined in Section 5(11)(c) of the Act and entitled to the protection of the provisions of the Act. The suit has been filed by the landlady to recover possession of the suit premises on the ground that she bona fide required the possession thereof for selling Saris and to do printing work. Both the lower Courts have come to the conclusion that the evidence on the record was insufficient to prove that the landlady required the suit premises for her personal bona fide requirement. The said finding is not and could not be challenged before us. It is thus clear that the landlady having failed to prove her bone fide requirement in respect of the suit premises is not entitled to decree of eviction. We have accepted the first contention of Mr. Shah and, therefore, it is not necessary for us to consider other contentions advanced by him.

7. The result is that the decree passed by the learned Assistant Judge requiring the petitioners to hand over the possession of the suit premises is set aside and for the reasons already stated, the decree passed by the trial Court dismissing the suit of the landlady for possession is restored. There shall be no order as to costs of this revision application. Rule made absolute.