

(1971) 09 BOM CK 0006

In the Bombay High Court

Case No : Criminal Revision Application No. 592 of 1970

K.R. Agarwal

APPELLANT

Vs

Balkrishna Jawar and Another

RESPONDENT

Date of Decision : 21-09-1971

Acts Referred:

Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 — Section 2

Citation : AIR 1972 Bom 343 : (1972) 74 BOMLR 238 : (1972) MhLj 474

Hon'ble Judges : Apte, J

Bench : Single Bench

Advocate : S.P. Kanga, for N.H. Pardashani, for the Appellant; G.N. Khare, S.C. Pratap, Asst. Government Pleader, for the Respondent

Judgement

1. This revision by the original complainant is directed against the order passed by the Presidency Magistrate 27th Court, Mulund, Greater Bombay dismissing the complaint filed by the Petitioner against respondent No. 1 and one V. K. Jawar, alleging offences under the provisions of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale Management and Transfer) Act, 1963 (hereinafter referred to as "the Act"), on a preliminary ground that the premises in dispute were not covered by the Act, inasmuch as they were not a "flat" within the meaning of that term as defined in the Act.

2. Few facts which it is necessary to state for the purposes of this application , are these :

3. The accused, who are brothers and were partners of a concern styled as M/s. Korbusiers, widely advertised a housing scheme which was called "Mini Land". It appears that the accused had acquired about 45, 831 Sq. yards of open plot of land from M/s. Orient Corporation on lease for a period of ninety-nine years with a renewal clause and they proposed to divide this land in different plots and offered housing accommodation in these plots. It appears the scheme was that on each plot accommodation consisting of ground - floor and two other floors

was offered to each purchaser. It seems that one building was to be constructed on each plot, but that building was to be divided into four different buildings touching each other. Several persons purchased the housing accommodation in this Scheme and it is common ground that the accused actually constructed such buildings and even delivered possession to the purchaser. One of the terms of the agreement was to form a co - operative society promoted by the accused. The accused not having done that, the present complaint out of which this revision petition arises was filed by the petitioner who is one of the purchasers of one of the portions of a building called a bungalow type building. The number of the bungalow type accommodation given to him is 5 - B. The complainant alleged various breaches of the provisions of the Act by the Accused.

4. The accused contended that the accommodation offered was an independent bungalow type accommodation and that each purchaser became absolute owner of the ground and two floors standing thereon, and that, therefore, it was not a flat within the meaning of that expression as defined in the Act. This contention was upheld by the learned Magistrate and he dismissed the complaint. The learned Magistrate, however, while dismissing the complaint, observed that since the premises in question were not a "flat" under the Act, he had no jurisdiction to deal with them. It is difficult to follow this part of the reasoning of the learned Magistrate, because even assuming for a moment that the premises in dispute do not fall under the definition of a "flat" contained in the Act, that will not affect the jurisdiction of the Magistrate to deal with the complaint.

5. The only question that arises on this revision, therefore, is whether the premises, which were sold by the accused to the complainant satisfied the requirements of the definition of expression "flat" as contained in the Act. Clause (a) of Section 2 defines the expression "flat" as meaning a separate and self contained set of premises used or intended to be used for residence, or office, or show - room or shop or godown (and includes a garage) the premises forming part of a building and includes an apartment. In order that premises, therefore, should come under this definition, the following requirements must be fulfilled :-

1. the premises must be separate and self contained set of premises; and
2. must be such as can be used or intended to be used for residence, shop or Goodman or garage.
3. the premises must form part of a building.

6. It is not disputed in the present case that the first two requirements are satisfied. It is not denied that the premises in question are a separate and self contained set of premises and that they are intended to be used for residence. The controversy, however, centres round the last requirement, viz. whether the premises form part of a building or not ? If the answer to this question is in the affirmative, then, obviously, the premises in question must be held to be a "flat" within the meaning of this definition. On the other hand, if the answer to the question is in the negative, then, obviously the premises in question cannot be

regarded as "flat" and then the provisions of the Act would not be applicable.

7. Now, in order to determine whether the premises form part of a building or not, the actual construction erected will have to be taken into account. It appears that the entire area of 45, 831 sq. yards, which was taken on lease by the accused was divided into several plots, each plot measuring 500 square yards. On each plot a bungalow type construction having four apartments divided by common party - wall east - west and south - north was erected unit having separate entrance and opening on two sides. Each portion has a ground - floor and two storeys. Each part has common wall on two sides - back side and one other side. To illustrate this point further on the plot in question building No. 5 was constructed and that building was divided into four parts by putting party - walls exactly in the middle length - wise and breadthwise, and each portion was given a separate No. as 5 - A, 5 - B and 5 - C and 5 - D. The complainant in this case purchased the portion bearing No. 5 - B. It is , therefore obvious that although each portion is an independent unit, it forms part of larger building which has been divided into four portions.

8. It was contended on behalf of the accused - respondent that the purchaser of each of the four portions in the building became an independent however of the building as well as of the ground below it. It was also submitted that each purchaser was an absolute owner of the portion purchased by him and was free to sell it or to dispose of it in any manner he liked, and therefore, each unit must be regarded as a separate bungalow. It is however, difficult to accept this contention for the simple reason that the element of ownership does not enter into the definition of the expression "flat". In other words whether the purchaser is an independent owner or not is entirely irrelevant in order to determine whether the premises are a flat or not. That being so, it is obvious that the premises in this case to satisfy all the three tests of "a flat" within the meaning of the definition contained in the Act.

9. It is incidentally contended for the respondent that the Life Insurance Corporation had taken a view that each purchaser was the full and absolute owner of the portion purchased by him and he was able to mortgage the same and they have even accepted mortgages of the portion from some of the owners. But, as observed above, that is not the criterion to determine whether the premises are a flat.

10. Mr. Khare wanted to urge that in order to determine whether it is a flat it would also be necessary to take into account the dictionary meaning of that expression. But since the Legislature itself has chosen to define the word "flat" for the purposes of this Act, it would not be permissible to travel beyond the definition contained in the Act, in order to determine the scope of that expression.

11. For these reasons discussed above, the view taken by the learned Magistrate that the premises involved in this case are not a "flat" is obviously erroneous. The order dismissing complaint of the petitioner is, therefore, set aside and the

case is sent back to the learned Magistrate to proceed with it according to law.

12. Rule absolute.

13. Revision allowed.