

(1977) 11 BOM CK 0001

In the Bombay High Court

Case No : Special Civil Application No. 2836 of 1975

Marutrao Pandurang Zende

APPELLANT

Vs

Eknath Shivram Jagtap

RESPONDENT

Date of Decision : 02-11-1977

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 2, 3
Hindu Succession Act, 1956 — Section 14

Citation : (1979) 81 BOMLR 234

Hon'ble Judges : Jahagirdar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Jahagirdar, J.—This is a tenant's petition against the decree passed by the learned Fourth Extra Assistant Judge of Poona whereby the plaintiff's suit for possession of the premises tenanted by the petitioner was decreed. The petitioner and the respondent will hereinafter be called "the defendant" and "the plaintiff" respectively. This petition raises an interesting question of law relating to the consequences of the withdrawal by the notification of the provisions under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter called "the Bombay Rent Act") from certain areas to which the said provisions had been made applicable earlier.

2. Admittedly the defendant was in possession of a part of the house No. 589, hereinafter referred to as "the suit premises", situated at Saswad in Purandar Taluka of Poona District. The defendant entered in the suit premises as a tenant in January 1963 and continued to occupy the same as a tenant. It is said that the initial rent was Rs. 20 and subsequently it was increased to Rs. 50 per month. The plaintiff, by a notice dated July 2, 1970, terminated the tenancy of the defendant with effect from July 31, 1970 and filed a suit for the recovery of possession of the suit-premises on the ground, among others, that he was in need of the same for the purpose of his business as parcel commission agent of

the State Transport. The suit was resisted by the defendant on various grounds which however need not be mentioned in details for the purpose of the disposal of this petition.

3. The learned trial Judge decreed the suit upon holding that the provisions of the Bombay Rent Act were not applicable to the relationship between the plaintiff and the defendant. This decree was successfully challenged by the defendant in appeal which was allowed by the appeal Court. The appeal Court set aside the decree of the trial Court and remanded the suit to the trial Court holding that during the pendency of the suit the provisions of the Bombay Rent Act were made applicable and, therefore, the suit would be governed by the provisions of the said Act.

4. After the remand the trial Court dismissed the suit for possession though a decree for some amount was passed towards the rent due from the defendant. The plaintiff preferred an appeal, being Civil Appeal No. 85 of 1974, which was heard and allowed by the learned Extra Assistant Judge of Poona by his judgment and order dated August 27, 1975.

5. While so allowing the appeal the learned Assistant Judge noted that immediately after the disposal of the suit and during the pendency of the appeal the provisions of the Bombay Rent Act were withdrawn by the Government by a notification. Relying upon the judgment of the Supreme Court in Qudrat Ullah Vs. Municipal Board, Bareilly, , the learned Assistant Judge took the view that if the provisions of the Rent Act were withdrawn from a particular area even during the pendency of an appeal, the judgment and decree that will be passed in appeal will be according to the position that the provisions of the Rent Act were not applicable to the proceedings at all. It must be pointed out that both the Courts below have, on the merits of the case, if it were a Rent Act suit, gave findings in favour of the defendant. If, therefore, the provisions of the Rent Act are held to be applicable to the suit premises, then a decree for possession could not be passed. If, however, it is held, as the learned Assistant Judge has held, that the provisions of the Rent Act are not applicable even if they were made inapplicable after the dismissal of the suit, then the decree that would be passed in appeal will be one for possession in accordance with the general law and not in accordance with the provisions of the Rent Act.

6. The suit, it must be noted, was filed in the year 1970 and by a notification, dated February 25, 1971, issued u/s 2(3) of the Bombay Rent Act, the provisions of the Rent Act were made applicable to Saswad wherein the suit premises are situated. As a result of this notification, as already mentioned above, the appeal Court at a previous stage of the proceedings remanded the matter to the trial Court for disposal on the basis that the provisions of the Rent Act applied to the suit premises. The suit was dismissed on December 21, 1973 and the plaintiff preferred an appeal against the decree of dismissal. When this appeal was pending, under another notification issued u/s 2(4) of the Rent Act, the provisions of the Rent Act ceased to apply to the suit premises. Thus on the date

of the hearing of the appeal, the protection of the Bombay Rent Act was not available to the defendant.

7. The present petition challenges the view taken by the learned Assistant Judge that if the provisions of the protective Act are withdrawn during the pendency of the appeal, the tenant ceases to have protection of that Act. According to the petitioner, who is represented before me by the learned advocate Mr. Laliit, the suit was governed by the provision's of the Rent Act and this is concluded by the previous order passed by the appeal Court and if that is so, then, in view of the provisions contained in Section 3(3) of the Bombay Rent Act, all the proceedings pending before the notification withdrawing the provisions of the Rent Act from Saswad will" have to be continued as if the withdrawing notification was not issued at all. Mr. Lalit further contended that the reliance placed by the learned Assistant Judge on the judgment of the Supreme Court in Qudrat Ullah's case was misplaced inasmuch as that case dealt with a statute which was temporary and the provisions corresponding to Section 7 of the Bombay General Clauses Act would not apply to a temporary Act. In the present case, however, says Mr. Lalit, by Sub-section (3) of Section 3 the Legislature had made the provisions of Section 7 of the Bombay General Clauses Act explicitly applicable to a situation arising after a notification is issued withdrawing the provisions of the Rent Act from any particular area. As I will presently point out the meaning which has been read by Mr. Lalit in the decision of the Supreme Court is not correct. Before doing so, it would be proper to briefly mention the relevant provisions of the Bombay Rent Act,

8. The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, came into force on January 19, 1948. As originally enacted, the Act was of limited duration but it has been extended from time to time by several amending statutes. As it stands to-day, the Act is to expire on March 31, 1979. Section 2 of the Bombay Rent Act mentions that Parts I and IV of the Act shall extend to the Bombay area of the State of Maharashtra and that Parts II and III shall extend respectively to the areas specified in schs. I and II of the Act and would continue to extend to any such area notwithstanding the fact that the area ceases to be of the description therein specified. We are concerned with the provisions of Part II in the present case because that part deals with the residential premises, Sub-section (J) of Section 2 empowers the State Government to extend to any other area any or all of the provisions of Part II or Part III or of both by a notification to be published in the Official Gazette. Corresponding power to withdraw the application of the provisions by issuing fresh notification is given in Sub-section (4) of Section 2 of the Act. Upon such notification being issued, the provisions, which are withdrawn by the notification will cease to be in force in such area and from such date as specified in the notification. As it stands to-day the Act shall remain in force upto and inclusive of March 31, 1979 and then shall expire. It is, therefore, clear that the Act is temporary and normally, as has been held by several authorities, the provisions corresponding to Section 7 of the Bombay General Clauses Act do not apply to temporary Acts. This position is well-settled

and needs no further discussion (See State of Orissa Vs. Bhupendra Kumar Bose, Because of this legal position, it appears that the Bombay Legislature made a provision by Sub-section (3) of Section 3 that Section 7 of the Bombay General Clauses Act shall apply upon the expiry of this Act or upon this Act or any provision thereof ceasing to be in force in any area, as if it had then been repealed by a Maharashtra Act. It is, therefore, clear that if any provision which was originally applicable to any particular area is repealed or ceases to be in force in any area pursuant to a notification issued by the State Government u/s 2(4) then, the provisions of Section 7 of the General Clauses Act must come into play. There is abundant authority for the proposition that if during the pendency of a suit the provisions of the Rent Act are made applicable to any particular area, that suit will be heard and disposed of under the provisions of the Rent Act. (See Shah Bhajraj v. Subhash Chandra (1961) 64 Bom. L.R. 407. There is also an authority for the proposition that if during the pendency of an appeal the provisions of the Rent Act are made applicable to any area, the appeal shall be disposed of in accordance with the general law and not in accordance with the provisions of the Rent Act which are made applicable. (See Ratandas v. Monica (1973) 76 Bom. L.R. 394. The position which would arise if the provisions of the Rent Act are withdrawn from any area after the disposal of the suit but during the pendency of the appeal, it appears, has not been the subject of any reported decision.

9. The decision of the Supreme Court in Qudrat Ullah's case deals with an enactment which is somewhat analogous to the Act with which we are dealing and the learned Assistant Judge relied upon the same while decreeing the suit of the plaintiff. Before I proceed to examine whether the reliance placed by the learned Assistant Judge is correct, it would be appropriate to notice the provisions of Section 7 of the Bombay General Clauses Act which is made specifically applicable to a situation arising after the withdrawal of any provision of the Rent Act from any area. Section 7 of the Bombay General Clauses Act reads as under:

Where this Act, or any Bombay Act or Maharashtra Act, made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(c) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act has not been passed.

For our purpose Clause (e) of the said section is of relevance. Paraphrased Section 7 of the Bombay General Clauses Act says that repeal of any Bombay Act shall not affect any investigation, legal proceeding or any remedy in respect of any such right, privilege, obligation, liability and any such investigation, legal proceeding or remedy may be instituted, continued or enforced as if the repealing Act had not been passed. Predictably, Mr. Lalit emphasised on phrases in this provision whereby it is mentioned, according to him, that any legal proceeding shall be continued as if the repealing Act had not been passed.

10. The effect of the provisions analogous to Section 7 of the Bombay General Clauses Act has also, in my opinion, been considered by the Supreme Court in Qudrat Ullah's case and it has been held, as I will show presently, that disability of the landlord under the relevant rent legislation in removing the tenant from the suit premises does not bestow a corresponding right upon the tenant to remain in possession of the suit premises. If the provisions of the Rent Act are withdrawn, the disability upon the landlord is removed and the landlord shall proceed against the tenant in accordance with the general law as if the protection under the Rent Act is not available to the tenant.

11. In Qudrat Ullah's case a suit had been filed by the Municipal Board against the defendant on the ground that he was a licensee of the premises in his possession and belonging to the Municipal Board on the ground that the defendant was a licensee and the licence had been revoked. In 1955 the trial Court dismissed the suit holding that the defendant was a lessee entitled to protection of the then U.P. (Temporary) Control of Rent and Eviction Act, 1947, hereinafter referred to as "the 1947 Act". The Municipal Board preferred an appeal to the High Court which, by its decision dated September 29, 1964, held that part of the premises in possession of the defendant were subject-matter of a lease and the remaining part were the subject-matter of a licence. Consistent with this finding, the High Court decreed the suit in so far as the premises held under licence were concerned and dismissed the suit in respect of the premises held under lease. Both the sides preferred appeals to the Supreme Court. Civil Appeal No. 1727 of 1968 was preferred by the defendant and Civil Appeal No. 1728 of 1968 was preferred by the Municipality. By the time the appeals came up for hearing in the year 1973, U.P. Legislature had passed another Act viz. U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, hereinafter referred to as "the 1972 Act". Section 2 of this Act exempted from the operation of the Act any building belonging to or vested in the State Government or the Government of India or any local authority. Under this Act, therefore, a building belonging to Municipal Board (original plaintiff) was exempted from the

provisions of the said Act. Section 43 of the 1972 Act repealed the Act of 1947 which was temporary and which was to expire within a short time. However, in Section 43(2)(h) it was provided that notwithstanding the repeal of the earlier Act any Court before which any suit or other proceedings relating to the eviction from any building is pending immediately before the commencement of this Act may, on an application being made to it within sixty days from such commencement, grant leave to any party to amend its pleadings in consequence of the provisions of the said Act. Referring to this provision, the Supreme Court observed that even if the suit for recovery of possession be one under the earlier Rent Control law, the later Act will apply and necessary amendments in the pleadings can be made. That, however, was not the only ground on which the Supreme Court held that appeals pending before it should be disposed of as if the protection that was available under the Act of 1947 ceased to be available to the defendant at the time of the hearing of the appeals by the Supreme Court. It is true, as Mr. Lalit pointed out, that there is considerable discussion in the judgment of the Supreme Court wherein the question has been dealt with on the footing that the provision corresponding to Section 7 of the Bombay General Clauses Act shall not apply but that is not the whole judgment. The Supreme Court has discussed the case visualising three situations and under each one of them it has been held the plaintiff ought to succeed in the appeal. Indeed as mentioned in para. 26 of the judgment, U.P. Act of 1947 expressly attracted Section 6 of the U.P. General Clauses Act (corresponding to Section 7 of the Bombay General Clauses Act) and that is why they discussed the position even with reference to the General Clauses Act. In para. 20 of the judgment the legal position on the assumption that Section 6 of the General Clauses Act applied has been discussed. If the said section applied then the Supreme Court proceeds to point out that what is preserved by operation of the said section of the General Clauses Act is the previous operation of repealed enactment, rights, privileges, obligations and liabilities acquired, accrued or incurred, investigations, legal proceedings and remedies in respect of any such right, privilege, obligation or liability. The submission of the learned advocate appearing for the plaintiff that the defendant had no right or privilege under the repealed Act was mentioned with approval. Section 3 was only a procedural restriction and did not create a substantial right. Section 3 to which reference was made is in the following terms:

No suit shall, without the permission of the District Magistrate, be filed in any civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds.

It was more a procedural disability that is cast upon the landlord and it does not create a substantive cause of action. A reference was also made to a judgment of the Division Bench of the Calcutta High Court in Haripada Pal Ghosh v. Tofajaddi Ijardar ILR(1933) Cal. 1438, wherein it was held that the disability which was imposed by the previous law having been removed, there was nothing that stood in the way of the plaintiffs recovering rent at the contract rate, when the cause of

action for the same arose.

12. The judgment which the Supreme Court thought was more relevant to the position in the appeals before it was *Boddington v. Wisson* [1951] 1 All E.R. 166. That was a case where the landlord of a holding served on the tenant a notice to quit without the consent in writing of the Minister as required by relevant regulation. Before the period of notice expired, the relevant regulation was revoked. Section 38 of the Interpretation Act, 1889, of England corresponded to Section 6 of the General Clauses Act under consideration of the Supreme Court and the following passage from the judgment was approvingly reproduced in para. 21 of the judgment of the Supreme Court (p. 403):

... nor do I think that the tenant's protection under the regulation could be fairly described in the words of Sub-section (2) (c) as a "right" or "privilege", or the limitation of the landlord's right be fairly described as an "obligation" or "liability", nor do I think that it is a penalty or a punishment in respect of an offence within para. (Id).

The Supreme Court pointed out that the Court eventually concluded that the notice to quit was valid since the regulation requiring consent had been, revoked and the landlord was entitled to possession,

13. Mr. Lalit's criticism, therefore, that the Supreme Court did not deal with the position where the provision corresponding to Section 7 of the Bombay General Clauses Act applied is incorrect. The position that emerges from a correct reading of the judgment of the Supreme Court in *Qudrat Ullah's* case is this that, if during the pendency of an appeal the provisions of the relevant Act are withdrawn from any area, then appeal shall be disposed of in accordance with the general law and not in accordance with the provisions of the Rent Act. The question, whether a change in law at the time when an appeal is pending can be taken into consideration while giving relief in appeal, is also concluded by the same judgment in *Qudrat Ullah's* case. That a change in law can be considered by the appeal Court in order to mould the relief to be given at the time of the disposal of the appeal is well-established. Only one reference need be made and that is the judgment of the Supreme Court in *Gummalapura Taggina Matada Kotturuswami Vs. Setra Veeravva and Others*, , where this question, directly arose and was answered in the affirmative. In that case A, the last male holder, died in the year 1920 and by his will he had authorised his wife to adopt a son. Such adoption having been done, it was challenged by a person who claimed to be the nearest reversioner. The suit to the District Judge was dismissed and the appeal tot the High Court also came to be dismissed and when the matter went to the Supreme Court and before it was heard, Hindu Succession Act, 1956, was passed. It was,urged on behalf of the widow that by virtue of Section 14 of the Hindu Succession Act she became the full owner of the property possessed by her. The Supreme Court held that the change in law that took place when the appeal was pending before the Supreme Court has got to be taken into consideration for giving final relief and accordingly, holding on the facts of that

case and considering the provisions of Section 14 of the Hindu Succession Act that the widow had become the full owner of the suit property, the appeal preferred by the original plaintiff came to be dismissed. That apart, in Qudrat Ullah's case itself in para. 27 it has been specifically mentioned that:

. . .It is appropriate for a Court to do justice between parties to the litigation and in moulding the relief in the light of the subsequent developments, to take note of legislative changes. A court of justice should, if it could, adjudicate finally and not leave the door ajar for parties to litigate again.(p. 404).

So in the two appeals which were finally disposed of by this judgment, the Supreme Court took note of the change in law that has come about during the pendency of the appeals "before the Supreme Court and disposed of the appeals in accordance with the law.

14. Before I conclude this judgment a reference must be made to "a judgment of Vaidya J. in Narayan Shripati Phadtare v. Govind Tukaram Khalade (1976) Special Civil Application No. 1949 of 1975, decided by Vaidya J., on October 20, 1976 (Unrep.), which is also after the decision of the Supreme Court in Qudrat Ullah's case. Mr. Lalit brought this judgment to my attention and pointed out that the proceedings giving rise to the petition before Vaidya J. were also in respect of the town Saswad and similar situation prevailed in those proceedings but Mr. Lalit was also fair to point out that the effect of the withdrawal of the provisions of the Bombay Rent Act to any particular area was not discussed in the judgment of Vaidya J.; It is needless to say that there is no reference to the judgment of the Supreme Court in. Qudrat Ullah's case. The judgment proceeded on the assumption that the suit having been governed by the provisions of the Bombay Rent Act, continued to be governed till it was finally disposed of upto the stage of the High Court. In my opinion, therefore, there is nothing in this judgment which would affect the view I have taken by following the judgment of the Supreme Court.

15. In view of peculiar circumstances of the case, the parties will bear their own costs. The petition fails. The rule is discharged with no order as to costs. The decree for possession, however, will not be executed till January 1, 1978.