
(1967) 03 GUJ CK 0004
In the Gujarat High Court

Mustafa Ismail and Others

APPELLANT

Vs

Manishanker @ Maheshkumar Keshavlal Vyas and Another

RESPONDENT

Date of Decision : 21-03-1967

Acts Referred:

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

Citation : (1967) 8 GLR 641

Hon'ble Judges : Akbar S. Sarela, J

Bench : Single Bench

Judgement

Akbar S. Sarela, J.—The applicants in this revision application are the heirs and legal representatives of the original defendant Ismailbhai Mohmmadbhai. That defendant was sued in the Court of the Joint Civil Judge, Junior Division, Nadiad, by the present opponents, who were the plaintiffs of that suit for eviction from the suit premises in which that defendant was their tenant. Out of the several grounds on which eviction was sought one ground, which alone is now relevant, was that the landlords required the premises reasonably and bona fide for their own occupation. The trial Court by its judgment dated 11th February 1963, found that case made out and having further held that greater hardship would be caused by refusing to pass a decree than by passing it, it gave the landlords a decree for eviction. The original defendant went in appeal to the District Court at Nadiad. Pending the appeal the original defendant died and his heirs and legal representatives were brought on record. Now, the premises in suit are admittedly business premises and it was held by this Court on 22-4-63 in Parubai v. Baldevdas V G.L.R. 563 that on a true construction of Section 5(11)(c) of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1948 (hereinafter referred to as the Act) that section does not apply to premises which were used by the tenant as business premises and on the death of a statutory tenant in respect of business premises, the statutory tenancy would come to an end and neither the heirs nor the members of the family of the statutory tenant would be entitled to resist the landlord's claim for recovery of possession. When the

appeal before the District Court came up for hearing this decision was brought to the learned Judge's notice and the learned appellate Judge held, following this decision, that the heirs and legal representatives of the defendant were not entitled to resist the claim for possession. Accordingly, the appeal was dismissed and against that order this revision has been filed.

2. Before I set out the submissions of Mr. R.M. Shah, the learned advocate appearing for the applicants, in support of the revision application, it is appropriate to notice the change in the Act which has taken place after the appeal was decided and while the revision application to this Court was pending. Clause (11) of Section 5 of the Act defines the expression "tenant" as meaning any person by whom or on whose account rent is payable for any premises and then follows the inclusive part of the definition made up of four sub-clauses. Sub-clause (a) refers to certain sub-tenants, Sub-clause (aa) to certain persons to whom the interests of the tenant in the premises has been transferred,, Sub-clause (b) refers to certain persons remaining in possession after the determination of the lease and Sub-clause (c), which is material, reads as under:

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.

The persons falling in this Sub-clause (c) were thus included in the definition of the expression "tenant". It was this Sub-clause (c) which was construed by this Court in *Parubai v. Baldevdas* (supra). In that case the premises were leased out and were being used by the tenant for the purpose of business. After the termination of his tenancy on the ground that he had fallen in arrears of rent the landlord filed a suit against the tenant and pending the suit the tenant died. The main contention urged on behalf of the heirs and legal representatives of the defendant-tenant was that on the death of the original defendant the said heirs and legal representatives became statutory tenants in their own right u/s 5(11) (c) of the Act. The Court held that that provision cannot apply to a case where the premises are used for the purpose of business. After that decision the said Sub-clause (c) was amended by Section 3 of the Gujarat Act No. 18 of 1965 which came into force on 18th June 1965 and for the said Sub-clause (c) the following clause was substituted:

(c) (i) in relation to premises let for residence, any member of the tenant's family residing with the tenant at the time of, or within three months immediately preceding the death of the tenant as may be decided in default of agreement by the Court, and

(ii) in relation to premises let for business, trade or storage, any member of the tenant's family carrying on business, trade or storage with the tenant in the said premises at the time of the death of the tenant as may continue, after his death, to carry on the business, trade or storage, as the case may be, in the said premises and as may be decided in default of agreement by the Court.

Sub-clause (c)(i) substantially reproduces the original Sub-clause (c) and under Sub-clause (c)(ii) the protection of the Act is extended to business premises and a member of the tenant's family carrying on business, trade or storage with the said tenant in the premises at the time of the death of the tenant as may continue after his death to carry on the business, trade or storage, as the case may be, in the said premises, became entitled to that protection. This change in law took place, as I earlier stated, while this revision application was pending before this Court.

3. The submissions made by Mr. R.M. Shah, the learned advocate of the applicants, may now be stated. His first submission was that this Court's decision in Parubai's case which was the decision of a Single Judge had not considered the provisions of the law correctly and he invited me to disagree with that decision and hold that the protection of Section 5(11)(c) of the Act, as it originally stood, did extend also to business premises and to refer the matter to a Division Bench. His next submission was that if I was not inclined to accept that submission, even then the decision does not come in his way in view of the amendment in the law made by the Gujarat Act 18 of 1965 while this revision application was pending in this Court. His argument on that part of his submission was two-fold. One was that the amendment was in fact retrospective by its language and intendment and gave a retrospective protection to tenants of business premises and the members of their family carrying on business with the tenants in the premises at the time of the death of the tenants and therefore the applicants here, if they prove that they satisfied the conditions laid down in the amended provision, cannot be evicted. He desired that for that purpose the matter should be remanded back to enable the applicants to prove by evidence that they satisfied the conditions laid down in the amended provision. His other argument was that even if the amended provision is not held to have retrospective operation by its language or necessary intendment, even then, under a rule of construction of statutes the amendment must relate back to the date of the original Act and therefore the amendment must be deemed to have been there all along and the Act must be read as if it always contained this amended provision. In support of this last proposition he relied on the decision of the Bombay High Court in Parvati v. Shridhar 60 Bom. L.R. 1165.

4. The first submission may be disposed of in brief. In respect of the construction of Section 5(11)(c) of the Act as it originally stood before it was amended by Gujarat Act 18 of 1965 Mr. R.M. Shah has not been able to advance any argument which has not been considered in Parubai's case. I see no sufficient reason to differ from the view taken by Bhagwati J. in that case. 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 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 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 that sub-clause referred to residential premises.

5. To appreciate the arguments advanced by Mr. R.M. Shah in support of his submission that the amended provision is retrospective in operation, it is necessary to notice the scope and effect of the said Sub-clause (c)(ii), that is to say, the amended provision. On the termination of the contractual tenancy the landlord has under the general law a right to the possession of the premises which carries with it a right to recover possession. This is a substantive right. Section 12 of the Act places restrictions on that right. Now, Sub-section (1) of Section 12 creates what is known as the status of irremovability in favour of the tenant which is generally described as a statutory tenancy. Under the inclusive part of the definition of the expression "tenant" this protection against eviction was available even after the death of the statutory tenant to the members of his family residing with him, in view of the provisions contained in Section 5(11)(c) as it stood before the amendment. In respect of premises let for business, trade or storage, to be referred to for brevity's sake as business premises, a member of the tenant's family was not protected from eviction after the death of a statutory tenant. In respect of business premises, therefore, so far as these applicants are concerned a right to recover possession became vested in the landlord on the death of their father. The amendment of Clause (c) of Section 5(11) by Gujarat Act 18 of 1965 affects this right of the landlord in this case. The statutory tenant's right, if it be called a right, to continue in occupation went with him on his death as the law stood at the time. The amendment created a new restriction on the landlord. In respect of landlords who had become entitled to recover possession the amendment if retrospective would deprive them of that right. This is the effect of the amendment.

6. It is now time to consider the second submission of Mr. R.M. Shah and it would be convenient to deal first with the second limb of that submission. His argument is that when a provision of an Act is amended, the amendment must relate back to the date of the original Act and the provision as amended must be deemed to have been there all along from the date of the Act. He said that this was a rule of construction in respect of an amending enactment. His argument in effect was that in respect of an amendment it was unnecessary to inquire whether the Legislature intended it to be retrospective, for the rule of construction on which he relies gives the amendment in that effect. In support of this proposition he relies on *Parvatibai v. Shridhar* (supra). That decision relates to an amendment of the very Act we are considering. Section 13 of the Act entitles a landlord to recover possession on one of the several grounds set out in the various clauses of Sub-section (1). One of those clauses, Clause (g), entitled the landlord to recover possession when he reasonably and bona fide required the premises for occupation by himself or by any person on whose benefit the premises were held. Sub-section (2) originally contained an explanation. The explanation reads as under:

For the purposes of Clause (g) of Sub-section (1), a person shall not be deemed

to be a landlord unless he has acquired his interest in the premises at a date prior to the beginning of the tenancy, or the first day of January 1917, whichever is later or, if the interest has devolved on him by inheritance or succession, his predecessor-in-title had acquired the interest at a date prior to the beginning of the tenancy, or the first day of January 1947, whichever is later

While this explanation was standing the person who had purchased the property after the first day of January 1947 filed a suit against the tenant on the grounds stated in Clause (g) of Sub-section (1) of Section 13. Now, in view of the explanation he would not be entitled to take the benefit of the said Clause (g). While the matter was pending in appeal before the District Court the said explanation came to be deleted by an amending Act and the effect of the deletion was that, although a person claiming to be a landlord may have acquired his interest in the premises after January 1, 1947, even so he could be deemed to be a landlord. The argument advanced on behalf of the tenant before the High Court was that the landlord was not entitled to the benefit of this amendment. In negating that argument their Lordships of the Bombay High Court said:

Now, the question in this appeal is: what is the effect of the Amending Act No. LX[of 1953 upon the explanation below Sub-section (2) of Section 13 of the Rent Control Act ? Having heard Mr. Abhyankar at considerable length on this point, we have come to the conclusion that the amending Act introduced a change in the provisions of Sub-section (2) of Section (3 of the Rent Control Act. As soon as the change was introduced, the amending Act finished itself. Its purpose was served out. The amending Act had no independent existence and, therefore, what was done by the amending Act must relate back to the date when the original Act was passed. It is settled upon authority that the amending statute must be taken to have been written with the same ink and pen with which the original statute was passed. This is the same thing as to say that so far as the provisions of this amending Act are concerned they must relate back to the date upon which the original statute was passed.

Mr. R.M. Shah relies on the observations that "what was done by the amending Act must relate back to the date when the original Act was passed". His argument is that in this case also the amended provision embodied in Sub-clause (c)(ii) must relate back to the date on which the original Act was passed. This observation of the Bombay High Court is based on the decision of the Supreme Court in the case of Shamrao Parulekar v. State of Bombay 54 Bom. L.R. 877 . But before [turn to that case it would be convenient to refer to an earlier decision of the Supreme Court namely S. Krishnan and Others Vs. The State of Madras, . There the Supreme Court was considering an amendment to the Preventive Detention Act, 1951. The amending Act, by its provisions, not only extended the period of the operation of the original Act but also incorporated several other material provisions in the original Act. It was with reference to those provisions that his Lordship Mahajan J. observed:

Technically speaking, an amended statute remains the same statute as originally

enacted but from that proposition it does not follow that the law contained in the amended statute is the same law as was contained in the original one. The law declared by Sections 9 and 12 of the amended statute is not the same law as was declared by the original statute and to that extent the amended statute is in the nature of a new and independent statute.

Therefore, the amended Act is in the nature of a new and independent statute. The law contained in it is not the same law as was contained in the original Act. The amended portion cannot be deemed to have been in the original Act all along. Now turning to the case of *Shamrao Parulekar v. State of Bombay* (supra) the Court was again concerned with an amending Act which amended the Preventive Detention Act, 1950, so as to extend the life of the said Act. With reference to that amendment their Lordships said:

The construction of an Act which has been amended is now governed by technical rules and we must first be clear regarding the proper canons of construction. The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed (except where that would lead to a repugnancy, inconsistency or absurdity) as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all.

The decision of the Bombay High Court in *Parvatibai's* case is based on these observations. It will be noticed that the observations of the Supreme Court are not concerned with the date from which the amended provision takes effect but are concerned with the construction of the original Act after the amendment in the Act has been made and this is clear by the Supreme Court itself in a subsequent decision in *Shri Ram Narain Vs. The Simla Banking and Industrial Co. Limited*, to which Mr. M. C. Shah for the opponents invited my attention. After reproducing the above observations from *Shamrao Parulekar's* case the Court goes on to explain them as under:

Now there is no question about the correctness of this dictum. But it appears to us that it has no application to this case. It is perfectly true as stated therein that whenever an amended Act has to be applied subsequent to the date of the amendment the various unamended provisions of the Act have to be read along with the amended provisions as though they are part of it. This is for the purpose of determining what the meaning of any particular provision of the Act as amended is, whether it is in the unamended part or in the amended part.

But this is not the same thing as saying that the amendment itself must be taken to have been in existence as from the date of the earlier Act. That would be imputing to the amendment retrospective operation which could only be done if such retrospective operation is given by the amending Act either expressly or by necessary implication.

Therefore, the proposition which the Bombay High Court drew from the dictum

enunciated in Shamrao Parulekar's case has been expressly negated by the Supreme Court itself in Rama Narain's case. In Balvantsing v. N. Rama Iyer 7 G.L.R. 1101 this Court after referring to the rule of construction enunciated in Shamrao Parulekar's case pointed out that the question whether the amended part has not retrospective operation has still to be answered. Reference may now be made to the decision of Supreme Court in Moti Ram Vs. Suraj Bhan and Others, on which Mr. M C. Shah for the opponents relies. Their Lordships were dealing with an amendment to the East Punjab Urban Rent Restriction Act, 1949. u/s 13(3)(a)(iii) as it stood before the amendment the landlord was entitled to possession from the tenant on the ground that he wanted to reconstruct the premises. After the landlord had instituted the proceedings for possession on that ground, that provision was amended and the landlord under the amended provision could get possession on the ground of reconstruction only if he required the rented building to carry out any building work at the instance of the Government or Local Authority or any Improvement Trust under some improvement or development scheme or the building had become unsafe or unfit for human habitation. Therefore, the amended provision introduced an additional restriction on the landlord's right to recover possession. While considering the question whether the amendment was or was not retrospective the approach to that question was laid down by their Lordships in the following words:

It is well-settled that where an amendment affects vested rights the amendment would operate protectively unless it is expressly made retrospective or its retrospective operation follows as a matter of necessary implication

It was held that the amendment was not retrospective and did not affect the right of the landlord in the pending proceedings to obtain possession in accordance with the law before the amendment. It is, therefore, not possible to accept Mr. R.M. Shah's submission that the amendment in the present case must be deemed to have the same force and effect as if it was enacted in the original Act from the date when the original Act was passed.

7. The question whether the amendment in this case is in fact retrospective has then to be decided. Whether or not an enactment is retrospective is a matter of legislative intent. The question to be asked is what is the will of the Legislature in that behalf. If the Legislature desires an enactment to be retrospective it may say so in express words or it may indicate it by necessary implication. Where there are no express words and the question is whether a retrospective operation of the relevant provision can be spelt out by necessary implication. Before considering that aspect of the matter certain general principles may be noticed. There is a presumption against retrospective impairment of vested rights. As pointed out by Maxwell in his Interpretation of Statutes (eleventh edition) at page 206, every statute which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions or considerations already past, must be presumed, out of respect to the Legislature, to be intended not to

have a retrospective operation. The same principle applies to amendatory statutes. The observations of the Supreme Court in *Motiram, v. Suraj Bhan* (supra), earlier quoted, make this clear. In *Corpus Juris Secundum* Vol. 82, article 432, it is stated:

In accordance with the rule generally applicable to legislative enactments, discussed supra 414, unless the contrary is required in express terms or by clear implication, an amendatory act will be construed prospectively and not retrospectively at least with respect to substantive rights.

Therefore, in respect of an amendatory enactment the approach is the same as in respect of an original enactment. Even if the alteration of the law takes place during the pendency of an action, the acquired rights are presumed not to be disturbed unless the intention to disturb them is clear. As stated by Maxwell (supra at page 212):

In general when the law is altered during the pendency of an action, the rights of the parties are decided according to the law as it existed when the action was begun, unless the new statute shows a clear intention to vary such rights.

9. This presumption against retrospective operation in respect of substantive rights does not apply to alteration in procedure. Alterations in procedure are generally taken to be retrospective unless there is good reason against it, because there is no vested right in procedure.

10. Now there is no doubt that the amendment with which we are concerned in the present case affects the substantive rights of the landlord as already pointed out. Therefore, the amendment would operate retrospectively in such a case only if it is expressly made retrospective or its retrospective operation follows as a matter of necessary implication. Now, there is no express provision either in the amending Act (Gujarat Act 18 of 1965) or also elsewhere making the amended provision retrospective in operation. The absence of such an express provision is significant in view of the fact that the Legislature had on a former occasion while amending this Act when it intended to make the amending provision retrospective expressly stated so. Thus by Bombay Act 46 of 1954 Sub-section (1) of Section 10C of the Act was amended by substituting a new Clause (5) for the original Clause (5). This amendment was made by Section 2 of the said amending Act, and Section 3 of the said amending Act provided that the amendment made by Section 2 of this Act shall be deemed to have come into force on or from the date on which the Bombay Rent, Hotel and Lodging House Rates Control (Second Amendment) Act, 1953 came into force. The Legislature therefore must be aware of this previous practice. The absence of a similar express provision in respect of the amendment of Section 5(11)(c) introduced by Gujarat Act 18 of 1965 is, therefore, not without significance. However, if the language of the amended provision compels the inference that it was intended to be retrospective the absence of an express provision would not come in the way. Mr. R.M. Shah has not been able to point out how the language compels such an

inference. All that he could argue was that the Legislature intended to extend the benefit of the Act to business premises after the original tenant's death. That no doubt is true. But from that to infer that therefore retrospective operation was intended is begging the question. He argued that if retrospective operation was not given the object of provision would be defeated. It is not possible to accept that argument. The benefit of the provision would be available in cases where the tenant dies after the amended provision is enacted. The language of the provision shows that its protection is available at the time of the death of the tenant. Obviously the death contemplated is the death after the amended provision was enacted, for if the statutory tenant has died before the provision was enacted, the protection which he carried with him in respect of the business premises in his occupation has gone with him. The amendment contemplates a survival of tenancy. If there was no right of tenancy existing on the date of the amendment came into force, there was nothing to continue. The language of the amendment therefore does not support the contention that it compels retrospective operation. Having regard to the fact that by the amendment new restrictions are placed, that those restrictions are on the undoubted right of the landlord to obtain possession and that a retrospective operation of the amended provision would have serious consequences on accrued rights, one should expect, when there is no express provision requiring the amendment to operate retrospectively, a clear indication in the language that it was intended to operate retrospectively. There is absence of any such indication and it is, therefore, not possible to accept the submission of Mr. R.M. Shah that the amended provision operates retrospectively.

11. For these reasons, the revision application is rejected. Rule discharged with costs.