
(1983) 01 BOM CK 0036

In the Bombay High Court

Case No : Spl. C.A. No. 2797 of 1978 (Bom.)

Rukhminibai Ramvilas Lahoti

APPELLANT

Vs

Muralidhar Govindram and Company

RESPONDENT

Date of Decision : 21-01-1983

Acts Referred:

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

Citation : (1985) 1 BomCR 418 : (1983) 85 BOMLR 454

Hon'ble Judges : Tulpule, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Tulpule, J.—The petitioner is the landlord of certain premises situate in the town of Karad, Satara District. The properties are known as City Survey Nos. 220/18 and 220/15. These two properties are apparently situate in a compound and are separate from each other. The property bearing City Survey No. 220/15 is the rear or "to the east of property CTS No. 220/18. The two are separated by an open space in between which is apparently used by the different tenants of the two properties in question. There appear to be tenants in both the houses Nos. 220/18 and 220/15. It would appear from the map which is produced in the case exh. 56 that the occupants and tenants occupying the rear building to CTS No. 220/18 have a passage of way or exit and entry to the Western road by strip of land lying between the shop let to the defendant and plaintiffs' other portion of the property.

2. The defendant runs a business of mineral oils and is a supplier and stockist thereof. He has a shop in property CTS No. 220/15 which faces the west and a godown in the rear building No. CTS 220/18. The go-down and the shop face each other and the godown is accessible only from the open space.

3. The plaintiffs-landlords complained of the defendant having erected a permanent structure in that open space lying between the godown and the shop

of the defendant and, therefore, filed the present suit out of which this petition has arisen in the Court of the Civil Judge, Junior Division, Karad. That was Civil Suit No. 68 of 1971. Apart from the other grounds which were pressed into service for claiming possession from the defendant-tenant, one of the contentions was that the defendant had erected a permanent structure or construction on the premises leased to him. That was the only ground which survived and remained in the contest between the parties.

4. The learned trial Judge framed an issue, which is issue No. 5, in this behalf and it is worded in this manner. "Does the defendant prove that he has right as a tenant of the suit premises to use the open space in between the suit premises for his trade?" He answered that issue in the affirmative, but said that the defendant "should not erect permanent structure therein". As a fact he found that the defendant has erected a permanent structure. In that view of the matter, he decreed the plaintiff's suit apparently holding that the open space was a part of the premises leased to the defendant.

5. Against this decision an appeal was carried by the tenant to the District Court, Satara, which was Civil Appeal No. 257 of 1974. The learned Assistant Judge, who heard that appeal allowed it by his judgment dated February 21, 1978 and dismissed the suit. So far as the portion over which the permanent structure was constructed, he held that it was not a part of the leased premises though he agreed with the finding of the trial judge that the structure erected was a permanent structure, since this erection of the structure was not on the premises which were let. In the view taken by the learned Assistant Judge, he dismissed the suit.

6. Aggrieved by that judgment and decree, the present petition is filed.

7. Shri Dabre, advocate appearing for the petitioner pressed only one contention before me. His contention was that upon a true construction of the word "premises" and of what was let to the defendant the open space in between the shop and the godown which was leased to the defendant, must be held to be the premises let to the defendant within the meaning of the word "premises" as defined in Section 5(8) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "the Rent Act"). His contention was that the open space in between the shop and the godown was appurtenant to the premises which were let to the defendant, namely, the shop and the go-down and, therefore, fell within the definition of the word "premises" in Section 5(8) of the Rent Act. He relied, therefore, strongly upon the definition of "premises" in Section 5(8), Clause (b) and in particular Sub-clause (i), which reads as follows;

the garden, grounds, garages out houses, if any, appurtenant to such building or part of" a building.

8. The contention of the learned advocate was that assuming premises which were let to the defendant were a part of a building, which cannot, if disputed, the open space in between was appurtenant to such part of the building. It was,

therefore, part of the premises which were let to the defendant and must be held to be falling within the Rent Act.

9. [After reviewing the pleadings and evidence His Lordship proceeded.]

10. It will thus be seen that it is the plaintiff's case that the open space in these two properties was not only not leased to the defendant, but that the defendant was not permitted or allowed to use that open space. Further it was the case of the plaintiff that this open space was meant for use by all the tenants of the plaintiff. Exhibit 56 would go to show that there appear to be other tenants besides the defendant in both these properties namely, CTS No. 220/18 and 220/15.

11. Shri Dhorde relied upon a decision of the Madras High Court in *In Re: S. Panchapakesa Iyer*, He contended that the word "appurtenant" in the definition of "premises" in Section 5, Sub-section (8) would include ground along with a building or a part of a building. He contended that this definition is similar to the definition of the word "building" appearing in the Madras Rent Control Act and the interpretation, therefore, in *Irani's case* (supra) should be adopted.

12. This contention overlooks the question which really arose for decision in that case and also suffers from the circumstance that the definition of the word "building" therein in the Madras Rent Act is different than the definition of the word "premises" in the Bombay Rent Act. It is no doubt true that relevant Sub-clause (a) of the Madras Act is analogous to the definition in Section 5(8)(b), but the Bombay Act does not have the words "and let or to be let along with the leased building". It will thus be seen that in order that grounds should be a part of the building, so far as Madras Act was concerned, they must be "let or to be let along with leased building."

13. Considering the question as to the meaning of the word "appurtenant", it must be recognised that the word "appurtenant" has reference to the word "premises" or building. Section 5(8) says "premises" means any building or part of a building and includes garden or grounds appurtenant to such building or part of a building. In other words, therefore, the ground in question must be appurtenant to the building whether let with it or without it. Where garden, ground or garages or out-houses are let along with the building or part of that building, no difficulty arises. The question only arises where what is admittedly let is a building or a part of the building and the question is whether any garden, grounds or garages or out-houses which are along with such a building or part of a building are appurtenant to it or No.

14. The word "appurtenant" must be understood therefore, in the context and would mean relating or in conjunction with the premises, namely, building or part of a building. If the grounds, garages, gardens or outhouses can be said to be a part thereof or so connected with the building or part of the building let, that they must be deemed to be appurtenant, then it can be said that they are included in the lease.

15. There is also another angle to such an enquiry and that would be from the point of enjoyment of the premises and obviously for the better enjoyment of the premises. Where there is no writing delineating what was let under the lease, it is the conduct of the parties which would indicate as to what was the intention of the parties, whether a building or part of the building is let. If the conduct indicates that the grounds, garages or out-houses were let along with the building or part of the building, then it would be clear that the intention between the parties was to do so. Even if, therefore, the reference is loosely to a building or part of a building, the ground which is appurtenant to" such, a building or part of the building that indicates was intended to be appurtenant to or for enjoyment thereof, would be a part of the leasehold premises. An illustration or a case in point will be where a house is let having a court-yard, the letting may indicate merely that what was let was a house and not the court-yard, which is an open space. Nevertheless if the court-yard is such which is for the beneficial enjoyment of the house in question and is for the better enjoyment thereof and is such as can be used and enjoyed with reference to the building or part of the building let, then an inference that it is appurtenant to the building or part of the building let would readily arise. Where, however, such is not the case and where the open space is not only for the enjoyment of the building or part of the building which adjoins it is concerned, but it is also available and can be used by other persons, then it is difficult to think that such open space is appurtenant to the building or part of the building. As the word "appurtenant" indicates and suggests it is joint with the building or part of the building. If such an inference or conclusion is not possible, then it is difficult to think that the open space can be held to be appurtenant to the building or part of the building.

16. That seems also to be so if a reference is made to some of the decisions in the matter. In *Lakhmichand Khetsey Punja Vs. Ratanbai*, the question related to a privy. The plaintiff therein was a tenant of a room and while he was in the privy that part of the building collapsed leading to his death. The question was whether the plaintiff was a tenant of the privies though it was clear that that was -absolutely necessary for the enjoyment of the room which was let. It was held that he was not a tenant of the privies, but enjoyed a revocable licence to use the privy.

17. A reference may also be made to the decision in *Whitty v. Scott-Russell* (1950) 2 K.B. 32, where a house and cottage with garden were let. The question was whether that was a "dwelling house" within the meaning of Rent and Mortgage Interest (Restrictions) Act, 1939. The true question, however, therein related to the cottage which was not connected with the main house and question was whether it may be treated as a dwelling house. That was, however, based on the observation of Lord Denning in *Wolfe v. Hogan* (1949) 2 K.B. 194, which was quoted with approval and also can be quoted here. It was observed.

In determining whether a house or part of a house, is let as "a dwelling" within the meaning of the Rent Restriction Acts, it is necessary to look at the purpose of

the letting. If the lease contains an express provision as to the purpose of the letting, it is not necessary to look further. But if there is no express provision, it is open to the Court to look at the circumstances of the letting.

18. The question was, however, more directly considered in the case reported in *M & J.S. Properties Ltd v. White* (1959) 2 All E.R. 81. In that case the building consisted of ground and first floor. Beyond the ground floor, there was a garden. That garden was used in common between the first floor and the ground floor tenants. The question was whether it could be treated as a part of the premises and it was held that the word "premises" in proviso to Section 11, Sub-section (2) of the Rent Act, 1957 referred to premises which were capable of physical occupation and not to ancillary incorporeal rights, such as a right to use a garden in common with another tenant. It, therefore, follows that where that which is used in common with others would not become a part of the concept of "premises" and would be, therefore, outside the pale of the definition of the word "premises" occurring in Section 5, Sub-section (8A).

19. Consequence of the aforesaid conclusion is that the suit was rightly dismissed. Petition fails and is dismissed with costs. Rule discharged.