
(1994) 09 BOM CK 0069

In the Bombay High Court

Case No : Civil Rev. Application No. 487 of 1991

S.H. Jawandhiya and others

APPELLANT

Vs

Onkareshwar Birbal Prasad Mishra

RESPONDENT

Date of Decision : 21-09-1994

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 2(1), 50, 51, 80

Citation : (1994) 09 BOM CK 0069

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : B.N. Mohta, for the Appellant; J.A. Anthoney, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Lodha, J.—This revision application has been filed by applicants against the order dated 13-3-1991, who are Defendants in Civil Suit No. 233/90 filed by Non-applicant who is Plaintiff in the suit in the Court of Joint Civil Judge, Junior Division, Ist Court, Khamgaon, seeking declaration to the effect that the property viz. House No. 1/9 GH, situated at Khamgaon is governed by the provisions of Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 (for short "Rent Control Order") and that he is tenant of the property in question. Other consequential reliefs have also been sought for in the said suit.

2. It is an admitted position that no written statement has been filed by the original Defendants in the suit so far. However, in view of the reply filed by the Defendants to the application for grant of temporary injunction certain objections were taken regarding maintainability of the suit and jurisdiction of the Court to try the suit necessitating adjudication of those questions by the Joint Civil Judge, Junior Division, First Court, Khamgaon as preliminary issue.

3. Brief facts of the case are that, the Plaintiff in the plaint averred that he was employee of Defendant No. 2-Vidarbha Sikshan Prasarak Mandal, a Public Trust, which runs G. S. College of Science, Commerce and Arts, Khamgaon and he has

been allotted residential premises -- House No. 1/9 GH. The Plaintiff also averred that he is occupying the said premises as lessee with an agreement to pay the rent of Rs. 100/- per month exclusive of municipal taxes and electricity charges. However, the Defendants unilaterally enhanced the rent from Rs. 100/- per month to Rs. 300/- per month and has threatened to deduct the rent at the rate of Rs. 300/- per month from his salary.

4. As stated above, the Defendants have not filed any written statement and in reply to the application for the grant of temporary injunction raised objection that the suit being against Public Trust registered under the Bombay Public Trusts Act, the Civil Court has no jurisdiction to try the suit. Defendants also objected that in view of the provisions of Rent Control Order, the dispute relating to tenancy and rent can only be decided by Rent Controller, and therefore, the suit could not be proceeded with before the Civil Court and the Civil Court has no jurisdiction to try the said suit.

5. In view of the aforesaid controversy between the parties, two preliminary issues were framed by the trial Court:

(i) Whether in view of the dispute of enhancement of rent by landlord against tenants, this Court has jurisdiction to try this suit?

(ii) Whether jurisdiction of this Court is barred in view of Section 80 of the Bombay Public Trusts Act?

6. Both the parties did not lead any evidence on the preliminary issues and the said issues were decided on the basis of the arguments advanced by the Learned Counsel for the parties.

7. Mr. Mohta, the Learned Counsel for the applicants submits that in view of the declaration sought for by the Plaintiff that the premises in question are governed by Rent Control Order, it was obvious that Civil Court had no jurisdiction, and therefore, finding of the trial Court on Issue No. 1 is unsustainable. Mr. Mohta also submits that since the Defendant No. 2 happens to be the Public Trust registered under the Bombay Public Trusts Act, 1950, in view of the fact that no sanction has been obtained from the Charity Commissioner, the suit was not maintainable by virtue of Sections 50 and 51 of the said Act.

8. On the other hand, Mr. Anthoney, the Learned Counsel submits that the declaration sought for by the Plaintiff that the premises are governed by Rent Control Order can only be granted by Civil Court and not by Rent Controller, and therefore, it cannot be said that the Civil Court had no jurisdiction. It is further contended by Mr. Anthoney that the objections relating to Sections 50 and 51 of the Bombay Public Trusts Act were not raised by the Defendants before the trial Court, and therefore, the same cannot be allowed to be raised in the present revision application for the first time.

9. Having heard the arguments of the Learned Counsel, I find no substance in the arguments of Mr. Mohta. The fact that there is dispute between the parties

about the tenancy, because the Defendants treat the Plaintiff as an employee and not their tenant and on the other hand the Plaintiff treats himself as a tenant at the rate of Rs. 100/- per month of the premises in question and since the Defendants are disputing the status of the Plaintiff as tenant, a declaration is being sought in the suit, the said relief can only be given by the Civil Court and not by the Rent Controller. The trial Court was justified in holding that the questions involved in the suit related to the civil right of the Plaintiff and it is only the Civil Court which has jurisdiction to adjudicate the said dispute. In this view of the matter, the finding given by the trial Court on Issue No. 1 is proper and does not call for any interference by this Court.

10. Adverting to the submissions of Mr. Mohta that the suit was not maintainable because the sanction of the Charity Commissioner has not been obtained in writing before filing the suit, suffice it to say that the objections relating to Sections 50 and 51 of the Bombay Public Trusts Act have not been raised by the Defendants before the trial Court. A perusal of the order impugned in the present revision application reveals that the only argument raised before the trial Court on Issue No. 2 was relating to Section 80 of the Bombay Public Trusts Act. Mr. Mohta has not challenged the finding of the trial Court on Issue No. 2 on the ground of Section 80, but as stated above his submission is that the suit was not maintainable because of non-compliance of Sections 50 and 51 of Bombay Public Trusts Act. Besides, the question of non-compliance of Sections 50 and 51 of the Bombay Public Trusts Act was not raised by the Defendants before the trial Court, it may be observed that Section 51 is applicable only to the suits which are filed by the persons having the interest in the Public Trust. Section 51 reads:

If the persons having an interest in any public trust intend to file a suit of the nature specified in Section 50, they shall apply to the Charity Commissioner in writing for his consent...

Person having an interest is defined in Section 2(1) of the Public Trust Act which includes:

(a) in the case of a temple, person who is entitled to attend at or is in the habit of attending the performance of worship or service in the temple, or who is entitled to partake or is in that habit of partaking in the distribution of gifts thereof, (b) in the case of a math, a disciple of the math or a person of the religious persuasion to which the math belongs, (c) in the case of a wakf, a person who is entitled to receive any pecuniary or other benefit from the wakf and includes a person who has right to worship or to perform any religious rite in a mosque, idgah, imambara, dargah, maqbara or other religious institution connected with the wakf or to participate in any religious or charitable institution under the wakf, (d) in the case of a society registered under the Societies Registration Act, 1860, any member of such society, and (e) in the case of any other public trust, any trustee or beneficiary.

Thus, it is obvious that employee or a tenant does not fall within the category of

the person having an interest in the Trust, and therefore, Sections 50 and 51 of the Public Trust Act have no application. Issues Nos. 1 and 2 have been rightly decided as preliminary issues by the trial Court and does not call for any interference by this Court.

11. Consequently, this revision has no force and is dismissed accordingly. No order as to costs.