

(1991) 04 GUJ CK 0024
In the Gujarat High Court

Shantilal Udaychand Bohra

APPELLANT

Vs

Suman Bhailal Patel and Others

RESPONDENT

Date of Decision : 19-04-1991

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 24, 24

Citation : (1993) 2 GLR 1779

Hon'ble Judges : D.G. Karia, J

Bench : Single Bench

Judgement

D.G. Karia, J.—An interesting question of law that arises in the present revision application is whether the open space in the compound on the ground floor of the building is "appurtenant" to the leased premises on the first floor; and denial of parking the tenant's vehicle in such open space of the compound would amount to curtailment or withdrawal of essential services, within the meaning of Section 24 of the Bombay Rent Act.

2. The petitioner, original plaintiff, is the tenant in respect of first floor premises of the bungalow, known as "Sapna" at 63, Haribhakti Colony, Baroda, on a monthly rent of Rs. 650/-. According to the evidence of the plaintiff-tenant at Exh. 39, the tenant has been using and occupying part of the first floor premises consisting of one leaving room, one dining room, one kitchen, one More room and two bed rooms, besides a lavatory and bathroom and chokdi to clean the utensils. There are two gates in the premises of the bungalow—one is small for personal entry and another is a big gate for vehicles, etc.

3. The petitioner-plaintiff filed a Rent Suit No. 272 of 1983 in the Small Causes Court at Baroda against the respondents herein, for declaration and permanent injunction that (1) the defendants have no light to remove or stop the electric motor for the purposes of water-fitted at the ground floor of the suit bungalow, (2) that defendants have no right to restrain the plaintiff from parking the plaintiffs car in the open space of the compound in the bungalow and (3) that the defendants be restrained from allowing the plaintiff to make use of the terrace of

the suit bungalow. The Court at first instance, by its judgment and order dated July 31, 1984, partly decried the suit declaring that the defendants have no right to remove, stop or make ineffective the working of the electric motor on the ground floor for water purposes and ordered to issue permanent injunction accordingly. The trial court, however, disallowed the remaining two reliefs with regard to car parking and right to use the terrace of the bungalow.

4. The petitioner-Tenant being aggrieved by the said judgment and order, preferred Civil Appeal No. 238 of 1984 in the District Court at Baroda. The respondents filed their cross-objections in so far as the judgment and decree were against them. The learned Joint District Judge, Baroda, by his judgment and order dated April 4, 1985, dismissed the appeal with costs, and also the cross-objections.

5. The petitioner has approached This Court by way of this Revision Application against the aforesaid judgment and order against him.

6. It is necessary to state at this stage that on March 6, 1991, when the matter was called out for final hearing, it was stated on behalf of the petitioner-Tenant that the tenant has acquired other suitable bungalow and wanted to vacate the suit premises and on that count, the time was sought. This Court, therefore, passed the following order:

Mr. P.B. Majmudar, the learned Advocate for the petitioner-Tenant states that the petitioner-Tenant has expressed his desire to vacate the suit premises and in that event, the issue involved in the present Revision Application will not survive any longer. He seeks time to get further instruction and to call his client for filing necessary consent-terms and undertaking. Time granted. S O to 11-3-1991 at 4-45 p.m. in Chamber. Matter to be treated as part-heard.

However, no settlement is arrived at between the parties.

7. Mr. Soni, the learned Advocate appearing for the petitioner, made the following submissions:

(1) The ground floor open space in the compound of the bungalow is "appurtenant" to the demised premises on the first floor within the meaning of Section 5(8)(b) of the Rent Act and therefore it is "premises", as defined in Section 5(8) of the Act.

(2) Parking car by the plaintiff-Tenant is an essential service within the meaning of Section 24(1) of the Act and therefore defendants cannot curtail or withhold the same. The plaintiff-petitioner has statutory right to park his car without any permission from the defendants. Therefore, the judgments and orders of the Courts below were erroneous, illegal and liable to be quashed.

8. Mr. Trivedi, appearing for the respondents-Landlords, vehemently supported the impugned judgments and orders.

9. Section 5(8) of the Act defines "premises". The relevant part of the definition

reads as under:

5. Definitions: In this Act unless there is anything repugnant to the subject or context-

XXX XXX XXX (8) "premises" means-

(a) xxx xxx xxx (b) any building or part of a building let separately (other than a farm building) including-

(i) the garden, grounds, garages and out-houses, if any, appurtenant to such building or part of a building.

xxx xxx xxx.

Section 5(8) thus says, "premises" means any building or part of a building and includes garden or grounds appurtenant to such building or part of the building. In other words, therefore, the ground in question must be appurtenant to the building whether let 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 space in the compound on the ground floor can be said to be a part of the demised premises as appurtenant thereto. There is an agreement, Exh. 49, between the parties by which the said first floor premises have been let to the petitioner-Tenant. There is nothing in the said agreement to suggest that the petitioner-Tenant has been given any right to use the terrace or he has been given right to park the car in the open space of the compound in the bungalow. On perusal of the said agreement and the evidence of the plaintiff, Exh. 39, the petitioner is not entitled to park his car in the compound or use the terrace.

10. Now the question arises as to what is the meaning and interpretation of the word "appurtenant" occurring in the aforesaid provision of Section 5(8)(b) of the Bombay Rent Act.

11. In the case of Moraji Goculdas Deoji Trust and Others Vs. Madhav Vithal Kudwa, the term "appurtenant" has been discussed and defined at length, relying upon various dictionary meanings. The word "appurtenance" is to be understood, in the context and would mean relating or in conjunction with the premises, namely, the leased portion of the first floor. In the context of Section 5(8)(b) of the Act, the term "appurtenant" has to be construed not in its primary sense but in its secondary, non-technical sense such as "usually enjoyed with". It would, therefore, indicate something appurtenant to the lease and not the lease itself. So construed, it would mean "relating to", "adjoining", "an adjunct or an accessory" to the premises let. Simple meaning of the provisions simpliciter would indicate a nexus between the demised premises and the premises appurtenant thereto. There must be reasonable and rational co-relation between such two premises. In view of this interpretation of the term "appurtenant", the open space of the compound in ground floor cannot be said to be adjunct to the

demised premises on the first floor of the demised premises within the definition of Section 5(8)(b) of the Act.

12. The submission of Mr. Soni that the petitioner has to pass through the compound of the premises and as such the same is part and parcel of the demised premises, has no substance, in view of the aforesaid meaning of "appurtenant". Therefore, having regard to the facts and circumstances of the case, it would be misnomer to consider the ground-floor open space as appurtenant to the leased premises at the first floor. The said open space cannot be said to pertain or relate to the first floor premises. Nor can it be concluded that the open space on ground floor is usually enjoyed and occupied with the first floor.

13. Mr. Soni relied upon the case of Shrimati Naresh Rani v. Hari Dutt Sharma reported in 1972 RCJ 411. In that case, it has been held that the obstruction caused by the landlady to the use of the bath-room and the common passage by the tenants constitutes cutting off or withholding the essential supply and services within the meaning of Section 45 of the Delhi Rent Control Act. The facts of that case have no relevance to those of the present case. Therefore, the submission of Mr. Soni is devoid of any force.

14. Mr. Soni, relying upon the case of Maganlal Parsottamdas Sevniwala Vs. Chimanlal Dahyabhai Modi, , contended that car parking in the compound should be considered to be beneficial use of the premises. The ratio laid down in Maganlal's case (supra) does not support the submission of Mr. Soni, for the reason that it was a case of a protected tenant under the Bombay Rent Act who claimed an irrevocable licence to a latrine for the beneficial use of the premises let out to him. It was held in that case that without any access to the latrine, the premises let out to a tenant will be rendered unusable and uninhabitable and as such an irrevocable licence must be inferred from the terms of the tenancy in order to enable the tenant to make beneficial use of the premises let out to him. In the present case, it is not such position, nor any inference can be raised. The compound cannot be said to be appurtenant to the demised premises and as such the ratio laid down in Maganlal's case (supra) does not help the petitioner-Tenant.

15. Reliance was also placed on behalf of the petitioner-Tenant on the case of Madhav Vithal Kudwa Vs. Madhavdas Vallabhdas and Another, . However, the judgment and order in the said case has been reversed by the Division Bench of Bombay High Court and the same is reported in Moraji Goculdas Deoji Trust and Others Vs. Madhav Vithal Kudwa, , which is referred to hereinabove.

16. Next submission of Mr. Soni was that the use of the compound for car parking would amount to "essential service" within meaning of Section 24 of the Act. Section 24 of the Act contemplates that no landlord either himself or through any person acting or purporting to act on his behalf shall without just or sufficient cause cut off or withhold any essential supply or service enjoyed by the

tenant in respect of the premises let to him. Explanation I to Section 24 provides that essential supply or service includes supply of water, electricity, lights in passages and on stair cases, lifts and conservancy or sanitary service. Therefore, parking of car in the compound cannot be said to be an essential service to be provided by the landlord to tenant. The suit premises were let to the petitioner-Tenant in the year 1972. He purchased his car in 1979. The petitioner-Tenant stated in the notice Exh. 53 dated May 19, 1982 that since the petitioner got his car, he used to park the same in the compound. The petitioner-Tenant, therefore, did not enjoy the facility as to parking his car in the compound since the time the premises were let to him. However, there is nothing on record to show that the plaintiff, after purchasing the car, parked the same in the compound by way of right. It cannot be said to be an essential service within meaning of Section 24 of the Act. There is, therefore, no substance in the submission made on behalf of the petitioner-Tenant.

17. In view of the above premises, there is no substance in this Revision Application. It is, therefore, rejected. The judgments and orders of the Courts below are confirmed. Rule is discharged with costs.

18. Mr. Soni lastly submitted that six months' time be granted for, continuing the petitioner to park his car, as he has been doing so for last several years. Mr. Trivedi objected vehemently to this request. Mr. Trivedi submitted that on account of the compound being blocked, the landlords have not been able to carry out the construction and development of the property. The plaintiff parked his car in compound for all these years, as injunction and interim relief were obtained by him in this behalf. There is no reason to grant the request. Hence, it is rejected.