

(1969) 02 BOM CK 0009

In the Bombay High Court

Case No : Special Civil Application No's. 1978 of 1965 and 1966 of 1966

Smt. Muktabai Gangadhar Kadam

APPELLANT

Vs

Smt. Muktabai Laxman Palwankar

RESPONDENT

Date of Decision : 14-02-1969

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 10, 10A, 10B, 12, 13

Citation : (1969) 71 BOMLR 752 : (1971) MhLj 72

Hon'ble Judges : Bal, J

Bench : Single Bench

Judgement

Bal, J.—A short but interesting question of law of considerable importance arises for decision in this petition in the following circumstances.

2. The petition is directed against a decree for eviction under the Rent Act. The petitioner is the tenant and opponents Nos. 1 and 2 (hereinafter referred to as the opponents) are her landlords in respect of a room in their house situated in Nana Peth at Poona, since several years. The agreed rent of the room was Rs. 15 per month. In February 1960, the opponents gave notice to the petitioner purporting to terminate her tenancy on the ground of non-payment of rent, and within one month of the receipt of the notice the petitioner filed an application for fixation of standard rent in the Court of Small Causes at Poona. The opponents also thereafter filed a suit for eviction against the petitioner in the same Court. Both the proceedings were heard together and terminated in favour of the petitioner. The standard rent of the room was fixed at Rs. 8 per month and as the petitioner had deposited all the rent in Court, the suit of the opponents was dismissed. The appeal filed by the opponents against the dismissal of their suit and the revision application filed by them against the order fixing the standard rent, were both dismissed with costs by the District Court on June 8, 1963. In the meantime the petitioner had been sending rent by money orders. Some of these money orders were accepted by the opponents but the others were not. On July 3, 1963 the opponents, through their advocate, gave a notice

to the petitioner alleging that she was in arrears of rent from March 1, 1962, and purporting to terminate her tenancy with effect from the end of August 1963 on the ground of non-payment of rent. By that notice, in addition to the arrears of the standard rent, they also demanded the education cess at the rate of 2 per cent, of the standard rent from October 1, 1962, which they claimed to have paid in respect of the room in the occupation of the petitioner. The petitioner received the notice on July 4, 1963, and seems to have given a reply to it but the reply is not on record. A money order for Rs. 15 was also sent by her but the opponents refused to accept it. On September 18, 1963, the opponents filed their suit against the present petitioner. In the suit also they made a claim for the amount of education cess at the same rate from October 1, 1962, Eviction of the petitioner was sought by the opponents on the sole ground of non-payment of standard rent and education cess.

3. The petitioner resisted the suit. She filed her written statement on January 20, 1964, and on that very day, she deposited in Court Rs. 215 which was sufficient to cover the standard rent due till then, the amount of education cess at the rate claimed by the opponents and the notice charges claimed by them. Her contention, however, was that she was not liable to pay the education cess (the real contention seems to have been that the education cess had been claimed at an excessive rate). She denied that she was not ready and willing to pay the standard rent. According to her, she was unable to make the payment as the opponents were refusing to accept the money orders sent by her. She also contended that there was an over-payment of Rs. 21 in the rent paid prior to March 1, 1962, and the opponents were to pay to her Rs. 37.50 as the cost awarded to her of the former proceedings, and prayed that these amounts should be adjusted against the amount of standard rent due to the opponents. She further contended that the notice given by the opponents was invalid as the amount demanded therein was in excess of the amount actually due. During the pendency of the suit, she went on depositing the amounts of standard rent as and when they became due, and before the suit was decided she also deposited sufficient amount to cover the costs of the suit though there was no direction by the Court in that behalf.

4. The opponents realised that their claim for the amount of "education cess" at 2 per cent, of the standard rent was not maintainable and gave up that claim altogether at the trial. The trial Court held the over-payments proved but held that the claim for the same was barred by limitation. It also held that though Rs. 37.50 were due to the petitioner towards the costs of former proceedings, her remedy was by way of execution and she was not entitled to set-off that amount against the suit claim. The trial Court further held that the dispute relating to "education cess" was not a dispute relating to a "permitted increase", and hence, though the petitioner had complied with the requirements of Section 12(3) (b) of the Kent Act, she was not entitled to the protection of that section. According to that Court as the rent was in arrears for over six months, the case was governed by the provisions of Section 12(3)(a) of the Rent Act. It, however,

held that the notice did not satisfy the requirements of Section 12(2) of the Bent Act inasmuch as the amount demanded therein was in excess of the amount due, and, on that ground alone, dismissed the suit directing that the opponents should withdraw the amount deposited in Court by the petitioner and that the parties should bear their respective costs.

5. On appeal by the opponents, the appellate Court reversed the finding of the trial Court on the question of validity of the notice but confirmed the finding that "education cess" was not a "permitted increase" under the Bent Act, and the dispute relating to the same would not, therefore, take the case out of the provisions of Section 12(3)(a). The other points were not agitated before the appellate Court and that Court accordingly set aside the decree of the trial Court and decreed the opponents' claim for possession and future mesne profits. That decree is challenged by the petitioner in the present petition.

6. On behalf of the petitioner, Mr. Ganpule argued that the Courts below were in error in holding that the "education cess" which the landlords claimed from the tenant was not a "permitted increase" and the dispute relating to it did not, therefore, attract the provisions of Section 12(3)(b) of the Bent Act.

7. The expression "permitted increase" is defined in Section 5(7) of the Bent Act to mean "an increase in rent permitted under the provisions of this Act". It must, therefore, be seen in the first place whether the "education cess" claimed by the landlords as an addition to the rent constitutes an "increase in rent"; in other words, whether it would form part of the total rent payable by the tenant to the landlords.

8. The term "rent" is not defined in the Bent Act and it would be reasonable, therefore, to suppose that it has been given its ordinary dictionary meaning. According to the Oxford English Dictionary

"Rent" means the return or payment made by a tenant to the owner or landlord, at certain specified or customary times, for the use of lands or houses.

This is comprehensive enough to include all items of periodical payment which a tenant is liable to make to his landlord for the occupation of the premises, whether under the contract of tenancy or by virtue of a statutory provision. There is ample judicial authority for holding that where the term "rent" has not been specially defined, it should be given this wider meaning. In *Property Holding Co. Ltd. v. Clark* [1948] 1 All E.R. 165 the Court of Appeal in England had to determine the standard rent of certain premises and for that purpose, had to ascertain the rent at which the premises had been let on September 1, 1939. The case was governed by the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, as subsequently amended, and the term "rent" was not defined in that Act. The agreement in writing under which the premises were held by the tenant who was in occupation on that day, provided that the tenant shall pay to the landlords ? 110 a year as rent and shall make an "additional payment" of ? 30 a year for certain amenities and conveniences which the

landlord provided for the beneficial enjoyment of the premises. The county court Judge had held that the additional payment was not part of the rent; the sum of ₹ 110 which was described as rent was alone the rent on September 1, 1939, and hence the standard rent. When the matter came before the Court of Appeal, there was no earlier decision binding on that Court and the Court, therefore, proceeded to decide the appeal on first principles and reversed the decision of the county court Judge, holding that the word "rent" did not mean "rent" in the strict sense but the total payment to be made by the tenant to the landlord under the instrument of letting. *Ever shed L.J.* observed, (p. 174) :

...Prima facie the rent is the monetary compensation payable by the tenant in consideration for the grant, however it be described or allocated. Alternatively, it may be described (as *Scott L. J.* has described it) as the contractual monetary obligation the payment of which is the condition of the right to enjoy the property granted.

9. The same question arose before the Court of the King's Bench Division in *Alliance Co., Ltd. v. Shaffer* [1948] 2 All E.R. 224, in slightly different circumstances. In that case the agreement of lease under which the tenant held the premises on the relevant date, provided for payment of rent at ₹ 175 per year. It did not provide for any additional payment of any amount. Another agreement in writing executed between the parties on the same day, however, provided that the tenant shall pay to the landlords an additional ₹ 40 a year in consideration of the decorative and other alterations carried out by the landlords and a further ₹ 60 a year towards the cost of the management of the building in which the flat was situated. This second agreement was to run concurrently with the lease and to determine with it. *Slade J.*, who decided the case, held that the fact that the additional payment of ₹ 100 a year was provided by a separate agreement made no difference to the legal position, and applying the earlier decision in *Property Holding Co.*'s case, held that the rent at which the premises must be taken to have been let on the relevant date, was ₹ 275 a year.

10. In *Karnani Properties Ltd. v. Miss Augustine* [1957] A.T.R. S.C. 309 a similar question arose before the Supreme Court under the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950. The term "rent" was not defined in that Act also and one of the questions which the Supreme Court had to consider was whether the whole payment of Rs. 100 agreed to be made by the tenant to the landlord under a lease which contained the following clause, can be said to be "rent":

That the tenant shall occupy the said flat paying therefore unto the bank a monthly rent of Rs. 100 including hire of 2 A.C. fans and extra Government duty on electric current without any reduction or abatement to be paid at the bank on or before the 7th of succeeding month for which the rent is due and that the said rent is inclusive of charges for current for fans, lights, radio and electric stove not exceeding 600 Watts for heating meals and making tea only, use of lift, hot and cold water, the owner and occupier's shares of Municipal Taxes.

The applicability of the provisions of the West Bengal Act depended upon the decision of the above question and, following the English decisions which I have quoted above, the Supreme Court held that the term "rent" must be given the wider meaning of the total payment to be made by the tenant to the landlord for the beneficial enjoyment of the premises. In that connection their Lordships observed (p. 312) :

...The term "rent" has not been defined in the Act. Hence it must be taken to have been used in its ordinary dictionary meaning. If, as already indicated, the term "rent" is comprehensive enough to include all payments agreed by the tenant to be paid to his landlord for the use and occupation not only of the building and its appurtenances but also of furnishing, electric installations and other amenities agreed between the parties to be provided by and at the cost of the landlord, the conclusion is irresistible that all that is included in the term "rent" is within the purview of the Act...

The old Calcutta case of *Watson v. Secrest Bhumick* ILR (1893) Cal. 132 is perhaps more in point as the facts thereof were very much similar to the facts of the present case. In that case under the contract of tenancy, apart from what was described as the "rent", the tenants were to pay to the landlord certain cesses including one which was described as dak cess. The landlord filed a suit for recovery of the whole amount including the dak cess for a certain period. One of the contentions raised by the tenants was that they were not liable to pay the dak cess. When the matter came to the High Court in second appeal, a question arose whether the second appeal was competent, and the answer to that question depended upon whether the dispute regarding the dak cess was a dispute regarding rent. The High Court held that it was, and in that connection observed (p. 133) :

The dak cess is claimed under the contract by which the rent is payable; it is claimed practically as part of the rent, and according to the definition of that word as contained in the Bengal Tenancy Act, we think it must be regarded as rent, that is to say, as a part of what is lawfully payable in money for use and occupation of the land held by the tenant.

It appears from the above observations that there was some definition of "rent" in the Bengal Tenancy Act, and according to that definition "rent" included everything that was lawfully payable in money for use and occupation of the land held by the tenant. The fact that the Legislature, when it thought fit to define the term "rent", had given it the wider meaning is, however, significant.

11. The cases referred to above deal with contractual payments but there is no reason why the same principle should not apply to payments which the tenant is required to make to his landlord by virtue of statutory provisions when the (liability to make those payments arises on account of the tenant's use and occupation of the premises let to him. This view receives support from the provisions of Section 10B of the Rent Act. That section provides that subject to

certain conditions, landlord who has paid the amount of riot tax imposed on any premises under the City of Bombay Police Act, 1902, shall be entitled to recover the same from the tenants of those premises in not less than four equal installments. It is not disputed before me that the amount of riot tax which the landlord is thus entitled to recover from his tenant is a temporary "permitted increase" within the meaning of that expression as defined in Section 5(7) of the Rent Act. Section 10B does not, however, say that the landlord shall be entitled to make an increase in the rent of the premises on account of payment by him of the riot tax but only provides that the recovery of the amount "shall not be deemed to be an increase for the purposes of Section 7 and Section 7, as we shall presently see, prohibits only any increase "on account of rent" above the standard rent.

12. The "education cess" which is the subject of controversy in the present case is a tax levied and collected under the Maharashtra Education (Cess) Act, 1962 (Maharashtra Act No. XXVII of 1962). Section 4(a) of the Act provides for the levy and collection of that tax on lands and buildings in Municipal Areas at the rate of two per cent, of the annual letting value (or "rateable value") of such lands or buildings with effect from October 1, 1962. Section 8, in effect, casts the primary responsibility for the payment of the tax on any land or building on the owner thereof (other than the Government or a Local Authority) irrespective of whether he is the actual occupier thereof or not. Section 13 then provides that on payment of the amount of the tax in respect of any land or building, the owner shall be entitled to receive that amount from the person, if any, in actual occupation of such land or building during the period for which he has paid the tax. Section 14 provides for cases where the land or building assessed to the tax is let but the rateable value exceeds the rent which the landlord receives from the tenant. The net effect of the provisions of Sections 13 and 14 is to ultimately transfer the entire burden of the tax to the actual occupier or occupiers. Section 15 which follows reads:

15. Any person entitled to receive any sum u/s 13 or 14 shall have for the recovery thereof, the same rights and remedies as if such sum were rent payable to him by the person from whom he is entitled to receive the same.

The actual occupier of a land or building may not necessarily be the tenant of the owner thereof and the section had, therefore, to be worded in general terms; but for the recovery of the amount of the Education Cess from him, the section provides the same rights and remedies as if the amount were rent payable by him to the person entitled to receive the same irrespective of whether the occupier is or is not the tenant. Where the premises in his occupation are governed by the Rent Act, a suit for the recovery of the Education Cess from the occupier must, therefore, be brought in the Special Court established under that Act and in such a suit the plaintiff and the defendant must be regarded as the landlord and the tenant respectively. If then the premises are let, so that the occupier is a tenant liable to pay rent to his landlord, it can be safely concluded

that the amount of education cess which is payable by him by virtue of the statutory provision in Section 13 of the Maharashtra Education (Cess) Act, 1962, is part of the "rent" within the meaning" of that term as used in the Kent Act and when claimed in addition to the contractual or standard rent constitutes an "increase in rent". It may be mentioned that one of the reasons why the additional payment in Alliance Property Co.'s case was held to be part of the rent was that it was recoverable by distress like rent in arrears.

13. It has next to be seen whether such increase is permitted under the provisions of the Kent Act. Prohibition against making any increase on account of rent above the standard rent is contained in Section 7 of the Rent Act. That section provides that except in cases where the rent is liable to periodical increment by virtue of an agreement entered into before the first day of September 1940, it shall not be lawful to claim or receive on account of rent for any premises any increase above the standard rent, unless the landlord is entitled to recover such, increase under the provisions of the Rent Act. The subject of "permitted increases" is dealt with in Sections 8 to 10E. Out of these sections, Section 10A is by way of an exception to Section 10 and need not concern us in the present case. Similarly Section 8(7) which provides for cases where there is no increase in the amount of rent in fact but there is deemed to be an increase in law because of the terms of the tenancy being so altered as to become on the whole less favourable to the tenant than the previous terms, need not also concern us here. The remaining sections out of this group viz., Sections 8(2), 9, 10 and 10AA to 10E deal with specific instances of cases in which the landlord is entitled to make an increase in the rent or to recover amount in excess of the standard rent to the extent provided. A peculiar feature of all these sections is that each one of them contains a clause which says that the increase or recovery under that section "shall not be deemed to be an increase for the purposes of Section 7". The scheme regarding the "permitted increases", therefore, appears to be that any increase in rent or recovery of any amount in addition to the standard rent which is not hit by the prohibition contained in Section 7 is a "permitted increase". It is immaterial whether the right of the landlord to make such increase or to recover such amount arises out of any express provision of the Rent Act or out of the provisions of any other statute and the list of permitted increases given in the aforesaid group of sections is not exhaustive.

14. Now, Section 13 of the Maharashtra Education (Cess) Act, 1962, which came into force on October 1, 1962, reads:

13. (1) If any person from whom under the provisions of Section 8 the tax is leviable pays the tax in respect of any land or building, he shall, if he is not himself in occupation there during the period for which he has paid the tax, be entitled to receive the amount of the tax from the person, if any, in actual occupation of such land or building for the period aforesaid.

(2) If any building in respect of -which the tax is paid consists of more than one

tenement, and the tax in respect of that building is paid by the person referred to in the last preceding subsection or by any person acting in his behalf, then such person shall be entitled to recover the amount of the tax pro rata from the occupiers of the tenements for the period for which the tax is payable in proportion to the amount of rent for which each such tenement is let:

Provided that, if-

(a) any of the tenements is in occupation of such person or any person acting on his behalf, or

(b) by the terms of the tenancy, such person has agreed to pay the tax for an occupier of the tenement,

the amount payable pro rata in respect of such tenements shall not be recovered from the occupiers of other tenements.

(3) The recovery of any amount of tax from an occupier under this section shall not be deemed to be an increase for the purposes of Section 7 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, or any law corresponding thereto in force in any part of the State.

Explanation,-In this section "tenement" means a room or group of rooms rented or offered for rent as a unit.

The tax referred to in this section is the education cess. The right to recover the amount of it from the tenant or tenants occupying the premises during the relevant period is conferred upon the landlord by Sub-sections (1) and (2) and in view of the provisions of Sub-section (5) the recovery of the amount in addition to the standard rent is not hit by the prohibition contained in Section 7 of the Bent Act, It is, therefore, a "permitted increase" within the meaning of that expression as defined in Section 5(7) of the Rent Act. In view of this legal position, the Courts below were in error in holding that the amount of "education cess" claimed by the opponents from the petitioner in the present case was not a "permitted increase".

15. Admittedly there was a dispute about the amount of the education cess. There is no suggestion that it was not a genuine dispute. On the contrary, the landlords-opponents realised that their claim was unsustainable as made, and gave it up at the trial. There was thus a dispute relating to a "permitted increase", and the case would, therefore, be governed by Section 12(5)(b) of the Kent Act and not by Section 12(5)(a) of that Act.

16. The trial Court has recorded a clear finding that the petitioner had complied with all the requirements of Section 12(3)(5) of the Rent Act and the appellate Court has not disagreed on that point with the trial Court. The petition must, therefore, succeed.

17. The rule is accordingly made absolute. The decree of the lower appellate Court is quashed and set aside and that of the trial Court is restored though for

different reasons. The opponents shall pay the costs of the petitioner in this Court and in the lower appellate Court.

18. [The rest of the judgment is not material to this report.]