
(1978) 02 GUJ CK 0005
In the Gujarat High Court

Case No : Criminal Appeal No's. 546 and 547 of 1977 and Criminal Revision
Application No. 314 of 1977

The State of Gujarat

APPELLANT

Vs

Sunderlal Karshanji Min

RESPONDENT

Date of Decision : 07-02-1978

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 24(1)

Citation : AIR 1978 Guj 121 : (1978) 19 GLR 509

Hon'ble Judges : M.K. Shah, J;D.P. Desai, J

Bench : Division Bench

Advocate : V.H Bhairavia, Public Prosecutor Criminal Appeal Nos. 546 and 547 of 1977, P.V. Hathi, Cri. Revn. appln. No. 314 of 1977, for the Appellant; P.V. Hathi, Criminal Appeal Nos. 546 and 547 of 1977, A.P. Ravani and V.H. Bhairavia, Public Prosecutor, for the Respondent

Judgement

Desai, J.—The question involved in these three proceedings pertains to the interpretation of S. 24 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereafter referred to as "the Act") in a case where essential supply or service has come to an end not on account of any overt act or omission on the part of the landlord, but on account of some other reason. The question is whether the landlord is bound to restore the essential supply or service when it is within his power to do so and whether his failure so to restore the supply or service would amount to withholding of the essential supply or service enjoyed by the tenant as contemplated by Section 24(1) and made punishable under sub-section (4) thereof? A few facts for this purpose may be stated.

2. Two prosecutions came to be launched by two different tenants against two different landlords, in the Court of the learned Judicial Magistrate, First Class at Dwarka under S. 24(4) of the Act. The following circumstances led to the launching of the prosecution in each of the two cases.

3. The complainants were tenants of the premises situated in the town of Dwarka

and the accused in both these cases were landlords. In both the cases the premises had a facility of basket type latrines attached to them. These latrines were being cleansed by sweepers employed by the Nagar Panchayat. It appears that pursuant to a decision in respect of the Bhangi Kashta Mukti Scheme taken by the Government to do away with manual sweeping of refuge, a circular was issued to the local authorities; and pursuant to the said circular, the Nagar Panchayat of Dwarka directed the landlords (accused in each of the two cases) to convert the basket type latrines into aqua type (flush type) latrines on or before a specified date. Both the landlords failed to do this. The Nagar Panchayat had stopped providing services of sweepers for cleansing basket type latrines. The upshot of all this was that the conservancy service as provided to the tenants in both the cases came to a halt. The tenants gave notice to the landlords requiring them to restore this conservancy service which had stopped. The landlords did not comply with the same and that resulted into two prosecutions in question.

4. The accused-landlords in both the cases pleaded that they had not cut off or withheld the essential service in the present case and that it had come to a stop on account of the decision of the Nagar Panchayat not to provide sweeping of latrines by human labour. Therefore, their contention was that there was no act or omission on the part of the landlords so as to result in cutting off or withholding of the essential service in question. The learned Magistrate negated this contention observing that it was on account of the accused not acting as per the directions of the local authority that the local authority stopped to render the services of cleansing the Dabba latrines. The learned Magistrate also observed as regards an alternative arrangement for cleansing of latrines by human labour as under:

"Whether the services of other Bhangis who are not employees of Nagar Panchayat was or was not available, then also it was the duty of the accused to provide the services of those Bhangis as he had provided the amenity of latrine to the complainant as a tenant. He ought to have managed for the clearance of the Dabba latrine any how, because he was accepting the sanitation cess from the complainant; and, therefore, it was his duty to do it. But the accused did not acquire the services of those harijans nor did he convert the Dabba latrine into water closet, and the essential service of the complainant was withheld."

The reason assigned by the accused was not held to be just and sufficient. In this view of the matter, in both the cases, the learned Magistrate convicted the accused under S. 24(4) read with S. 24(1) of the Act and sentenced the accused to a fine of Rs. 50/-, with simple imprisonment for ten days in case of default. Against this order of conviction and sentence passed in two separate Proceedings, two separate criminal revision applications were filed before the Sessions Court being Criminal Revision Application No. 13 of 1977 arising from Criminal Case No. 403 of 1975 and Criminal Revision Application No. 14 of 1977 arising from Criminal Case No. 341 of 1975. Both the revisional applications were heard together by the learned Sessions Judge, Jamnagar, who allowed them and

set aside the orders of conviction and sentence. It may further be stated that the learned Magistrate also issued a direction to the accused to restore the essential service by converting basket type latrines into aqua type latrines or water closets. The learned appellate Judge, in his judgment observed that this direction was not within the power of the learned Magistrate. However, in the final order he does not seem to have set aside the said direction.

5. Being aggrieved by the acquittal in Criminal Revision Application No. 13 of 1977, the State has preferred Criminal Appeal No. 546 of 1977; and against the acquittal in Criminal Revision Application No. 14 of 1977, the State has preferred Criminal Appeal No. 547 of 1977. The complainant has Preferred Criminal Revision Application No. 314 of 1977 in this Court against the acquittal of the landlord in Criminal Revision Application No. 13 of 1977.

6. All the three proceedings are heard together and will be disposed of by this common judgment, The question is of pure interpretation of Section 24 of the Act so as to ascertain whether the act or omission of the landlords in this case would be covered by the term "withhold" occurring in S. 24(1) of the Act. It may be stated that in the conclusion to which the learned Sessions Judge arrived,, he relied upon a decision of a learned Single Judge of the Bombay High Court in Dhanrajmal Gobindram and Co. (P.) Ltd. and Others Vs. The State of Maharashtra and Another, .

7. The provisions of S. 24 of the Act way now be reproduced:

"24 (1) 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.

(2) A tenant in occupation of the premises may, if the landlord has contravened the provisions of sub-section (1), Make an application to the Court for a direction to restore such supply or service.

(3) If the Court on inquiry finds that the tenant has been in enjoyment of the essential supply or service and that it was cut off or withheld by the landlord without just or sufficient cause, the Court shall make an order directing the landlord to restore such supply or service before a date to be specified in the order. Any landlord who fails to restore the supply or service before the date so specified shall for each day during which the default continues thereafter be liable upon a further direction by the Court to that effect to fine which may extend to one hundred rupees.

(4) Any landlord, who contravenes the provisions of sub-section (1) shall, on conviction, be punishable with imprisonment for a term which may extend to three months or with fine or with both.

Explanation I:- In this section essential supply or service includes supply of water, electricity lights in passages and an stair-cases. lifts and conservancy or

sanitary service.

Explanation II:- For the purposes of this section, withholding any essential supply or service shall include acts or omissions attributable to the landlord on account of which the essential supply or service is cut off by the local authority or any other competent authority."

Apart from any authority, a bare examination of the language of this section will make it clear that the legislative intent behind this provision is to see that a tenant who is in enjoyment of an essential supply or service gets protection of law. In order to achieve this, the section prohibits the landlord from cutting off the supply or service directly. It also prohibits the landlord from withholding supply or service which has come to a stop on account of any other reason and which is within the power of the landlord to restore. The Legislature has advisedly used two words in this Provision viz. . "Cut off"" or "withhold." On a correct interpretation of this legislative provision keeping in mind the object behind it, it is clear to us that these two words have distinct connotation. The word "cut off" is limited to cases where supply or service is brought to an end directly by an act of the landlord himself or done through any person acting on his behalf. If the deprivation is brought about not in this direct manner but indirectly as in cases where a local authority or any other competent authority cuts off the supply or service, the same is classified by the legislature by virtue of Explanation II as falling within the connotation of the word "withheld". If in a case where the landlord brings about this deprivation indirectly and the cutting off of the supply or service is on account of acts or omissions attributable to the landlord, then the said landlord by virtue of Explanation II can be said to have withheld the supply or service. In our opinion, Explanation II in a way clarifies the limited import of the word it "cut off" to cases where deprivation is brought about directly by the landlord without intervention of any agency or a factor. If this is the correct interpretation of the word "cut off", it is crystal clear that the word "withheld" is definitely of wider import; and one of the species of withholding is that contemplated by Explanation II. Withholding of essential supply or service can be brought about in various manners even without intervention of the local authority or a competent authority in case of certain supplies or services. Take for instance " a lift in a multistoreyed building. Under Explanation I it is an essential supply or service. The mechanism of this lift is out of order. The electric supply company has not cut off the electric supply for operating the lift. Only the mechanism needs repairs. The landlord does not get it repaired. In such a case, the essential supply or service has ceased not directly on account of the act of the landlord, but by a factor de hors the act of the landlord, viz. failure of the mechanism. In such a case also it is a deprivation of the essential supply or service in the form of a lift and if the landlord does not get the mechanism repaired, and thus restore the service, it can be said that though he has not cut off the essential supply or service, he has all the same withheld it from the tenants. If this is the correct understanding of the connotation of the two words "cut off" and "withhold" occurring in sub-section

(1), it is clear that Explanation II cannot be held to limit " the scope of the word withhold" occurring in sub-section (1). The said Explanation cannot be read in a restricted manner as exhaustive of the instances in which a supply or service could be said to have been withheld. It is true that the word "includes" though generally used as a word of extension, can in a given case be used in a restricted sense depending upon the context in which it is used. (Vide The South Gujarat Roofing Tiles Manufacturers Association and Another Vs. The State of Gujarat and Another, . In that case the Supreme Court reproduced in Para 5 the observations of Lord Watson in Dilworth v. Commr. of Stamps (1899 AC 99) showing that the word "include" is also susceptible of another construction which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to "mean and include," and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions. In the present case the context of the Act and in particular the provision of S. 24 does not justify a limited meaning to be given to the word "withheld" occurring in S. 24(1) of the Act. There is no question of construing this word by applying the principle of ejusdem generis. These two words have two, distinct connotations and operate in distinct fields. Therefore, it is not possible to take the view in interpreting the word "with hold" that it takes colour from the Preceding word "cut off" as was done, speaking with respect, by the learned Single Judge of the Bombay High Court in Dhanrajmal Gobindram and Co. (P.) Ltd. and Others Vs. The State of Maharashtra and Another, . It is obvious that the legislative intent could not be to confine the meaning of the word "withhold" to a category of deprivation of supply or service by the local authority or other competent authority as mentioned in Explanation II. The word "withhold" as Per its definition in the Shorter Oxford English Dictionary, Third Edition, has different shades of meaning. Some of them are "to hold back; to keep back-, or to refrain from granting or giving;". Implicit in these meanings is the power or capacity of a Person keeping back or refraining from granting, to make a thing, service or privilege which is kept back, available. In our opinion, therefore, withholding essential supply or service as contemplated by S. 24(1) would mean refraining from granting or giving essential supply or service though it is within the Power of the landlord to do so. Of course, in order to entitle the tenant to this privilege of essential supply or service, the same should have been made available for the use of the tenant i.e. enjoyed by him, at some time when the Act was in force as laid down by the Supreme Court in Kanaiyalal Chandulal Monim Vs. Indumati T. Potdar and Another, . The distinct connotation of the word "withhold" is also clear from the following observations of the Supreme Court in the aforesaid decision in pars. 3. The Court, after reproducing the Provisions of Section 24 stated as under:

"It has not been denied before us that the supply of tap water is an essential supply, and that is beyond controversy in view of explanation I. What has been

argued, is that the supply of municipal water had been cut off by the Municipality as a result of the default in payment of municipal dues, by the appellant's predecessor-in-title. It may be that the appellant was not to blame for the default in payment of municipal dues, but it was open to him to pay Rs. 11-4-0 and have the water connection restored. He may not have "been directly responsible for the cutting off of the supply of municipal water, but it was within his power to get the supply restored by the Municipality on payment of the prescribed fee. Hence, in so far as the appellant omitted to do so, such an omission is attributable to him within the meaning of explanation II which was inserted into the Act in 1953. There can, therefore, be no doubt that" he appellant was continuing to withhold an essential supply within the meaning of S. 24, as it stood in 1953."

8. In a case, therefore, where the landlord is not directly responsible for the deprivation of the tenant of the essential supply or service, if it is within his power to get the supply or service restored and he omits to do so, such an omission would amount to withholding of the essential supply or service by the landlord. This is because, by this omission he is refraining from granting or giving the privilege of the supply or service to the tenant though it is within his power to restore the same. Looking to the context in which the word "withhold" occurs and keeping in mind the legislative object, we find no difficulty in coming to the conclusion that in a case where the essential service or supply has come to an end not on account of any direct act done by the landlord but on account of the act done by a third party, or on account of any factor over which the landlord had no control, the landlord can be said to have withheld the supply or service if he omits to get it restored though it is within his Power to do so. His omission in such a case amounts to refraining from granting or giving the privilege of the supply or service to the tenant. The correct test applicable in case of withholding of essential supply or service which has come to an end not on account of any default on the part of the landlord, is supplied by the observations of the Supreme Court in *Kanaiyalal Chandulal Monim Vs. Indumati T. Potdar and Another*, quoted above. The test is that even though the landlord may not be directly responsible for cutting off of the supply or service, if it was within his power to get the same restored and he omits to do so, that act of his amounts to withholding supply or service. In an earlier decision of the Bombay High Court a learned Single Judge had taken a view which is contrary to the view taken in the later decision by the same High Court in *Dhanrajmal Gobindram and Co. (P.) Ltd. and Others Vs. The State of Maharashtra and Another*, . That earlier decision is the *The Bombay Bullion Association Limited Vs. Jivatlal Pratapsi*, . In that case, as in the case of *Dhanrajmal*, the supply or service concerned was amenity of lift. That amenity was enjoyed by the tenant since 1942 till about February, 1959 when it went out of order. The tenant made an application under S. 24(3) of the Act for restoration and succeeded in the trial Court as well as in the appellate Court of Small Causes. The landlords approached the High Court and contended that mere omission on the Part of the landlords to repair the lift, which was worn-

out and had fallen into disuse, would not amount to withholding of any essential amenity enjoyed by the tenant. A contention was in terms advanced that in view of Explanation II, it is only such omissions as are described in that Explanation that may amount to the withholding of an essential supply or service. The learned Single Judge rejected this contention; and speaking with respect rightly, observing that the Explanation is only an inclusive Explanation and it would mean that withholding of any essential supply or service includes not merely those acts or omissions which are expressly described in the Explanation but also all other acts or omissions which themselves result in such supply or service being withheld. The learned Judge further observed

"If the landlord omits to effect necessary repairs to his lift or otherwise fails to keep it in working order and thus makes the lift unavailable, even then the result is the same; he has in fact withheld an essential supply or service to his tenant within the meaning of that section."

Certain observations from the decision of the Supreme Court in Kanaiyalal's case occurring in Para 6 were relied upon in support of the contention of the landlords before the Bombay High Court. These observations are as under:

"It may also be pointed out that it is doubtful whether, before the second explanation was inserted into the section, as aforesaid, in 1953, the cutting off of the water supply by the municipality or the omission of the landlord to take steps to have the connection restored, would have come within the mischief, of the penal section. Supposing the second explanation was not there, could the prosecution attribute the cutting off of the connection by the municipality and the subsequent refusal of the landlord to get the connection restored, as an act or omission of the landlord within the meaning of S. 24(1) ?"

These observations, we may say, were made with regard to the connotation of the word "cutting off". The learned Single Judge said that in the passage reproduced above "their Lordships have described the expressions cutting off" or "withhold" (paraphrased as refusal to get the connection restored) as an act or omission of the landlord within the meaning of S. 24(1)." One thing is quite clear. The aforesaid observations do not purport to lay down that Explanation II is exhaustive of the acts or omissions attributable to the landlord which may result in withholding of essential supply or service. The learned Single Judge in the later Bombay decision in Dhanrajmal's case, however, dissented from the earlier decision of the Bombay High Court in the Bombay Bullion Association's case and observed as under:

"With great respect to the learned Judge, I do not think that his judgment adequately explains or even attempts to explain the ratio of the Supreme Court passage quoted by me above."

With great respect, it is not possible to agree with the view of the learned Single Judge in Dhanrajmal's case (supra) in view of the reasons given above by us.

9. Having found the correct connotation of the word "withhold" occurring in S. 24(1) of the Act. we have now to see whether in the present case it could be said that the essential service viz. sanitation service was withheld by the respondents-landlords in both the cases even though their respective tenants were deprived of that service by an act, of the Nagar Panchayat which decided to discontinue providing service of cleansing of refuge from the latrines by human labour. Applying the ratio laid down by the Supreme Court in Kanaiyalal Chandulal Monim Vs. Indumati T. Potdar and Another, mentioned above and applying the correct connotation of the word "withhold", it is clear that it was within the power of the landlords to get this conservancy service restored either by getting the latrine converted into aqua privy or water closet or by providing for its cleansing privately through human labour. No just or sufficient cause was made out in the trial Court for the omission to do so. Therefore, the conviction of the two landlords in the facts of this case was quite correct and proper. The learned Sessions Judge set aside the order of conviction and sentence purely on an interpretation of the provisions of S. 24(1) of the Act. We have shown earlier that the interpretation placed on this provision by the learned. Sessions Judge, with respect, is not correct. If this is the position, there is no dispute that both the appeals must succeed.

10. In the result, both the appeals are allowed; and the orders of acquittal passed in Criminal Revision Applications Nos. 13 and 14 of 1977 by the learned Sessions Judge are set aside. The orders of conviction and sentence passed by the trial Court in Criminal Cases Nos. 403 and 341 of 1975 are restored. It may be stated, however, that the order passed by the learned Sessions Judge in both the cases setting aside the order of restoration of the conservancy service is not interfered with, because it would be within the power of the Civil Court under sub-s. (3) of S. 24 to direct such restoration. In view of these orders, no orders will be necessary in Criminal Revision Application No. 314 of 1977 and the same will be disposed of without any orders; and in that sense, the Rule will stand discharged.

11. Order accordingly.