

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**REVIEW PETITION (ST) NO. 23078 OF 2016
IN
CIVIL REVISION APPLICATION NO. 307 OF 2016**

Shri Manuprasad Shivbadan
Tiwari @ Brijwasi

..Petitioner.

Vs

1.Mishribai Badriprasad Ashiwal,
since deceased, 1(a) Smt Anandi
Banwarilal Buswala and Ors

.. Respondents

Mr. R.A.Thorat, Senior Advocate i/b Mr. P.J.Thorat, Advocate for
petitioner.

Mr. Kunal Bhange, Advocate for Respondents.

**CORAM : R.G.KETKAR,J.
DATE : 23/09/2016**

PC:

1. Heard Mr.R.A.Thorat, learned senior counsel for the
petitioner and Mr.Kunal Bhange, learned counsel for the
respondents at length.

2. By this Petition under Section 114 read with Order 47,
Rule1 of the Code of Civil Procedure, 1908, (for short, 'C.P.C. '), the
petitioner has sought review of the Judgment and order dated
14..6.2016 passed by this Court in Civil Revision Application
No.307 of 2016. By that order, the Civil Revision Application
preferred by the petitioner under section 115 challenging the
Judgment and decree dated 12.1.2012 passed by the learned trial

Judge in R.A.E.&R Suit No.753 of 1997 as also the Judgment and decree dated 22.4.2016 passed by the Appellate Bench of the Small Causes Court in Appeal (A-1) No.12 of 2012 was dismissed.

3. Respondents, hereinafter referred to as plaintiffs, had instituted suit against the petitioner, hereinafter referred to as 'defendant', inter alia, contending that they are lessee of plot no.20 situate at Kherwadi, Bandra (E), Mumbai. The defendant was monthly tenant of the plaintiffs in respect of room admeasuring 10' x 10', situate in plot no.20, Kherwadi, Bandra (E) Mumbai (for short, 'suit premises'). The plaintiffs had instituted suit for recovery of possession, inter-alia, invoking grounds under sections 12, 13(1)(c), 13(1)(g), 13(1)(l), 13(1)(a) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, 'Act') read with section 108(o) of the Transfer of Property Act, 1882 (for short, 'T.P. Act').

4. Defendant resisted the suit by filing written statement inter-alia contending that Small Causes Court has no jurisdiction to entertain and try the suit as the plaintiffs are not lessees of the suit premises. Suit premises belongs to Government of Maharashtra. The defendant further contended that Tahsildar (Addl.) Andheri-I (E) had issued photo-pass in 1992 in the name of the defendant in respect of the suit premises. The defendant has been paying rent to the Collector, Andheri Division and had

issued appropriate receipts upto date. The defendant submitted that the plaintiffs are not landlords or lessees as alleged and therefore suit is not maintainable. The Courts below decreed the suit under section 13(1)(g) of the Act. Aggrieved by these orders, the defendant had instituted Civil Revision Application in this Court which was dismissed.

5. In support of this petition, Mr. Thorat submitted that basically there is no relationship of landlord and tenant between the parties. The plaintiffs were not allotted plot no.20 by the Government either on lease or on licence basis. Apart from that, the construction carried out by the plaintiffs was not as per the lease agreement or after obtaining permission from the State Government or a local authority. In other words, the plaintiffs had carried out unauthorised construction and, therefore, dual tests laid down under section 4(4)(a) of the Act are not satisfied. He, therefore, submitted that rent act is not applicable. The decree passed by the Courts below is a nullity.

6. Mr.Thorat has taken me through the impugned orders passed by the Courts below. The learned trial Judge has dealt with this aspect in paragraphs 16 to 18 while answering issue no.7. The learned trial Judge after considering the evidence on record held that the government allotted plot no.20 to the plaintiffs' father and paternal uncle on lease for 99 years. Exh.P-

40 was copy of the terms and conditions of lease agreement. He submitted that as against this, appellate court dealt with this aspect in paragraph 11. In paragraph 11, the appellate Court observed that the defendant did not dispute that the construction of chawl on the plot was not carried out by the plaintiffs. His only contention was that it is illegal construction. However, it cannot be issue before the Court whether said construction is authorised or unauthorised. The Appellate Court thereafter proceeded to consider Section 116 of the Indian Evidence Act, 1872 to observe that the defendant is estopped for denying relationship of landlord and tenant. In other words, he submitted that the appellate court did not consider whether the plaintiffs satisfied the dual conditions of section 4(4)(a) of the Act and that the construction carried out by the plaintiffs is authorised or not or it was in pursuance of the lease agreement. In support of this contention, Mr. Throat relied upon following decisions:

- (i) Nagji vallabhji and Company Vs.Meghji Vipar and Company, 1983(3) SCC 68;
- (ii) Zunshi Bhanu Yadav Vs Tukaram Raghoo Chavan, 1993 (1) Mh.L.J. 859.

In paragraph 8 of the report, the learned Single Judge has referred to the decision in the case of Ram Bhagwandas Vs Municipal Corporation of the City of Bombay, AIR 1956 Bom. 364

and extracted passage from that report. He submitted that the plaintiffs have not satisfied the twin requirements stipulated in Section 4(4)(a) of the Act. Basically, suit under rent act itself is not maintainable. He, therefore, submitted that the petition requires consideration.

7. On the other hand, Mr. Bhangе submitted that no case is made out for review of the order dated 14.6.2016. He submitted that basically section 4 deals with exemptions. Section 4(4)(a) clarifies the explanation “premises belong to the Government or a local authority”. He submitted that the expression 'premises belonging to the Government or a local authority' does not include a building erected on any land held by any person from the Government or a local authority under an agreement, lease licence or other grant. He therefore submitted that the structure of the building constructed on a plot belonging to the Government or a local authority will not fall in the expression 'premises belonging to the government or a local authority' so as to apply exemption. In fact, Section 4(4)(a) is introduced in view of the decision of the Apex Court in the case of Bhatia Cooperative Housing Society Ltd vs. D.C.Patel, AIR 1953 SC 16.

8. I have considered the submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. The short controversy is whether rent act is

applicable to the suit premises or not, and whether for availing benefit of Section 4(4)(a) the construction carried out by the plaintiffs has to be authorized and that is the requirement of section 4(4)(a). In order to appreciate these submissions, it is necessary to extract Section 4(1) and 4(4)(a) of the Act which reads thus:

“4. Exemptions-

(1) This Act shall not apply to any **premises belonging to the Government or a local authority** or apply as against the Government to any tenancy. Licence or other like relationship created by a grant from or a licence given by the Government in respect of premises requisitioned or taken on lease or on licence by the Government, including any premises taken on behalf of the Government on the basis of tenancy or of licence or other like relationship by, or in the name of any officer subordinate to the Government authorised in this behalf but it shall apply in respect of premises let, or given on licence, to the Government or a local authority or taken on behalf of the Government on such basis by, or in the name of, such officer.”

“4. Exemptions:-

(4) (a) The expression **"premises belonging to the Government or a local authority"** in sub-section (1) shall notwithstanding anything contained in the said sub-section or in any judgment, decree or order of a court, not include a building erected on any land held by any person from the Government or a local authority under an agreement, lease or licence or other grant, although having regard to the provisions of such agreement, lease licence or grant the building so erected may belong or continue to belong to the Government or the local authority, as the case may be; and”

(emphasis supplied)

Section 4(1) lays down that the Act shall not apply to any premises belonging to the Government or a local authority. Section 4(4)(a) lays down that the expression "premises belonging to the Government or a local authority" in sub-section (1) shall notwithstanding anything contained in the said sub-section or in any judgment, decree or order of a court, not include a building erected on any land held by any person from the Government or a local authority under an agreement, lease licence, or other grant, the building so erected may belong or continue to belong to the Government or the local authority, as the case may be. Thus, in view of Section 4(4)(a), the building erected on any land held by any person from the Government or local authority will not be covered by the expression 'premises belong to the Government or a local authority. Understood thus, obviously, the building so erected will not get exemption as contemplated by section 4 of the Act and parties will be governed by the rent act.

9. Mr. Thorat relied upon the decision of Nagji Vallabhji and Company (supra) and in particular paragraph 8 thereof. In that case, respondent no.1 was given on lease the building along with land on which it was situate by Bombay Port Trust. Respondent no.1 in turn inducted appellants as sub tenants. In that context In para 8 the Apex Court referred to the question, namely, whether

the protection of sub section 4(a) of Section 4 is available to sub-lessee in a building leased by lessee from the government or a local authority or put up by a lessee the land belonging to the Government or a local authority but not under any building, lease or pursuant to any obligation imposed on the lessee to put up a building. It was noted that nowhere it was contended any stage by the appellants that the building in which the said premises are situate was put up by respondent no.1 firm. The Apex Court thereafter observed that it was not concerned with the position of sub-lessee in a building put up by the lessee on land taken from the Government or a Local Authority without any obligation to do so. Thus, the said decision is not applicable to the facts of the present case as it is nobdoy's case that the plaintiffs were lessees of the structure put up by them. The plaintiffs are lessees of open plot.

10. In the case of Zunshi Bhanu Yadav (supra), the respondent -plaintiff had instituted suit for declaration that he is a tenant in respect of the premises and for possession. It was noted that defendant was a rank trespasser who had constructed the structure on the government land unauthorisedly. In paragraph 7, the learned single Judge held that before the provisions of Section 4(4)(a) can be made applicable the premises should satisfy a dual test, viz. (1) the land must be held from the

Government or the Local Authority under a lease and (2) the lessee under the terms of the lease should have constructed and put up the premises. In paragraph 8, the learned Single Judge reproduced passage from the decision of RamBhagwandas (supra) which is as under:-

“The proper interpretation to put upon section 4(4)(a) is that “under an agreement, lease or grant” must qualify both “building erected” and ‘land held’. In other words, the building is erected by the lessee pursuant to the agreement, lease or grant given to the person who holds the land under the agreement lease or grant. Therefore, when a building is erected by the lessee not pursuant to any agreement with the Municipality or not under any agreement with the Municipality, then the case does not fall under section 4(4) (a).

What section 4(1) does is to give immunity to the local authority in respect of the land which it has let out to the lessee and that immunity cannot be taken away merely because the lessee on his own volition and without being under any obligation under any agreement chooses to put up structure on that land. A building “erected on any land held by a person from a local authority” is descriptive of the building. It does not emphasis the point of time when the building was erected. What is emphasized is that the nature of the building must be such as to satisfy the test that it is erected on a land held by a person from a local authority, and the test must be applied at the time when protection is sought.”

In paragraph 12, it was observed that the premises in dispute therein fail to qualify the dual test laid down in sub-section 4(a), namely, the land on which the premises stand are not held by the defendant under an agreement, lease or grant from the government. Further the building in which the premises are situate is not erected by the defendant pursuant to the

agreement lease or grant from the government. It is in that context observed that the premises in question fail to satisfy either of the two tests and therefore were not governed by the Rent Act and consequently Rent Court will have no jurisdiction to entertain and try the suit.

11. In the present case, in paragraph 18 the learned trial judge observed that documents at Exhibit P-50 are certified copies of office notings dated 6.12.1957 issued by office of Collector, Bombay Suburban District under Right to Information Act, 2005. It contains that Collector permitted the lessees of the said plots to mortgage the plots with the Bombay Cooperative Housing Finance society Ltd for the purpose of obtaining loans for construction of structures on the said plots. It can be inferred from the office notings that there was implied permission from Collector for construction on the leased premises. The learned trial Judge also referred to document Exhibit P-40 relating to terms and conditions of the lease agreement. Condition no. 4 stipulated that there can be no partition, transfer, sell , mortgage or letting of plot without permission of the government and in case there is breach of the said term, plot would be taken back by the Government. The submission made on behalf of the plaintiffs that the area of Bandra (E) where the suit premises is situate was not under the jurisdiction of Mumbai Municipal

corporation and there was a Gram Panchayat in the said area and, therefore permission of the Corporation was not obtained was recorded. The learned trial Judge also observed that the defendant did not adduce any cogent evidence to point out that as the plaintiff violated terms of the lease agreement, the Government took back leased premises from the plaintiff.

12. In paragraph 11, the Appellate court observed that the defendant admitted that construction of a chawl on the suit plot was carried out by the plaintiffs. His only contention was that it is an illegal construction. However, that cannot be issue before the Court. The defendant gave suggestion to plaintiffs' witnesses and in particular PW 2 that he had paid rent till 1980.

13. That apart, no material is produced on record to establish that the plaintiffs failed to satisfy the other condition, namely, that the building was not erected pursuant to the agreement, lease or grant from the Government. In the absence of any material on record, no finding was recorded by the Courts below. In fact, no such case was made out by the defendant in the courts below. It is, therefore, not possible to accept the contention raised by Mr. Thorat that the Rent Act is not applicable and the suit property is exempt from application of Rent Act. As I have already held that Section 4 (4)(a) defines the expression "premises belonging to the government or a local

authority” does not include building erected on plot of land belonging to either Government or local authority. Hence, no case is made out for review of the order dated 14.6.2016.

14. In the case of Kamlesh Verma Vs. Mayawati, AIR 2013 Supreme Court 3301, it is observed by the Apex Court as under :

“The jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review. A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected, but lies only for patent error. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. The power of review can be exercised for correction of a mistake but not to substitute a view. “

Applying the tests laid down by the Apex Court to the present case, I do not find that there is any error apparent on the face of the record or that any mistake is committed warranting its correction. Hence, Review Petition fails and the same is dismissed.

15. At this stage, Mr. Thorat orally applies for stay of this order for a period of 12 weeks from today. He states that the applicant is in possession of the suit premises and nobody else is in possession. The petitioner has neither created third party interest nor parted with possession and he will hereafter neither

create third party interest nor part with possession. Mr. Thorat assures that within two weeks from today, the petitioner and all adult family members residing in the suit premises will file usual undertaking in this Court, after giving advance copy to other side, incorporating therein:

(i) that they are in possession of the suit premises and nobody else is in possession;

(ii) that they have neither created any third party interest nor parted with possession;

(iii) that they will hereafter neither create third party interests nor part with possession;

(iv) that the petitioner will pay arrears, if any, within two weeks from today.

(v) that they will not apply for further extension of time;

(vi) that in case they are unable to obtain suitable orders from higher Court within 12 weeks from today, they will vacate and hand over vacant and peaceful possession of the suit premises to the respondents-plaintiffs.

16. In view thereof, notwithstanding dismissal of Review Petition, eviction decree shall not be executed for a period of twelve weeks from today subject to the petitioner and all adult family members residing in the suit premises filing undertaking in the aforesaid terms within two weeks from today and serving

copy in advance to other side. It is made clear that if the undertaking in the aforesaid terms is not filed and arrears are not paid within two weeks from today, the interim order shall stand vacated without further reference to the Court.

17. List the Application for reporting compliance after three weeks.

(R.G.KETKAR, J.)