Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 28 OF 2016

WITH

CIVIL APPLICATION NO. 44 OF 2016

The Department of Post Govt of India ...Applicant

Versus

Girish Vishwanath Karandikar ...Respondent

Ms SI Shah, *a/w Mr Parag Vyas, i/b Mr Pranil Sonawane, for the Applicant.*

Mr Prabhakar K Shetty, *for the Respondent.*

CORAM: G.S. PATEL, J

DATED: 7th November 2017

PC:-

1. The postal department of the Government of India is aggrieved by an order of 18th November 2015 of the Appellate Bench of the Small Causes Court. The postal department's appeal against the eviction decree was dismissed. That decree directed eviction of the postal department from room nos.2 to 4 admeasuring 1200 sq. ft. on the 1st floor, room no.9 to 12 admeasuring 672 sq. ft. on the ground floor and a garage admeasuring 260 sq. ft. on the ground floor of Janardhan Building, Senapati Bapat Marg, Dadar, Mumbai 400 028.

The Appellate Court confirmed this decree and directed the Defendant not to part with possession.

2. The ground for eviction was that the landlord Plaintiff *bona fide* required the premises for expansion and modernization of his business, M/s Bodytone Systems. The Plaintiff said that one of the partners was doing business in the name of United Potteries and Glassware Mart at Fort. That building was taken up for reconstruction or redevelopment. The Plaintiff said that even that business required further premises for display of tiles and sanitary fittings. Without space he could not expand either of his business interests. As to the question now raised about lack of service of a notice under Section 80 of the Code of Civil Procedure, 1908, it is noted in the Appellate order that a notice dated 4th December 2006 under Section 80 was indeed issued. If there is any doubt about this, it is laid to rest by the fact that the department replied to it on 31st January 2007. There is therefore no question of lack of notice; at least none as would warrant interference by this Court.

3. Now before the Courts below the argument was that the Defendant post office was a 'statutory tenant' of the premises and was paying fair rent. I am informed that this, in a prime locality like Dadar, was about Rs.15,660/-. After the Appellate order, the Defendant deposits monthly an amount about Rs.1,50,000/- per month.

4. The principal argument here is that there is a 'greater hardship' to the Union of India. I find it difficult to see this. The Union of India is not short of resources. It is not short of funds. It can be establish its post offices anywhere and postal services can be provided anywhere in the vicinity. It has options that are entirely unavailable to private citizens, including acquiring and erecting its own premises on land otherwise unavailable to citizens. It is certainly not open to the Union of India to claim to make this sort of claim and I have the most serious doubt whether the Union Government can ever even claim to be a 'protected tenant' strictly speaking; protected against whom? Against what? When the Union of India is an owner it claims that the Rent Act does not apply to it, but when it takes properties on lease or rental it starts claiming protection. The incongruity is plain and is inexplicable. This is a complete distortion of the Rent Act provisions. It was never intended to make large premises available cheap to any government. The statute was initially a wartime provision to make available affordable housing in the face of scarce housing stock. That it has continued in times of peace is another matter, but the intent of the statute was always to protect individual citizens and residents. The earlier considerations from the time of enactment of the tenancy protection statute are no longer valid. In *State of Maharashtra v. Super Max International (P) Ltd.*[1], the Supreme Court observed:

> 66. The Rent Act was the socio-legal response to certain historical developments, namely, the acute shortage of housing in the aftermath of the World War, the great influx of refugees in a number of States of the Union following the partition of the country and the massive migration inside the country from rural areas to the urban centres as a result of rapid urbanisation. All these developments that took place almost at the same time skewed the law of supply and demand totally in favour of the landlord. The need of the hour, therefore, was to protect the tenant, who would have otherwise been left completely at the mercy of the landlord.

1 (2009) 9 SCC 772.

The legislature intervened and brought in the Rent Act, severely restricting the grounds for enhancement of rent and for eviction of the tenant from the rented premises, thus regulating the relationship between the landlord and the tenant beyond the general law under the Transfer of Property Act, 1882. In this regard the Court responded in equal, if not greater measures. But after about three quarters of a century and three generations later when things are no longer the same and the urban centres are faced with newer problems, some of those having their origin in the Rent Act itself, there is the need to take a relook on the Court's attitude towards the relationship between the landlord and the tenant and to provide for a more level ground in the judicial arena.

67. The way this Court has been looking at the relationship between the landlord and the tenant in the past and the shift in the Court's approach in recent times have been examined in some detail in the decision in *Satyawati Sharma v. Union of India* [(2008) 5 SCC 287] . In that decision one of us (Singhvi, J.) speaking for the Court referred to a number of earlier decisions of the Court and (in para 12 of the judgment) observed as follows: (SCC pp. 304-05)

> "12. Before proceeding further we consider it necessary to observe that there has been a definite shift in the Court's approach while interpreting the rent control legislations. An analysis of the judgments of 1950s to early 1990s would indicate that in majority of cases the courts heavily leaned in favour of an interpretation which would benefit the tenant—*Mohinder Kumar v. State of Haryana* [(1985) 4 SCC 221], *Prabhakaran Nair v. State of T.N.* [(1987) 4 SCC 238], *D.C. Bhatia v. Union of India* [(1995) 1 SCC 104] and *C.N. Rudramurthy v. K. Barkathulla Khan* [(1998) 8 SCC 275]. In these

> and other cases, the Court consistently held that the paramount object of every rent control legislation is to provide safeguards for tenants against exploitation by landlords who seek to take undue advantage of the pressing need for accommodation of a large number of people looking for a house on rent for residence or business in the background of acute scarcity thereof. However, a different trend is clearly discernible in the later judgments."

5. This is not, of course, to suggest even remotely that the Rent Act has no application to a government-tenant. But the approach must surely not be doctrinaire, and the relative positions of the parties is always a consideration. Governments have throughout recorded human history acquired property in private hands by a number of ways, including statutory interventions. These are modes of property acquisition and recovery unavailable to private citizens. It seems to me incongruous, therefore, that a government should be able to equate itself with an indigent individual tenant and claim 'hardship'. This also does not mean that a government tenant can be evicted for the asking. No doubt, in a case such as this, *bona fide* requirement must be proved in accordance with law. But surely, when it comes to a government tenant, it ends at that.

6. As a matter of fact, the findings of the Appeal Court in paragraph 31 at pages 111 and 112 where the evidence of DW-2 is analyse or a very great interest. He admitted that the suit premises are actually being used only for delivery, not for any of the other allied services often provided by the postal department. There is an admission that the Defendant does not from these premises sell stamps or national savings certificates. Even postal articles are not sold here. All that the premises are used for is for delivery, and it is difficult to find fault with the Appellate Court's view that, by no stretch of the imagination can it legitimately be said that premises in a main commercial locality are essential for delivering postal articles.

7. The plea of non-joinder is not material and, as to the question of the statutory notice under Section 80, this is covered by paragraphs 41 and 42. It is not established that there is any material irregularity in these findings.

8. As to the question of whether the Plaintiff has "proved" bona fide requirement, the evidence before the Trial Court of the Plaintiff as to the expansion of his business was complete. The argument that the Plaintiff must have documents in his favour to show this is of course incorrect.

9. Ultimately the Applicant comes to this Court under Section 115 of the Civil Procedure Code, 1908. It must confine itself to the scope and ambit of that section and it must therefore demonstrate either a jurisdictional error or a material irregularity or perversity in the exercise of that jurisdiction. I see none committed by the Appeal court in the impugned order.

10. The Civil Revision Application is rejected. There will be no order as to costs.

11. The earlier order of deposit will continue for a period of four weeks from today. Time to deliver possession is extended by four weeks from today.

12. In view of disposal of the Revision Application, Civil Application No.44 of 2016 does not survive and is disposed of accordingly.

(G. S. PATEL, J.)