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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11114 OF 2016

Sanjay Subhash Devargudi	...Petitioner
<i>Versus</i>	
Niloofer Shahrokh Nooshian & Ors	...Respondents

Mr SS Devargudi, *Petitioner in person.*
Mr DB Sawant, *for Respondents Nos. 1 & 5.*
Ms Aditi Pawar, *with Tulsi Dhami, i/b Motiwala & Co., for*
Respondent No. 3.

CORAM: G.S. PATEL, J
DATED: 30th November 2017

PC:-

1. The premises in question are nothing more than a cubicle or kiosk admeasuring about 36 sq ft, 18 ft x 2 ft, in South Mumbai in Colaba. This kiosk is located at the tenanted premises of the popular and well-known eatery Café Mondegar, which itself occupies a portion of the ground floor of a structure known as Metro House. This is Unit No. 2 of Metro House. The kiosk is a newspaper and magazine vending outlet and it is on the outside of the structure and annexed to it, yet part of the Café Mondegar tenancy. Metro House is a structure that stands on a plot of land that is owned by the Bombay Port Trust, constituted under the Major Port Trusts Act 1963. Metro House Pvt Ltd, the 4th Respondent, is the lessee from

the Bombay Port Trust of this plot and structure. Metro House created a tenancy in favour of Café Mondegar. At this stage there is no dispute between Metro House and Café Mondegar in regard to that tenancy. It appears that Café Mondegar then created a sub-tenancy in favour of the Petitioner in respect of this kiosk.

2. It is commonly accepted that the portion that the Petitioner occupies falls within the definition of premises under Section 7(9) of the Maharashtra Rent Control Act 1999.

3. Café Mondegar, represented by its partners, Respondents Nos. 1 and 5, sought eviction of the Petitioner from this kiosk, and, to that end, filed RAE Suit No. 483/709 of 2006 in the Court of Small Causes at Mumbai. That suit was brought against Subhash Shankar, the present Petitioner's father. After his death, his sons Shankar Subhash and Sanjay Subhash, the present Petitioner, were joined. Shankar Subhash is not in Mumbai and has said he has no interest in this.

4. The suit filed by Café Mondegar through its partners said that they were the tenants of Unit No. 2 on the ground floor of Metro House annexed to which was a stall or structure of 18 ft x 2 ft. The Plaintiff said that they were the tenants of Metro House. They then said that in 1952 they allowed Shankar Parshuram to use and occupy this 18 ft x 2 ft annexed to Cafe Mondegar. They claimed that the arrangement was a leave and license arrangement and; in view of the provisions of the 1947 Act the licensee became a deemed tenant protected by that Act.

5. It appears that the Trial Court dismissed the suit by an order dated 26th April 2010. The Plaintiffs filed Appeal No. 6 of 2011 and, by an order dated 26th November 2012, the Appellate Court allowed the allowed the Appeal, reversed the judgment and order of the Trial Court dismissing the suit and decreed the suit, directing delivery of possession within 60 days. The present writ petition filed by Sanjay Subhash Devargudi, appearing *pro se*, is apparently directed against that appellate order, even though it does not say so clearly.

6. The contentions raised by the Petitioner is this: the plot and structure being owned by the Bombay Port Trust, the entirety of the property is permanently exempted from the application of the Maharashtra Rent Control Act 1999 in view of the provisions of Section 3(1) of that Act. In this regard, reliance is placed on the decision of the Supreme Court in *Bhatia Cooperative Housing Society v DC Patel*.¹ The submission is that this decision says the Rent Act then in force did not apply to premises belonging to the government or a local authority or apply as against the government to any tenancy or other similar relationship created by grant from the government in respect of premises taken on lease or requisitioned, but did apply to the premises let out to the Government. Hence, the Rent Act is inapplicable to government premises. Resultantly, no rent statute operates even as between the tenant and sub-tenant, or as between the sub-tenant and the sub-sub-tenant.

1 AIR 1953 SC 16.

7. The argument overlooks two critical factors. First, that this was a decision under the unamended Bombay Rents (Hotel & Lodging, House) Rates Control Act 1947 (“**the 1947 Act**”). It was also a decision rendered under Section 4(1) of that Act at a time when the subsequent Sections 4(4)(a) and (b) had not been introduced. Those were brought into effect by a later amendment of 1953, the Supreme Court judgment being rendered in November 1952.

8. In *Bhatia Cooperative*, the lessee from original Bombay Improvement Trust was one Sitaram Luxman in respect of a property at Princess Street. His lease required him to erect a building at a cost — in today’s age this is particularly interesting — of not *less* than Rs. 50,000/- of five floors with suitable offices and drainage and to let these premises out of tenancy. Sitaram did all this and he put up the New Sitaram Building. After Sitaram died, the Receiver of his estate entered into an Indenture of Lease on 19th April 1960 and that included the land and the building. There followed, several decades later, in 1948 a Deed of Assignment between the Bhatia CHS, the Appellant before the Supreme Court, and the lessee. The society served a notice on the Respondent, a monthly tenant of one of the blocks, and demanded that he vacate the premises. The tenant claimed protection under the 1947 Act. It was the case of the society that the 1947 Act did not apply to the demised premises. The City Civil Court held it had jurisdiction — viz., that the 1947 Act did not apply — and decreed the suit. The decree was reversed by the High Court in appeal, which held that the 1947 Act did apply to the premises and that, therefore, the City Civil Court had no jurisdiction to entertain the suit.

9. The point of distinction here is that this decision was of 5th November 1952 before the introduction into the statute of Section 4(4)(a). The relevant portions of Section 4 of the 1947 Act read:

"4. Exemption:

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 or 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.

2.

3.

(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 judgement, 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, although having regard to the provisions of such agreement, cause, 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

(b) **Notwithstanding anything contained in section 15 such person shall be entitled to create a tenancy in respect of such building or a part thereof whether before or after the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959.**

(Emphasis added)

10. It is this section that makes all the difference because it tells us what meaning is to be attributed to the expression “premises belonging to the Government or a local authority”. This says in terms that this does not include a building erected on any land held by any person from the government or from a local authority under any agreement, lease etc even if having regard to that document the building belongs to the Government or local authority. Sub-clause (b) says that notwithstanding anything contained in Section 15 of the 1957 Act such person shall be entitled to create a tenancy in respect of such a building. Section 15 of the Act contain a restriction on subletting or transfer.

11. The sum total of this is that the effect of *Bhatia CHS* was considerably diluted by the amendment. An exclusion from the exemption was provided in Section 4(4)(a) and a subletting of the premises was specifically allowed by virtue of sub clause (b) of that Act.

12. The entirety of the Petitioner's case in the writ petition is mounted on the decision of the Supreme Court in *Bhatia CHS* on the basis of the 1947 Act *before the amendment and the introduction of Section 4(4)(a)*. It does not take into account the subsequent amendment which correspond exactly to Section 3(3) of the Maharashtra Rent Control Act, 1999 ("**the 1999 Act**").

13. It may be true that as between the head lessor, the Bombay Port Trust, and Metro House Pvt Ltd, the Rent Control Acts Act will have no application, and that these are premises governed by the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 ("**the PP Act**"). In fact, the Bombay Port Trust which is represented today has already initiated eviction proceedings. But as between Metro House, the original head lessee, and its sub-tenants it is difficult to see how the exclusion in Section 3(1) of the 1999 Act would apply. In other words, as between Metro House and Café Mondegar, or between Café Mondegar and the Petitioner I do not think it is remotely possible to say that rent control legislation has no role to play.

14. In any case, this is of very little assistance to the Petitioner. The reason is simple. Obviously the PP Act cannot apply to the advantage of either Metro House or Café Mondegar. Consequently, if neither the PP Act nor the local rent legislation operate, then the Transfer of Property Act 1882 would apply as between the landlord and tenant, and here provisions of the Presidency Small Causes Court Act 1882 will come into play, in any view of the matter. These confer exclusive jurisdiction on the Small Causes Court in an

admitted landlord-tenant dispute. Resultantly, there would be nothing of the jurisdictional failure the Petitioner contends.

15. Leaving aside the Trial Court order, in the Appeal Court it was noted that the Plaintiffs claimed to require the premises for their *bona fide* purposes. They also said that the present Petitioner was an adopted son, if at all, and only seldom visited the suit stall. The original Defendant said that he was not a sub-tenant. He said his sons Shankar and Sanjay (Sanjay is the present Petitioner) were doing business. They denied the ground of *bona fide* requirement and the ground of non-user. The Appeal Court re-appreciated the evidence including on the question of *bona fide* requirement and comparative hardship. It answered these in favour of the Plaintiff. It also held that the Defendants had not used the premises, i.e., the suit stall or kiosk for a period of six months immediately prior to the institution of the suit.

16. It was on this basis that the Appeal Court decreed the suit having regard to the evidence before it and on the contentions. This plea that the Bombay Rent Act 1947 did not apply was never canvassed before either the Courts below. It seems to me to be a completely misconceived latter-day epiphany.

17. There is a detailed order of 28th September 2016 that summarizes some of these submissions prior to the issuance of notice and says that, subject to time constraints and convenience, the petition would be finally disposed of at the stage of admission. Hence, this order.

18. The writ petition is without any substance. It is rejected.
There will be no order as to costs.

(G. S. PATEL, J)