



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 335 OF 2016
WITH
CIVIL APPLICATION NO.613 OF 2016

Shabbir Fakruddin Maru
(Since deceased thr. Lhr)
Fatema Shabbir Maru & Ors.

...Appellant/
Applicant

Versus

Bholadasji Mandir
Sri Panchmukhi Hanuman Mandir
Ramji Mandir
Shri Satyanarayn Mandir,
Shri Murli Manaohar Mandir
Narsingwadi & Ors properties trust,
through its trustee
Kishor Gururamlakhandasji Shrivaishnav & Anr.

...Respondents.

Adv. P. N. Joshi for the Appellant/Applicant.

Adv. R. D. Soni i/b Adv. Hrishikesh S. Shinde for the Respondents.

Coram : Sharmila U. Deshmukh, J.

Date : March 18, 2024.

P. C. :

1. By a common judgment dated 23rd September, 2015 passed by the Appellate Court in Regular Civil Appeal No. 68 of 2013 and Regular Civil Appeal No. 59 of 2013, the Appellate Court dismissed the Appeals filed by the original Defendant No. 1 and original Defendant

Nos. 2 and 3 respectively confirming the judgment of the Trial Court dated 3rd December, 2012 decreeing the suit and directing the Defendant Nos. 1 to 3 to hand over the vacant possession of the suit land to the Plaintiff within three months from the date of this order by removing the structures thereon. Two independent appeals were filed and argued separately arising out of the common judgment and hence are decided independently.

2. The present Appeal arises out of RCA No. 59 of 2013 filed by the original Defendant Nos. 2 and 1. For the sake of convenience, the parties are referred to by their status before the Trial Court.

3. RCS No. 164 of 2003 was filed by the Plaintiff Trust seeking recovery of possession with directions of removal of the constructions on the suit property. The suit property is described as non agricultural land bearing survey Nos. 182, 182-A, bearing CTS Nos. 5923 to 5951 and Municipal House No. 4609 situated within the limits of Nashik Municipal Corporation.

4. The case of the Plaintiff was that the Defendant No. 1 was inducted as a tenant in the suit property on 3rd October, 1972 under a duly registered lease deed executed between parties on 17th February, 1973. The Defendant No. 1 was formerly known as Burmah

Shell Oil Storage and Distributing Company of India Ltd. The suit property was an open land used for non agricultural purpose on which the Defendants have constructed some structures. Defendant Nos. 2 and 3 are the dealers and agents of the Defendant No. 1. The Plaintiff had instituted RCS No. 209 of 1983 against the Defendants under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The said suit was withdrawn with liberty to file a fresh suit for the same cause of action. Defendant No.1 is a public limited company and is not entitled to the protection of the Maharashtra Rent Control Act, 1999. On 14th August, 2002 the Plaintiff issued a notice to quit to the Defendant No.1 which was served on or about 19th August, 2002. Defendant Nos. 2 and 3 did not accept the notice and the postal packets were returned back to the Plaintiff with the remarks 'not claimed.' However, the notice sent under certificate of post were duly received by Defendant Nos. 2 and 3. As there was certain minor mistakes about paragraph numbers in the notice dated 14th August, 2002, vide communication dated 14th January, 2003, the said mistakes was clarified. As possession was not handed over the suit came to be filed.

5. The suit came to be resisted by the Defendant No. 1 by filing its written statement. It appears that the written statement filed on 11th

August, 2003 came to be amended and the amended written statement was filed on 30th July, 2010. The contention of the Defendant No. 1 was that the suit is not maintainable under the provisions of Transfer of Property Act, 1882 and should have been filed under the provisions of Maharashtra Rent Control Act, 1999. There is non compliance of Section 80 of the CPC 1908. The Defendant No. 1 was protected by virtue of provisions of The Burmah Shell (Acquisition Of Undertakings In India) Act, 1976 and therefore right of renewal of lease are vested with the Defendant No. 1. The previous trustee had agreed to renew the lease and entered into fresh agreement and therefore the Plaintiff are estopped from claiming recovery of possession. It was contended that the user of the property for the purpose of structuring Dharam Shala for sadhu's devotees and constructing temple is prohibited and for this reason the Plaintiff cannot claim the possession of the property.

6. The Defendant Nos. 2 and 3 by filing their independent written statements contended that the initial lease was executed in the year 1954 with the erstwhile entity which was renewed in the year 1964 and lastly in the year 1972. The Defendant Nos. 2, 3 and others are in possession of the property as licensees of the Defendant No. 1 as on 1st February, 1973 and are deemed tenants of the Plaintiff protected

by the provisions of rent control legislation. The Defendant Nos. 2 and 3 denied having received notice to quit from the Plaintiff.

7. The parties went to trial. The Plaintiff examined himself and the Defendant Nos. 1 and 2 examined themselves. The Trial Court held that the lease was in respect of non agricultural land and upon coming into force of Maharashtra Rent Control Act, 1999, and the Defendant No. 1 being exempted under Section 3 of Maharashtra Rent Control Act, 1999, the suit was governed by Transfer of Property Act. As regards the mandatory renewal of lease by virtue of Section 5(2) of the Burmah Shell (Acquisition Of Undertakings In India) Act, 1976, it was held that the Defendant No. 1 has not produced any document to show that they had sought renewal of lease. The Trial Court held that the notification dated 3rd December, 2009 does not prohibit institution of suit by landlord for termination of tenancy and the change of user is a matter between the Plaintiff and the Planning Authority. The Trial Court held that where the premises is exempted from the operation of the Rent Act, then sub tenants of such premises cannot claim protection under the Rent Act and thus Defendant Nos. 2 and 3 had no protection.

8. The suit was decreed as against which Regular Civil Appeal No. 59 of 2013 was filed by the original Defendant Nos. 2 and 3 and

Regular Civil Appeal No. 68 of 2013 was filed by the Defendant No. 1. By a common judgment the Appellate Court held that the Defendants are not protected after repeal of the Bombay Rent Act and the provisions of the Maharashtra Rent Control Act are not applicable to the suit premises. The Appellate Court held that there is no agreement or right to have perpetual lease and the Apex Court has recognised only one renewal of lease. It was held that the lease of the Defendants is lawfully determined and the Appeals came to be dismissed.

9. Heard Mr. P.N. Joshi, learned Counsel for the the Appellant and Mr. Soni, learned Counsel for the Respondents.

10. Mr. Joshi, Learned counsel for the Appellant submits that the Defendant Nos. 2 and 3 were the licensees of Defendant No. 1 since the year 1954. He submits that by virtue of provisions of Section 15A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Rent Act of 1947) the Defendant Nos. 2 and 3 have become the tenants of the landlord in respect of the premises after the termination of tenancy of the Defendant No. 1 and without suit being filed under the provisions of Rent Control Legislation, the decree of the possession could not have been passed. He would submit that the Defendant Nos. 2 and 3 have acquired the legal status of a lawful sub-

tenant in view of the provisions of the Section 14 of the Rent Act of 1947 , upon the tenancy of the Defendant No. 1 being terminated and the provisions of Maharashtra Rent Control Act, 1999 (Rent Act of 1999) were applicable. He would further submit that on the date when the suit was filed the open land was converted into structures and thus was covered within the definition of “premises” under Section 7(9) of Maharashtra Rent Control Act, 1999. Pointing out to the terms of the lease deed he would contend that the lease deed permitted the erection of structures.

11. *Per contra*, Mr. Soni, learned counsel for the Respondent-Plaintiff would submit that at the inception of the tenancy what was granted was an open plot of land which by virtue of the coming into force of Maharashtra Rent Control Act, 1999 was outside the preview of the rent control Legislation. He would submit that what was granted by Defendant No. 1 to the Defendant Nos. 2 and 3 was dispensing pump and selling license and Defendant Nos. 2 and 3 after the termination of the tenancy of the Defendant No. 1 did not acquire any right to remain in possession. He would further submit that the Defendants Nos. 2 and 3 were dealers and not licensees as contemplated by Section 15A of Rent Act of 1947.

12. Considered the submissions and perused the record.

13. The contention of Mr. Joshi is that the Defendant Nos. 2 and 3 have acquired deemed tenancy by virtue of being a licensee of the Defendant No. 1 as on 1st February, 1973 and were protected under the Rent Control Act.

14. Two issues arises firstly, whether the Defendant Nos. 2 and 3 have acquired deemed tenancy and secondly, in event the original tenant is not protected whether the sub tenant would be protected under the rent control legislation. The erstwhile Burmah Shell Oil Storage and Distributing Company of India Limited had entered into Dispensing Pump and Selling Licence (DPSL) agreement with the Defendant Nos. 2 and 3 permitting the Defendant Nos. 2 and 3 to enter upon the site occupied by dispensing pump, tank etc. for sale of the motor spirit etc. upon payment of license fee to the Company. The terms and conditions of grant of license are contained in the DPSL agreement. The premises is described in the Schedule as site occupied by dispensing pump, tank etc. and permits the Defendant Nos. 2 and 3 to enter upon the said premises and to use the pumps, storage tanks, pipes and other facilities for purpose of sale of motor spirit etc. upon payment of monthly license fee. The premises and the facilities are licensed to the Licensee to be used for stocking and selling/dispensing the petroleum products of the Company and shall not be used for any

other purpose.

15. Upon holistic reading of the various clauses of the agreement, it is evident that by virtue of the license granted the Defendant Nos. 2 and 3 were permitted to enter upon the site occupied by dispensing pump, tank etc. for the limited purpose of using the facilities for purpose of sale of the motor spirit etc. as licensee of the Defendant No 1.

16. It will be relevant to refer to the definition of tenant and licensee under the Rent Act of 1999 and Rent Act of 1947 which read thus:

(15) "tenant" means any person by whom or on whose account rent is payable for any premises and includes,-

(a) such person,-

(i) who is a tenant, or

(ii) who is a deemed tenant, or

(iii) who is a sub-tenant as permitted under a contract or by the permission or consent of the landlord, or

(iv) who has derived title under a tenant, or

(v) to whom interest in premises has been assigned or transferred as permitted, by virtue of, or under the provisions of, any of the repealed Acts;

(b) a person who is deemed to be a tenant under section 25;

(c) a person to whom interest in premises has been assigned or transferred as permitted under section 26;

(d) in relation to any premises, when the tenant dies, whether the death occurred before or after the commencement of this Act, any member of the tenant's family, who,

(i) where they are let for residence, is residing, or

(ii) where they are let for education, business, trade or storage, is using the premises for any such purpose,

with the tenant at the time of his death, or, in the absence of such member, any heir of the deceased tenant, as may be decided, in the absence of agreement, by the court.

"[(4A) "licensee", in respect of any premises or any part thereof, means the person who is in occupation of the premises or such part, as the case may be, under a subsisting agreement for licence given for a licence fee or charge; and includes any person in such occupation of any premises or part thereof in a building vesting in or leased to a co-operative housing society registered or deemed to be registered under the Maharashtra Co-operative Societies Act, 1960; but does not include a paying guest, a member of a family residing together, a person in the service or employment of the licensor, or a person conducting a running business belonging to the licensor, for a person having any accommodation for rendering or carrying on medical or para-medical services or activities in or near a nursing home, hospital or sanitorium, or a person having any accommodation in a hotel, lodging house, hostel, guest house, club, nursing home, hospital, sanitorium, dharmashala, home for widows, orphans or like premises, marriage or public hall or like premises, or in a place of amusement or entertainment or like institution, or in any premises belonging to or held by an employee or his spouse who on account of the exigencies of service or provision of a residence attached to his or her post or office is temporarily not occupying the premises, provided that he or she charges licence fee or charge for such premises of the employee or spouse not exceeding the standard rent and permitted increases for such premises, and any additional sum for services supplied with such premises, or a person having accommodation in any premises or

part thereof for conducting a canteen, creche, dispensary or other services as amenities by any undertaking or institution; and the expressions "licence", "licensor" and "premises given on licence" shall be construed accordingly;]"

17. The Rent Act of 1999 recognised the deemed tenants under section 15A as "tenant" under section 7(15)(a). The definition of licensee does not include a person conducting a running business belonging to the licensor. The license under the DPSL agreement is granted for permitting the Defendant Nos. 2 and 3 to enter upon the site occupied by the dispensing pump, tank etc for purpose of sale of the products as per the DPSL agreement. As the occupation of the Defendant Nos. 2 and 3 was not on their own account but as dealer/agent of Defendant No. 1 though under a document termed as Dispensing Pump and Selling License, the same was for the purpose of running the business of Defendant No. 1 and is excluded from definition of Licensee under Section 4A of Rent Act of 1947 and thus even if the person was using the premises on 1.2.1973, he will not become a deemed tenant within the meaning of section 15A of the Rent Act of 1947 and will not be covered by definition of tenant under section 7(15)(a) of the Rent Act of 1999.

18. Even assuming that the Defendant Nos. 2 and 3 by virtue of the license has acquired deemed tenancy, the admitted position is that

the Defendant No. 1 who is the original tenant is not protected by reason of Section 3 of the Rent Control Act of 1999 as the subject premises were exempt from the provisions of Rent Control Act of 1999. The Appellate Court relying upon the decision of Apex Court in the ***Kersi Commissariat and Ors vs Ministry of Food and Civil Supplies, Government of Maharashtra [(2012) 5 Supreme Court Cases 187]*** held that as the premises were exempt from operation of Rent Act, the sub tenants of such premises cannot claim protection of the Rent Act. In ***Kersi Commissariat and Ors (supra)***, similar contention of deemed tenancy was taken by the sub tenant although the original tenant was exempt under Section 3 of the Rent Control Act of 1999. In that case the original tenant was New India Assurance Co. Ltd and the sub tenant was Ministry of Food and Supplies. The Apex Court considered Section 4 of the Rent Act of 1947 and observed that the provision exempted the premises let out and a subtenant cannot claim protection in the premises belonging to the Government. The Apex Court thereafter considered Section 3 of the Rent Control Act of 1999, and observed that the Act does not apply to the insurance company. The Apex Court noted the decision of ***Bhatia Co-op Housing Society Ltd. vs D.C Patel [AIR 1953 SC 16]*** which clearly laid down that Section 4(1) of Rent Act of 1947 applied to premises and not to parties or their relationship. The Apex Court held

that as the Act does not cover the original tenant as basically the exemption applies only to premises and not to any relationship, the sub-tenant who becomes a deemed tenant cannot enjoy a better protection or privilege by ostracising the concept of premises which is the spine of the provision. The issue is therefore no longer *res integra* and is settled by the decision of the Apex Court.

19. Having regard to the discussion above, no substantial question of law arises in the present case. Appeal stands dismissed. Civil Application, if any, stands disposed of in view of dismissal of the Appeal.

20. At this stage request is made by learned Counsel for Defendant Nos. 2 and 3 to extend the interim protection for period of four weeks. The said request is opposed by learned counsel for Appellant. As this Court is informed that the interim protection was operating since long, I am inclined to extend the same for period of four weeks from date of uploading of this order on the official website.

[Sharmila U. Deshmukh, J.]

Harish

Signed by: Harish V. Chaudhari

Designation: PA To Honourable Judge

Date: 28/03/2024 14:48:26