(2001) 1 GLR 772

Gujarat High Court

Case No: Second Appeal No. 293 of 1983

Sanmukhlal K. Darji		APPELLANT
	Vs	
District Panchayat		RESPONDENT

Date of Decision: July 21, 2000

Citation: (2001) 1 GLR 772

Hon'ble Judges: A.L. Dave, J

Bench: Single Bench

Advocate: D.U. Shah, for the Appellant; S.K. Jhaveri, for the Respondent

Final Decision: Dismissed

Judgement

A.L. Dave, J.
The appellant, being aggrieved by judgment and decree passed by the Court of learned Assistant Judge, at Surat, in Regular Civil Appeal No.70 of 1982, dated April 30, 1983, arising out of a judgment and decree passed by learned Civil Judge (J.D.), at Vyara, in Regular Civil Suit No.1 of 1979, on December 31, 1981, has preferred this Second Appeal u/s 100 of the Code of Civil Procedure.

2. The facts leading to the present appeal are that the appellant is the owners/landlord of houses No.261, 266, 267, 268, 269 and 270 of Vyara Nagar Panchayat and four rooms of the first floor were rented to the respondents for running a school on a monthly rent of Rs.56/-. The defendant is the District Panchayat, which ran this school in the properties in issue. The appellant preferred a Regular Civil suit against the respondent for eviction from the suit premises on the ground that the premises were required for personal and bona fide use/occupation. The suit was also for recovery of Rs.167/- as arrears of rent and for mesne profits. The suit was preferred after giving a notice.

3. The case of the defendant was mainly of denial. It was contended further in the written statement by the defendant-respondent that notice as required u/s 320 of the Gujarat Panchayats Act was not given. It was also contended that the Trial Court did not have jurisdiction. The ground for greater hardship was also pressed by the

respsondent-defendant. The Trial Court, considering the contentions raised by rival sides, raised the following issues :-

"(1) Whether the plaintiff proves that the suit premises are reasonably and bonafide required by him for occupation by himself as averred in plaint para 3?

(1) A. Whether plaintiff proves that he is the only owner of the suit premises if not what is its effect on this suit?

(1) B. Whether the suit is maintainable without statutory notice u/s. 320 of Gujarat Panchayat Act?

(2) What is due from the defendant towards the rent and mesne profit for the use and occupation of the suit premises?

(3) Whether the suit is bad for non-joinder of proper and necessary parties?

(4) What is the standard rent of the suit premises?

(5) To whom greater hardship would be caused if decreed is passed or refused?

(6) Whether the defendants'' tenancy is rightly terminated?

(7) To what relief, if any, the plaintiff is entitled to?

(7-A) Whether the defendant proved that the suit premises valued more than Rs.1,00,000/- as contended in the amended written statement? If yes, what is its effect on this suit?

(8) What order and decree?

After considering evidence of rival sides, the Trial Court gave findings on the above issues as under;

(1) In negative.

(1.A) Not pressed.

(1.B) In affirmative.

(2) Rs.168.00

(3 to 5) Not pressed

(6) In affirmative.

(7) Plaintiff is entitled to decree of eviction and arrears of rent.

(7.A) Not pressed.

(8) As per final order.

and, ultimately, decreed the suit.

3.1 While decreeing the suit, the Trial Court observed that provisions of the Bombay Rent Act are not applicable. For coming to this conclusion, the Trial Court relied on provisions of Section 6 of Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947 ("Rent Act" for short). The Trial Court also observed that notification issued on the 26th March, 1980 bearing No.GH/J/37/80/BRA:1877/4861/N(i) is not applicable to the facts of the present case. It is only applicable to the suits which were pending on 3.4.1980 and, therefore, the suit was, ultimately, decreed.

3.2 Aggrieved by the said judgment and decree, present respondents preferred Regular Civil Appeal No.70 of 1982 before the District Court, at Surat and the learned Extra Assistant Judge, Surat, after considering the provisions of Section 6 of the Rent Act and the notification came to a conclusion that the Trial Court committed an error in coming to the conclusion that Bombay Rent Act is not applicable to the suit property and thereby committed an error in decreeing the suit for possession of the suit premises under the Transfer of Properties Act. Aggrieved by this judgment and decree, the original plaintiff/landlord has preferred this Second Appeal.

3.3. While admitting this appeal, the following substantial question of law was framed :-

(1) Whether notwithstanding the issuance of Government notifications dated 4th March, 1978 and 26th March, 1980, the provisions of the Bombay Rent Act did not apply to the premises in question because the said premises were let for the purpose of running a school, that is, an educational purpose and not any of the purposes referred to in the aforesaid two notifications?

4. Learned advocate, Mr. D.U. Shah, has taken this Court through the judgments of the Trial Court as well as the First Appellate Court. He has taken this Court through the provisions of the Bombay Rent Act, as contained in Section 6 as well as the notification in question. He has taken this Court through the memo of appeal as well and submitted that the First Appellate Court has committed an error, which may be rectified by allowing this appeal and by confirming the judgment and decree passed by the Trial Court.

5. Mr. S.K. Zaveri, learned Senior Advocate, appears for respondent No.1.

6. Having regard to the contentions raised before this Court and considering these contentions in light of the question framed by this Court while admitting the appeal, the glaring feature that attracts the attention of this Court and caught the attention of the First Appellate Court is that the question of non-applicability of the Bombay Rent Act to the suit premises was never a point in issue before the Trial Court. No such contention was

raised in the pleadings. This is evident from the issues framed by the Trial Court since no such issue is framed. It seems that this contention was raised during the course of arguments before the Trial Court and the Trial Court was pleased to accept this contention.

7. Section 6 of the Bombay Rent Act runs as under :-

"6. Application

(1) In areas specified in Schedule I, this Part shall apply to premises let for residence, education, business, trade or storage and also to open land let for building purposes.

Provided that the State Government may, by notification in the Official Gazette direct that in any of the said area, this part shall cease to apply to premises, let for any of the said purposes.

Provided further that State Government may by like notification, direct that in any of the said areas this Part shall re-apply to premises let for such of the aforesaid purposes as may be specified in the notification.

(2A) The State Government may by notification in the Official Gazette, direct that in any of the said areas this Part shall apply to premises let for any other purpose.

(2) In areas to which this part extended under sub-section 3) of Section 2, it shall apply to premises let for such of the purposes referred to in sub-section (1) or notified under sub-section (1A) or let for such standard rent as the State Government may, by notification in the Official Gazette specify."

The Rent Act, therefore, would be applicable to the areas specified in Schedule-I, to the premises let for residence, education, business, trade or storage and also the open land let for building purposes. Undisputedly, at the relevant time, Vyara was not included in Schedule-I. However, a notification came to be issued by the Government of Gujarat on the 26th March, 1980. The notification runs as under :-

"Sachivalaya, Gandhinagar,
26th March, 1980.

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

No.GH/J/37/80/BRA:1877/4861/N(i);- In exercise of the powers conferred by sub-section (3) of section 2 and sub-section (1A) of Section 6 of the Bombay Rents, Hotel and Lodging House Rates Control Act,1947 (Bom LVII of 1947) (hereinafter referred to as "the said Act") the Government of Gujarat hereby:-

(i) extends all the provisions of Part II of the said Act, with effect on the date of publication of this notification in the Official Gazette to the areas of all Gram Panchayats, Nagar

Panchayats, Nagar Palikas and Municipal Corporations in the Gujarat State; and

(ii) specific that the provisions of part-II of the said Act, shall with effect on and from the date of publication of this notification in the Official Gazette apply to the premises let to the Government of Gujarat or to any Gram Panchayat, Nagar Panchayat, Nagar Palika, Municipal Corporation or Local Authority in the areas of Gujarat State, for the purpose of setting up an office, public hospital, dispensaries or godowns except the areas in which the provisions of Part II of the said Act are applied for these purposes.

By order and in the name of the Governor of Gujarat.

Sd/-
K. D. Vasava
Under Secretary to Government."

The said notification was published on the 3rd April, 1980. From that date onwards, the provisions of Part II of the Bombay Rent Act was made applicable to the areas of Gram Panchayats, Nagar Panchayats, Nagar Palikas and Municipal Corporations in the State. It was also specifically provided in that notification that provisions of Part II of the said Act shall be applicable to the premises let to the Government of Gujarat or to any Gram Panchayat, Nagar Panchayat, Nagar Palika, Municipal Corporation or Local Authority in that area of the State. The judgment was rendered on the 31st December, 1981. The conclusion of the learned Trial Judge that the Rent Act would apply by virtue of the notification only to the suits pending on 3.4.1980, therefore, cannot be accepted. It appears that the learned Trial Judge committed an error in discerning the observations made in Mahalinga Bandappa v. Venkatesh Waman Karnataki 59 BLR 227, wherein it was observed thus:-

"The suits which was pending at the date on which the provisions of Part II of the Act were applied to the suit premises would be governed by the Act though, at the date upon which the suits were filed, the provisions of Part II were not applied to the suit premises."

8. If the notification is read, it is clear it is applicable from the date of its publication, which is 3.4.1980 and from the above referred judgment relied upon by the learned Trial Judge, it is clear that by virtue of this notification, provisions of Rent Act would be applicable even to the pending suit, which was filed on the 2nd January, 1979 and disposed of on the 31st December, 1981, meaning thereby that it was pending on 3.4.1980. The First Appellate Court, therefore, was right in setting aside the finding of the Trial Court that Rent Act was not applicable to the premises.

9. It is abundantly clear that by virtue of the 1980 notification, Part II of the Act is applied to the areas of Gram Panchayats, Nagar Panchayats, Nagar Palikas and Municipal Corporations and, therefore, it would be applicable to Vyara, where the property in question is situated. Now, if Section 6 is seen, it says that it shall apply to premises let for residence, education (the purpose for which the suit premises was let), business, trade,

etc. and, therefore, reliance cannot be placed on the notification dated the 4th March, 1978 for holding that the Rent Act is not applicable to the suit premises.

10. In considered opinion of this Court, therefore, it cannot be said, notwithstanding the issuance of notifications dated 4th March, 1978 and and 26th March, 1980, the provisions of the Bombay Rent Act did not apply to the premises in question because the said premises were let for the purpose of running a school, that is, an educational purpose and not any of the purposes referred to in the said notifications. The question is, therefore, answered in the negative. The appeal, therefore, must fail and the same is dismissed. No order as to costs.