Rajpati Sudama Panday Vs Taj Mohamed Rustom Khan

Court: Bombay High Court

Date of Decision: Nov. 14, 1963

Acts Referred: Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 â€" Section 10, 10B, 12

Citation: (1964) 66 BOMLR 258 : (1964) MhLj 390

Hon'ble Judges: Patel, J; Chitale, J

Bench: Division Bench

Judgement

Patel, J.
His Lordship after stating the facts, proceeded. The learned Judges then addressed themselves to the question as to whether the

notice was valid. They construed Sections 10 and 12 of the Kent Act to mean, relying on a judgment of their own Court that before a notice is

given u/s 12 by a landlord for termination of tenancy on the ground of arrears of rent and permitted increases, u/s 10, the landlord must terminate

the agreement regarding the contractual rent and demand the increases and it is only thereafter that he can issue a notice u/s 12. As there was no

prior notice in the present case, they held that the claim was excessive. They also observed that the increase in municipal taxes was on. the rateable

value while the landlords had claimed the increases on the full amount of rent. They, therefore, held that the notice was bad in law. They allowed

the appeal and dismissed the suit of the plaintiffs. It is this judgment that is sought to be revised in the present petition.

2. In our view, Mr. Advani is right in his contention that the learned Judges were not justified in holding that the notice was bad on the ground that

the percentage of increase in the municipal taxes was on the rateable value while the landlords had asked the amount of increase on the full rent. He

contendsÃ¯Â¿Â½and rightlyÃ¯Â¿Â½that no such question was raised in the defences and there is not one word suggested either in the defences of the

defendant or in his evidence from which an inference can be drawn that the rateable value for which the premises were charged was any different

from the standard rent which was recovered for the premises. Very often the rateable value differs from the rent chargeable under the Rent Act

and is often higher. Unless proper evidence is led to enable the Court to hold in favour of the defendant, it was an error on two part of the

appellate Court to raise such a point merely on the arguments at the bar. It is pertinent to note that Section 10 permits the transfer of the increase

to the tenant and unless it is shown that the burden sought to be transferred to the tenant is in excess of the amount paid by the landlord it cannot

be held that the demand was excessive and for which there is no proof.

3. The only question then remains is whether the appellate Court was right in the interpretation of Sections 10 and 12. Summary of its views will be

found in this sentence:

In the case before us, the respondents sought to recover the increase above the contractual rent without first putting an end to the contract as to

rent and so the demand in respect of the increased rent would clearly be illegal.

Section 10 is worded in simple language and it must be interpreted in a reasonable, manner without any addition into the section. Section 10, so far

as is relevant, says:

Where a landlord is required to pay to a local authorityÃ¯Â¿Â½any rate, cess or taxÃ¯Â¿Â½he shall be entitled to make an increase in the rent of the

premises by an amount not exceeding the increase paid by himÃ¯Â¿Â½.

The emphasis is laid on the words ""he shall be entitled to make an increase"" and it is said that unless he makes an increase lie would not be entitled

to recover the amount. If one reads the notice, the only conclusion to which one can come is that the landlord exercised the choice which lay with

him to make the increase when he asked the tenant to pay the increased, taxes. There is nothing in law to prevent the landlord making the increase

at the time of giving notice. The law itself gives the tenant a month''s time to pay the amount and it is only if the amount is not paid during the whole

month, that the landlord is entitled to file a suit. There is nothing in the statute which requires a landlord to give first a notice u/s 10 and then a

further notice u/s 12. We fail to see why the demand of the landlord for the increase in the rent does not amount to making of an increase in the

rent.

4. Some attempt was made to rely on the words in Section 10B of the Act which relates to the recovery by the landlord of the amount of the riot

tax from his tenant when imposed. The reason for the difference in the language is not far to seek. In the one case there is a continuing increased

payment every month as and when it becomes due for the whole period during which the taxes have been increased, while in the other it relates to

the recovery of a single sum of money on a single occasion when imposed. It is for this reason that the Legislature has used the words ""shall be

entitled to recover"" and more so because it has further provided the recovery by installments. Merely because there is difference in the language in

these two sections, we cannot import into Sections 10 and 12 something which is not there.

5. We might also point out that the learned Judges have not clearly appreciated, the judgment of their own Court on which they have relied. That

case arose out of a suit by the landlord for recovery of certain sums of money as increase in rent being proportionate share of water charges

alleged to be due from the tenants. The tenants had paid from time to time the actual rents due without any increase having been demanded by the

landlord. A perusal of the judgment shows that at no time intimation was given to the tenants requiring them to pay the increased charges. It is true

that the landlord could increase the rent but he was not bound to recover the charges payable by the tenant. Even so it appears to us that the

conclusion of the learned Judges could not be justified. If a party files a suit without giving notice, it is only a matter of costs and the plaintiff is

entitled to a decree provided law permits it. The learned Judges in that case observed:

The legislature has only put certain restrictions and controls on these contracts and the Court cannot in law refuse to enforce a contract as; to rent if

the rent did not exceed the standard rent and the permitted increases. In fact, in such a case, it will be the contractual rent only and not the

standard rent which will be enforced by the Court, so long as the contract is in force. Similarly in the case of permitted increases also, a landlord

will not be entitled to enforce any increase in cases where his contractual rent is less than or equivalent to the standard rent until the contract as to

the rent is terminated. Merely because a landlord possesses a right to increase the rent to the extent permitted by the law, it does not follow that he

can recover it without first making such an increase.

It is difficult to see why permitted increases cannot be recovered if the contractual rent is less than or equal to the standard rent. Section 10 entitles

the landlord to make an increase in the rent-and this may be contractual and may be more or less than, the standard or even equal to it. If it is more

and a contention that the rent is excessive is raised by the defendant the Court must determine the same and also allow the permitted increases in

addition to the standard rent determined by it. If the landlord claims the permitted increases in the suit without a prior demand, the Court would not

be justified in rejecting the claim except when the tenant can resist the claim on the ground of estoppel in which case he has to prove prejudice. If

no such ground is alleged the Court must decree the permitted increases in addition to the rent whether contractual or otherwise and whether equal

to or less than the standard rent, the suit itself being treated as a demand. It may be that the Court may disallow costs to the plaintiff.

6. In the present case in fact a demand was made for the increased payment which the tenant was bound in law to pay, and if he failed to do so

within the time provided by Section 12 of the Act, a decree must follow u/s 12(5)(a) of the Act.

7. Mr. Banaji cited before us the decision in Penfold v. Newman [1922] 1 K.B. 645 which, in our view, has absolutely no application at all.

[The rest of the judgment is not material to this report.]