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Bombay High Court

Case No: Writ Petition No. 4248 of 1987

Shrikant Golvankar	APPELLANT
Vs	
Rockey Dominick Gulas and Others	RESPONDENT

Date of Decision: March 29, 2001

Acts Referred:

- Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Section 12, 12(1), 12(3), 2, 5(11)
- Bombay Tenancy and Agricultural Lands Act, 1948 - Section 88(1)
- Transfer of Property Act, 1882 - Section 106

Citation: AIR 2001 Bom 287 : (2001) 3 ALLMR 703 : (2001) 4 BomCR 460 : (2001) 2 BOMLR 992 : (2001) 3 MhLj 605

Hon'ble Judges: R.M. Lodha, J; D.B. Bhosale, J

Bench: Division Bench

Advocate: Mr. M.N. Morje, for the Appellant; Mr. N.V. Walawalkar, for the Respondent

Judgement

R. M. Lodha, J.
The learned Single Judge before whom the writ petition came up for hearing prima facie formed opinion that in the light of the judgment of the Apex Court in H. Shiva Rao and another v. Cecilia Pereira and others, the petitioner-tenant is entitled to get the benefit of the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bombay Rent Act) which was made applicable to the village Gokhivare where the premises were situated during the pendency of appeal though at the time the suit was filed and was decreed by the Trial Court, the Bombay Rent Act was not applicable. The learned Single Judge in para 5 of the reference order observed thus :

"5. Prima facie, I am of the view that considering the judgment, of the Apex Court reported in H. Shiva Rao and Another Vs. Cecilia Pereira and Others, , in the present case, the petitioner-tenant is entitled to get the benefit of the provisions of the Bombay

Rent Act even though the said provisions, were made applicable to village Gokhivare during the pendency of the appeal. No doubt, the learned Counsel for the Respondents tried to distinguish the said judgment on the ground that Karnataka Rent Control Act, 1961 was made applicable to all the areas within the City limits and an area of 3 kms. therefrom. Thereafter the concerned village was included in the Mangalore Municipality limits by the notification issued under the Karnataka Municipal Corporation Act. However, in my opinion, that would not make any difference. The provisions of the Karnataka Rent Control Act became applicable to the premises situated in the concerned Village after the decree for possession was passed and the Apex Court considering the object of the legislation held that benefit thereof can be given to a tenant. However, considering the fact that there is a Full Bench Judgment reported in Ramdas P. Chitrigi Vs. Monica Pascol Miranda and Another, directly in the field. In my opinion, it would be proper to place this matter either before the Division Bench or the Full Bench for considering the legal position afresh in view of the Judgment of the Apex Court reported in H. Shiva Rao and Another Vs. Cecilia Pereira and Others, ."

2. This is how the matter has come up before us.

3. The facts are not disputed that the petitioner was monthly tenant in respect of room No. 6 out Of the house property bearing House No. 223 of village Gokhivare, Taluka Vasai on the rent of Rs. 30/-per month. The said premises were let out to the petitioner in the year 1969 by the erstwhile landlord. The present respondents who are original plaintiffs purchased the entire house property No. 223 in the year 1977. The petitioner"s tenancy was terminated by giving notice u/s 106 of the Transfer of Property Act on 1.9.81 as he was in arrears of rent. Since at the relevant time the provisions of Bombay Rent Act were not applicable, the landlords filed the suit for possession in the Court of Civil Judge, Junior Division, Vasai setting out the facts afore-stated. The tenant traversed landlord"s claim by filing his written statement. According to him, he had paid the rent regularly. He also denied that Bombay Rent Act was not applicable to the village Gokhivare where the premises in question were situated. On the basis of the pleadings of the parties, the Trial Court framed issues and by judgment and decree dated 30th June, 1986 decreed plaintiffs suit for possession and directed the petitioner-tenant to hand over possession on or before 30th July, 1986. Upset by the judgment and decree passed by the Trial Court, the petitioner preferred appeal before the District Judge, Thane. It appears that Part II of the Bombay Rent Act was made applicable vide notification dated 5.2.87 to Gokhivare village during the pendency of appeal before the District Judge. The Appeal Court, however, did not find any merit in the appeal and by judgment dated 13th July, 1987 dismissed tenant"s appeal and extended time for vacation of the premises upto 31st August, 1987. The concurrent judgment and decree for eviction passed against the petitioner by the Courts below are under challenge in the present writ petition. The sole contention on behalf of the petitioner is that the provisions of Part II of Bombay Rent Act to the area in question having been reapplied to Gokhivare Village during pendency of appeal, the judgment and decree passed by the Courts below are bad in law and tenant

cannot be evicted from the premises in question unless a case for eviction is made out under the Bombay Rent Act.

4. At this stage, it may also be noted that the provisions of Part II of the Bombay Rent Act were first made applicable to the village Gokhivare on 13.2.1948. However, vide notification dated 30th August, 1948, the applicability of said part of Bombay Rent Act was withdrawn in respect of village Gokhivare. Again vide notification dated 5.2.87, the Government of Maharashtra directed that in the area of Gokhivare village Part II of the Bombay Rent Act shall be applicable to the premises let for the purpose of residence from the date of publication of the notification in Official Gazette. The said notification was published in the Official Gazette on that very day viz. 5.2.87 itself. It would, thus, be seen that for the period from 30th August. 1948 until 4th February. 1987 Part II of the Bombay Rent Act was not applicable to Gokhivare Village. The suit for eviction was filed by the landlords against the tenant on 1st October, 1981 and the decree was passed in favour of the landlords by the Trial Court on 30th June, 1986. Thus, on the date of the filing of the suit, during its pendency and when the decree was passed by the Trial Court, provisions of Part II of the Bombay Rent Act were not applicable to the premises in question. It was made applicable only during the pendency of appeal preferred by the tenant against the judgment and decree passed by the Trial Court.

5. It goes without saying that ordinarily every legislation is prospective in its effect and it does not affect vested rights. However, it is always open to the legislature to make legislation retrospective. Whether a particular piece of legislation is retrospective or not can be found out by the express provision of retrospectivity made in the legislation itself or in absence of such express provision by finding out any implied intention of the legislature whether they intended such legislation to be retrospective. Whenever the question arises whether the statute is retrospective or not, the Court is required to look into the relevant provisions of such legislation. In this connection, therefore, we may first refer to section 50 of the Bombay Rent Act whereby the Bombay Rent Restriction Act, 1939 and the Bombay Rents, Hotel and Lodging House Rates Control Act, 1944 were repealed. Section 50 of the Bombay Rent Act reads thus :-

"50. Repeal

The Bombay Rent Restriction Act, 1939 and the Bombay Rents. Hotel Rates and Lodging House Rates (Control) Act, 1944, are hereby repealed :

Provided that all suits and proceedings between a landlord and a tenant relating to the recovery of fixing of rent or possession of any premises to which the provisions of Part II apply and all suits and proceedings by a manager of a hotel or an owner of lodging house against a lodger for the recovery of charges for, or possession of, the accommodation provided In a hotel or lodging house situated in an area to which Part III applies, which are pending in any Court, shall be transferred to and continued before the Courts which would have jurisdiction to try such suits of proceedings under this Act [or shall be

continued in such Courts, as the case may be, and all the provisions of this Act and the rules made thereunder shall apply to all such suits and proceedings.

(Nothing in this proviso shall apply to execution proceedings and appeals arising out of decrees or orders passed before the coming into operation of this Act and such execution proceedings and appeals shall be decided and disposed of as if this Act had not been passed,

Provided further that -

(a) every order passed or act done by the Controllers under Part IV of the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944, and every order or act deemed to have been passed or done under that Part shall be deemed to have been passed or done under this Act; and

(b) all proceedings pending before the Controllers under Part IV of that Act shall be transferred to and continued before the Controllers appointed under this Act as if they were proceedings instituted before the Controllers under this Act."

6. His pertinent to note that by enacting a provision like Section 50, the legislature has only given limited retrospectivity to the operation of Bombay Rent Act and expressly excluded its applicability to appeals and execution proceedings pending at the time of coming into force of the Act, The express provision appended to the first proviso that nothing in the said proviso shall apply to the execution proceedings and appeals arising out of decrees or orders passed before coming into operation of the Act and such execution proceedings and appeals shall be decided and disposed of as if this Act has not been passed makes the intention of legislature very clear that the provisions of Part II or Part III of the Bombay Rent Act on its coming into force shall not apply to the execution proceedings and appeals arising out of the decrees or orders passed before coming into operation of the said Act. The legislation further made it clear that such execution proceedings and appeals shall be decided and disposed of as if Bombay Rent Act has not been passed. The legislature, thus, has not only expressly provided that pending appeals and execution proceeding shall not be affected by applicability of Bombay Rent Act to the area but also such appeals and execution proceedings shall be disposed of as if Bombay Rent Act was not in existence. In Nilkanth Ramchandra Chandole v. Rasiklal Mulchand Gujar, the Full Bench of this Court considered the question about the applicability of Bombay Rent Act to the pending appeal arising out of a decree for ejectment when the provisions of Bombay Rent Act were not applicable. The Full Bench of this Court through Chagla. C.J. held thus :-

"4. ..... So that no pending legal proceedings can be affected by a repeal unless there is a different Intention in the statute itself. Therefore, when we are asked to apply the new Section 12 to the decree which was passed by the Trial Court, we must find in the new Act a clear intention which constitutes a departure from the principle of law laid down and

enunciated in Section 7, of the General Clauses Act, and far from finding any such different intention, we find that u/s 50 of the new Act the Legislature has expressly and in terms made the statute retrospective only in those restricted cases referred to in that section. It has been suggested that placing this narrow construction upon Section 50 would lead to anomalies and difficulties not contemplated by the Legislature. It is perfectly true that a Court of law must always see to it as far as possible that the obvious intention of the Legislature is not defeated by a construction which It puts upon a statute passed by the Legislature. But, on the other hand, it is equally clear that a Court of law should not put itself in the shoes of the Legislature. If the language of the statute is plain and clear then the intention of the Legislature can only be judged from the words and expressions it has used in the Act which it has passed."

7. The aforesaid judgment of the Full Bench of this Court has been approved by the Supreme Court in Chandra singh Manibhai v. Surjit Lal Ladhamal Chhabda. The Apex Court in para 4 of the report while construing sections 12 and 50 of the Bombay Rent Act held that the Bombay Rent Act was given retrospective operation only to a limited extent and execution proceedings and appeals were excluded from this effect and were to be governed by the provisions of the law in force at the time when the decrees were passed. The Apex Court ruled thus :

"On a plain reading of the language of Sections 12 & 50 it seems clear to us that the Act was given retrospective operation only to a limited extent and execution proceedings and appeals were excluded from this effect and were to be governed by the provisions of the law in force at the time when the decrees were passed. The concluding words of Section 50 "and thereupon all the provisions of this Act and the rules made thereunder shall apply to all such suits and proceedings" fully bear out this construction."

8. The learned Single Judge of this Court vide order referred the special Civil application, Ramdas P. Chitrigi v. Smt. Monica Pascal Miranda and another, for decision by the Full Court about the rights of landlord and tenants in suits or appeals pending on the date on which Bombay Rent Act was made applicable since he found that there were conflicting decisions of this Court. On the reference the matter came up before the Full Bench of this Court which is in Ramdas P. Chitrigi v. Smt. Monica Pascal Miranda,. In the case before the Full Bench, the petitioner Ramdas P. Chitrigi was a tenant of one room in the building called Monica House situate within the limits of Gram Panchayat of Diwanman. On January 20, 1968, the landlady (respondent No. 1 therein) served notice upon the tenant terminating his tenancy and then filed a suit to recover possession of the premises. On March 31, 1970 a decree for possession was passed In favour of the landlady and against the tenant holding that the Bombay Rent Act was not applicable to the suit premises. An appeal was preferred by the tenant aggrieved by the judgment and decree passed by the Trial Court and during pendency of appeal, the Bombay Rent Act was made applicable. The Appeal Court dismissed the appeal. Before the Full Bench on behalf of the tenant it was argued that the provisions of the Bombay Rent Act are retrospective in operation and the tenant is entitled to claim protection under the Bombay

Rent Act even if the provisions of Part II of the said Act were made applicable to the premises during the pendency of appeal though the said provisions were not applicable at the time when suit was instituted and decreed by the Trial Court. The Full Bench of this Court referred to earlier Full Bench Judgment in Nilkanth Ramchandra, the Judgment of Apex Court in Chandrasingh (supra) and some other judgments and ultimately ruled that the provisions of the Bombay Rent Act cannot be made applicable to the appeals pending on the date on which the provisions of Parts II and III of the Bombay Rent Act were applied to the premises and therefore, the tenant would not be entitled to protection of the provisions of Part II of Bombay Rent Act as those provisions were not applicable to the premises at the time when the decree was passed by the Trial Court. Thus the Full Bench in Ramdas P. Chitrigi in unequivocal, clear and categorical terms held that the provisions of Bombay Rent Act do not apply to pending appeals arising of the decree for eviction when the provisions of Parts II and III were not applicable to the premises during the pendency of suit. The question which is raised before us was also the question for consideration before the Apex Court in Motiram Ghelabhai v. Jagan Nagar and others,. The Supreme Court therein had an occasion to decide the question whether the pending appeal would be governed by the Bombay Rent Act upon the Part II of the Act being made applicable to the area in which the premises were situate during its pendency. The Apex Court affirmed its earlier view taken in Chandrasingh"s case (supra) and in paras 9 and 10 of the report held thus :-

"9. Bearing in mind the aforesaid legislative amendments we shall proceed to consider the question as to what is the true nature and scope of the proviso. For that purpose it will be necessary to read as a whole the entire provision, namely, the substantive part of section 50, the proviso thereto and the new paragraph added at the end of the proviso. So read, two aspects stand out very clearly. In the first place, it is clear that under the substantive part of section 50 on the coming into force of the Act (the 1947 Act) the two earlier enactments (the 1939 Act and the 1944 Act) stand repealed. If nothing more was said then section 7 of the Bombay General Clauses Act. 1904 would have come into play and would have had the effect of saving the legal proceedings or remedies in respect of any right, privilege, obligation or liability acquired, accrued or incurred under the repealed enactments. In other words, all suits and proceedings including execution proceedings and appeals arising therefrom which were pending on the relevant date and which were governed by the provisions of these respective repealed Acts would have been saved and the rights and obligations of the parties thereto would have been worked out under the relevant provisions of the repealed Acts. But here a clear intention do deviate from the normal rule which applies to the repeal of enactments is clearly evinced by the Legislature by the manner in which the proviso was enacted initially or as it now stands after the amendments. Either under the proviso as it originally stood or under the new separate paragraph enacted byway of an amendment the legislative intent was and is quite clear that only suits and original proceedings between a landlord and tenant (of the description or categories specified therein) which were pending on the relevant date are required to be decided and disposed of by applying the provisions of the 1947 Act while

execution proceedings and appeals arising out of decrees or orders passed before the coming into operation of the Act are denied the benefits of the provisions of the Act and have been directed to be decided and disposed of as if this Act had not been passed, that is to say, such execution proceedings and appeals would be continued to be governed by and shall be disposed of in accordance with the law that was then applicable to them. In other words, it is clear that the proviso was and has been enacted to provide for special savings which suggests that it has not been introduced merely with a view to qualify or create exceptions to what is contained in the substantive part of section 50. Secondly, it does appear that the Legislature while framing the Act (the 1947 Act) was enacting certain provisions for the benefit of tenants which conferred larger benefits on them than were in fact conferred by the earlier enactments which were repealed, (and this would be clear if regard be had to the wider definition of the expression "tenant" adopted in Section 5(11) of the Act) and therefore, the Legislature thought it advisable that in regard to pending suits and original proceedings also (of course of the description or categories specified therein) in which the decrees and orders were not passed the provisions of the Act should be made applicable. It is with this Intention that the proviso to Section 50 has been enacted in the manner it has been done. What is more, while so extending the larger benefits of the Act (the 1947 Act) to tenants the Legislature has used a very wide expression, namely, "all suits and proceedings between a landlord and a tenant" so as to include within that category suits and proceedings filed under the repealed Acts as also under the general law or Transfer of Property Act. Deliberate use of such wide expression clearly shows that the benefit of the Act was Intended to be given to all tenants who were parties to all suits and proceedings filed either under the repealed Acts or under the general law or Transfer of Property Act and were pending at the relevant date. It is therefore, clear that the proviso read with the separate paragraph added thereto will have to be regarded as an independent provision enacting a substantive law of its own by way of providing for special savings and Counsel''s contention that the same has been added merely with a view to qualify or to create an exception to what is contained in the main provision of Section 50 has to be rejected. We might refer to a Bombay High Court decision in Shankarlal Ramratan Shet Vs. Pandharinath Vishnu Phatak, where a similar view of the proviso to Section 50 of the Act has been taken and we approve the same.

10. Having regard to the aforesaid conclusion which we have reached on the true nature and scope of the proviso to Section 50 of the Act it would he clear that the present case in which an appeal (arising out of a decree passed in a suit filed under the Transfer of Property Act) was pending when Part II of the Act was made applicable to village Kalwada, would be directly covered by the proviso read with the separate paragraph added thereto and the appeal was liable to be decided and disposed of as if the 1947 Act had not been passed, that is to say, had to be disposed of in accordance with the law that was then applicable to it. In this view of the matter, we are of the opinion that the learned Assistant Judge as well as the High Court were right in coming to the conclusion that the appellant-plaintiff was not entitled to any protection of the 1947 Act as claimed by him."

9. Again in paras 11, 12 and 13, the Apex Court made the following observations :-

"11. Counsel for the appellant-defendant however, faintly urged before us that his client would be entitled to the protection of Section 12(1) of the Act, (which has been held to be retrospective in operation) independently of and irrespective of whether his case was covered by the proviso to Section 50 read with the latter part thereof or not. It is impossible to accept this contention for the simple reason that S. 12(1) of the Act would unquestionably be a general provision whereas the proviso to S. 50 read with the new paragraph added thereto, which has now been held to be an independent provisions enacting substantive law in itself and which expressly deals with pending matters (suits and other proceedings in contradistinction with execution proceedings and appeals) would be a special provision contained In the Act and obviously under the normal rule of interpretation the special provision must prevail over the general and therefore if a case is covered by the special provision the general provision will not be attracted to It. The contention has therefore to be rejected.

12. Before parting with the case we would like to point out that Chandrasingh Manibhai and Others Vs. Surjit Lal Ladhamal Chhabda and Others, was also a case dealing with an appeal (arising out of a decree passed on a date prior to the coming into force of the 1947 Act in a suit filed under the Transfer of Property Act) which was pending at the relevant date and the question was whether on the principle that the appeal was in the nature of a rehearing of the suit the same should be decided in accordance with the provisions of the 1947 Act which had come into force during its pendency and this Court took the view that having regard to the proviso to Section 50 as it originally stood the Act was given retrospective operation only to a limited extent and execution proceedings and appeals were excluded from this effect and were to be governed by the law in force at the time when the decrees were passed and therefore, the tenant was not entitled to the protection of the 1947 Act and was liable to be evicted.

13. Really speaking this decision had concluded the point raised before us in the present appeal. But since in Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Sinha, a distinction was made between subsection (1) of Section 12 on the one hand and sub-secs. (2) and (3) on the other and it was held that the former provision was retrospective in operation and the later prospective, Counsel for the appellant-defendant made valiant attempt to bring his client"s case within the purview of Section 12(1) by putting forward the plausible contention that his case was not covered by the proviso to Section 50 read with the separate paragraph added thereto at all on the ground that the said proviso together with the new separate paragraph added thereto was not an independent provision enacting any substantive law therein but was linked with the main provision contained in Section 50 and had been introduced merely with a view to qualify or create an exception to what is contained in the main provision but that attempt has failed in view of our conclusion on the true nature and scope of the said proviso read with the new separate paragraph added to it."

10. We are of the firm view and have no hesitation whatsoever in holding that the matter referred by the learned Single Judge is squarely covered not only by the two Full Bench judgments of this Court in Nilkanth Ramchandra''s case (supra) and Ramdas P. Chitrigi (supra) but also it stands concluded on all fours by the judgment of the Apex Court in Chandrasingh''s case and Motiram Ghelabhai''s (supra). We do not find from the reference order that judgment of the Apex Court in Motiram Ghelabhai was brought to the notice of the learned Single Judge. The legal position seems to us to be very clear that by reapplying the provisions of Part II of the Bombay Rent Act to residential premises to the area of Gokhivare village vide notification dated 5th February, 1987, the tenant who suffered decree for eviction when the said provisions of Part II were not applicable cannot get protection and benefit of Part II of the Bombay Rent Act which was made applicable during the pendency of appeal.

11. In the reference order relying upon the judgment of the Apex Court In H. Shiva Rao and another v. Cecilia Pereira and others, the learned Single Judge prima facie observed that Bombay Rent Act being beneficial to the tenant and restrictive to the rights of the landlord''s applicability of Part II of the said Act has to be held to be retrospective and when the said provisions of Part II of Bombay Rent Act were made applicable to the premises in question during pendency of appeal, the tenant must be given benefit of the Bombay Rent Act and thereby questioned the correctness of the judgment of Full Bench in Ramdas P. Chitrigi. The learned counsel for petitioner relying upon the reference order and judgments of the Apex Court in Mohanlal Chunilal Kothari Vs. Tribhovan Haribhai Tamboli, and Mani Subrat Jain Vs. Raja Ram Vohra, submitted that Ramdas P. Chitrigi is not a good law in so far as Mohanlal Chunilal Kothari''s case is concerned, it arises out in the provisions of Bombay Tenancy and Agricultural Lands Act, 1948 and the observations made thereunder in respect of retrospectively Link Missing cannot be applied to the controversy which centres round different provisions. Similarly, the Judgment of the Apex Court in Mani Subrat Jain which arises out of the provisions of H. Shiva Rao and Another Vs. Cecilia Pereira and Others, arising out of Karnataka Rent Control Act, 1961 do not help the case in hand. In none of these cases, the provision similar to section 50 of the Bombay Rent Act was under consideration. In H. Shiva Rao''s, the question raised before the Apex Court was in respect of sub-section (1) of section 21 of Karnataka Rent Control Act as to whether the said provision is retrospective or not and in the light of the said provision of sub-section (1) of section 21, the Apex Court held that the provision of said Karnataka Rent Control Act shall be applicable to the pending execution proceedings in relation to the decree of eviction which has passed at the time when the Rent Control Act was not applicable to the premises. As we have already observed and that is trite principle of law that when the Court is called upon to consider the question whether particular legislation is retrospective or not, the Court has to consider the question in the light of the relevant provisions of the legislation and not in abstract. In so far as Bombay Rent Act Is concerned, in the light of section 50 of the said Act, the two Full Bench judgments of this Court in Nilkanth Ramchandra and Ramdas P. Chitrigi and the two judgments of the Apex Court in Chandrasingh Manibhai and Moti Ram Chelabhai which

are directly on the point wherein it has been held that provisions of Bombay Rent Act, particularly Part II and Part III made applicable during pendency of appeal cannot affect the judgment or decree for eviction passed by the Trial Court when the said provisions were not applicable hold the field and the judgment of the Apex Court in H. Shiva Rao arising out of Karnataka Rent Control Act and the different provision contained therein does not affect the correctness of the earlier judgments.

12. We, therefore, have no hesitation in holding that petitioner is not entitled to protection of the provisions of Bombay Rent Act when Part II of the said Act was only made applicable to the area in question after the decree was passed and during pendency of appeal preferred by petitioner-tenant. No other point was urged.

13. Resultantly, we do not find any merit in the writ petition and dismiss the same with no order as to costs.

14. One month time is granted to the petitioner for handing over peaceful vacant possession of suit premises to the decree holders falling which it would be open to the decree holders to execute the decree.

15. Certified copy expedited.