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(1954) 01 BOM CK 0020

Bombay High Court

Case No: O.C.J. Appeal No. 92 of 1953 and Miscellaneous Application No. 286 of 1953

K.K. Verma and Another		APPELLANT
	Vs	
Union of India and Another		RESPONDENT

Date of Decision: Jan. 19, 1954

Acts Referred:

- Government Premises (Eviction) Act, 1950 - Section 3(1), 3(2), 4, 5, 6
- Limitation Act, 1963 - Article 139 , 144
- Specific Relief Act, 1877 - Section 9
- Transfer of Property Act, 1882 - Section 108, 116

Citation: (1954) 56 BOMLR 308 : (1954) ILR (Bom) 950

Hon'ble Judges: Chagla, C.J; Dixit, J

Bench: Division Bench

Advocate: K.T. Desai and Jamshedji Kanga, for the Appellant; N.C. Malkani, for the Respondent

Judgement

Chagla, C.J.

This is an appeal from a Judgment of Mr. Justice Desai and it raises a very short question as to the interpretation of Section 3 of the Government Premises (Eviction) Act, 1950, being Act No. 27 of 1950. It is necessary to state only a few facts in order to understand and appreciate the legal arguments that are advanced before us.

2. The respondent is a displaced person and he has a son in the army and a flat which is situated at Dhobi Talao was given to him under instructions from the Ministry of Defence on the basis that he was a dependant of an army officer and was a displaced person. It is not In dispute that a contractual monthly tenancy was created between the Union of India, which is the owner of these premises, and the respondents, and by notice to quit given on behalf of the Union on 25-6-1953, the tenancy was terminated.

As the respondent did not hand over possession, as a matter of fact he had filed the petition from which this appeal arises on 15-4-1953, prior to the notice, apprehending that the appellant who is the Sub-Area Commander would take action against him, the Union gave a further notice on 3-8-1953, u/s 3 of Act 27 of 1950, calling upon the respondent to hand over ''possession within fifteen days'' from the date of the service of the notice, and the only question that arises in this appeal is whether this notice is a valid notice, and it will only be a valid notice provided the respondent comes within the ambit of Section 3 of Act 27 of 1950.

That Act was put on the statute book, as the preamble shows, for the purpose of providing for the eviction of certain persons from Government premises and for certain matters connected therewith. The expression "certain persons" does not throw much light on the intention of the Legislature because it is clear that the persons contemplated are persons who would satisfy the conditions laid down in Section 3, and, therefore, in order to determine whether a person is the certain person to whom the Act applies, what we have to do is to construe Section 3 and in construction of Section 3 the preamble is not of any assistance.

Section 3 is entitled "Power to evict certain persons from Government premises." Sub-section (2) of Section 3 gives the power to the competent authority to evict the person from, and take possession of, the premises and for that purpose use such force as may be necessary. Section 4 confers the power upon the authority to recover damages. Section 5 provides for appeal to the Central Government. Section 6 ousts the jurisdiction of civil Courts and Section 9 is the penal section which makes a person liable to punishment if he obstructs the lawful exercise of any power conferred by or under the Act or contravenes any provision of the Act or of any rule or order made thereunder. Therefore, the statute is in the nature of a penal statute and there can be no doubt that it must be strictly construed in favour of the subject.

Now, turning to Section 3, it provides:

"(1) If the competent authority is satisfied-

(a) that the person authorised to occupy any Government premises has, whether before or after the commencement of this Act,--

(i) sub-let, without the permission of the Central Government or of the competent authority, the whole or any part of such premises, or

(ii) otherwise acted in contravention of any of the terms, express or implied, under which he is authorised to occupy such premises, or

(b) that any person is in unauthorised occupation of any Government premises.

the competent authority may, by notice served by post or otherwise, order that that person as well as any other person who may be in occupation of the whole or any part of the premises, shall vacate them within fifteen days of the date of the service

of the notice....."

The scheme of Section 3 seems to be that Sub-clause (a) deals with persons who are authorised to occupy Government premises and it gives the power to evict in cases where such persons have sub-let or where they have acted in contravention of the terms, express or implied, under which they were authorised to occupy the premises, and Sub-clause (b) deals with persons who are in occupation of Government premises and whose occupation is unauthorised.

Now, it was suggested by Mr. Desai, although this point was not expressly raised in the Court below, that on the facts the case of the respondent may well fall u/s 3(1) (a) (ii) & what was urged was that on the termination of the tenancy of the respondent he was under an obligation u/s 108(q) of the Transfer of Property Act to hand over possession of the demised premises & inasmuch as he failed to do so, he acted in contravention of an implied term of the tenancy. Mr. Desai says that Section 108(q) of the Transfer of Property Act is a term implied in every tenancy unless there is a contract to the contrary and, therefore, this particular clause must be looked upon as an implied term of the contractual tenancy between the Union of India, the landlord, and the respondent.

In our opinion, it is clear that Sub-clause (a) deals with the acts of a person which he commits while being in possession of the Government premises which he is authorised to possess. The obligation of the tenant to hand over possession u/s 108(q) only arises after the tenancy has been terminated and to the extent that Sub-clause (a) deals with tenants, it deals with the acts of the tenants while the tenancy is subsisting. Sub-clause (a) (i) deals with the case of a sub-letting which the tenant does while he is a tenant and Sub-clause (a) (ii) deals with contravention of express or implied terms of the tenancy, again while the tenancy is subsisting.

Therefore, in our opinion, it is impossible to contend that the case of the respondent can fall u/s 3(1) (a) (ii), because it is not suggested that he contravened any of the terms of the tenancy while the tenancy was subsisting. What is alleged against him is that after the tenancy was terminated, he failed to hand over possession as required by Section 108(q). Therefore, the obligation which he failed to discharge was an obligation which arose on the termination of the tenancy and not an obligation which he had to discharge while the tenancy was subsisting.

3. But the real point of substance which has been seriously urged by Mr. Desai is that the case of the respondent falls under Sub-clause (b) and what we have to consider is whether a person who was lawfully in occupation of Government premises as a tenant whose tenancy has been terminated and who continues in possession of those premises can be described in law as a person in unauthorised occupation. Mr. Desai''s contention is that on the notice to quit being given by the landlord and the landlord clearly expressing his intention that on the termination of the tenancy he wanted possession of the premises, the possession of the tenant

after the termination became wrongful; it was against the express wish of the landlord and, therefore, the tenant became a trespasser.

Mr. Desai further contends that the Legislature in using the present tense "is" was emphasizing the fact that the person against whom proceedings are to be taken is a person who was in unauthorised occupation at the date when the notice contemplated by Section 3 is to be issued and, therefore, Mr. Desai says that however lawful the possession of the tenant was at its inception, if it became unauthorised at the point of time emphasized by the Legislature, then Section 3 would apply to such a person and a notice can be issued against him.

4. Now, the English law seems to be that when a landlord terminates the tenancy of a tenant, the tenant becomes a tenant on sufferance. He occupies that position because the landlord has not expressed his agreement or disagreement with the tenant continuing in possession. But as soon as the landlord expresses his clear intention that the tenant should not continue, then the possession of the tenant becomes wrongful against the landlord and the tenant is in the position of a trespasser. The well-known authority on Landlord and Tenant, by Hill and Redman, 11th Edn. at p. 498, states:

"After the determination of the tenancy any act of the landlord showing an intention to take possession is sufficient to revest the possession in him so that the tenant becomes a trespasser."

It seems to us that the author has advisedly emphasized the fact that the act of the landlord showing his intention should be after the determination of the tenancy. But Mr. Desai says that this only applies to cases where a tenancy runs out by efflux of time, but this would not apply to a case where a landlord gives a notice to quit and in the notice itself he makes it clear that he wants possession of the premises. Mr. Desai says that if the landlord has expressed that intention in the notice, then on the termination of the tenancy by reason of the notice the possession of the tenant becomes wrongful and he becomes trespasser.

In this particular case Mr. Desai says that the notice to quit makes it clear that the landlord wanted possession on the termination of the tenancy and, therefore, according to Mr. Desai, the respondent became a trespasser on 1st August, the tenancy having expired on July 31. Now, no authority has been cited to us which has laid down that in the case of a termination of a tenancy by a notice an act of the landlord antecedent to the termination of the tenancy would vest the property in him immediately after the termination of the tenancy and the tenant would become a trespasser.

The statement of the law just referred to in Hill and Redman on Landlord and Tenant would rather go to show that in every case a landlord must express his intention by some act which is subsequent to the termination of the tenancy, and the reason for that seems to be clear because after the termination of the tenancy,--however the

tenancy may be terminated,--there is as it were a neutral position created. The landlord may consent to the tenant continuing, may accept rent from him, in which case the tenant would become a tenant at will. He may, on the other Hand, make it clear that he does not want the tenant to continue in possession in which case the tenancy on sufferance which was created by the termination of the tenancy would cease and the ''tenant would become a trespasser.

But, in our opinion, the position in English law is unnecessary to be considered because, as we shall presently point out, the law in India is essentially different, and even assuming Mr. Desai is right that under the English law on the facts of this case the tenant became a trespasser, the same position would not arise under the Indian law. Under the Indian law, the possession of a tenant who has ceased to be a tenant is protected by law. Although he may not have a right to continue in possession after the termination of the tenancy, his possession is juridical and that possession is protected by statute, tinder Section 9 of the Specific Relief Act, a tenant who has ceased to be a tenant may sue for possession against his landlord if the landlord deprives him of possession otherwise than in due course of law, but a trespasser who has been thrown out of possession cannot go to Court u/s 9 and claim possession against the true owner.

Therefore, our law makes a clear and sharp distinction between a trespasser and an erstwhile tenant. Whereas the trespasser''s possession is never juridical and never protected by law, the possession of an erstwhile tenant is juridical and is protected by law. Therefore, as far as the Indian law is concerned, an erstwhile tenant can never become a trespasser. It may or may not be that in English law in certain circumstances he can become a trespasser and it does seem that the landlord can enter the premises and deprive the erstwhile tenant of his possession, but In India a landlord can only eject his erstwhile tenant by recourse to law and by obtaining a decree for ejectment.

Therefore, when we are construing the expression" unauthorized person", we must assume that the Legislature knew the distinction that was drawn in law between a trespasser and an erstwhile tenant, and, therefore, what we have to decide is whether in using the expression" unauthorized person" the Legislature was only contemplating ''trespassers'' in the sense in which that word is understood in Indian law or was also contemplating an erstwhile tenant who ceased to be a tenant by reason of the termination of his tenancy.

5. Now, there is no doubt that the respondent entered into these premises under a proper title, that his occupation was authorised and that his possession after the termination of the tenancy, as already pointed out, was a juridical possession. On the other hand, in the case of a trespasser, from its very inception his possession is unlawful and at no point of time could it be said of a trespasser that his possession was juridical. In our opinion, the Legislature was not so much emphasizing the point of time when it used the expression "any person is in unauthorised occupation" as

the nature of the possession of the person referred to in that sub-clause. "Is" obviously is used in the present perfect tense rather than in the present tense and "is in unauthorised occupation" means that the occupation was unauthorised to start with and continued to be unauthorised throughout the time that the person was in possession.

As we have already pointed out that this is a penal statute and therefore it would not be proper v to give a wider interpretation to the expression" unauthorized occupation" if a narrower interpretation was possible, and, in our opinion, the Legislature never intended, that a person who entered with title and whose title came to an end and who continued in possession which possession was a juridical possession protected by law was a person of whom it could be said that he was in unauthorised occupation of Government premises. It may be pointed out that the Limitation Act also clearly makes a distinction between the possession of an erstwhile tenant and a trespasser.

If a landlord wants to eject his tenant whose tenancy has been terminated, the article which applies is Art. 139, whereas when an owner wants to proceed against a trespasser, the article which would apply is Art. 144. Therefore, our law in its different aspects has always considered the position of an erstwhile tenant to be different from that of a trespasser, and what Mr. Desai is at pains to do is to equate the position of a tenant whose tenancy has been terminated with that of a trespasser. In our opinion, unless the Legislature had given indication of a clear intention that by the expression" unauthorized occupation" it meant not only persons who had no title at all but also persons who had title at the inception and whose title came to an end, it would not be proper to give an interpretation to the expression" unauthorized occupation" which would run counter to the principles of law which have been accepted in this country.

6. Mr. Malkani has rightly pointed out that Section 9 which is the penal section also helps us to construe the section in the manner suggested by Mr. Malkani. Section 9 imposes a penalty upon a person who contravenes any provision of the Act, and it Is difficult to take the view that the Legislature wanted to penalise a tenant who would not vacate after his tenancy was terminated. It would be indeed an extra-ordinary situation that the Legislature should look upon the act of the tenant in continuing in possession as an act requiring punishment when the law of the country protects his possession and makes his possession a Juridical possession.

The penalty, if imposed upon a trespasser, would be a proper penalty because he had no right to be in occupation of Government premises at any time, and his very entry being unauthorised, he could not contend that his possession was protected or his possession was juridical. Therefore, in our opinion, the learned Judge below was right in the view that he took that the Act did not apply to persons whose possession of Government premises was in its inception with title or legal. As it is not disputed in this case that" the respondent''s possession was under a contract of

tenancy, in our opinion, he did not become an unauthorised person within the meaning of Section 3(1)(b) and the notice issued by the Union of India against him is an invalid notice.

7. The result is that the appeal fails and must be dismissed. No order as to costs.

8. As the result of this decision would be that the Union will have to file a suit to eject the respondent, and as there does not seem to be any defence to such a suit being filed, the respondent not being protected by the Rent Act as the premises are Government premises, in order to avoid any such unnecessary litigation Mr. Malkani has fairly agreed and undertaken to this Court that he would hand over possession of the premises in question on or before December 31 of this year. If the Union of India files a suit or takes any other proceedings to eject the respondent, the respondent would not be bound by this undertaking.

9. Liberty to the appellants'' attorneys to with draw the sum of Rs. 500 deposited in Court.

10. Appeal dismissed.