

PETITIONER:
NALANIKANT RAMADAS GUJJAR

Vs.

RESPONDENT:
TULASIBAI (DEAD) BY L.RS.& ORS

DATE OF JUDGMENT: 09/08/1996

BENCH:
KULDIP SINGH, M.M.PUNCHHI, N.P.SINGH, M.K.MUKHERJEE, S.SAGHIR AHMAD

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

N.P. SINGH.J.

The defendant in a suit for eviction is the appellant before this Court. The plaintiff-respondents filed the suit in question for eviction of the defendant on the grounds mentioned under Section 13(1)(a)(e), (j) and (k) of the Bombay Rents, Hotel and Lodging Houses Rates (Control) Act, 1947 (hereinafter referred to as the Bombay Rent Act).

Plaintiff's grandfather Venkobacharya Anantacharya Burli had leased out a portion of R.S.No.62 of Bagalkot, measuring 275' East to West and 634' North to South, to Binny Company of Madras, in the year 1889. The Binny Company had taken the said lease for making constructions to set up ginning and pressing machines and for construction of godown to store cotton. The said company made constructions including the godown over the said leasehold area and installed the ginning and pressing machines. Thereafter, the said Binny Company transferred its right, title and interest in favour of one Shilvantappa in 1929. Later, the aforesaid Shilvantappa transferred the same in favour of the deceased husband of defendant Nos. 1 and 2.

In the suit for eviction which was filed on behalf of the plaintiffs, apart from other grounds, it was alleged that the defendant had sub-let the premises in question to various persons including defendants Nos. 4 to 16. The Trial Court dismissed the said suit on the ground that the provisions of Bombay Rent Act were not applicable to the leasehold area, over which the construction had been made. The District Judge dismissed the appeal filed on behalf of the plaintiffs. The Civil Revision filed on behalf of the plaintiffs has been allowed by the High Court. The High Court has come to the conclusion that the provisions of the Bombay Rent Act were applicable in the facts and circumstances of the case.

According to the appellant, as the initial lease had been granted in respect of vacant land measuring 275' x 634', in favour of the Binny Company aforesaid, the provisions of the Bombay Rent Act shall not be applicable.

This appeal had been listed before a Division Bench of this Court, which referred it to a Constitution Bench to

resolve the conflict between the two judgments of this Court in the cases of Vasudev Dhanjibhai Modi vs. Rajabhai Abdul Rehman & Ors., 1971 (1) SCR 66 and Mst. Subhadra vs. Narsaji Chenaji Marwadi, 1962 (3) SCR 98.

Section 5(8) of the Bombay Rent Act defines 'Premises, : follows:-

"Premises, means -

(a) any land not being used for agricultural purposes,

(b) any building or part of a building let separately (other than a farm building) including -

(i) the garden, grounds, garages and outhouse any, appurtenant to such building or part of a building,

(ii) any furniture supplied by the landlord for use in such building or part of a building,

(iii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof, but does not include a room or other accommodation in a hotel or lodging house.

From a plain reading of the definition of 'premises' in the aforesaid Act it is apparent that it shall not include any land used for agricultural purposes but certainly shall include any land which is not being used for agricultural purposes. From the records it appears that there is no dispute that when the lease was granted in favour of the Binny Company as early as in the year 1889, it was an open Site having no building thereon at that time. But the Binny Company had taken the said land for making construction over the same for installing ginning and pressing machines and in fact a building was constructed on the said piece of land in which ginning and pressing machines were installed. In this background, when the Bombay Rent Act came in force the leasehold area was not being used for agricultural purposes.

From the judgment in the case of Ms. Subhadra (supra) it appears that the owner of a certain plot of land granted a perpetual lease to some persons who sublet it to the respondent of that case on a higher rent. In the deed of lease it had been recited that the lessee might construct buildings on the land after obtaining sanction of the appropriate authority. The appellant of that case obtained sanction of the Collector for conversion of user of the land to nonagricultural purposes. Thereafter standard rent of the plot under Section 11 of the Bombay Rent Act was fixed. It was said by this Court:

"It is common ground that, till November 11, 1949, the plot was assessed for agricultural purposes under the Bombay Land Revenue Code. In the year 1947, the plot was undoubtedly lying fallow, but on that account, the user of the land cannot be deemed to be altered. User of the land could only be altered by the order of the Collector granted under s.65 of the Bombay Land Revenue Code. Section 11 of the Bombay Act 57 of 1947 enables a competent court upon application made to it for that

purpose to fix standard rent of any premises But s.11 is in Part II of the Act and by s.6 cl.(1), it is provided that in areas specified in Schedule I, Part II applies to premises let for residence, education business, trade or storage. There is no dispute that Part II applied to the area in which the plot is situate; but before the appellant could maintain an application for fixation of standard rent under s.11, she had to establish that the plot of land leased was premises' within the meaning of s.5(8) of the Act and that it was let for residence education, business, trade or storage.

It was further said that material date for ascertaining whether the plot is 'premises' for purpose of Section 6 is the date of letting and not the date on which the application for fixation of standard rent was made by the tenant or the landlord.

In the case of Vasudev Dhanjibhai Modi(supra), the appellant before this Court was the landlord of certain premises in Ahmadabad, who filed a suit for ejection, which was ultimately decreed. During the execution of the decree a stand was taken by the defendant that the provisions of the Bombay Rent Act were not applicable to the premises because the land was leased out for agricultural purposes. While allowing the appeal of the landlord, this Court said:-

"It is plain that the Court exercising power under the Bombay Rents, Hotel & Lodging House Rates (Control) Act, 1947 has no jurisdiction to entertain a suit for possession of land used for agricultural purposes. Again in ascertaining whether the land demised is used for agricultural purposes, the crucial date is date on which the right conferred by the Act is sought to be exercised."

This Court expressed the opinion in the case of Vasudev Rajabhai Modi (supra) that whether the provisions of the Bombay Rent Act shall be applicable or not, the crucial date for ascertaining the nature of the use of the land in question shall be the date when the rights under the aforesaid Act are to be exercised.

In the case of Mst.Subhadra (supra) the land which had been let out for agricultural purpose, no construction whatsoever appears to have been made on the same. The landlord only got an order of conversion on basis whereof he filed a petition for fixation of standard rent of the plot under the provisions of the Bombay Rent Act. So far the case of Vasudev Rajabhai Modi(supra) is concerned on the land which had been leased out, construction had been made from which eviction was being sought by the landlord and in that context it was said that the crucial date for ascertaining whether the provisions of the Bombay Rent Act shall be applicable or not, shall be the date when the right under the Act was sought to be exercised. So far the facts of the present case are concerned, the lease had been granted to the Binny Company for installing ginning and processing

machines and admittedly a building was constructed in which ginning and processing machines were installed and godown was also constructed. Once a piece of land which was agricultural in nature is put to nonagricultural use, it shall be covered by the definition of 'premises' under Section 5(8) of the Bombay Rent Act. It need not be impressed that clause (a) of Section 5(8) excludes from the definition of premises "any land not being used for agricultural purposes". The words not being used are significant. It can be said that the framers of the Act for applying the provisions of the said Act in the definition of 'premises' indicated that the crucial date shall be the date when the right conferred under the Act is sought to be exercised. There being no dispute in the present case that the land had been put to non-agricultural use several decades before coming into force of the Bombay Rent Act the provisions of the said Act were applicable. We are in respectful agreement with the views expressed in the case of Vasudev Rajabhai Modi (supra).

The High Court was justified in coming to the conclusion that it was a premises within the meaning of Section 5(8) of the aforesaid Act and provisions of the said Act were applicable. Accordingly, the appeal fails and it is dismissed. There shall be no order as to costs.