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September 29.

MRS. DOSSIBAI N. B. JEEJEEBHOY

v.

KHEMCHAND GORUMAL AND OTHERS

(K. N. WANCHOO, K. C. DAS GUPTA and
J. C. SHAH, JJ.)

Lease—Open land for construction of residential and business building—Letting, if for residence or business—Subsequent letting of building in absence of a contract permitting sub-letting—Effect—Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bom. 57 of 1947), ss. 6, 15, 25, 28—Part II, Sch. 1.

The appellant took lease of an open land for construction of buildings suitable for residential, business, industrial or office purposes. The appellant brought suits in the City Civil court, Bombay, for the recovery of arrears of rent in respect of premises built on the said open land, all within the city of Bombay thus in the area specified in Schedule I of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The appellant stated in the Plaint itself that the Bombay Rent Control Act, 1947, did not apply to the demised premises. The defendants pleaded that the Rent Act applied and the City Civil Court had no jurisdiction to try the suit. The trial Judge held that part II of the Rent Act applied to the premises and consequently only the special courts specified in s. 28 of the Rent Act had jurisdiction to entertain the suit and ordered the plaints in the suits to be returned to the plaintiff for presentation to the proper court. The Bombay High Court summarily dismissed the appeals from the said orders. The point at issue for decision was whether "when a lessee takes lease of open land for the purpose of constructing on it buildings intended to be used for residence or for business, this amounts to "letting for residence" or "letting for business".

The appellants' contention was that as open land not intended to be used, as it is, for residence or business but for construction of buildings for residence or business was taken on lease the land was not being let for residence or business.

Held, that the words "let for residence, education, business or storage" in s.6 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, are wide enough to include a letting for the achievement of these purposes by construction of buildings as also without construction of buildings.

Held, further, that on the facts of the present case, in each of these cases, the lease was taken with a view to construct buildings thereon for residential, business, industrial or office purposes and the land let was therefore 'premises' to

which under s. 6(1) of the Bombay Rent Act, the provisions of Part II of the Act applied.

Vinayak Gopal v Laxman Kashinath I. L. R. (1956) Bom. 827, approved.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 503 to 506 of 1958.

Appeals by special leave from the judgment and orders dated August 4, 1957, of the Bombay High Court in Letters patent Appeals Nos. 29 to 32 of 1957.

J. C. Bhatt, R. P. Bhatt, R. A. Gagrat and *G. Gopalakrishnan*, for the appellants.

N. C. Chatterjee, Madhowdas C. Bhagat and *Radhey Lal Agarwal*, for the respondents in C. A. No. 503 of 58.

Madhowdas C. Bhagat and *Radhey Lal Agarwal*, for the respondents in C. As. Nos. 504 to 506 of 1958.

1961. September 29. The Judgment of the Court was delivered by

DAS GUPTA, J.—When a lessee takes lease of open land for the purpose of constructing on it buildings intended to be used for residence or for business is this “letting for residence”, or “letting for business”? That is the short question which arises for decision in these four appeals. The appellant brought these four suits in the City Civil Courts, Bombay, for recovery of arrears of rent in respect of the premises mentioned in the plaint of these several suits. It is clear under the law that the City Civil Court, Bombay, would have no jurisdiction to try these suits if the provisions of Part II of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bom. 57 of 1947), which later in this judgment we shall refer to as the “Rent Act”, applied to the premises in suits. For this reason the plaintiff stated in the plaint itself that this Rent Act did not apply to the demised premises. The defendant in each case pleaded on

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the contrary that the Rent Act applied and so the City Civil Court had no jurisdiction to try the suits. The first issue framed in each of these suits therefore was, whether the Court had jurisdiction to entertain the suit. The learned Judge held that Part II of the Rent Act applied to the premises in each of these suits and consequently only the special courts specified in s. 28 of the Rent Act had jurisdiction to entertain the suits and the City Civil Court had no jurisdiction. Accordingly, he ordered the plaint in each of the four suits to be returned to the plaintiff for presentation to the proper Court. The plaintiff appealed to the High Court of Bombay but all the four appeals were summarily dismissed. The Letters Patent appeals preferred by the plaintiff from the decision of the Single Judge were also dismissed summarily. These appeals have been preferred against that decision of the Bombay High Court in Letters Patent Appeals on special leave obtained from this Court.

Under s. 5, sub-s. 8 of the Rent Act unless there is anything repugnant in the context, "premises" means, among other things, "any land not being used for agricultural purposes." It is undisputed in these cases that the land in respect of which the suits were brought was not being used for agricultural purposes and so comes within the definition of "premises" in s. 5.

The provisions of Part II of the Act do not however apply to all premises which fall within this definition. Section 6 with which this Part II opens provides in its first sub-section that this part shall apply to premises let for residence, education, business, trade or storage in areas specified in Sch. I. It is subject to a proviso that the State Government may direct that in any of the said areas, this Part shall cease to apply to premises let for any of the said purposes, with a further proviso that the State Government may again direct that in any of the said areas this Part shall re-apply to premises let

for such of the aforesaid purposes. As there has been no notification under these provisos affecting the premises in suit, we are not concerned with them; nor are we concerned with sub-s. 1(A) under which the State Government may direct that this Part shall apply to premises let for any other purposes. The four premises in respect of which the four suits were brought are all within the city of Bombay and thus in the area specified in Schedule I of the Act. In each of these cases we have therefore to examine the purpose of the lease and to decide whether it was let for residence or for education, business, trade or storage. The lease mentions that the leasee will construct buildings suitable for residential, business, industrial or office purposes. The plaintiff's case is that as open land is not intended to be used as it is for residence or business but for construction of buildings for residence or business the land is not being let for residence or business. The defendant in each case contends that the letting was for residence or business as that was the ultimate purpose of taking the lease. Mr. Bhatt addressed his arguments to the question whether the letting could be said to be for residence and did not separately address us on the question of letting for business as obviously if the land could not be said to be let for residence it could not also be said to be let for business.

The extreme proposition which Mr. Bhatt raised first of all on behalf of the appellant is that open land can never be let for residence and so when s. 6 speaks of premises being let for residence, land as defined in sub-s. 8 (a) of s. 5 is outside the word "premises". There is, in our opinion, no substance in this contention.

It is quite clear that open land as it is can be used for residence and so there is no reason to think that open land was not intended to be included in "premises" when s. 6 speaks of premises being let for residence.

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The more substantial question for consideration is whether when open land is being leased not to be used for residence in its condition of open land but to be used for the purpose of residence after constructing buildings thereon, the letting of the open land can reasonably be called to be letting for residence. Mr. Bhatt contends that as, what is to be considered is whether the letting of the open land is for residence the land cannot be said to be for residence if not the open land, but, something constructed on the open land is to be used for residence. In such a case, says Mr. Bhatt, the land is let for construction of a building and not for residence. We are unable to accept this argument. Land can be used for many purposes. It may be used for agriculture; for residence of human beings; for keeping cattle or other animals; for holding meetings; for carrying on business or trade; for storage of goods; for supply of water by excavating tanks, and many other purposes. Many of these purposes can be achieved on the open land without the construction of any buildings. But many of them can be better achieved if some kind of structure is created on the open land. It seems reasonable to us to think that when the Bombay Legislature took particular care to include open land not being used for agricultural purposes within the word "premises" and then went on in the very next section to speak of premises being let for several specified purposes, it was thinking of the purposes to which the land will be used irrespective of whether the purpose was intended to be achieved with or without construction of a structure. The intention in mentioning only some purposes, viz., residence, education, business, trade or storage in s. 6 was to exclude land let for purposes like, keeping of cattle, (except in the way of business or trade), and numerous other purposes to which the land may be put from the benefit of part II of the Act.

It seems to us that when people speak ordinarily of land being let for business, they are only

thinking that the ultimate purpose behind the letting is that business will be carried on and they are not thinking whether the business will be carried on on the land in its present state or by the construction of temporary sheds or by putting up permanent buildings. Similarly, when a man says that he will take lease of a plot of land for storage of his goods, what he has in mind is that by taking lease of the land he will achieve the object of storing goods, irrespective of whether for such storage he will have to put up a structure or not. In the same way, we think, that when land has been let for the purpose of constructing buildings for residence, people will say that it is being let for residence, just as they will say that the land has been let for residence if the lessee intends to use it as caravan site so that the people may live on the open land in caravans.

In our opinion, the words "let for residence, education, business, trade or storage" are wide enough to include a letting for the achievement of these purposes with construction of buildings as also without construction of buildings.

But, says Mr. Bhatt, look at sub-s. (i) of s. 15 of the Rent Act which is in this very part II and that will show that the Legislature could not have intended land which is let for the construction of buildings for residence to be within the phrase "premises let for residence". Section 15 of the Act after its amendment by Bombay Act 49 of 1959 reads thus:— "Notwithstanding anything contained in any law, but subject to any contract to the contrary, it shall not be lawful, after the coming into operation of this Act for any tenant to sublet the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein." It may be mentioned that as the section originally stood the words "but subject to any contract to the contrary" were not there. When the amending Act

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of 1959 introduced these words the amendment further provided that these words shall be deemed always to have been there. Even after the amendment, it remains unlawful, where there is no contract to the contrary, for any tenant of premises to sublet the whole or any part thereof. Mr. Bhatt's argument is that in every case where there is no such contract to the contrary the difficulty that will result if land let for construction of residential buildings be held to be premises let for residence within the meaning of s. 6. is that after the building is constructed the lessee will not be able to sublet the building or any portion of it; so that in many cases where the real purpose of taking the land is for the construction of building for letting out the same, that purpose will be defeated. This argument as regards the difficulty in the matter of letting out the building constructed on the land on which lease has been taken was more plausible when the saving phrase "but subject to any contract to the contrary" did not form part of the section. Now, however, the cases in which such difficulty will arise, if at all, would be few and far between; for, it is reasonable to expect that when taking lease of land for the construction of building intended to be let out to others for residence, the lessee of the land would take care to include in the contract of lease a term permitting him to let out the building. Assuming that there may be cases where the contract of lease does not contain any such term and assuming further that it will not be lawful for the lessee of the land to let out the building constructed by him, the probability of such difficulty in some cases, can be no reason to cut down the ordinary and reasonable connotation of the words "let for residence" in s. 6.

It is unnecessary for us to decide whether if there is no contract to the contrary, s. 15 will really stand in the way of a lessee of the land letting out buildings constructed by him on such land. We may say however that there is in our opinion

much force in the argument which found favour with the Bombay High Court in *Vinayak Gopal v. Laxman Kashinath* ⁽¹⁾, where the very question, which is now before us arose for decision, that the bar of s. 15 will operate only in the way of letting out the land of which lease has been taken, but will not stand in the way of letting the building constructed on the land.

In that case the Bombay High Court held that where land is leased for the purpose of construction of buildings for residence the land is "let for residence" within the meaning of s. 6 of the Rent Act. Mr. Bhatt devoted a considerable part of his argument to persuade us that some of the reasons given in that judgment do not stand scrutiny. We think it unnecessary however to examine whether all the reasons given in the judgment are correct. For, as already indicated, the words "let for residence" on a proper construction would cover the case of open land being let for construction of residential buildings and so the conclusion reached by the Bombay High Court in *Vinayak Gopal's Case* ⁽¹⁾ is, in our opinion, correct.

It is unnecessary for us also to consider for the purpose of the present appeals as to what may happen to the sub-lessee if and when on the terms of a particular lease the building ultimately vests in the owner of the land nor as to what may happen if and when on the terms of a particular lease the lessee who has constructed the building gets the right to remove the building. These considerations should not, in our opinion, affect the construction of the words "let for residence".

Turning now to the facts of the present case we find that in each of these cases the lease was taken with a view to construct buildings thereon for residential, business, industrial or office purposes. The premises let are therefore "premises" to which

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under s. 6 (1) of the Rent Act the provision of part II of the Act, apply.

The Trial Court and the High Court were therefore right in holding that the City Civil Court, Bombay, had no jurisdiction to try the suits.

The appeals are accordingly dismissed with costs. There will be one set of hearing fee for the four appeals.

Appeal dismissed.

MANNALAL JAIN

v.

THE STATE OF ASSAM AND OTHERS.

(B. P. SINHA, C. J., S. K. DAS, A. K. SARKAR,
N. RAJAGOPALA AYYANGAR and
J. R. MUDHOLKAR, JJ.)

Food Control—Licence for wholesale dealing in rice and paddy—Licensing Order prescribing conditions for grant of licence—State Government issuing instructions to licensing authorities to grant licences to co-operative societies only—Propriety of—Grant of licence to co-operative societies and refusal to others—Legality of—Essential Commodities Act, 1955, (10 of 1955), ss. 3 and 5—Assam Foodgrains (Licensing and Control) Order, 1961, cl. 5.

In exercise of the powers conferred by s. 3 of the Essential Commodities Act, 1955, the Assam Government made the Assam Foodgrains (Licensing and Control) Order, 1961. This Order provided that no person could do business in foodgrains including rice and paddy, in wholesale quantities except under a licence issued thereunder. Clause 5 of the Order laid down in sub-cl. (a) to (e) matters which the licensing authority shall, among other matters, have regard to in granting or refusing a licence; sub-cl. (e) being "whether the applicant is a co-operative society". In 1959, directions had been issued to all licensing authorities by the Government that the rights of monopoly procurement had been given to Apex Co-operative Society. The petitioner applied for a licence but was refused in view of the provisions of sub-cl. (e) of cl. 5 of the Order. The petitioner challenged the order refusing the licence on the grounds: (1) that sub-clause (e) was *ultra vires*