

Agarwal And Co. vs City Board, Dehradun on 13 October, 1952

Equivalent citations: AIR1953ALL175, AIR 1953 ALLAHABAD 175

ORDER

Desai, J.

1. This is an application by a plaintiff whose application under Section 5(4) of the Temporary Control of Rent and Eviction Act for the fixation of rent of a shop has been dismissed by a Munsif on the ground that the transaction was not unfair.

2. There is no dispute about the facts which are as follows: The opposite party, the City Board of Dehradun, constructed some shops after 1-7-1946, on an open piece of land owned by it by the side of Saharanpur road near the railway station of Dehradun. They were constructed with the object of letting them out to tenants. Offers were invited for the shops, which were open for inspection by the public and were let out to the highest bidders. The shop in dispute is one of them. Several persons applied to the opposite party for it, making their own offers. One man offered Rs. 60/- per month as rent, another Rs. 75/- and a third Rs. 80/-. The applicant appeared on the scene and presented an application to the opposite party offering Rs. 85/- per month. Not only did it voluntarily offer this rent, but it went further and offered to give security for the payment of the rent. More offers came for Rs. 86/- and Rs. 87/- per month and the applicant, within five days of its above offer, made another offer raising the rent to Rs. 90/- per month. Another - competitor offered Rs. 92/- and the applicant then offered Rs. 106/-. All these offers were made in the space of seven days. Nobody offered more than Rs. 106/- per month and the opposite party accepted the offer and let out the shop to the applicant.

3. As the shop had been constructed after 1-7-46 its reasonable annual rent could be determined only by the District Magistrate. The applicant made an application to the District Magistrate for fixing it and the District Magistrate fixed it at Rs. 204/-. Then the applicant started proceedings under Section 5(4) of the Act for fixation of rent, claiming that the agreed rent of Rs. 1272/- p.a. was more than the reasonable annual rent of Rs. 204/- and alleging that the transaction was unfair. The learned Munsif held that there was nothing unfair in the transaction and dismissed his application.

4. The learned Munsif rightly fixed the responsibility upon the applicant to prove that the transaction was unfair. He also rightly held that the mere fact that the agreed rent was so much higher than the reasonable annual rent, did not by itself make the transaction unfair. It is pleasing to note that the learned Munsif withstood the temptation to declare the transaction as unfair in spite of the great disparity between the two rents. There is no foundation for the argument of Mr. A. P. Pandey that the learned Munsif non-suited the applicant on the ground that it had voluntarily agreed to pay Rs. 106/- per month. Though the learned Munsif has said in his order that "It does not lie in the mouth of the plaintiff", and that "He cannot be allowed to say that the agreement was

obtained by undue force", he did not at all mean to apply the doctrine of estoppel against it and not to entertain its plea of unfairness of the transaction but only meant that in view of what it had done there was no substance in its plea. He certainly entertained the plea and discussed its merits and rejected it on merits and not on the technical ground that it could not be raised. Certainly an applicant under Section 5(4) who wants the rent to be fixed on the ground of unfairness of the transaction, is not to be debarred on the ground that he had voluntarily agreed to pay the agreed rent, But the fact that he voluntarily agreed to pay it is certainly one of the facts to be considered by the Court in deciding whether the transaction was unfair or not.

5. No allegation of any pressure, due or undue, or of any fraud of any kind has been made against the opposite party. The transaction was above-board and the parties were at arms-length from each other. Nothing was concealed by the opposite party and nothing was falsely represented. The opposite party did not even take the first initiative in the matter. It was the applicant who persistently went on writing to the opposite party offering more and more rent. If there is anything unfair, in my opinion it is in the attempt of the applicant to get the rent fixed at a much lower rate after having beaten down all the competitors in the field and taken the shop as the highest bidder. It appears to me that it agreed to pay Rs. 106/-p.m. to the opposite party fully knowing that it had no intention of paying so much rent for the shop and expecting to have the rent reduced under Section 5(4) of the Rent Control Act. It acted unfairly in concealing from the opposite party its intention of not paying the stipulated rent. It was the applicant who tried to overreach the opposite party. It cannot take advantage of its own unfairness and say that on account of the unfairness rent should be fixed by the court. The unfairness of the transaction which justifies fixation of rent is the unfairness as against the applicant and not the unfairness practised by it.

6. The usual argument was advanced that the applicant was forced by circumstances to agree to pay so much rent. Even if it were forced by circumstances, that would not make the transaction unfair. Circumstances might have compelled it to take the shop on such a high rate of rent, but the opposite party was not bound by any law to let out the shop to it at a certain price. When it is not shown that it knew of the circumstances and took undue advantage of them, it is impossible to say that it acted unfairly towards the applicant. The applicant has not even proved what were the exact circumstances which pressed it. It is to be noted that it is styled as a Company and is certainly a firm. I cannot imagine such pressing circumstances as would compel it to take the shop on rent of Rs. 106/- per month, even if it were unable to pay so much rent. As it existed up till now without the shop, it could exist in future also without the shop and it was not compelled to take it on rent. If it could not exist with a shop, it could be dissolved. A human being may have to live, but not a partnership or firm. It is impossible to lay down as a proposition of law that it is so much incumbent upon even a natural person to carry on business in a shop that the owner of a building suitable to be used as a shop is bound to let it out to him at not more than a certain price. There is no connection between the pressure on the person to have the shop and the liability of the owner to let it out to him at not more than a certain rent. The owner of the shop has such a property in it as to entitle him to let it out at any rent that he likes, in the absence of law fixing a limit to the rent. There is no law which fixes any limit to the rent at which a building can be let out. The law does not prohibit the letting out of any building at more than a certain rent. Even the U. P. Temporary Rent Control Act, though it allows the rent to be fixed if the transaction is unfair, does not make the letting out at more

than a certain rent illegal. In --'Sun Printing and Publishing Association, v. Moore', (1902) 46 Law Ed 366: 183 U S 642, White, J. said at page 382: "The law does not limit an owner of property, in his dealings with private individuals respecting such property, from, affixing -his own estimate of its value upon a sale thereof, or, on being solicited, to place the property at hazard by delivering it into the custody of another for employment in a perilous adventure. If the would be buyer or lessee is of the opinion that the value affixed to the property is exorbitant, he is at liberty to refuse to enter into a contract for its acquisition. But if he does contract, and has induced the owner to part with his property on the faith of stipulations as to value, the purchaser or hirer, in the absence of fraud, should not have the aid of a court of equity or of law to reduce the agreed value to a sum which others may deem is the actual value." Sutherland, J. observed in -- 'Tyson & Brother v. Banton', (1.927) 71 Lav/ Ed 718: 273 U S 418 at p. 722:

"The right of the owner to fix a price at which his property shall be sold or used is an inherent attribute of the property itself." According to Day. J. in -- 'Buchanan v. Warley', (1917) 62 Law Ed 149 at p. 161: 245 U S 60: "Property is more than the mere thing which a person owns. It is elementary that it includes the right to acquire, use and dispose of it."

7. This is also Mokenna, J.'s concept of property in -- 'Hall v. Geiger-Jones Co.', (1917) 61 Law Ed 480: 242 U S 539. Therefore, the opposite party had every right to let out the shop at any rent that it likes; it simply exorcised its right of property by doing so. In the absence of anything in the relationship that existed between it and the applicant or any law on account of which it should not have charged more than a certain amount of rent, it cannot be accused of having acted unfairly in fixing the rent that it did. If it was exorbitant or beyond the applicant's capacity to pay, it was open to the applicant not to take the shop on rent.

8. The court has jurisdiction to vary the rent only if the transaction was unfair. It is necessary to emphasise that what is required to be unfair is the transaction and not the rent. A great injustice would be caused if the distinction between the transaction and the rent were not kept in mind. A court would not be justified in fixing rent on the ground that the agreed rent was unfair. It must consider the transaction, that is, the negotiations resulting in the agreement about rent. If there is nothing unfair in those negotiations, the transaction cannot be held to be unfair merely because the rent appears to be exorbitant. Under Section 9 of the English Attorneys and Solicitor's Act 1870, if an agreement between a client and an attorney was in all respects fair, (and reasonable) to the parties, it could be enforced by the court. In dealing with an agreement alleged to be unfair, Lord Esher, M. R. said at page 204:

"With regard to the fairness of such an agreement, it appears to me that this refers to the mode of obtaining the agreement, and that if a solicitor makes an agreement with a client who fully understands and appreciates that agreement that satisfied the requirement as to fairness."

See -- In re Stuart; Ex parte Cathcart', (1393) 2 Q B 201. According to this test, there was nothing unfair in the transaction between the applicant and the opposite party.

9. The fact that the agreed rent is higher than the reasonable annual rent is absolutely immaterial. The agreed rent has got to be higher; otherwise the tenant would have no cause of action to go to court under Section 5. The law requires that not only must the agreed rent be higher than the reasonable annual rent, but also the transaction must be unfair. The two requirements are distinct from each other and one must not be inferred from the other. It is not open to court to lay down that if the agreed rent exceeds the reasonable annual rent by more than a certain percentage, the transaction automatically becomes unfair. That is obviously a legislative function which cannot be performed by a court. The court cannot fix an arbitrary limit beyond which a landlord cannot go. It follows that a court cannot denounce a transaction as unfair on the ground that the agreed rent exceeds the reasonable annual rent by more than a certain percentage.

9a. I am not perturbed at all, by the great disparity between the agreed rent and the reasonable annual rent, though Section 6 (a) of the Act requires that in determining the reasonable annual rent, the District Magistrate should take into the account the costs of the construction and of maintenance and the repairs of accommodation, its situation and any other matter which may be thought material, it leaves a large scope for the exercise of discretion by the District Magistrate. It has left entirely at his discretion to decide what percentage the reasonable annual rent should bear to the costs of construction and of maintenance and repairs. Owing to so much being left at his discretion, the reasonable annual rent fixed by him may vary considerably from the market value of the rent. I am, therefore, not prepared to attach any sanctity to the reasonable annual rent fixed by the District Magistrate. Its sole functions are to supply a cause of action for an application under Section 5(4) and to set a limit to the enhancement which can be effected by a landlord through notice. In event the reasonable annual rent is the rent to be paid by the tenant to the landlord. If there is an agreement about the rent, that is the rent payable, unless it is varied under Section 5 or enhanced by the landlord if not, the rent payable can be fixed by the landlord through a notice. The reasonable annual rent is not even to be considered by the court while fixing rent under Section 5; what it has to consider is mentioned in Section 6. Having regard to the sole functions of the fixing of reasonable annual rent it would be quite illegal to declare a transaction or even an agreed rent, as unfair merely because it exceeds it considerably. The court, when deciding whether the transaction was unfair or not, must bear in mind that fixing of reasonable annual rent was not intended to supply a measure for deciding upon the fairness or otherwise of the agreed rent, and a fortiori of the transaction. The agreed rent appears to be in the neighbourhood of the market rental value of the shop.

Market value is "the amount which would be paid by a willing buyer to a not unwilling but not anxious-to-sell vendor." Latham, C. J. in -- *Minister of State for the Army v. Parbury Henty and Co.*', 70 C. L. R. 459. The opposite party was anxious to let out the shops; as a matter of fact it had constructed them only for letting them out on rent. Still so many people were prepared to pay more than Rs. 720/- p.a. as rent. This was much more than the reasonable annual rent of Rs. 240/- It is not known what were the circumstances which forced the other competitors to offer rent upto Rs. 1100/- p.a. If they were not forced by pressing circumstances, and consequently the transaction as against them could not be assailed as unfair, there is no justification for assailing the transaction entered into with the applicant as unfair, just because it might have been forced by circumstances to take the shop. The agreed rent reached the figure of Rs. 1272/-p.a. because of great demand for the

shop. "The value of property at a given time depends upon the relative intensity of the social desire for it at that time, expressed in the money that it would bring in the market": Holmes, J. in --'Ithaca Trust Co. v. U. S. A.', (1929) 73 Law Ed 647: 279 U S 151. The word 'unfair' is not defined in the Act. Misra, J. discussed its meaning in -- 'Basarmal v. Durga Pershad', 1951 All I, J 263. He relied upon the dictionary meanings.

I respectfully agree with him that the fundamental conception underlying the word is that the transaction has nothing underhand in it, that it is honest, just, equitable and upright and that the other party has not taken undue advantage. There is nothing inequitable or unjust in the transaction between the parties nor has the opposite party taken any undue advantage. Whatever advantage it has taken was such as it was entitled to take as an owner exercising his right of property. The words "unfair methods of competition" have been discussed in a number of cases by the Supreme Court of the U. S. A. 'Federal Trade Commission v. Anderson Gratz'. (1920) 64 Law Ed 993: 253 U S 421: --

"'Federal Trade Commission v. Sinclair Refining Co.', (1923) 67 Law Ed 746: 261 U S 463; -- 'Federal Trade Commission v. Beech-Nut Packing Co.', (1922) 66 Law Ed 307: 257 U S 441 and -- 'Schechter Poultry Corporation v. U. S. A.', (1935) 79 Law Ed 1570: 296 U S 495 etc. in the case of -- 'Gratz' (1920) 64 Law Ed 993, McReynolds, J. said at p. 996: "The words are clearly inapplicable to practices never heretofore regarded as opposed to good morals because characterized by deception, bad faith, fraud, or oppression, or as against public policy because of their dangerous tendency unduly to hinder competition or create monopoly."

In the case of -- 'Sinclair Refining Co.', (1923) 67 Law Ed 746 the contract open and fair upon its face and not opposed to good morals because of deception, bad faith, fraud or oppression, was held to be not unfair. In the case of --'Beechnut Packing Co.', (1922) 66 Law Ed 307 Holmes, J. dissenting said at page 315:

"I cannot see how it is unfair competition to say to those to whom the respondent sells and to the world, 'you can have my goods only on the terms that I propose'." In the case of -- 'Schechter', (1935) 79 Law Ed 1570 Hughes, C. J. said at page 1581: 'Unfairness in competition has been predicated of acts which lie outside the ordinary course of business and are tainted by fraud, or coercion or conduct otherwise prohibited by law.'

If the alleged unfairness in the transaction was judged in the same manner in which the alleged unfairness of the means of competition was judged in the above cases, it would be found that there was nothing unfair in the transaction.

10. I agree with the learned Munsif that the transaction was not unfair.

11. There is no force in this application and it is dismissed.