Karnani Properties Ltd vs Augustin on 9 November, 1956

Equivalent citations: 1957 AIR 309, 1957 SCR 20

Author: Bhuvneshwar P. Sinha

Bench: Bhuvneshwar P. Sinha, B. Jagannadhadas, Syed Jaffer Imam

PETITIONER:
KARNANI PROPERTIES LTD.

Vs.

RESPONDENT:
AUGUSTIN

DATE OF JUDGMENT:
09/11/1956

BENCH:
SINHA, BHUVNESHWAR P.
BENCH:
SINHA, BHUVNESHWAR P.
JAGANNADHADAS, B.
IMAM, SYED JAFFER

CITATION:
1957 AIR 309 1957 SCR 20

ACT:
Rent Control-Standard rent, Fixation of-Lease Providing for a consolidated rent-Landlord undertaking to Provide special amenities including supply of electric current-Applicability of the Act Determination of fair and reasonable rent- West Bengal premises Rent Control (Temporary Provisions) Act of 1950 (West Bengal XVII of 1950), s. 9 cl. (g), Sch. A.

HEADNOTE:
The appellant was the common landlord of the three premises in respect of which three analogous proceedings were started by the respective tenants for standardisation of rent under s. 9 read with Sch. A of the West Bengal Premises Rent Control (Temporary Provisions) Act of 1950. Under the terms of the lease, which provided for a consolidated monthly rent, the landlord was to provide, besides electric installations, electric current for consumption and other special amenities. His defence was that the special incidents of the tenancies took the tenancies out of the

scope of the Act and if not, alternatively, cl. (g) of s. 9 of the Act should apply and the rent increased proportionately to the increase in the charges for electric current and enhanced Government duty payable thereon. The Rent Controller rejected the contentions and fixed the standard rent in accordance with the rules laid down in Sch. A of the Act. The Chief Judge of the Small Causes Court, on appeal by the landlord, applied cl. (g) of s. 9 of the Act, gave relief in respect of the higher charges for electricity and Government duty and fixed the standard rent at a higher figure. The tenants moved the High Court in revision and it held that cl. (g) of s. 9 did not apply and virtually, though not entirely, affirmed the decision of the Rent Controller. The landlord appealed by special leave on the questions of law involved.

Held, that the Act applied to the premises and the standard rent must be determined, under the provisions of cl. (g) of s. 9 of the Act and the decision of the Chief judge restored.

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The term 'Premises' as defined in s. 2(8) of_ the Act was wide enough to cover the tenancies with their special incidents and the consolidated monthly rent for the amenities provided by the landlord came within the comprehensive sense in which the word rent was used by the Act and was as such liable to be controlled under it.

The observation to the contrary made in respect of such rent in the case of Residence Ltd. v. Surendra Mokan did not correctly represent the legal position.

Property Holding Co., Ltd. v. Clark, (1948) I K. B. 63o, and Alliance Property Co. Ltd. v. Shaffer, (1948) 2 K.B. 464, referred to.

Residence Ltd. v. Surendra Mohan, A.I.R. 1951 Cal. 126, considered.

The purpose which the legislature had in view in enacting the Act and the wide terms in which it defined the term 'premises' leave no manner of doubt that its operative provisions were intended to have a wide application and the mere putting in of a term in the lease, not in terms provided for by any of the clauses of S. 9, could not take the tenancy out of the scope of the Act and it would be the duty of the Court, in order that the provisions of the Act might have full effect, to give as wide an application to them as was permissible under the Act.

Where, as in the instant case, the lease provided for a consolidated monthly rent, the Rent Controller and other authorities under the Act were empowered by the provisions of cl. (g) of s. 9 to determine the standard rent on a consideration of all the payments that constitued the agreed rent and they did not prohibit a recourse to such other provisions of the Act as could be applied, either in part or as a whole, in arriving at a fair and reasonable rent.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 32 to 34 of 1955.

Appeal by special leave from the judgment and order dated September 5, 1952, of the Calcutta High Court in Civil Revision cases Nos. 3257, 3258 and 3259 of 1951 arising out of the order dated September 7, 1951, of the Court of Small Causes at Calcutta, 4th Bench, in Rent Appeal Nos. 115, 743 and 744 of 1951.

C. K. Daphtary, Solicitor-General of India, D. N. Mookerji and Sukumar Ghose, for the appellant.

S.C. Janah and S.N. Mookerji, for the respondent. 1956. November 9. The Judgment of the Court was delivered by SINHA J.-Thesubstantial question for determination in these three analogous appeals by special leave is whether the provisions of s. 9 of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 (which hereinafter will be referred to as "the Act") apply to the three promises which formed the subject matter of three separate proceedings in the courts below; and, if so, which clause thereof. The common landlord is the appellant in each case the respondent in each case being the tenant of the particular tenement.

In order to appreciate the points of law at issue between the parties, it is necessary to state the relevant facts shorn of all details relating to the basic rent and the standard rent fixed at different stages of the proceedings. Those details are not necessary for the determination of these appeals. The undisputed facts are that the appellant is seized and possessed of several municipal holdings collectively known as the Karnani Mansions, 25-A, Park Street, together with adjoining premises situated at the junction of Park Street and Free School Street in the city of Calcutta. There are about 210 flats of different types and shop-rooms in the said Karnani Mansions let out separately to tenants. The tenant in each of the three cases leading up to the appeals in this Court had been inducted by the predecessor-in-title of the appellant. In each case the tenancy consisted of a single room, a bath and a covered verandah. The tenant has also the use of a number of fans, plug points, towel racks, besides a basin, a commode and a glass shelf. The landlord also supplies without any additional charge electrical energy for consumption by the tenant for the use of lamps, fans, radio, ovens for cooking, for ironing, laundering and refrigerators. The landlord is also responsible for repairs of the electric installations and sanitary fittings, as also for supplying service of night guards, sweepers, liftmen etc. The tenant in each case applied before the Rent Controller of Calcutta under s. 9 read with Schedule A of the Act for fixation of standard rent in respect of the flat occupied by the applicant. The landlord resisted the application on the ground, inter alia, that the Rent Controller was not authorised by the Act to deal with the tenancies in question because the premises were outside the scope of the Act; that there had been a great increase in the cost of maintenance, as also of repairs and replacements of electric and other installations, that there had been a considerable enhancement of the charge for electricity supplied by the Calcutta Electric Supply Corporation Ltd. and of Government duty on the same; that if the court held that these premises were governed by the' provisions of the Act, the landlord was entitled to proportionate increase in respect of those charges; that the fact that the Act does not make specific provision for increasing the rent with

reference to the charges aforesaid would also point to the conclusion that the Act was not intended to the applied to the tenancies in question. The Rent Controller after having inspections

-made of the premises in question fixed a standard rent in accordance with the rules laid down in Schedule A to the Act. The rent thus standardized was to take effect from September 1, 1950.. The appellant preferred an appeal to the Chief Judge of the Small Cause Court, Calcutta, against the aforesaid order of the Rent Controller. The Appellate Authority allowed the landlord's appeal in part by setting the standard rent at a higher figure than that arrived at by the Rent Controller by applying the provisions of cl. (g) of s. 9. The Appellate Authority aforesaid negatived the landlord's contention that the premises in question providing the special services and amenities aforesaid were outside the ambit of the Act. It gave the landlord relief in respect of the higher charges for electric consumption and Government duty aforesaid. The standard rent thus fixed by the appellate authority was in excess of the original rent agreed between the parties. The tenant in each case moved the High Court of Calcutta in its revisional jurisdiction. The learned single Judge of the High Court, who heard the revisional applications allowed them in part, giving effect virtually, though not entirely, to the decision of the Rent Controller and holding that cl. (g) of s. 9 of the Act was not attracted to the facts and circumstances of the cases before the court. He relied upon a Division Bench ruling of the same Court in the case of Residence Ltd. v. Surendra Mohan(1), which, it is agreed at the Bar, is on all fours with the facts and circumstances of the present case. After the rejection by the High Court of of the appellant's petition for a certificate under Art. 133 of the Constitution, the appellant obtained from this Court special leave to appeal on common questions of law. Hence the appeals in each of these three cases have been heard together.

In these appeals the learned Solicitor General appearing on behalf of the appellant raised substantially two points for determination, namely, (1) that the Act does not apply to the premises in question in view of the specify incidents of the tenancy as disclosed in the terms of the lease in the standard form as exhibited in Civil Appeal No. 42 of 1955 (Exhibit J) between the appellant and Miss M. Augustin, and as found by the courts of fact below; and (2) alternatively, that if the Court were to come to the conclusion that the premises in question were within the ambit of the Act, clause (g) of s. 9 should be applied to the tenancies in question as determined by the appellate authority aforesaid. Adverting to the first point raised on behalf of the appellant, we have to notice an argument which was raised for the first time before 'us, namely, that the definition of " premises " in s. 2 (8) would not in terms apply to the tenements in question and that if any provisions of the Act could be attracted totes cases, cl. (3) of s. 2 defining "

> hotel or lodging house " could more appropriately be applied to the tenancies in question. As this point in this form has not been raised in the courts below or even in the statement of the case in this Court, we refuse to go into that question, even assuming that the controversy thus raised does not require any fresh findings of fact. These cases have not been fought on that ground and, in our opinion, it is too late to raise for the first time a controversy in that form. We have therefore to examine the question whether the definition of " Premises " as contained in s. 2 (8) of the Act is not comprehensive enough to be (1) A.1.R. 1951 Cal- 126 applicable to these cases. The definition is in these terms:-

> " premises' means any building or part of a building or any hut or part of a hut let separately and includes-
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> (a)the gardens, grounds and out-houses (if any) appertaining to such building or part of a building or hut or part of a hut,
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> (b)any furniture supplied or any fittings affixed by the landlord for use of the tenant in such building or part of a building or hut or part of a hut, but does not include a room or part of a room or other accommodation in a hotel or lodging house or a stall in a municipal market as defined in clause (44) of s. 3 of the Calcutta Municipal Act, 1923, or in any other market maintained by or belonging to a local authority or a stall let at variable rents at different seasons of the year for the retail sale of goods in any other market as defined in clause (39) of s. 3 of the Calcutta Municipal Act, 1923, or clause (30) of s. 3 of the Bengal Municipal Act, 1932 ".

It has been contended for the appellant that premises " thus defined do not include tenements with the special facilities and conveniences agreed by the landlord to be supplied to the tenants. In this connection reference was made to the definition of " premises " as contained in the previous legislation like the Calcutta Rent Act (Bengal Act III), 1920, the Calcutta House Rent Control Order, 1943, the Calcutta Rent Ordinance (No. V), 1946 and the West Bengal Premises Rent Control (Temporary Provisions) Act, XXXVIII of 1948, which has been replaced by the Act. It will serve no useful purpose to go into the ramifications of the definitions in the different pieces of legislation which deal with the same subject matter. We have to construe the Act as it stood. The Act has now been replaced by the West Bengal Premises Tenancy Act (Act XII), 1956. But it is agreed at the Bar that we are concerned with the Act as it stood before it was replaced by the Act of 1956. The definition of " premises " set out above is in very wide terms and includes not only gardens, grounds and outhouse, if any, appertaining to a building or part of a building, but also furniture supplied by the landlord for the tenants' use and any fittings affixed to the building, thus indicating that the legislature was providing for all kinds of letting. The definition of " premises " and "hotel or lodging house"

> between them almost exhaust the whole field covered by the relationship of landlord and tenant, subject to the exceptions noted in the definition of "premises."

It is admitted at the Bar that the tenancies in question are regulated by the terms and conditions appearing in Exhibit J, the most important of which is clause (1) in the following terms:-

> " That the tenant shall occupy the said flat paying therefor unto the Bank a monthly rent of Rs. 100 including hire of 2 A.C. fans and extra Government duty on electric current without any reduction or abatement to be paid at the Bank on or before the 7th of succeeding month for which the rent is due and that the said rent is inclusive of charges for current for fans, lights, radio and electric stove not exceeding 600 Watts for heating meals and making tea only, use of lift, hot and cold water, the owner and occupier's shares of Municipal Taxes."

It is clear from the terms of the clause quoted above that the landlord was to place at the disposal of the tenants not only electric installation including fans but also electric current to be consumed in the use of those installations etc., besides radio and electric stove. it was argued that the tenancy comprised not only buildings and structures and permanent fixtures but also. the supply of electric power without any fresh charge for the same. It was also pointed out that s. 9 dealing with fixation of standard rent did not in terms contemplate the enhancement or reduction of rent according as the rates for electric current and Government duty thereon were enhanced or reduced. it is true that none of the cls. (a) to (f) of s. 9 has any reference to these considerations Clause (b) makes a specific reference only to increase in municipal taxes, rates or cesses. But then there is the residuary cl. (g) and the question whether that clause applies to the present cases will have to be discussed separately when the second point in controversy will be taken up for consideration. It is enough to point out at this stage that the legislature was conscious that contingencies may arise which would not be covered by any of the specific cls;. (a) to (f) of s. 9 which is the operative section in the Act relating to fixation of standard rent. Under this head the question reduces itself to. this: whether, if by a stipulation between the landlord and the tenant the' landlord agrees to provide for additional amenities like electric power for consumption and such other facilities, the case is taken out of the operation of the Act. The Act is intended " to make better provision for the control of rents of premises." It has defined "premises" in very wide terms, as pointed out above. Hence it is difficult, if not impossible, to accept the contention that the legislature intended the provisions of the Act to have a limited application depending upon the terms which an astute landlord may be able to impose upon his tenants. In order fully to give effect to the provisions of the statute, the court has to give them the widest application possible within the terms of the statute. Having those considerations in view, we do not think that the ,supply of the amenities aforesaid would make any difference to the application of the Act to the premises in question. In this connection reference may be made to the decision of the -Court of Apeal in the case of Property Holding Co-. Ltd. --v. Clark (1)- and' the case of Alliance Property Co. Ltd. V. Shaffer (2) which followed the earlier decision to the effect that if the stipulations between landlord and tenant include payment of rent for not only what may properly be characterized as premises within the ordinary acceptation of the term but also payment in respect of lighting cooking equipment, the furnishing and cleaning of hall and staircase and certain other similar amenities, the sum total of the payments in respect of the building or part -of the building and other services and amenities constitute (2)[1948] 2 K. B. (1) [1948] 1 K.B. 630.

rent. In the earlier case of Property Holding Co. Ltd. v. Clark (supra) the facts, shortly stated, were that the agreement between the landlord and the tenant in writing provided for the payment of pound 110 a year as rent and an additional payment of pound 30 a year in respect of the additional amenities and conveniences like lighting and cooking equipments, furnishing and cleaning of hall and staircase etc. In an action for rent by the landlord at the rate of pound 140 a year the tenant contended that the rent proper was only pound 110 and not the total sum of pound 140 a year payable on all counts, as aforesaid..The Court of Appeal allowed the landlord's appeal and held that the standard rent was pound 140 and not only pound 110. In the course of his judgment Asquith L.J. adopted the language of Younger L. J. in the case of Wilkes v. Goodwin (1) to the following effect:-

> "The first of these (considerations) is that the word Arent' in this exception surely means not rent in the strict sense but the total payment -under the instrument of

> letting. The exception assumes that 'rent' so called may include, for example, 'board', payment of which is not rent. I am here paraphrasing the statement of Shearman J. in Nye v. Davis (2)with which I agree."

Their Lordships of the Court of Appeal repelled the contention that the additional payment was not part of rent and held that the payment in respect of the additional amenities aforesaid was also part of rent within the meaning of the English Act which corresponds to the Bengal Act. Those English decisions are authorities for the proposition that "rent" included not only-what is ordinarily described as rent in an agreement between a landlord and a tenant but also payment in respect of special amenities provided by the landlord under the agreement between him and his tenant. The term "rent" has not been defined in the Act. Hence it must be taken to have been used in its ordinary dictionary meaning. If, as already indicated, the term it, rent " is comprehensive enough to include all payment;.agreed by the tenant to be paid to his landlord for the use and occupation not only of the building and (1) [1923] 2 K.B. 105.

(2) [1922] 2 K.B. 56.

its appurtenances but also of furnishings, electric in- stallations and other amenities agreed between the parties to be provided by and at the cost of the land-lord, the conclusion is irresistible that all that is included in the term "rent" is within the purview of the Act and the Rent Controller and other authorities had the power to control the same. In view of these considerations we overrule the first-contention raised on behalf of the appellant. But the second contention raised on behalf of the appellant, in our opinion, is well founded.

> "Standard rent" has been defined in el. (10) of s. 2 as follows:standard rent' in relation to any premises means-
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> (a)the standard rent determined in accordance. with the provisions of Schedule A;
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> (b)where the rent has been fixed under s. 9, the rent so fixed; or at which it would have been fixed if application were made under the said section;.....

This is a definition by in corpation of the provisions of Schedule A and of s. 9. it is common ground that no standard rent had- so far been determined in respect of the premises in question before the present proceedings were commenced at the instance of the respective tenants. Schedule A to the Act in clause (1) defines "basic rent" and then cl. (2) lays down the formulae for determination of standard rent once the basic rent has been arrived at. The tenant in each case in the present appeals invoked the provisions of s. 9 read with Schedule A of the Act for fixing the standard rent for their respective premises. The question arises which clause or clauses apply to the terms of the tenancy as indicated above. Clause (a) cannot apply because it cannot be said that "There is no cause for the alteration of the rate of standard rent as determined according to the schedule for any of the reasons mentioned in the following clauses, in accordance with the provisions of Schedule A." It has not been denied that electric charges and the Government duty thereon have been enhanced and that the municipal taxes also have been increased. Clause (b) also in terms cannot apply because it does

not by itself entirely cover the cases in hand. There has been increase not only. in municipal taxes but also in electric charges, Government duty on electric consumption and in the cost of the other services and amenities specially provided for by the agreement between the parties. Clause (c) is out of the way of the parties because there is no question of addition, alteration or improvement in the premises. Clause(d) is similarly inapplicable because it is nobody's case that any furniture not already provided by the landlord has been supplied to any -of the premise,% for the use of the tenant. Clause (e) also has not been claimed by either party to be applicable because the special circumstances contemplated therein are not found in these cases. Clause (f) is clearly inapplicable because the premises had been constructed admittedly much earlier than December 31, 1949. The only remaining clause is el. (g) which is in these terms:-

> " Where no provisions of this Act for fixing standard rent apply to any 'Premises, by determining the standard rent at a rate " which is fair and reasonable."

It will appear from the terms of the contract between the landlord and the tenant in each case, particularly from clause (1) of the agreement quoted hereinbefore that the land-lord has not only agreed to supply electric and other installations but also electric power and other services for which no separate payment has been stipulated It has not been denied as a matter of fact, coun' Sol for the tenats- respondents clearly admitted-that the rent fixed 'in each case included payment for those additional amenities and services though the amounts in respect of them have been separately shown in the agreement. The rent fixed was a consolidated sum for all those amenities and services, as is clearly stated in para.1 of the agreement set out above' But even after making that concession the learned counsel for the respondents strongly relied upon the decision of a Division Bench of the Calcutta High Court given on Letters Patent Appeal from a judgment of a single Judge of that Court, in Residence, Ltd. v. Surendra It has been laid-down in that case that the (1) A.I.R. 1951 Cal. 126.

Act is applicable to a tenancy the terms of which included such additional conveniences and facilities as have been provided by the landlord in these cases. We have already indicated that we agree with that conclusion. But the case also lays down the proposition that what is paid. as rent for the flat does not include any payment for the additional facilities and conveniences provided by the landlord for the use of the tenant. In this connection the High Court made the following observations:-

> " In my judgment when a flat is let, with the landlord agreeing to provide certain free services, what is let is the flat and what is paid is paid for the flat with the landlord providing certain amenities or performing certain obligation. What is paid is rent for the flat and no part of. it can be truly regarded as payment for the services."

With all due deference to the views the views thus expressed by that very experienced and learned Judge, we cannot agree that those observations correctly represent the true legal position. As a matter of fact, the learned Judge has referred to with approval the judgments of the Appeal Court and of the King's Bench Division in the cases mentioned above to show that the term "rent" is comprehensive enough to include not only rent in the narrower sense of the term as ordinarily understood but also payment in respect of the additional conveniences and amenities. The learned

Judge goes on to make the following observations:-

> " If he has undertaken obligations by the tenancy agreement the monthly payment or the yearly payment as the case may be would be suitably adjusted. That, however, would not make the monthly or yearly payment any the less rent."

The two parts of the observations quoted above cannot be reconciled unless it can be said that the learned Judge is using the word "rent" not in the same sense but in its different connotations according to the context. If the learned Judge used the word "rent" in its comprehensive sense in -which the Act must. be construed as having used that term, this part of the judgment cannot be said to be against the appellant's contention that the standard rent must be fixed with reference to all the constituents which made up the lump sum as fixed in each case as rent. This position emerges not only from a consideration of the legal position in contemplation of the Act, but also from the terms of the agreement between the parties, as indicated above. The provisions of el. (g) of a. 9 of the Act empower the Rent Controller and the other authorities under the Act to determine the standard rent after taking into consideration all the constituents which make up the total sum shown in the agreement as monthly rent. Those authorities are authorised to determine rent which is fair and reasonable. In thus arriving at a fair and reasonable rent they are not precluded from having recourse to such of the provisions of the Act as may be found applicable either in their entirety or in so far as they can be made applicable. The Rent Controller gave the landlord credit only for the amount by which the municipal taxes had been increased and no more, by applying the provisions of cl. (b) of s. 9. The Appellate Authority on the other hand, applied the provisions of el.

(g) of s. 9 by determining the fair and reasonable rent after taking into consideration the fact that electric charges as also Government duty on the consumption of electric power had been increased. So had the cost of providing for the other amenities and services. In view of our conclusion that the residuary el. (g) applies to the terms of the tenancy in these cases, it follows that the decision of the Appellate Authority was more in consonance with the provisions of cl. (g) than that of the Rent Controller or of the High Court. As the figures arrived at by the Appellate Authority have not been challenged before us, we would direct, that the orders passed by it should be restored and those of the High Court and of the Rent Controller set aside.

The appeal is accordingly allowed in part as indicated above. But in view of the directions of this Court at the time of granting the special leave, even though the appellant is successful in this Court, he must pay the costs of the respondents, one set of hearing fee to be equally divided amongst the three respondents. Appeal allowed in part.