

Vithal Krishnaji Nivendkar vs Parduman Ram Singh & Another on 27 March, 1962

**Equivalent citations: 1964 (1) CRI. L. J. 491, (1963) 1 S C R 63, 1963
MADLJ(CRI) 517, 1963 MAH L J 789, (1963) 2 S C J 453, 64 BOM L R 770**

PETITIONER:

VITHAL KRISHNAJI NIVENDKAR

Vs.

RESPONDENT:

PARDUMAN RAM SINGH & ANOTHER

DATE OF JUDGMENT:

27/03/1962

BENCH:

ACT:

Rent Control-Donation received by a person for charitable trust--When an offence-Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bom. 57 of 1947) s. 18 (1).

HEADNOTE:

The appellant was the President, Trustee and Secretary of a Sangh, which was a public trust registered under the Bombay Public Trust Act. 1950. The appellant agreed to grant the lease of a residential block, which was owned by the Sangh, at a monthly rent of Rs. 85.00 in favour of the first respondent on payment of Rs. 3,251/- as donation to the building fund of the said Sangh, which was paid before the first respondent actually occupied the premises. The appellant was convicted under s. 18 (1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, by the Presidency Magistrate who held that the amount was received as premium, as a condition precedent for letting the premises. On appeal the High Court held that the aforesaid payment even if it did not come within the expression "premium or other like sum" for granting the tenancy of the premises, it was received by the appellant as "consideration other than the standard rent" in respect of the grant of a lease of the premises and dismissed the appeal. The appellant came up by special leave in appeal to the Supreme Court.

The question is whether a sum of money paid ostensibly as a donation by a person to the person acting on behalf of the landlord, which was a charitable trust, in respect of the

grant a lease of the premises, came within the expression "fine, premium or other like sum or deposit or any consideration other than the standard rent" in sub-s. (1) of 18 of the Act.

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Held, that where the donation has been received in respect of the granting of the lease and not as a free donation for the advancement of the purposes of the Sangh it will come within the expression "premium" or "consideration" in s. 18. The consideration can be pecuniary or non-pecuniary.

The mere use of the word "donation" I do not take away the effect of the other expressions used which clearly support that the payment was made for the purpose of getting the tenancy of the premises.

The appellant was a trustee of the Sangh. He was receiving rent on account and on behalf of the Sangh and clearly therefore he comes within the expression "landlord" as defined in the Act. The fact that he had acted on behalf of the trust and not for any personal reasons does not affect the question or the appellant's conduct coming within the provision of s. 18 (1) and can affect only the quantum of sentence.

Karansey Kanji v. Velji Virji, (1954) 56 Bom. L. R. 619.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 52 of 1960.

Appeal by special leave from the judgment and order dated September 9, 1959, of the Bombay High Court in Criminal Appeal No 916, of 1959.

R. Gopalakrishnan, for the appellant.

H. R. Khanna and R. H. Dhebar, for the respondent No. 2. 1962. March 27. The Judgment of the Court was delivered by RAGHUBAR. DAYAL, J.-This appeal, by special leave, raises the question whether a sum of money paid ostensibly as, a donation by a person to the person acting on behalf of the landlord, which was a charitable trust, in respect of the grant of a lease of the premises, came within the expression 'fine premium or other' like sum or deposit or any consideration other than the standard rent' in sub-a. (1) of a. 18 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bom. Act LVII of 1947), hereinafter called the Act. The question arises in these circumstances. The appellant was the President, Trustee and Secretary of the Tillori Kunbi Samajonnati Sangh (hereinafter called the Sangh), Bombay, in 1958. The Sangh was a public trust registered under the Bombay Public Trusts Act, 1950. The first respondent approached him for taking on rent one of the residential blocks of Waghe Hall at St. Xavier Road, Parel Bombay, which was owned by the aforesaid Sangh. The appellant agreed to grant the lease of the premises at a monthly rental of Rs.85/- in favour of the first respondent on payment of Rs.3251/- as donation to the building fund of the said Sangh. The first respondent paid this amount in four installments,

three of which were paid prior to May 1, 1958, and the fourth, of Rs.1,000/- on May 1, 1958, before his actually occupying the premises. , The appellant admits the receipt of this amount of Rs.3251/, for donation to the building fund. He contends that he was not a landlord' as defined in the Act. The Presidency Magistrate, 7th Court, Dadar, held that the amount was received as a premium, as a condition precedent for letting the premises to the first respondent and that therefore the appellant committed the offence under s.18(1) of the Act.

On appeal, the High Court of Judicature at Bombay held that aforesaid payment, even if it did not come within the expression "premium or other like sum", for granting the tenancy of the premises it was received by the appellant as ,consideration other than the standard rent' in respect of the grant of a lease of the premises and therefore the conviction was correct. It accordingly dismissed the appeal. It is against this order that the appellant has filed this appeal.

Learned counsel for the appellant has urged that various enactments allowed companies to receive donations and that the Memorandum of Association and the Rules of the Sangh also permitted receipt of gifts of money, that the first respondent made the donation voluntarily and that therefore the donation cannot amount to a 'premium' or 'consideration' contemplated by subs.(1) of s.18 of the Act. The fact that the Sangh, can legally received donations from persons whether belonging to the Tillori Kunbi community or not has no bearing on the question before us. If the donation has been received in respect of the granting of the lease and not as a free donation for the advancement of the purpose of the Sangh, it will come within. the expression Pretoria, 'or consideration' in s. 18.

Both the Courts below have held that the so called donation was not a free gift to the Sangh but was paid by the first respondent and received by the appellant for the letting of the premises to the first respondent. There is evidence on the record to support this finding of fact. We see no reason to consider the finding vitiated by any error of law. Our attention has been drawn by the learned counsel for the appellant to the letter dated July 2, 1958, sent by the first respondent to the Secretary of the Sangh. The first respondent said, in paragraph 1:

"...I became a tenant of one of your ground floor blocks by paying a donation of Rs.3251/- only and in return I was promised a clean new block."

This statement in no way supports the contention for the appellant that the amount was paid as a free gift for furthering the objects of the Sangh. On the other hand, it clearly states that the first

67. respondent became a tenant by paying a donation of Rs.3251/-. The mere use of the word 'donation' does not take away the effect of the other expressions used which clearly supports the finding of the High Court that the payment was made for the purpose of getting the tenancy of the, premises.

It was further urged that charitable trusts are exempt from the operation of the Act and reference was made to the provisions of s. 4 of the Act. Clause (ii) of sub-s.(2) of this section provides that the State Government may direct that all or any of the provisions of the Act shall. not, subject to such conditions and terms all it may specify, apply generally to premises held by a public trust for a

religious or charitable purpose and let at a nominal or concessional rent. There is nothing on the record to show that the State Government had issued any such directions. Further, the amount charged for the premises let to the first respondent cannot be said to be nominal and has not been shown to be concessional rent. This contention therefore has no force.

The contention that the appellant does not come within the expression 'landlord' defined in sub-s.(3) of s.5 has no force. The expression 'landlord' includes a person who is receiving, or is entitled to receive, rent in respect of any promises on account, or on behalf, or for the benefit of any other person, or as a trustee for any other person. The appellant was a trustee of the Sangh. He was receiving rent on account and on behalf of the Sangh and clearly therefore he comes within the expression 'landlord' as defined in the Act.

It is further contended that the amount paid does not come within the expressions 'premium' or 'consideration.' in sub- s.(1) of s.18 of the Act. We do not agree. 'Premium' means any amount paid for the purpose of getting a lease. It was certainly paid as a 'consideration for obtaining the lease in this case. We agree with the High Court that there is no reason to restrict the expression consideration' to non- pecuniary consideration alone, as was held in Karamsey Kanji v. Valji Virji '1) No good reason exists for restricting the meaning of this word to non-pecuniary consideration alone, even though any pecuniary consideration paid in respect. of the grant of the lease will usually come within the expression 'Premium'. The fact that the sentence of fine,, according to the provisions of sub.s.(1) of s.18, is not to be less than the 'value of the consideration received' is not sufficient to limit the expression consideration' to non-pecuniary consideration alone.

The previous rent-control Acts, viz., the Bombay Rent Restriction. Act, 1939 (Bom. Act XVI of 1939) and the Bombay Rents, Hotel Rates and lodging House Rates (Control) Act, 1944 (Act VII of 1944) which were repealed by the Act provided in s.10 and 8 respectively, against the, landlord's requiring the payment of any fine, premium or any other like sum in addition to the rent in consideration of the grant, renewal or continuance of a tenancy of any premises. The addition of words deposit or any consideration' in sub-s.(1) of s.18, must have been to cover all payments besides the standard rent in consideration of getting the tenancy. In the circumstances, it need not be a matter of surprise that certain extra payments may come within more than one of the expressions fine', 'premium' 'other like sum', 'deposit' or 'consideration'.

In this connection, reference may be made to Explanation 1 to sub-s.(4) to s.18 which reads:

"For the purpose of sub-section (1)

(a) except as provided in sub-section (3) (1) (1954) 56. Bom. L.R. 619.

receipt of rent in advance for more than three months in respect of premises let for the purpose of residence, or

(b) where any furniture or other article is sold by the landlord to the tenant either before or after the creation of tenancy of any premises, the excess of the price received over the reasonable price of the

furniture or article, shall be deemed to be a fine or premium or consideration."

The receipt, of rent referred to in cl.(a) and the excess of the price received over the reasonable price of the furniture or other article referred to in cl.(b) is always to be in cash and yet the Explanation provides that the receipt of rent and the excess of the price coming within the provisions of cls.(a) and (b) respectively, shall be deemed to be a fine or premium or consideration'. Lastly, it was urged that the appellant just acted on behalf of the trust and not for any personal reasons. Such a consideration does not affect the question of the appellant's conduct coming within the provisions of sub- s.(1) of s.18 and can affect only the sentence, which, in the present case, had been the minimum possible, under the law. The appellant was sentenced to imprisonment till the rising of the Court and' a fine of Rs. 3251/-. Sub-s. (1) of s.18 provides that a person, on conviction for the offence under that section be punished with imprisonment for a, term which may extend to six months and shall also be punished with fine which shall not be less than the amount of fine, premium or sum or deposit or the value of the consideration received by him.

We are therefore of opinion that the appellant has 'been rightly convicted under s.18(1) of the Act and, accordingly dismiss the appeal.

Appeal dismissed..