Supreme Court of India
Babu Manmohan Das Shah & Ors vs Bishun Das on 12 October, 1966
Equivalent citations: 1967 AIR 643, 1967 SCR (1) 836
Author: Shelat
Bench: Shelat, J.M.

PETITIONER:
BABU MANMOHAN DAS SHAH & ORS.

Vs.

RESPONDENT:
BISHUN DAS

DATE OF JUDGMENT:
12/10/1966

BENCH:
SHELAT, J.M.
BENCH:
SHELAT, J.M.
RAO, K. SUBBA (CJ)
BACHAWAT, R.S.

CITATION:
1967 AIR 643 1967 SCR (1) 836
CITATOR INFO :
RF 1980 SC2181 (143)
R 1984 SC 684 (46)
E&R 1987 SC 617 (5,9)
D 1988 SC 293 (7,12)
RF 1990 SC 678 (5,6)

ACT:
U.P. (Temporary) Control of Rent and Eviction Act 3 of 1947 s. 3(1) (c)-Whether landlord only entitled to eviction on proof of material alterations--Or whether proof also necessary of diminished value of property-Material alterations what are.

HEADNOTE:
The appellant who was the owner of two shops rented to the respondent, filed a suit for the latter's ejection under Section 3 (1) (c) of the U.P. (Temporary) Control of Rent and Eviction Act III of 1947 which provides that no suit under the Act can be filed without the permission of the District Magistrate, except on the ground, inter alia, that the tenant has, without the permission of the landlord permitted or made such constructions as " materially altered the accommodation or is likely substantially to diminish its

value". The appellant claimed that the respondent had carried out material alterations consisting of lowering of the floor level of the shop by about 1-1/2 ft. by excavating earth and putting up a new floor, of lowering correspondingly the front door which entailed cutting and removal of the plinthband on which the door rested, of lowering likewise the level of the staircase in the shop and putting up new steps, and lowering the height of the Chabutra outside the shop so as to correspond it to the level of the new ground floor of the shop.

The trial Judge as well as the First Additional Civil Judge, in appeal, concurrently found that the respondent had carried out material alterations within the -meaning of s. 3 (1) (c); the appellant was therefore entitled to file a suit without obtaining the permission -of the District Magistrate and to a decree of eviction. In the appeal before the High Court it was contended on behalf of the respondent that on a proper interpretation of Clause (c) of Section 3(1), the appellant had also to establish-that the alterations, be-sides being material alterations, were likely substantially to diminish the value of the accommodation. In other words, the word "or" in Clause (c) should be read as "and". The High Court accepted this contention and held that as there was no finding by the lower court that any harm or damage had been caused to the building the appellant was not entitled to relief under s. 3 (1) (c).

HELD : Allowing the appeal : Even if the alterations did not cause any damage to the premises or did not substantially diminish their value, the alterations were material alterations and on that basis alone the appellants were entitled to evict the respondent. [841 H]

The language of the clause makes it clear that the legislature wanted to lay down two alternatives which would furnish a ground to the landlord to sue without the District Magistrate's permission, that is, where the tenant has made such construction which would materially alter the accommodation or which would be likely to substantially diminish its value. [839 F-G]

Hyman and Anr. v. Rose [1912] A.C. 623; distinguished. Wates V. Rowland and Another [1952] 2 Q.B. 12; Blackmore v. Dimmer [1903] 1 Ch. 158; referred to.

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Although no general definition can be given of what "material alterations" mean, as such a question would depend on the facts and circumstances of each case, the alterations in the present case amounted to 'material alterations" as the construction carried out by the respondent bad affect of altering the form and structure of the accommodation. [840 D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 643 of 1964. Appeal by special leave from the judgment and decree dated January 17, 1961 of the Allahabad High Court in S. A. No. 90 of 1959.

C.B. Agarwala, Champat Rai, E.C. Agarwala and P. C. Agarwala, for the appellants.

S. T. Desai and J. P. Goyal, for the respondent. The Judgment of the Court was delivered by Shelat, J. This appeal by special leave is directed against the judgment and decree passed by the High Court at Allahabad in Second Appeal No. 930 of 1959. Two questions arise in this appeal: (1) with regard to interpretation of s. 3(1)(c) of the U.P. (Temporary) Control of Rent and Eviction Act, III of 1947 and (2) whether the alterations carried out by the respondent-tenant were alterations which materially altered the accommodation within the meaning of the said clause (c).

The appellants are the owners of a building situate on Dashaswamedh Road in Varanasi, the ground floor of which consisted of two shops separated by a partition wall and an arch in between. The respondent was the tenant of one of these two shops. The other shop, adjacent to the respondent's shop, had been let out to one Benarsidas Lohar. The said Banarsidas vacated the shop and thereupon with the necessary sanction of the Rent Control Officer it was let out to the respondents as from July 24, 1,954. On July 21, 1954 the respondent executed a rent note by which he inter alia agreed that he would not have any right to make any alterations, additions, or 'Tor phor of any sort' in the said shop. The respondent took possession of the said shop thus becoming a tenant' of both the shops. On August 8, 1954, the appellants at the request of the respondent removed the said partition wall and replaced the said arch by iron girders enabling the respondent to have a compact and commodious unit. There is no dispute that about the middle of October 1954 the respondent started making altera- tions in the said shop without the consent of the appellants. Thereupon the appellants first by a telegram and then by letters called upon the respondent to refrain from making the said alterations as such alterations were contrary to the express covenant contained in the said rent note. Ultimately by a notice dated February 22, 1955 they terminated the said tenancy and called upon the respondent to hand over quiet and vacant possession. On the-

respondent failing to do so the appellants filed a suit for ejectment and other incidental reliefs, claiming that as the said alterations were material alterations they were entitled to file the suit for eviction without obtaining therefor the permission of the District Magistrate as required by section 3(1) of the said Act.

The relevant part of section 3(1) reads as under " Subject to any order passed under sub-section (3) no suit shall, without the permission of the District Magistrate be filed in any Civil Court against a tenant for his eviction from any accommodation, except on or more of the following grounds

(c) That the tenant has, without the permission in writing of the landlord, made or permitted to be made any such constructio n as, in the opinion of the court, has materially altered the accommodation or is likely substantially to diminish its value." Both the trial Judge and in appeal against his judgment and decree the First Additional Civil Judge, Varanasi, concurrently found that the respondent had carried out alterations, that he did so without obtaining the consent of the appellants and that the alterations consisted of lowering of the floor level of the shop by about 11/2

ft. by excavating earth therefrom and putting up a new floor, of lowering correspondingly the front door which entailed cutting and removal of the plinthband on which the door rested, of lowering likewise the level of the staircase in the shop .and putting up new steps thereto and lastly of lowering the height of the Chabutra outside the shop so as to correspond if to the level of the new ground floor of the shop. Both the courts found that these alterations were material alterations of the accommodation within the meaning of s. 3(1)(c) and held that the appellants were entitled to file the suit without obtaining the permission of the District Magistrate and to a decree of eviction. Aggrieved by the judgment and decree of the 1st Additional Civil Judge, the respondent filed a Second Appeal in the High Court. The High Court accepted the concurrent finding of the two courts below that the respondent had carried out the said alterations without the appellants' consent and agreed that the said alterations amounted to material alterations. But it was argued before the High Court that clause (c) of section 3(1) would not apply as on a proper interpretation of that clause the appellants had also to establish that the alterations, besides being material alterations, were likely substantially to diminish the value of the accommodation. The High Court held that there was no finding by either of the courts below that any harm or damage had been caused to the building and on that footing reversed the judgment and decree passed by the lower court, allowed the respondent's appeal and dismissed the appellants' suit. Mr. Agarwal, for the appellants, contended before us that the interpretation placed by the High Court on section 3(1)(c) was erroneous inasmuch as the High Court failed to appreciate that clause (c) was disjunctive and that it would apply either where the alterations are material alterations or, even if, they are not, they are likely to diminish substantially the value of the accommodation. He also contended that the alterations were material alterations within the meaning of clause (c) and that therefore, the appellants were entitled to a decree for eviction, they having been carried out without the permission of the appellants. Mr. Desai, on the other hand, argued that the word "or" in clause (c) should be read as "and" and therefore unless the appellants also established that the alterations had diminished or were likely substantially to diminish the value of the accommodation clause (c) would not operate and the suit would not be maintainable without the permission of the District Magistrate. He also argued that the said alterations in fact enhanced the value of the accommodation as held by the High Court and were not material alterations within the meaning of the said clause. In our view clause (c) of section 3 (1) cannot bear the construction suggested by Mr. Desai. The clause is couched in simple and unambiguous language and in its plain meaning provides that it would be a good ground enabling a landlord to sue for eviction without the permission of the District Magistrate if the tenant has made or has permitted to be made without the landlord's consent in writing such construction which materially alters the accommodation or is likely substantially to diminish its value. The language of the clause makes it clear that the legislature wanted to lay down two alternatives which would furnish a ground to the landlord to sue without the District Magistrate's permission, that is, where the tenant has made such construction which would materially alter the accommodation or which would be likely to substantial diminish its value. The ordinary rule of construction is that a provision of a statute must be construed in accordance with the language used therein unless there are compelling reasons, such as, where a literal construction would reduce the provision to absurdity or prevent the manifest intention of the legislature from being carried out. There is no reason why the word "or" should be construed otherwise than in its ordinary meaning. If the construction suggested by Mr. Desai were to be accepted and the word "or" were to be construed as meaning "and" it would mean that the construction should not only be such as materially alters the accommodation but is

also such that it would substantially diminish its value. Such an interpretation is not warranted for the simple reason that there may conceivably be material alterations which do not, however, diminish the value of the accommodation and on the other hand there may equally conceivably be alterations which are not material alterations but nevertheless would substantially diminish the value of the premises. It seems to us that the legislature intended to provide for both the contingencies and where one or the other exists it was intended to furnish a ground to the landlord to sue his tenant without having to obtain the previous permission of the District Magistrate. The construction of clause (c) placed by the High Court is therefore not correct.

As regards the alterations, there is no dispute that the respondent carried them out without the permission of the appellants. The question then is whether they were such that they materially altered the accommodation as provided by clause (c). Without attempting to lay down any general definition as to what material alterations mean, as such a question would depend on the facts and circumstances of each case, the alterations in the present case must mean material alterations as the construction carried out by the respondent had the effect of altering the form and structure of the acconunodation. The expression "material alterations" in its ordinary meaning would mean important alterations, such as those which materially or substantially change the front or the structure of the premises. It may be that such alterations in a given case might not cause damage to the premises or its value or might not amount to an unreasonable use of the leased premises or constitute a change in the purpose of the lease. The High Court however seems to have relied on Hymen and Anr. v. Rose (1) where relief against forfeiture of lease was granted, inter alia, on the ground that the alterations carried out by the lessee had not done any harm to any one and the reversioner was in no way injured. But the question there was one of interpretation of a covenant contained in the lease and whether the alterations constituted waste. The leased premises were intended originally and were used as a chapel but on the leasehold being sold the assignees made the alterations complained of as they desired to use the premises as a cinema theatre. On these facts and the terms of the lease, the House of Lords held that in view of the fact that the lease did not prohibit the contemplated user of the premises as a cinematography theatre, the alterations in the circumstances of that case did not constitute any breach of the covenant and since the purchasers of the leasehold had offered as a condition of obtaining relief against forfeiture to deposit a sum of money to secure the restoration of the premises to their original condition at the end of the lease relief ought to be granted on the terms so offered. This decision in our view cannot be of assistance. As an illustration as to what a structural altera-

(1) [1912] A.C. 623.

tion means some assistance can be had from the decision in Wates v. Rowland and Another (1) though it was a case of interpretation of s. 2(1)(a) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920. The Court of Appeal there found that whereas substitution of titled floor for a wooden floor which had become rotten owing to rise in the water level in the land fell within the description of "repairs" within the meaning of s. 2(1)(a), the laying of the additional concrete bed provided the house with a better substratum than it had before and was an improvement or a structural alteration of the house within the meaning of the said section. Similarly in Bickomore v. Dimmer(2) Lord Cozens-Hardy L. J. construing a covenant against alterations in a lease, made a

distinction between alterations intended for the proper user of leased premises and material alterations observing that some limitation must be put on the word "alteration" in such a covenant and that it could not be applied to a change in the wall paper of a room or to the putting up of a gas-bracket, or the fixing of an electric bell, though in fixing it some holes might have to be made in the wall and that the covenant should be limited to something which alters the form or structure of the building.

Lowering the level of the ground floor by about 1-1/2 ft. by excavating the earth therefrom and putting up a new floor, the consequent lowering of the front door and putting up instead a larger door, lowering correspondingly the height of the Chabutra so as to bring it on the level of the new door-step, the lowering of the base of the staircase entailing the addition of new steps thereto and cutting the plinthband on which the door originally rested so as to bring the entrance to the level of the new floor are clearly structural alterations which are not only material alterations but are such as to give a new face to the form and structure of the premises. In this view the construction carried out by the respondent must fall within the mischief of clause (c) and entitles the appellants to maintain their suit for eviction without the permission of the District Magistrate and to a decree for eviction. Both the contentions urged by Mr. Desai must therefore fail. In our view, the High Court was in error in allowing the appeal of the respondent only on the ground that the said alterations did not appear to have caused any harm to the premises or that there was no such finding by either of the two courts below. The basis of the High Court's judgment was on the interpretation which it sought to put on clause

(c)an interpretation commended by Mr. Desai for our acceptance. As already stated, even if the alterations did not cause any damage to the premises or did not substantially diminish their value the alterations were material alterations and (1) [1952] 2 Q.B. 12. 7Sup.C.1166-9 (2) [1903] 1 Ch. 158.

on that basis alone the appellants were entitled to evict the respondent) We therefore allow the appeal, set aside the judgment and decree passed by the High Court and restore the judgment and decree passed by the First Additional Civil Judge, Varanasi, whereby he directed the eviction of the respondent. The respondent will pay to the appellants their costs throughout.

R.K.P.S.

Appeal allowed.