Supreme Court of India
National Spiritual Assembly Of ... vs Maharashtra State Khadi And ... on 25 January, 1994
Equivalent citations: 1994 SCC, Supl. (2) 704
Author: S Mohan
Bench: Mohan, S. (J)

PETITIONER:
NATIONAL SPIRITUAL ASSEMBLY OF BAHAIS OF INDIA

Vs.

RESPONDENT:
MAHARASHTRA STATE KHADI AND VILLAGE INDUSTRIES BOARD

DATE OF JUDGMENT25/01/1994

BENCH:
MOHAN, S. (J)
BENCH:
MOHAN, S. (J)
MUKHERJEE M.K. (J)

CITATION:
1994 SCC Supl. (2) 704

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. This is a simple appeal arising outof rent control proceedings under Section 13(1)(g) of the Bombay Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the 'Act'). This appeal has taken a circuitous course by reason of the landlord and the tenant trying to outwit each other. With this prefatory remark we go on to the minimum facts which are necessary for determination of this case. Appellant 1 (the National Spiritual Assembly of Bahais of India Society) came to purchase the suit property in March 1967 therein under the sale deed was Bungalow No. 2 of Sardar's Estate therein the final plot Nos. 437 and 439 in the Town Planning Scheme No. III Panchgani. Out of this property purchased the property forming part of the dispute is Bunglow No. 2 from Sardar's Estate bearing final plot No. 437 Scheme No. 111. At this stage, it requires to be stated that it is a common case between the parties that the second appellant is a charitable trust.

2. The second appellant ]eased out the property in favour of the first respondent. The tenancy was from month to month. However, the annual rent was fixed at Rs 1200. The second plaintiff invoking the benefit of Section 13(1)(g) of the Act sought eviction of the defendant. These are the facts averred in the plaint. In the written statement it has not been denied anywhere that the first appellant was the landlord and the payment of rent to the second appellant was by reason of any arrangement between the first and the second appellant. In other words that the second appellant was receiving rent on behalf of the first appellant.

3.In the plaint Section 13(1)(g) was invoked stating that the second appellant was entitled to receive the benefit of Section 13(1)(g). The trial court decreed the suit in favour of the plaintiff holding that the second plaintiff was the landlord and the premises were bona fide required for school. Thereupon appeal No. 289 was preferred by the respondents. At this stage an application was filed by the plaintiffs to lead an evidence that the second and the first appellants were the landlords. It also transpires that an opportunity was sought to establish the first appellant itself was a trust. This was objected to by the tenant. By an order dated 28-4-1978 this application was dismissed. Thereafter, the appellate court considered the matter and came to the conclusion that (the appellant) the first appellant alone was the landlord within the meaning of the Act. There was no bona fide requirement of the suit premises. It accordingly allowed the appeal and dismissed the suit. Special civil application was preferred under Article 227 of the Constitution to the High Court. The High Court concurred with the appellate court and confirmed the dismissal of the suit. Thus, Civil Appeal No. 704 of 1987 is filed.

4.Mr Soli J. Sorabjee, learned counsel appearing for the appellants took us through pleadings and submits that nowhere the respondent had denied the relationship of landlord and tenant between the second appellant and the respondents. In other words no case was made out in the pleadings that the second appellant was collecting rent on behalf of the first appellant. No doubt an attempt was made to clarify the position by means of amendment of pleading at the first stage but that was wholly unnecessary. In such a situation the lower appellate court was not right in concluding that the first appellant was the landlord which was not the plea of any party. The respondent was a tenant at the time of purchase by the first plaintiff. The crucial question is after purchase by the first plaintiff to whom did respondent attorney? There is nowhere a plea or even a suggestion that the attornment was in favour of the first appellant. On the contrary by a long course of conduct, namely, the payment of rent from 1967 in favour of the second appellant for which second plaintiff passed the receipts in evidence of such payments, it is clear that the tenant had attorned in favour of the second plaintiff. If this be so the second appellant becomes the landlord in its own right and entitled to the benefit of the latter half of Section 13(1)(g) as trust. Such a trust need not establish bona fide requirement. All that it requires to establish is, only the requirement for occupation for the purpose of trust. In this case, the second appellant trust is running the school. For the purpose of school eviction was sought. From this point of view, both the lower appellate court and the High Court had been wrong in deciding the case.

5.Mr A.M. Khanwilkar, learned counsel for Respondent 1 meeting the submissions would urge that it is the case of the tenant, that the ownership of the property vested in the first appellant. The second appellant was collecting rent on behalf of the first appellant. The first appellant is not a

charitable trust. In such a situation though as. a collecting agent the second appellant may be a landlord within the meaning of this Act, it cannot invoke the benefit of Section 13(1)(g) since the first appellant is the owner. If it wants to invoke the benefit of Section 13(1)(g) it can bring its case only within the scope of first half of Section 13(1)(g). This was why the lower appellate court held the first appellant is the owner and the bona fide requirement had not been proved. That is correctly confirmed from the High Court and no interference is warranted.

6.We have given our careful consideration to the above submissions. We find great force in what Mr Soli J. Sorabjee, learned counsel submits. We have gone through the plaint and the written statement. The case of the plaintiff is a simple one that the appellant (the second plaintiff) is the landlord under the provision of the Act. It is further averred that the defendant used to pay the rent of the said premises to plaintiff 2 and plaintiff 2 passed the receipts for the said amounts as and when paid. To these averments there is no denial in the written submission anywhere. We may also point out that there is not even a suggestion that the first plaintiff was the owner and the second appellant was collecting the rent on behalf of the first appellant as the collecting agent. If this was the state of the pleading, we do not know why the application was taken out at the appellate stage. This is the reason why we remarked the landlord and the tenant each trying to outwit other. In the counter-affidavit to the application for amendment, the stand is taken by the tenant it is true that the appellant used to send rent as per the directions of the owner of the property (the appellant herein is the tenant). Therefore, for the first time such an allegation comes to be made. Fortunately for the landlord, this application came to be rejected. Therefore, one is relegated to the original pleadings. Under such situation it is really difficult to appreciate how the lower appellate court had come to decide that the first appellant was the owner and the second appellant was collecting rent on its behalf. First of all this is not a suit in relation to title. The only question to be decided is as to who was the landlord within the meaning of Section 5(3) of the Act. Having regard to the comprehensive definition of landlord, the ownership pales into insignificance. That is evident from the following extract of the section:

> "5. (3) "Landlord" means any person who is for the time being, receiving, or entitled to receive, rent in respect of any premises whether on his own account or on account, or on behalf, or for the benefit of any other person or as a trustee, guardian, or receiver for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant; and includes any person not being a tenant who from time to time derives title under a landlord and further includes in respect of his subtenant, a tenant who has sublet any premises and also includes in respect of a licensee deemed to be a tenant by Section 15- A, the licenser who has given such licence."

7.The second appellant is collecting the rent and it has passed on receipts in evidence of such payment right from 1967. It stands to reason that the second appellant alone was the landlord within the meaning of Section 5(3). It is incorrect to hold that it was collecting rent on behalf of first appellant. One more point to be put against the tenant is, it was a tenant even prior to the purchase by the first appellant in March 1967. After purchase in whose favour did the respondent attorney has not been pleaded anywhere. However, as we held above, by long established conduct of payment of

rent from 1967 the second appellant has been recognised as a landlord. It would amount to attornment in law. Therefore, Section 116 of the Evidence Act would apply as against the tenant. The result of our discussion is it is the second appellant charitable trust (as noted above, which is the admitted case between the parties) is the landlord. Such being the result the latter half of Section 13(1)(g) would apply. There is no need for the second appellant to establish its bona fide. All that is required to do is to establish the requirement for the purpose of the school which has been established in this case. For these reasons, we set aside the judgment of the lower appellate court and that of the High Court and restore the decree of the trial court. There shall be no order as to costs.

8.Both the learned counsel for the landlord and the tenant are agreed to as regards the time to evict the premises:

(1) The landlord will not levy execution for a period of six months from today for evicting the tenant.

(2) This will be subject to the tenant filing the usual undertaking within four weeks from today to deliver vacant, peaceful possession without requiring the landlord to levy execution.