A NAGJI VALLABHJI & COMPANY

v.

MEGHJI VIJPAR & COMPANY
MEGHJI VIJPAR (DECEASED)
THROUGH HIS LRS.

B MAY 4, 1988

[R.S. PATHAK, C.J. AND M.H. KANIA, J.]

Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947-sub-section (4)(a) of section 4—Interpretation of—Dispute between sub-tenant and tenant regarding eviction of sub-tenant from premises in occupation of sub-tenant.

C

This appeal raised a short question as to the interpretation of sub-section (4)(a) of section 4 of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 ("the Bombay Rent Act").

D

The appellants were the sub-tenants of the respondent No. 1 Firm in respect of the premises called Gala No. 4 in a godown. Respondent No. 1 Firm were the tenants of the said godown, having taken a lease of the building from the Bombay Port Trust. The appellants were in occupation of the said Gala under written agreements executed from time to E **time for one year each. The last such agreement expired on 19th October, 1971. The respondent No. 1 Firm served a notice on the appellants on 13th January, 1972 to hand over possession of the said gala on the ground that the period of lease had expired. By notice dated February 3, 1972, the respondent No. 1 Firm terminated the tenancy of appellants and then filed a suit in the City Civil Court against the** F **appellants to recover possession of the premises in dispute *inter alia* on the ground that the period of lease had expired. The appellants took up the contention that they were not liable to be evicted as they were entitled to protection under the provisions of the Bombay Rent Act. The City Civil Court decreed the suit. On appeal by the appellants, the High Court (Single Judge,) holding that the notice of termination of tenancy** G **dated 3rd February, 1972, was a valid notice and the provisions of the Bombay Rent Act did not apply to the premises in question, upheld the decree of eviction passed by the City Civil Court. Letters Patent appeal against this judgment was dismissed by a Division Bench of the High Court. The appellants then moved this Court for relief by special leave.**

H **Dismissing the appeal, the Court,**

HELD: The only submission made by the appellants before the Court was that the said premises, viz, Gala No. 4, were entitled to the protection of the provisions of the Bombay Rent Act and the respondent No. 1 Firm was not entitled to a decree for eviction as no grounds for eviction under the Act had been made out. [910G]

The question raised was whether the protection of the sub-section (4)(a) of section 4 of the Bombay Rent Act was available to the sub-lessee in a building leased by the lessee from the Government or a local authority or put up by a lessee of the land belonging to the Government or a local authority but not under any building lease or pursuant to any obligation imposed on the lessee to put up a building. In this case, the entire building in which the premises in question, namely, Gala No. 4 were situated, belonged to the Bombay Port Trust. It was nowhere contended at any stage by the appellants that the building in which the said premises were situated was put up by the respondent No. 1 Firm. The Court was, therefore, not directly concerned with the position of a sub-lessee in a building put up by a lessee of the land taken from the Government or a local authority without being under any obligation to do so. [913D-F]

A plain reading of sub-section (1) of section 4 of the Bombay Rent Act makes it clear that the provisions of the Bombay Rent Act are not applicable to premises belonging to the Government or a local authority. Sub-section (4)(a) only takes out from the scope of the exemption conferred by section 4(1) "a building erected on any land held by any person from the Government or a local authority under an agreement, lease, licence or other grant, although having regard to the provisions of such agreement, lease, licence or grant the building so erected may belong or continue to belong to the Government or the local authority, as the case may be". If this provision were to be as including any building put up or erected on land held by any person from the Government or a local authority, the result would be that such protection would be available even against the Government or a local authority and the provision of sub-section (1) of section 4 may be rendered largely nugatory. The provisions of sub-section (4)(a) were never intended to take away the immunity conferred upon the premises belonging to the Government or a local authority, and if the provisions of section 4(4)(a) were to be construed as urged by the appellants, this immunity would be rendered practically nugatory. A plain reading of the provisions of sub-section (4)(a) in the context clearly shows that there is no intention therein to take a building put up by the Government or a local authority from the scope of the exemption conferred by sub-section (1) of section

A **4. The language of sub-section (4)(a) and sub-section (1) of section 4 of the Bombay Rent Act, read together, suggests that it was only in respect of a building put up by the lessee on the Government land or the land belonging to a local authority under a building agreement that the sub-lessees were taken out of the exemption contained in sub-section (1)**
B **of section 4 and allowed the benefit of the provisions of the Bombay Rent Act. It was significant that the exemption granted under the earlier part of sub-section (1) of section 4 is in respect of the premises and not in respect of the relationship. In order to confer the protection of the provisions of the Bombay Rent Act on the sub-lessees occupying the premises in any building erected on the government land or the land belonging to a local authority irrespective of the question who has put**
C **up the building as against the lessees of the land but without affecting the immunity conferred on the government or local authorities as contemplated by sub-section (1) of section 4 of the Bombay Rent Act, the Court would have to practically rewrite the provisions of section 4, and it was not open to the Court to do that. The argument of the**
D **appellants, therefore, could not be accepted. The learned Judge of the High Court was right in coming to the conclusion that the premises in question were not entitled to the benefit of the provisions of the Bombay Rent Act. [914A-H; 915A]**

The decision of this Court in *Kanji Manji* v. *The Trustees of the
E ***Port of Bombay,* [1962] Suppl. 3 S.C.R. 461 cited by the appellants was of no assistance to the case before the Court, and the decision of this Court in *Maneklal and Sons* v. *Trustees of Port of Bombay and Others,* [1984] 4 S.C.C. 733 cited by the appellants, far from supporting the submission of the appellants, militated against it. [916D]**

F **There was no merit in the appeal and it must fail. Taking the facts and circumstances of the case into consideration, the Court directed that the appellants would not be evicted from the premises in question until December 31, 1988. [916E]**

The Court observed that if the intention of the legislature was that
G **the protection should be given to the sub-lessee against the lessee in a building taken on lease by the lessee from the government or a local authority, it was for the legislature concerned to make appropriate amendments in the Bombay Rent Act and it was not open for the Court to re-write the provisions of sub-section (4)(a) of section 4 of the Bombay Rent Act on the ground of any such intention as suggested by**
H **Dr. Chitale counsel for the appellants. [916F]**

Bhatia Co-operative Housing Society Ltd. **v.** *D.C. Patel,* **[1953] 4 S.C.R. 185;** *Kanji Manji* **v.** *The Trustees of the Port of Bombay,* **[1962] Suppl. 3 S.C.R. 461;** *Maneklal and Sons* **v.** *Trustees of Port of Bombay and Others,* **[1984] 4 S.C.C. 733 and** *Ram Bhagwandas* **v.** *Municipal Corporation of the City of Bombay,* **AIR 1955 Bom. 364, referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4248 of 1986.

From the Judgment and Order dated 22.9.86 of the High Court of Bombay in L.P.A. No.66/86.

Dr. Y.S. Chitale, Kailash Vasudev and A.J. Dholakia for the Appellants.

S.A. Dave, E. Maqbool and Mrs. M. Karanjawala for the Respondents.

The Judgment of the Court was delivered by

KANIA, J. This Appeal, by Special Leave granted under Article 136 of the Constitution, raises a short but interesting question as to the interpretation of sub-section (4)(a) of Section 4 of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 (hereinafter referred to as "the Bombay Rent Act").

As the only point canvassed before us is a point of law, the relevant facts can be shortly stated.

The Appellants are the sub-tenants of Respondent No. 1 Firm in respect of Gala No. 4 or Bay No. 4 in a godown situated at the Grain Market at Dana Bunder in Bombay. Respondent No. 1 Firm were the tenants of the said premises, namely, the said godown in which the said Gala is situated, having taken a lease of the building in which it is situated along with the land on which the building stands from the Bombay Port Trust under a written agreement. The Appellants were in occupation of the said Gala under written agreements executed from time to time for a period of one year each. The last such agreement was executed on 7th November, 1970 and was to expire on 19th October, 1971, that is, at the end of Samvat year 2827. Respondent No. 1 Frim served a notice through their advocate on the Appellants on 13th January, 1972 to hand over the possession of the said premises, namely, the said Gala (referred to hereinafter as "the said premises")

A *inter alia* on the ground that the period of the lease had expired. In their reply dated 14th January, 1972, the Appellants contended that they were lawful sub-tenants of Respondent No. 1 Firm in respect of the said premises and were entitled to the protection of the Bombay Rent Act. Respondent No. 1 Firm in their reply denied that the Appellants were entitled to protection under the said Act. Respondent No. 1
B terminated the tenancy of the Appellants by their notice dated February 3, 1972. In the correspondence ensued thereafter between the parties, they repeated their respective stands. Respondent No. 1 filed a suit in the Bombay City Civil Court to recover possession of the said premises. The Appellants in their written statement took up the contention that they were not liable to be evicted as they were entitled
C protection under the provisions of the Bombay Rent Act. The Bombay City Civil Court decreed the suit of Respondent No. 1. On an appeal by the Appellants, a learned Single Judge of the Bombay High Court remanded the suit to the Bombay City Civil Court for recording findings on two questions, namely, (1) as to who were lessors of the defendants whose monthly tenancy commenced in the year 1957 and
D (2) whether that tenancy was legally and validly terminated. On remand the Bombay City Civil Court held that the lessors of the Appellants in 1957 were one Maghji and Kanji and that the tenancy of the Appellants was not validly terminated. Thereafter the Appeal of the Appellants came up for hearing before a learned Single Judge of the Bombay High Court. He held that the notice of termination of
E tenancy dated 3rd February, 1972 was a valid notice terminating the Appellants' tenancy and that the provisions of the Bombay Rent Act did not apply to the premises in question. The learned Single Judge upheld the decree of eviction originally passed by the Bombay City Civil Court. A Letters Patent Appeal was preferred against this judgment to a Division Bench of the Bombay High Court but the same was
F dismissed by a short order. This Appeal is directed against the judgment and order of the Division Bench of the Bombay High Court.

The only submission made before us by Dr. Chitale, learned Counsel for the Appellants, was that the impugned judgment was erroneous and liable to be set aside as the said premises, namely, the
G said Gala No. 4, were entitled to the protection of the provisions of the Bombay Rent Act and Respondent No. 1 Firm was not entitled to a decree for eviction as none of the grounds for eviction under that Act had been made out.

It may be mentioned here that for the purpose of this Appeal we
H intend to proceed on the assumption that Respondent No. 1 Firm has

not made out any ground which would entitle him to a decree for eviction under Section 13 of the Bombay Rent Act. Section 12 of the Bombay Rent Act provides that a landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays or is ready and willing to pay the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of the Bombay Rent Act. Section 13 provides that notwithstanding anything contained in the Bombay Rent Act but subject to the provisions of Section 15 and 15A, a landlord shall be entitled to recover possession of any premises if the court is satisfied with any of the grounds set out in that section is made out. Sub-section (1) of Section 4 of the Act which deals with the Exemptions reads as follows:

> "4. *Exemptions.*—
>
> (1) This Act shall not apply to any premises belonging to the Government or a local authority or apply as against the Government to any tenancy, licence or other like relationship created by a grant from or a licence given by the Government in respect of the premises requisitioned or taken on lease or on licence by the Government, including any premises taken on behalf of the Government on the basis of tenancy or of licence or other like relationship by, or in the name of any officer subordinate to the Government authorised in this behalf; but it shall apply in respect of premises let, or given on licence, to the Government or a local authority or taken on behalf of the Government on such basis by, or in the name of, such officer."

Sub-section (4)(a) to Section 4 which was introduced into the Bombay Rent Act by the Bombay Act 4 of 1953 runs as follows:

> "18(4)(a). The expression "premises belonging to the Government or a local authority" in sub-section (1) shall notwithstanding anything contained in the said sub-section or in any judgment, decree or order of a court, not include a building erected on any land held by any person from the Government or a local authority under an agreement, lease, licence or other grant, although having regard to the provisions of such agreement, lease, licence or grant the building so erected may belong or continue to belong to the Government or the local authority, as the case may be".

A It was contended by Dr. Chitale that although the building in which the said premises are situated belonged to the Bombay Port Trust which is admittedly a local authority as contemplated in Section 4 of the Bombay Rent Act, the said premises were excluded from the scope of the exemption provided by sub-section (1) of Section 4 of the Bombay Rent Act as the case fell within the scope of sub-section (4)(a) B of Section 4 of the Bombay Rent Act. It was urged by him that the said building was erected on land belonging to a local authority, namely, the Bombay Port Trust and hence the said premises must be considered to be outside the scope of the exemption provided by sub-section (1) of Section 4 and covered by the provisions of the Bombay Rent Act although the building might belong to the Bombay Port Trust.

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We may at this stage notice the legislative history in connection with sub-section (4)(a) of Section 4. The exemption granted under Section 4(1) of the Bombay Rent Act came up for consideration before the Supreme Court in the case of *Bhatia Co-operative Housing Society* D *Ltd.* v. *D.C. Patel,* [1953] 4 S.C.R. 185. The facts in that case were that the building site was auctioned to a person by the City Improvement Trust of Bombay with a condition that the bidder was to put up a building thereon of a certain description at a cost of not less than Rs.50,000 and after the completion of the building, the site and the building were to be leased to the bidder for a period of 99 years at a E fixed yearly rent. It was held that the building belonged to the Improvement Trust and not to the bidder and a suit by the lessee of the Improvement Trust against his sub-lessee was not governed by the Bombay Rent Act as the premises belonged to a local authority within the meaning of Section 4(1) of that Act. In analysing Section 4(1) of that Act, the Court pointed out that the sub-section has three parts, F namely, (1) This Act shall not apply to premises belonging to the Government or a local authority, (2) this Act shall not apply as against the Government to any tenancy or other like relationship created by grant from the Government in respect of premises taken on lease or requisitioned by the Government and (3) this Act shall apply in respect of premises let out to the Government or a local authority. The G Court observed that the conclusion was, therefore, irresistible that the Legislature did not by the first part intend to exempt the relationship of the landlord and tenant but intended to confer on the premises belonging to Government an immunity from the operation of the Act. The contention of the counsel for the sub-lessee that the immunity given by the first part should be held to be available only to the H Government or a local authority to which the premises belonged was

rejected. It was held that if the benefit of the immunity was given only to the Government or a local authority and not to its lessee and the Act applied to the premises as against the lessee, it must follow that under Section 15 of that Act, it would not be lawful for the lessee to sublet the premises or any part of it and that if such were the consequences, nobody would take a building lease from the Government or a local authority and the immunity given to the Government or a local authority would, for all practical purposes, and in so far as at any rate as the building leases are concerned, be wholly illusory and worthless and the underlying purpose for bestowing such immunity will be rendered wholly ineffective. As a result of this decision, the sub-lessees in a building put up by a lessee from the Government or a local authority under a building lease did not get any protection from being evicted at the sweet-will of the lessee and were denied the benefit of the provisions of the Bombay Rent Act. In order to obviate this hardship of sub-lessees, sub-section (4)(a), set out earlier, was introduced into the provisions of the Bombay Rent Act. The question, however, is whether the protection of that sub-section is available to the sub-lessee in a building leased by the lessee from the Government or a local authority or put up by a lessee of the land belonging to the Government or a local authority but not under any building lease or pursuant to any obligation imposed on the lessee to put up a building. We may make it clear in this connection that in the present case, the factual position emerging from the record appears to be that the entire building in which the said premises, namely, Gala No. 4 is situated belonged to the Bombay Port Trust. That is clear from the contents of clause (ii) of Paragraph (2) of the Special Leave Petition preferred by the Appellants as well as the other material on record. It has nowhere been contended at any stage by the Appellants that the building in which the said premises are situated was put up by Respondent No. 1 Firm. We are, therefore, not concerned with the position of a sub-lessee in a building put up by a lessee of the land taken from the Government or a local authority without being under any obligation to do so.

It was urged before us by Dr. Chitale that, if the sub-lessee in a building put up by a lessee on land leased from the Government or a local authority under a building lease is entitled to the protection of the Bombay Rent Act under the provision of Section 4(4)(a) thereof, there is no reason why such protection should be denied to a sub-lessee in any building belonging to the Government or a local authority and taken on lease by a private party regardless of the question as to who has put up the building. That may or may not be so but what we have to examine is whether the intention to confer such protection can be

A imputed to the legislature on the language of the said sub-section read in the context of the relevant provisions of the Bombay Rent Act. The plain reading of sub-section (1) of Section 4 makes it clear that the provisions of the Bombay Rent Act are not applicable to premises belonging to the Government or a local authority. Sub-section (4)(a) only takes out from the scope of the exemption conferred by Section B 4(1) "a building erected on any land held by any person from the Government or a local authority under an agreement, lease, licence or other grant, although having regard to the provisions of such agreement, lease, licence or grant the building so erected may belong or continue to belong to the Government or the local authority, as the case may be". If this provision were to be construed as including any C building put up or erected on land held by any person from the Government or a local authority, the result would be that such protection would be available even against the Government or a local authority and the provisions of sub-section (1) of Section 4 may be rendered largely nugatory. It is not disputed by Dr. Chitale that the provisions of sub-section 4(a) were never intended to take away the immunity D conferred upon the premises belonging to the Government or a local authority and if the provisions of Section 4(4)(a) were to be construed as urged by Dr. Chitale this immunity would be rendered practically nugatory. In fact, a plain reading of the provisions of sub-section (4)(a) in the context clearly shows that there is no intention therein to take out a building put up by the Government or a local authority from E the scope of the exemption conferred by sub-section (1) of Section 4. In fact, the language of sub-section (4)(a) and sub-section (1) of Section 4 of the Bombay Rent Act read together suggests that it was only in respect of a building put up by the lessee on the Government land or land belonging to a local authority under a building agreement that the sub-lessees were taken out of the exemption contained in sub-section F (1) of Section 4 and allowed the benefit of the provisions of the Bombay Rent Act. It is significant that the exemption granted under the earlier part of sub-section (1) of Section 4 is in respect of the premises and not in respect of the relationship. In order to confer the protection of the provisions of the Bombay Rent Act to the sub-lessees occupying the premises in any building erected on Government land or G on land belonging to a local authority irrespective of the question who has put up the building as against the lessees of the land but without affecting the immunity conferred to the Government or local authorities as contemplated by sub-section (1) of Section 4 of the Bombay Rent Act, we would have to practically rewrite the provisions of Section 4 and it is not open to us to do that. We are, therefore, unable to H accept the argument of Dr. Chitale and we are of the view that the

learned Judge of the High Court of Bombay was right in coming to the conclusion that the premises in question were not entitled to the benefit of the provisions of the Bombay Rent Act.

Before parting with the matter we may take note of some of the other decisions cited before us.

In *Kanji Manji* v. *The Trustees of the Port of Bombay*, [1962] Suppl. 3 S.C.R. 461 this Court took the view that if the Government or a local authority wants to evict a person from land belonging to the Government or a local authority, the provisions of the Bombay Rent Act do not come in the way. For the same reason, the suit for ejectment does not have to be filed in the Court of Small Causes as required by the Rent Control Act but in the City Civil Court. If the original lessees took on lease not only the land but also the building, it is not open to their assignees to claim that the ownership of the Government extended only to the land and not to the buildings. This decision is of no assistance to the case before us.

In *Maneklal and Sons* v. *Trustees of Port of Bombay and Others*, [1984] 4 S.C.C. 733 the facts, very briefly stated, were that Respondent No. 1 being the Trustees for the Port of Bombay were the owners of a plot of land situated in Bombay. In 1945, the trustees granted lease of the said plot of land to one Mustafa Husein for the purpose of erecting a godown for carrying on commercial activities. The godown was erected by Mustafa Husein in 1946 and in 1958 he granted a lease of the said godown to the petitioners in that case. The Trustees of the Port of Bombay filed a suit against Mustafa Husein for eviction. The lease granted to Mustafa Husein stood terminated. The ground of eviction was the termination of Tenancy. The Trustees obtained a decree against the heirs of Mustafa Husein. A warrant of possession in execution of decree was sought to be executed against the petitioners. The petitioners obstructed the execution of the decree. Thereupon, the Trustees took out a Chamber Summons in the High Court of Bombay for removal of obstruction. The petitioners contended that they were the lessees under the said Mustafa Husein and were entitled to the protection of the Bombay Rent Act. This Court pointed out that the word "premises" in sub-section (1) could mean the land or the buildings or both. Sub-section (4)(a) of the Bombay Rent Act dealt only with the buildings and did not deal with the land because it used the word "buildings" and not the more general word "premises". The import of sub-section (4)(a) of Section 4 was thus limited to buildings and did not extend to land. The sub-section, however, was drafted

somewhat inartistically and the obscurity of the language resulted in some difficulty. After considering the decision of the Bombay High Court in *Ram Bhagwandas* v. *Municipal Corporation of the City of Bombay*, AIR 1956 Bom. 364 this Court pointed out that as observed by Chagla, C.J., in the case of *Ram Bhagwandas,* (supra) by enacting sub-section (4)(a) of Section 4 of the Bombay Rent Act, the Legislature was seeking to protect by that sub-section tenants who occupied buildings put up upon land belonging to a local authority if the buildings occupied by them were constructed under an agreement under which the lessee was under an obligation to construct buildings. The protection of sub-section (4)(a) was to buildings and not to lands and the phrase "under an agreement, lease or other grant" modified not only the expression "held by any person from the Government or a local authority" but also "erected on any land". This Court pointed out that this was the view taken by this Court in *Kanji Manji Case,* cited earlier. On the basis of this conclusion, this Court dismissed the Special Leave Petition filed by the petitioner. This decision far from supporting the submission of Dr. Chitale, militates against it.

In the result, we find that there is no merit in the Appeal and it must fail. The Appeal is, therefore, dismissed with no order as to costs. However, taking into consideration of the facts and circumstances of the case we direct that the Appellants shall not be evicted from the premises in question until December 31, 1988.

We can only observe that if the intention of the Legislature is that the protection should be given to the sub-lessee against the lessee in a building taken on lease by the lessee from the Government or a local authority, it is for the Legislature concerned to make appropriate amendments in the Bombay Rent Act and it is not open for us to re-write the provisions of sub-section (4)(a) of Section 4 of the Bombay Rent Act on the ground of any such intention as suggested by Dr. Chitale.

S.L. Appeal dismissed.