DR. M. K. SALPEKAR

v.

SUNIL KUMAR SHAMSUNDER CHAUDHARI AND OTHERS

AUGUST 10, 1988

[R.S. PATHAK, CJ AND LALIT MOHAN SHARMA, J.]

C.P. & Berar Letting of Houses and Rent Control Order, 1949: Clause 13(3)(v)—Whether confined to only residential houses.

The respondent-landlords submitted two separate applications before the Rent Controller for permission to determine the tenancy of the appellant-tenant from their portions of the premises on the ground that the tenant had built a large house in the city and had thus secured alternative accommodation. The Rent Controller allowed the prayer. A Single Judge of the High Court dismissed the appellant's writ petition and his Letters Patent Appeal was also dismissed.

Before this Court the appellant's main contention was that the provisions of clause 13(3)(v) of the C.P. & Berar Letting of Houses and Rent Control Order, 1949 did not apply to non-residential buildings. The argument was that by the addition of the Explanation to clause 13(3)(v), non-residential buildings have been excluded from the purview of the sub-clause.

Dismissing the appeals it was,

HELD: (1) It cannot be reasonably suggested that by the addition of the Explanation, which is confined to cases dealing with residential buildings, a non-residential building is excluded even where the tenant leaves the area for a period of four months and does not need the house. [342G-H]

If the position in regard to the second category of cases remained unaffected, the Explanation cannot be construed to narrow down the scope of the first category of cases where the tenant secures alternative accommodation. [342H; 343A]

(2) It is not possible to split the main sub-clause so as to apply it to non-residential buildings where the tenant leaves the area for four months and at the same time exclude it where he secures alternative accommodation as the sub-clause deals with the two situations in the

A **same language without making any distinction. [343A-B]**

(3) The Explanation operates within a very narrow area and does not cover the entire field governed by the main sub-clause. By the use of the expression "shall be deemed" a legal fiction has been employed for the purpose of including a particular situation within the sweep of the
B **sub-clause. [343D]**

(4) It cannot be legitimately suggested that since in the majority of other States, similar provisions in the statutes on rent law are limited in operation to residential buildings, the same must be presumed to be the intention of the author of the Control Order. It is a question of
C **policy to be adopted by the different legislatures. [343G-H]**

Mansaram **v.** *S.P. Pathak,* **[1984] 1 SCC 125 referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1584-1585 of 1985.

D From the Judgment and Order dated 16.6.1984 of the Bombay High Court in L.P.A. Nos. 76 and 77 of 1984.

V.A. Bobde, A.G. Ratnaparkhi, S.D. Mudaliar and Ms. Alanjit Chauhan for the Appellant.

E U.R. Lalit and A.K. Sanghi for the Respondents.

The Judgment of the Court was delivered by

SHARMA, J. The main question in these cases is whether sub-clause (v) of Clause 13(3) of the C.P. & Berar Letting of Houses and
F Rent Control Order, 1949, (hereinafter referred to as the Control Order), applied to all buildings whether residential or non-residential, or was confined only to residential houses.

2. The civil appeals have arisen out of two proceedings initiated by the owners of the disputed premises for the eviction of the
G appellant-tenant on the ground that he has secured alternative accommodation and, therefore, does not reasonably need the house. The two premises are parts of the same building situate in Mahal Chowk in the city of Nagpur, and belong to a family of which the applicants, respondents before this Court, are members. The appellant-tenant Dr. M.K. Salpekar, who is a renowned doctor of Nagpur, has been
H occupying the premises as tenant for the purpose of his clinic since

1944. Admittedly he has built in Ramdaspeth, another part of the city, a large double storeyed house, and has let out portions thereof to the State Forest Department for running its office. On a partition amongst the members of the family of the owners of the Mahal Building the premises in possession of the appellant-tenant was allotted to the respondents in the two appeals, in parts and they started the present proceedings by two separate applications for permission to determine the tenancy of the appellant-tenant. The appellant defended the actions but the Rent Controller allowed the prayer of the respondents. The order was confirmed in appeal. The appellant moved the High Court under Article 226 of the Constitution. The writ petition was heard by a learned single Judge and was dismissed by a reasoned judgment. A Letters Patent Appeal was dismissed in limine. The appellant then filed the present civil appeals by special leave.

3. The necessary findings on the various issues involving facts were recorded in favour of the respondents by the Rent Controller as well as the appellate court and have been endorsed by the learned single Judge of the High Court.

4. Mr. Bobde appearing in support of the appeals has contended that the provisions of Clause 13(3)(v) quoted below, which are the basis for the impugned decision, do not apply to non-residential buildings:

> "13.(1) No landlord shall, except with the previous written permission of the Controller—
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> (a) give notice to a tenant determining the lease or determining the lease if the lease is expressed to be determinable at his option; or
>
> .....
>
> (3) If after hearing the parties the Controller is satisfied—
>
> (i) .....
> .....
>
> (v) that the tenant has secured alternative accommodation, or has left the area for a continuous period of four months and does not reasonably need the house;

A Explanation—For the purpose of this item the tenant shall be deemed to have secured an alternative accommodation if he owns a residential house in the city or town concerned and if such house is constructed on a site lying vacant on 1st January 1951 or on a site made vacant on or after that date by demolition of any structure standing on such site; or

B

(vi) .....

.....

he shall grant the landlord permission to give notice to determine the lease as required by sub-clause (1)."

C The courts were, therefore, in grave error in directing eviction of the appellant from the premises let out to him not for the purpose of his residence but for running a clinic. The argument is that the Explanation to the clause quoted above by referring to "a residential house in the city or town concerned" makes it abundantly clear that the clause D cannot be applied to a non-residential house, for, a residential house cannot be considered as alternative accommodation to a non-residential building.

5. The original Control Order did not include the Explanation; it was added later by an amendment. Sub-clause (v) referred to E "house" which by clause 2(3) means building or part of a building, whether residential or non-residential, and it cannot, therefore, be suggested that its application was limited to residential buildings only. While introducing the Explanation, the main sub-clause was left untouched. The substance of the argument addressed on behalf of the appellant is that by the addition of the Explanation, non-residential F buildings have been excluded from the purview of the sub-clause. We do not find any justification for this interpretation. The expression "house" used in the Control Order in the wider sense is retained and envisages two situations in which the landlord becomes entitled to possession, namely, (i) where the tenant secures alternative accommodation, and (ii) where he leaves the area for a continuous period of G four months. It cannot be reasonably suggested that by the addition of the Explanation, which is confined to cases dealing with residential buildings, a non-residential building is excluded even where the tenant leaves the area for a period of four months and does not need the house. If the position in regard to the second category of cases remained unaffected, the Explanation cannot be construed to narrow H down the scope of the first category of cases where the tenant secures

alternative accomodation. It is not possible to split the main sub-clause so as to apply it to non-residential buildings where the tenant leaves the area for four months and at the same time exclude it where he secures alternative accommodation, as the sub-clause deals with the two situations in the same language without making any distinction. A close look of the Explanation will also show that unlike the main sub-clause it deals with only a very limited class of cases where the tenant owns a residential house which was constructed on a site lying vacant on 1.1.1951 or on a site which became available on or after that date by demolition of any structure. Further, the main sub-clause is not restricted to cases where the tenant is the owner of the alternative building; it also applies where the tenant gets the alternative accommodation in another capacity, e.g., under a lease, or acquires the right of residence for life under a bequest. It is, therefore, manifest that the Explanation operates within a very narrow area and does not cover the entire field governed by the main-sub-clause. By the use of the expression "shall be deemed" a legal fiction has been employed for the purpose of including a particular situation within the sweep of the sub-clause. Without the Explanation there was some scope for controversy about the precise meaning of the expression "has secured" in the sub-clause, which by the inclusive nature of the Explanation is set at rest.

6. Mr. Bobde referred to several other State statutes on rent law to show that similar provisions corresponding to those in sub-clause (v) are limited in operation to residential buildings. It was urged that it should, in the circumstances, be assumed that the State Government while making the present Control Order also intended to limit the scope of the present sub-clause (v). There is no merit in this argument either. The list of the different State Acts prepared by the learned counsel itself shows that in four of them the corresponding provisions are applicable to both residential as well as non-residential premises. In the remaining Acts the relevant ground is restricted to residential buildings but in clear and unambiguous terms in the body of the section itself. They are, therefore, of no help to the appellant. Besides, it is a question of policy to be adopted by the different legislatures, and it cannot be legitimately suggested that since the majority of the State legislature have followed a particular policy, the same must be presumed to be the intention of the author of the Control Order in question before us. We, therefore, do not find any merit in the argument of the appellant for restricting the application of sub-clause (v) to residential buildings.

A 7. Mr. Bobde pressed two additional points. It is urged that the clause "and does not reasonably need the house" applies as a necessary condition to both categories of cases, that is, where the tenant secures alternative accommodation as also where he has left the area for a period of four months, and this the courts below have failed to appreciate. We do not agree. The punctuation 'comma' in the sub-
B clause after "alternative accommodation" and before the rest of the sentence indicates that the last part of the sub-clause namely "and does not reasonably need the house" governs only the second part of the sub-clause. However, this controversy is academic in nature because when a court is called upon to decide whether another building available to the tenant can be treated as alternative accommo-
C dation, it has to consider whether the other building is capable of reasonably meeting the requirements of the tenant on his vacating the disputed premises. The adjective "alternative" by itself imports this as a condition. And this aspect has been thoroughly gone into by the courts below and necessary findings have been recorded against the appellant.

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8. The last ground uged is that since "Ramdaspeth" house was built several years before the institution of the present proceedings, the applications should have been dismissed on the ground of undue delay. Reliance has been placed on *Mansaram* v. *S.P. Pathak and others,* [1984] 1 SCC 125. The learned counsel for the respondents in
E his reply contended that an action for enforcing a right filed within the period of limitation as fixed by law cannot be thrown out merely on the ground of delay. He also relied on the evidence in the present case indicating the special circumstances arising later justifying the belated filing of the application. Following a partition in the family of the landlord-respondents they became entitled to exclusive possession of
F the respective portions of the premises which are subject-matter of the two cases. The evidence also indicates that the appellant was in the process of retiring from active practice and was attempting to establish his son, who is also a doctor, in the premises in question. In that view there is no substance in the point urged. The facts in which the decision in *Mansaram's* case was rendered clearly indicate that it does not
G support the argument put forward on behalf of the appellant and no aid therefrom can be taken. The case of the plaintiff, there, was that the appellant-tanant had occupied the premises in question about 22 years earlier illegally and was, therefore, liable to eviction. It was pointed out by this Court that before the application for eviction, out of which the appeal before the Supreme Court arose was filed, there
H were numerous proceedings between the original landlord and the

tenant and this question about the illegal entry of the appellant had never been raised and it was only after the death of the original landlord that a "total stranger" had come forward to raise the issue and it was held that he was not entitled to do so. The principle of waiver was clearly applicable. We, therefore, do not find substance in any of the points urged on behalf of the appellant. The appeals are accordingly dismissed with costs. A B

R.S.S. Appeals dismissed.