1961

August 9.

MST. SUBHADRA

v.

NARSAJI CHENAJI MARWADI

(K. N. WANCHOO, K. C. DAS GUPTA and J. C. SHAH, JJ.)

Standard Rent—Land assessed for agricultural purposes—If 'premises'—Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947 (57 of 1947), ss.5(8), 6, 11.

The owner of a certain plot of land granted a perpetual lease of it on an annual rent to some persons who sublet it to the respondent on a higher rent. The respondent sublet the plot to the appellant on a still higher rent. In all the three deeds of lease it was recited that the lessee might construct buildings on the land after obtaining sanction of the appropriate authority but on the dates of all the three leases the plot was assessed for agricultural purposes under the Bombay Land Revenue Code, 1879. The appellant obtained sanction of the Collector for conversion of user of the land to non-agricultural purposes. The appellant thereafter applied to the court for fixation of standard rent of the plot under s.11 of the Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947. The respondent contended that the land when granted in lease being agricultural, the provisions of the Act did not apply thereto. The question which arose for decision was whether the plot of land was 'premises' within the meaning of s.5(8)of the Act.

Held, that the material date for ascertaining whether the plot is 'premises' is the date of letting and not the date of the application for fixing the standard rent. In the persent case the plot in dispute could not be regarded as 'premises' under s. 5(8) of the Bombay Act on the date of letting and the application for fixation of standard rent was not maintainable.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 356 of 58.

Appeal by special leave from the judgment and order dated January 21, 1955, of the Bombay High Court in Civil Revision Application No. 813 of 1953.

S. T. Desai, S. N. Andley and *Rameshwar Nath*, for appellant.

I. N. Shroff, for the respondent.

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1961. August 9. The judgment of the Court was delivered by

SHAH, J.—Plot No. 68 Town Planning Scheme No. 1 Jamalpur Ahmedabad, part of survey No. 405 Mouje Rajpur-Hirpur admeasuring approximately 38 Gunthas was owned by Bai Jekor and her two sisters. By a lease dated October 15, 1934, this plot of land was granted in lease by the owners in perpetuity to Gajjar Ramanlal Gordhandas and his brother at annual rental of Rs.558. The lessees—Gajjars—sublet by a lease dated February 7, 1946, the plot also in perpetuity to Narsaji Chenaji Marwadi—hereinafter referred to as the respondent—at an annual rental of Rs. 1,425. The respondent by deed dated April 25, 1947, sublet the plot to Subhadra—hereinafter referred to as the appellant—at an annual rental of Rs. 2,225. In all these three deeds, it was recited that the lessees may construct buildings on the land and for obtaining sanction in that behalf, the lessors shall make applications to the Collector or any other authority for that purpose. The plot on the dates of the three leases was assessed for agricultural purposes. Under the Bombay Land Revenue Code V of 1879, land assessed for agricultural purposes may be used for non-agricultural purpose if permission in that behalf is granted by the Collector. The appellant applied for permission for conversion of user of the land to non-agricultural purposes, and the Collector of Ahmedabad by order dated November 11, 1949, sanctioned conversion of the user. Thereafter, the appellant by application dated October 27, 1950, applied to the Court of Small Causes, Ahmedabad for fixation of standard rent of the plot under s.11 of the Bombay Rents, Hotel and Lodging Houses Rates, Control Act 57 of 1947—hereinafter referred to as the Act. The respondent contended that the land when granted in lease being agricultural, the provisions of Bombay Act did not apply thereto and the application was not maintainable. The

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Court of Small Causes upheld the contention of the respondent and dismissed the application. This order was confirmed in appeal to the District Court at Ahmedabad and in a revision application to the High Court of Judicature at Bombay. The appellant has, with special leave, appealed to this court against the order of the High Court.

It is common ground that till November 11, 1949, the plot was assessed for agricultural purposes under the Bombay Land Revenue Code. In the year 1947, the plot was undoubtedly lying fallow, but on that account, the user of the land cannot be deemed to be altered. User of the land could only be altered by the order of the Collector granted under s. 65 of the Bombay Land Revenue Code. Section 11 of the Bombay Act 57 of 1947 enables a competent court upon application made to it for that purpose to fix standard rent of any premises. But s. 11 is in Part II of the Act and by s. 6 cl. (1), it is provided that in areas specified in Schedule I, Part II applies to premises let for residence, education, business, trade or storage. There is no dispute that Part II applied to the area in which the plot is situate ; but before the appellant could maintain an application for fixation of standard rent under s. 11, she had to establish that the plot of land leased was "premises" within the meaning of s. 5(8) of the Act and that it was let for residence, education, business, trade or storage. For the purposes of this appeal, it is unnecessary to consider whether the plot was let for residence, education, business, trade or storage. The expression "premises" is defined by s. 5 (8) and the material part of the definition is :

> "In this Act, unless there is anything repugnant to the subject or context—
>
> x x x x
>
> (8) "premises" means—
>
> (a) any land not being used for agricultural purposes,

(b) any building or part of a building let separately (other than a farm building) including—

(i) the garden, grounds, garages and out-houses if any, appurtenant to such building or part of a building,

(ii) any furniture supplied by the landlord for use in such building or part of a building,

(iii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof.

x x x x

Reading s. 5 sub-cl. (8) with s. 6(1), it is manifest that Part II of the Act can apply in areas specified in Sch. II to lands (not being used for agricultural purposes) let for residence, education, business, trade or storage. The material date for ascertaining whether the plot is "premises" for purposes of s. 6 is the date of letting and not the date on which the application for fixation of standard rent is made by the tenant or the landlord. We agree with the High Court that the plot in dispute could not be regarded as "premises" inviting the application of Part II of the Act. The application filed by the appellant under s. 11 for fixation of standard rent was therefore not maintainable.

The appeal fails and is dismissed with costs.

Appeal dismissed.