

(2016) 09 BOM CK 0054

In the Bombay High Court

Case No : Writ Petition No. 2531 of 2010

Anand Shankarlal Tiwari

APPELLANT

Vs

Gulshan Santram Sahani

RESPONDENT

Date of Decision : 16-09-2016

Acts Referred:

Constitution of India, 1950 — Article 227
Maharashtra Rent Control Act, 1999 — Section 16(1)(g)

Citation : (2016) 2 RCRRent 466

Hon'ble Judges : A.S. Chandurkar, J.

Bench : Single Bench

Advocate : A.C. Dharmadhikari, Advocate, for the Petitioner; R.M. Sharma, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Chandurkar, J.—The petitioner who is the tenant of the premises owned by the respondent has challenged the decree for eviction passed by the trial Court under the provisions of Section 16(1)(g) of the Maharashtra Rent Control Act, 1999 (for short, the said Act) which decree has been affirmed by the District Court in appeal.

2. The facts giving rise to this writ petition are that it is the case of the respondent that he is the owner of shop block no.10 admeasuring about 429 sq. ft. along with mezzanine floor and loft in a building known as Seva Sadan located at Central Avenue Road, Nagpur. These premises were let out to the petitioner on rent of Rs. 1650/per month. The petitioner was doing business of Sanitary Ware and hardware in the name and style of M/s Laxmi Agency in the said premises. According to the respondent, he was running transport business in the name and style of M/s Maharaj Garage and Company. The said business was being run in partnership along with other family members. The son of the respondent was assisting the respondent in the transport business, but he wanted to start his own business. Though the respondent owned other premises, the same was let

out to a tenant. The premises occupied by the petitioner were most suitable for his son to start his business. According to the respondent, the petitioner also owned a building consisting of ground floor, first floor and second floor at Central Avenue Road. On the ground floor of the said building, there were three shop blocks occupied by three different tenants. Thus, on the ground that the respondent was in bona fide need of the suit premises so as to settle his son in business, the respondent filed Regular Civil Suit No.63/2008 on 22-2-2008.

3. The petitioner filed his written statement and took the stand that in absence of other co-owners of the suit property, the respondent alone had no locus to file the suit for eviction. The stand was taken that the suit premises comprise of a front portion bearing block no.9 and rear portion bearing No.27. The premises were initially owned by the mother of the respondent who had let out the same to the petitioner. The respondent used to collect rent on behalf of his mother as well as on his own behalf. It was then pleaded that the respondent had various properties including a residential house and these premises were sufficient to satisfy the need of his son. It was alleged that the facts pertaining to other properties owned by the respondent had been suppressed. A further plea was taken that the petitioner only had 1/4th share in the joint family property that was situated at Central Avenue road. It was averred that greater hardship would be caused to the petitioner in case the decree for eviction was passed and it was, therefore, pleaded that the suit be dismissed.

4. Before the trial Court the parties led evidence. The respondent examined himself and his son while the petitioner examined himself, one Omprakash Barapatre, manager of Corporation Bank, one Amit Prasad serving in the Income Tax Department and one Subhash Dhanare who was serving in the Slum Department of the Municipal Corporation as a clerk.

5. The trial Court after consideration of the entire evidence on record held that the respondent was the landlord of the petitioner and that since the year 1995, the petitioner had been paying rent to him. It was further held that the respondent had succeeded in proving bona fide need as regards requirement of the said property for enabling his son to start business. It was also held that greater hardship would be caused to the respondent if such decree was not passed. The trial Court also held that the presence of coowners of the suit property was not necessary and that the premises did not fall within slum area. By judgment dated 26-3-2009 the trial Court decreed the suit.

6. The petitioner being aggrieved by the aforesaid decree challenged the same by filing an appeal under Section 34 of the said Act. The appellate Court on reappraisal of the evidence on record confirmed the findings recorded by the trial Court. The bona fide need of the respondent was upheld and the finding that the greater hardship would be caused to the respondent was also confirmed. On that basis by judgment dated 11/12/2009, the appellate Court maintained the decree for eviction. This judgment is under challenge in the present writ petition.

7. Shri A.C. Dharmadhikari, the learned Counsel for the petitioner submitted that both the Courts erred in upholding the bona fide need of the respondent. It was submitted that the respondent alone was not the exclusive owner of the suit premises and in the absence of other coowners he was not authorised to file the suit for eviction. According to him, the respondent had no exclusive right over the suit property nor was there any evidence to show that any authority was given to the respondent to initiate proceedings for eviction of the petitioner. There were no averments in the plaint that the other owners of the suit property had consented to the initiation of the proceedings. It was urged that the respondent was merely a "rent collector" and in view of the explanation to the provisions of Section 16(1)(g) of the said Act, the suit at the instance of a rent collector for bona fide need of the suit premises was not maintainable.

It was then submitted that the respondent had not approached the Court with clean hands. There was suppression of the material facts as regards the ownership of other properties by the respondent. The source of income of his son was not brought on record. Despite the fact that the respondent was owning sufficient other premises, the eviction of the petitioner was sought which indicated lack of bonafides on his part. It was merely a case of desire to have vacant possession as contrasted with genuine need. It was further submitted that the respondent had not made out any case of bona fide need for his son. As per the case of the respondent, his son was doing transport business and despite that he intended to change his business to that of Sanitary ware and Hardware. The partnership deed of M/s Maharaj Garage was also not placed on record deliberately by the respondent. As regards the aspect of hardship, it was submitted that the petitioner was doing business in the suit premises since the year 1989 and had acquired goodwill therein. The property in which the petitioner had some share was occupied by the three tenants and proceedings initiated for their eviction were pending. If the petitioner was evicted, he would not have any other premises to do business and therefore, greater hardship would be caused to him. It was thus submitted that both the Courts by failing to take into consideration these relevant aspects committed an error in directing eviction of the petitioner. In support of his submissions, the learned Counsel placed reliance upon the following decisions:

- [1] Subhash K. Thakkar v. Rushad Dineshaw and others, 2005(4) Mh.L.J. 353.
- [2] Balkrishna H. Patil v. Madhukar Madhavrao Deshpande, 1999(2) Mh.L.J. 304.
- [3] S.P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others, AIR 1994 Supreme Court 853.
- [4] Badrinarayan Chunilal Bhutada v. Govindram Ramgopal Mundada 2003(3) ALL MR 1141 (S.C.)
- [5] Kempaiah v. Lingaiah and others (2001) 8 Supreme Court Cases 718.
- [6] Remco Inds. Workers House Bldg. Coop. Soc. v. Lakshmeesha M. and Ors.,

2003 SAR (Civil) 804.

[7] H.S. & W. Mills v. H.C.M.S.K.K.S.S., 2007(5) Mh. L.J. 801.

[8] Lajpat Rai v. Smt. Vidya Wati, 1998 (1) Civil LJ 566.

[9] R.K. Madhuryyajit and another v. Takhellambam Abung Singh and another 2002 (2) Civil LJ 55.

[10] Sukhadeo v. Laxmibai 1979 Mh.L.J. 546.

[11] Eknath Bhanudas v. Shankarrao, 1971 Mh.L.J. 546.

[12] Janba Daulatrao Borkar v. Rajeshkumar Ramjiwan Agarwal, 1975 Mh.L.J. 746.

8. Per contra, Shri R.M. Sharma, the learned Counsel for the respondent supported the decree for eviction. According to him, the grounds raised by the petitioner for challenging the decree for eviction were considered by both the Courts and it had been concurrently held that a case of bona fide need of the respondent so as to settle his son was made out. He submitted that the submission made on behalf of the petitioner that other co-owners/joint owners had not consented to the filing of the present proceedings was misconceived inasmuch as even one co-owner could seek eviction of a tenant. It was not the case that the other co-owners/joint owners were opposing the prayer for eviction made by the respondent. His plea that the respondent was merely a "rent collector" was not raised in the written statement nor was the same argued either before the trial Court or the appellate Court. The same was being raised for the first time in the writ petition. It was submitted that the respondent was not a "rent collector" but being the joint owner of the property, he was entitled to seek eviction of the petitioner. According to the learned Counsel, the intention of the respondent's son to start business of Sanitaryware could not be doubted as it was for the son to decide as to which particular business he should start. It was not necessary that he should have had necessary expertise in that regard. It was, therefore, submitted that both the Courts had recorded clear findings of fact and the same was not liable to be interfered with in writ jurisdiction. In support of the decree for eviction, the learned Counsel placed reliance upon the following judgments:

[1] Kedarnath Bohra and another v. Md. Safiulla and another, AIR 1984 Patna 172.

[2] Akhileshwar Kumar and others v. Mustaqim and others, AIR 2003 Supreme Court 532.

[3] Goverdhandas v. Bherulal Uderam, 2005(3) Mh.L.J. 196.

[4] Shamshad Ahmed and others v. Tilak Raj Bajaj through legal heirs, (2008) 9 SCC 1.

[5] Jainuddin Abdul Rehman Shaikh v. Sitaram Damodar Varvadkar and others

1981 Mh.L.J. 498.

[6] Sri Ram Pasricha v. Jagannath and others (1976) 4 Supreme Court Cases 184.

[7] Mohinder Prasad Jain v. Manohar Lal Jain, (2006) 2 Supreme Court Cases 724.

[8] Sara Rauf and another v. Durgashankar Ganeshlal Shroff and others, 2007(4) Mh.L.J. 129.

[9] Lingala Kiondala Rao v. Vootukkuri Narayana Rao, AIR 2003 Supreme Court 2077.

[10] Meenal Eknath Kshirsagar (Mrs.) v. Traders & Agencies and another, (1996) 5 Supreme Court Cases 344.

[11] Yogesh Dattaram Pathak v. Shrikrishna Shriram Joshi, 2003 (Supp.) Bom. C. R. 587.

[12] Premprakash Hukumatray Sethi v. Smt. Vandana Bhalchandra Altekar 2002 (2) RCJ 123.

[13] Sait Nagjee Purushotham and Co. Ltd. v. Vimalabai Prabhulal and others (2005) 8 Supreme Court Cases 252.

9. I have heard the respective Counsel for the parties at length and I have given due consideration to their submissions. I have also gone through the contents of the affidavit dated 07-07-2016 filed by the petitioner as well as the counter-affidavit dated 14-07-2016 filed by the respondent. The subsequent events sought to be brought on record vide C.A. No. 1512/2016 by the petitioner as well the reply filed thereto have also been taken into consideration.

Before examining the merits of the rival submissions, it has to be kept in mind that this Court is exercising jurisdiction under Article 227 of the Constitution of India and the present proceedings cannot be treated to be an appeal in disguise. If the findings recorded by both the Courts are based on material available on record and such appreciation of evidence is not found to be perverse, this Court would be slow in interfering with said findings merely because another view of the matter was possible. This approach is in the light of the judgment of the Hon"ble Supreme Court in Shamshad Ahmad and others (supra).

10. Considering the challenge to the entitlement of the respondent to file the present proceedings, in the plaint it was pleaded that the respondent was the owner of shop block No.10 that was occupied by the petitioner as tenant. In the written statement, the petitioner pleaded that he was not aware whether the respondent was the owner of the suit property. It was further pleaded that the suit premises were let out to the petitioner by the respondent's mother and that the respondent used to collect rent on behalf of his mother as well as for himself. In the evidence of the respondent, it was admitted by the respondent that initially two rent receipts were being issued, one by his mother and one by

himself. It was denied that the tenancy of the two portions of the suit property was separate as claimed. The petitioner in his deposition admitted that after the death of the mother of the respondent in the year 1995, he was paying rent to the respondent for the entire premises.

From the aforesaid material on record both the Courts have found that since May 1995, the petitioner was paying rent of the suit premises to the respondent without any protest. There was no rival claim set up by any other coowner nor was there any such evidence brought on record by the petitioner. In the backdrop of this material on record, I do not find that both the Courts committed any error in holding the respondent entitled to seek eviction of the petitioner by filing the present proceedings. The decisions in Jainuddin Abdul Rehman Shaikh and Sriram Pasricha (supra) support the stand of the respondent. The ratio of the decision in Subhash K. Thakkar (supra) cannot be made applicable to the facts of the present case.

11. As regards the submission that the respondent merely being a "rent collector", he could not have sought eviction of the petitioner on the ground of bona fide need, such plea was not raised in the written statement. The stand that the plaintiff was merely a "rent collector" and therefore, not entitled to file proceedings for eviction under the provisions of Section 16(1)(g) of the said Act is a plea based on facts. Unless such stand is taken in the written statement and is thereafter substantiated by leading evidence, the same cannot be permitted to be raised for the first time in these proceedings. In any event, on the basis of the material on record I do not find that the respondent can be treated as a "rent collector". After the death of his mother in the year 1995, the petitioner had been paying the entire rent to the respondent and he had even admitted that prior thereto the respondent was receiving rent on behalf of his mother as well as on his own behalf. Hence, said submission made on behalf of the petitioner cannot be accepted and for said reason, the reliance placed upon the decision in Balkrishna H. Patil (supra) is misconceived.

12. In so far as bona fide need of the respondent is concerned, it is the case of the respondent that the suit premises were required to enable the son of the respondent to start business in Sanitaryware and Hardware. The evidence on record indicates that the respondent's son was assisting his father in the transport business that was being run in the name of M/s. Maharaj Garage. He, however, intended to start his independent business. Absence of sufficient experience with regard to the business proposed to be started is not necessary. If the properties in which the respondent had interest are considered, besides the suit property there was an office block at Transport Nagar that was let out to a tenant. This property admeasured 300 sq. ft. and was situated in the area known as Transport Nagar wherein offices of transport operators were situated. The transport business of M/s Maharaj Garage and Company was being run at Mirchi Bazar. The said business was a partnership business which included the interests of the brother of the respondent and his nephews. In so far as the

residential house is concerned, the same was jointly owned by the family of the respondent and was not suitable for doing any business.

13. The subsequent events sought to be brought on record by the petitioner are not such that would overshadow the bona fide need of the respondent. The property said to have been purchased on 03-06-2010 does not exclusively belong to the respondent. After considering the material placed on record including the affidavits of the parties, I do not find that there has been suppression of any material facts on the part of the respondent so as to apply the ratio of the decision in *S.P. Chengalvaraya Naidu (supra)*. The respondent is entitled to succeed on the strength of his own case as observed in *Remco Inds. Workers House Bldg. Coop Society (supra)*. His case stands duly proved on the basis of evidence led by him. The reliance placed by the learned counsel for the petitioner on the decisions in *Hindoostan Spg. & Wvg. Mills Ltd, Lajpat Rai and R. K. Madhuryyajit and anr. (supra)* do not assist the case of the petitioner. In the light of the available properties, it cannot be said that by intending to start business of Sanitaryware and Hardware at the suit premises such intention was not bona fide. As held in *Minal Eknath Kshirsagar (supra)*, the landlord is the best judge of his needs and it is for him to decide which business has to be done. The observations of the Hon''ble Supreme Court in *Badrinarayan Chunilal Bhutada and M/s Sait Manji Purushottam and Company (supra)* support the case of the respondent. The view taken by both the Courts in that regard, therefore, cannot be faulted. The need of the respondent is found to be bona fide as contrasted with a mere desire and the learned Counsel for the respondent is justified in relying upon the judgment of learned Single Judge in *Sara Rauf and another (supra)*. The ratio of the decision of the Hon''ble Supreme Court in *Kempaiah (supra)* and learned Single Judge in *Eknath Utane and Janba Borkar (supra)* does not assist the case of the petitioner.

14. On the question of hardship, it is true that the petitioner is in occupation of the suit premises since the year 1989. However, mere long occupation by the tenant in the tenanted premises cannot be a ground by itself to hold that greater hardship would be caused to the tenant if he is evicted. The record indicates that the petitioner is the owner of House No.633 which is a two storied building. On the ground floor of said premises, there are three shop blocks. Though the same are presently occupied by tenants and proceedings for their eviction are pending at the instance of the petitioner, the same cannot be a ground to hold that the respondent should wait till these proceedings are decided and vacant possession is obtained by the petitioner. In fact, the proceedings initiated by the petitioner against the tenant namely *Smt Tulsabai Tijoriwala* have been remanded tot he Rent Controller. It would be unfair to expect the respondent''s son to wait till the petitioner secures vacant possession of the premises occupied by the tenants of the petitioner. The petitioner has admitted in his deposition that he did not take any search of alternate premises after the suit for eviction was filed. As observed in *Omprakash Sethi (supra)*, the tenant should take steps to search for alternate accommodation after the initiation of eviction proceedings. Hence, I do not find

any reason to interfere with the finding on the question of greater hardship being caused to the respondent if the decree for eviction is not passed.

15. Thus, from the aforesaid, I do not find that both the Courts have committed any error whatsoever in holding that the respondent had made out a case of bona fide need for evicting the petitioner. In the absence of any jurisdictional error whatsoever in the adjudication by both the Courts, there is no case made out to interfere in writ jurisdiction under Article 227 of the Constitution of India. As a result, the decree for eviction is liable to be confirmed.

16. In view of aforesaid, the writ petition stands dismissed. Rule stands discharged with no order as to costs.

17. At this stage the learned counsel for the petitioner seeks continuation of interim relief so as to protect his possession. This request is opposed by learned counsel for the respondent. In the facts of the case, the interim order is continued for a period of six weeks from today. The petitioner shall deposit the amount of compensation at the rate of Rs. 5,500/per month for the period for which the interim order is continued. Said amount be deposited within a period of four weeks from today. The respondent would be at liberty to withdraw the amount of compensation already deposited along with accrued interest as well as the amount of compensation that would be deposited as directed herein above.

18. Order accordingly.