

(1992) 03 BOM CK 0014

In the Bombay High Court

Case No : Writ Petition No's. 974, 978, 990 and 993 of 1988 and 804 of 1989

Arco Roadways Private Limited

APPELLANT

Vs

Smt. Gawarajabai Sikchi

RESPONDENT

Date of Decision : 17-03-1992

Acts Referred:

Citation : (1994) 3 BomCR 120

Hon'ble Judges : A.A. Desai, J

Bench : Single Bench

Advocate : J.N. Chandurkar, in W.P. Nos. 974, 978, 990 and 993 of 1988, for the Appellant; S.G. Aney in W.P. Nos. 974, 978, 990 and 993 of 1988, P.Y. Deshpande in W.P. No. 804 of 1989 and A.M. Gordey in W.P. No. 804 of 1989, for the Respondent

Final Decision : Allowed

Judgement

A.A. Desai, J.—These petitions at the instance of tenants are directed against the permissions granted by the Rent Control Authorities to terminate their tenancy. They arose out of common questions of facts and law. Hence, they are heard together and are being disposed of by this common judgment.

2. The respondents are members of Sikchi family. The family in 1950 constructed five godowns in a locality known as 'Mofussil Compound', Ward No. 43, Amravati. It appears that ownership of the godowns has individually been transferred to the respondents. Accordingly, respondent Gawarajabai owns godown bearing Municipal No. 147(B) admeasuring 42" x 37" and godown bearing Municipal No. 288(G) admeasuring 50" x 30". Respondent Sarlabai owns godown bearing Municipal No. 140(B) admeasuring 50" x 20". Respondent Sulochanabai owns godown bearing Municipal No. 140(C) admeasuring 54" x 20". In early 1970, these respondents let out the godowns to petitioners for carrying business of transportation, by creating separate leases for each godown.

3. Sometime in October-December, 1982, the respondents-landladies with other

members of the family entered into partnership styled as 'M/s. Rajesh Auto' dealing in two wheelers and television sets, 'M/s. Anurag Enterprise' and 'M/s. Abhishek Enterprise' - both dealing in distribution and exhibition of cinema films. Each firm has a separate registration and business.

4. In May 1983, the respondents filed five separate applications under Clause 13(3)(vi) and (ix) of C.P. and Berar Letting of Houses and Rent Control Order, 1949 (hereinafter referred to as 'the Rent Control Order, 1949') seeking permission to terminate the tenancy of the petitioners. Though independently pleaded, their common case is that they are the prominent partners of their respective firms and they require the tenanted godowns for carrying on business of the firms. Moreover, parking of trucks and loading and unloading of goods by the petitioners-tenants create nuisance to them and also to the persons in the neighbourhood.

The petitioners-tenants resisted the claim of bona fide need. According to them, Sikchi family has several premises and open plots in the city of Amravati. The formation of the firms is with a mala fide intention to evict the petitioners. They have also denied the allegations of nuisance.

The Rent Controller granted permission to terminate the tenancy, as sought. In appeal, the same has been maintained. Hence, these petitions at the instance of the tenants styled as under Articles 226 and 227 of the Constitution.

5. Shri Aney and Shri Gordey, the learned Counsel appearing for the respondents-landladies, tried to urge that the petitions under Article 226 of the Constitution are not maintainable. The High Court cannot issue a writ of Certiorari and also cannot act as an appellate Authority. In support, they relied on certain Authorities. The submission as made is wholly misconceived.

The Authorities under the Rent Control Order are charged with a statutory duty. Their function is quasi-judicial. High Court, by Article 227 of the Constitution, is invested with a superintending jurisdiction to be exercised so as to ascertain as to whether such Tribunal functions in conformity and within the parameters of the relevant law. The orders impugned are amenable to Article 227 of the Constitution. The facts, grounds and relief as involved, however, do not justify invoking of Article 226 of the Constitution. These petitions are being entertained under Article 227 of the Constitution.

6. Shri Chandurkar and Deshpande, the learned Counsel appearing for the petitioners-tenants, assailed the impugned orders. According to them, the applications as presented by the respondents-landladies do not satisfy the requirement of sub-clause (vi) of Clause 13(3) of the Rent Control Order, 1949. The need as put forth by each landlady, according to the learned Counsel, is not for individual. The claim is in a capacity of partner and for the business of their respective firms. The respondents have not disclosed the premises possessed and owned by them and also by other partners of firms. They have also not disclosed the extent of need of each firm. The peculiarity of the claim is that for

the same firm and business, each respondent, as a partner, claimed separately premises tenanted by them. However, each of them has not made reference to the claim made by other. Device as adopted is ingenious. The claim as put forth, according to the learned Counsel, suffers from malice and the need is neither genuine nor bona fide.

It is pointed out that the Rent Control Authorities have not adverted to the pertinent aspects. They have committed a patent illegality in holding that the petitioners-tenants have failed to prove that the respondents-landladies have sufficient accommodation. According to the learned Counsel, the onus is on the respondents and the burden cannot be shifted to the petitioners. As such, the impugned orders suffer from the illegal exercise of jurisdiction. The submission as advanced on behalf of the petitioners-tenants is well founded.

7. The learned Counsel for the respondents-landladies tried to urge that the Rent Control Authorities after considering the material placed, recorded concurrent findings. Even if there is any error or illegality, it cannot be corrected in exercise of superintending jurisdiction. The petitioners have not made out any case either of lack or want of jurisdiction. As such, the impugned orders do not warrant any interference.

There could not be any debate on a general proposition as canvassed. The orders impugned even if within the jurisdiction of the Rent Control Authorities, could be amenable to Article 227, if passed in exercise which is derogatory to the mandate of law.

8. Respondents Gawarajabai and Sarlabai, as discussed, each hold two tenanted godowns. Both of them are the partners in M/s. Rajesh Auto. All these four godowns have separately been claimed for the business of M/s. Rajesh Auto, namely, to keep and store vehicles and other articles and to develop and make progress in the business of the said firm.

Respondent Gawarajabai is also a partner in M/s. Anurag Enterprise. She also claims some two tenanted godowns for the business of the said firm. Respondent Sulochanabai is a partner in M/s. Anurag Enterprise and M/s. Abhishek Enterprise. She has also claimed her godown for the business of the said firms, namely, storing safety films, publicity material, etc.

Respondent Gawarajabai has not disclosed the premises presently available to M/s. Rajesh Auto. Respondent Sarlabai makes a reference to a small room at Morshi road. Moreover, respondents Gawarajabai and Sulochanabai have not disclosed the premises presently available to M/s. Anurag Enterprise and M/s. Abhishek Enterprise.

Undisputedly, the claim as put forth is independent. However, the same is interlinked and for a common purpose. None of the respondents made any reference to the claim put forth by another. All the respondents-landladies have calculatedly omitted to specify the extent of need of each firm. This aspect

necessarily fortifies the contention of the petitioners-tenants that the need as presented is not genuine and floated with an oblique motive.

9. Shri Aney relying on a decision in *Bhanjibhai v. N.P. Pashine*, 1957 N.L.J. 21, made a submission that the need of a landlord or landlady ought to be reasonable. It is not necessary for sub-clause (vi) of Clause 13(3) of Rent Control Order, 1949 that such need should be either pressing or dire. It is urged that taking into consideration the nature of business of each firm, the extent of need could be a matter of inference. Moreover, in the submission of the learned Counsel, the rule of pleading has no strict application to the instant proceedings. The submission as made is totally misconceived.

No doubt, the requirement of landlord or landlady must be a need based and reasonable. Such need cannot strictly be assessed with a mathematical calculation. However, sub-clause (8) of Clause 13 of the Rent Control Order, 1949 directs the Rent Controller to hold enquiry into the claim presented by the landlord under Clause 13(3)(vi). The Rent Controller, after having satisfied, may grant permission to terminate the tenancy as regards the entire premises or a part thereof. Clause 13(8), therefore, casts an obligation on the applicant-landlord to disclose the extent of need in the application. The extent of need as such, could not be a matter of inference from the material brought on record subsequent to the presentation of application. Drawing of an inference from the material subsequently brought is totally impermissible. Sub-clause (vi) of Clause 13(3) reads as thus :

"that the landlord needs the house or a portion thereof for the purpose of his bona fide occupation, provided he is not occupying any other house of his own in the city or town concerned."

Even if the rule of pleading is not made strictly applicable, the mandate of Clause 13(3)(vi), makes it obligatory to specify the premises presently available, premises or accommodation in possession of the person concerned and the extent of additional need. The enquiry as envisaged under Clause 13(8) is to probe into the reasonableness of need, as claimed. How to manage a particular business is an exclusive domain of the landlord or landlady. The extent of need could not be a matter left to speculation. As such, the submission of Shri Aney that the extent of need could be inferred from the nature of business and the material placed on record is wholly erroneous. The material comes on record subsequent to presentation of the application during the course of an enquiry whereas Clause 13(8) issues a mandate to the Rent Controller to hold enquiry into the claim specified in the application by landlord or landlady.

In view of this discussion, the applications as presented by the respondents-landladies are factually crippled and legally infirm since they do not satisfy the essential requirements. The Rent Control Authorities completely omitted from consideration this pertinent aspect. Hence, the satisfaction recorded by the Rent Control Authorities in granting permission under Clause 13(3)(vi) of the Rent

Control Order, 1949 is wholly in illegal exercise of jurisdiction. The same cannot be sustained.

It is rightly pointed out by the learned Counsel for the petitioners-tenants that the claim for bona fide need as put forth is on a ground of improvement and development in the business of the firms. The Rent Control Authorities have wrongly held that the need of the respondents-landladies was to start the business, which is not the case made out by the respondents-landladies.

10. Shri Aney, alternatively, tried to urge that though the extent of need of each firm is not separately specified in each application, taking into consideration the nature of business, each firm is entitled to at least one godown. As such, on the applications of respondents Gawarajabai, Sarlabai and Sulochanabai, one godown each for M/s. Rajesh Auto, M/s. Anurag Enterprise and M/s. Abhishek Enterprise could be granted.

The claim as modulated during the course of submissions, was not the subject matter of enquiry under sub-clause (8) of Clause 13 of the Rent Control Order, 1949. This claim, even in the absence of the necessary ingredients, as discussed above, is equally infirm and cannot be entertained at this stage.

11. The next claim of the respondents-landladies is on the ground of nuisance under sub-clause (ix) of Clause 13(3) of the Rent Control Order, 1949. The common case of the respondents-landladies is thus :---

"There is a day and night traffic of trucks in this locality now-a-days. The trucks are loaded and unloaded on the road and the non-applicants are storing their goods unauthorisedly, on the road as well as on the premises nearby the road, which were not let out to them. The tenanted godowns are situated in the heart of the city and the applicants have got their residential houses near these godowns. The peace of this area, due to noise of trucks and air horns, has been totally disturbed and it has created a great nuisance to the people in this area. There are cinema theatres, Panchsheel and Alankar, situated in the locality and this is the main road for clearance of the traffic of the spectators. The encroachment covered by storing of the goods and the traffic and parking of the trucks create a great nuisance to the activity of the public in this area. There are maternity homes, surgical theatres, hospitals and other dispensaries of private Doctors as well as Central Bank of India and other important offices are situated in this important locality. The non-applicants have created a great nuisance to the above profession and business of the people in this locality."

Shri Chandurkar, the learned Counsel appearing for the petitioners-tenants, has rightly pointed out that the Rent Control Authorities have not recorded any finding in this behalf. It is not held that the petitioners-tenants are creating nuisance in a manner as envisaged by Explanation to Clause 13(3)(ix) of the Rent Control Order, 1949. The explanation reads as thus:

"For the purpose of this item, nuisance means any act or omission which causes

or is likely to cause injury, danger, annoyance or offence to the sense of sight, smell or hearing or which is or may be dangerous to life or injurious to the health of the neighbour or to property".

It is thus explicit from the explanation that it must be a particular act or omission, which is capable to cause nuisance as explained. The respondents-landladies have examined one Suresh and Amritlal. They have merely deposed that because of the parking, loading and unloading, there has been a trouble to the people of neighbourhood. The explanation as reproduced, does not contemplate a case either of trouble or inconvenience. The explanation envisages that the act or omission tend to be either dangerous to life or injurious to health or property of the people in neighbourhood.

Undisputedly, as revealed from the order of the Rent Controller, the locality where the tenanted godowns are situated, is predominantly for the commercial activity. The Rent Controller has specifically referred that there are about 8-10 godowns in the locality and about 4-5 godowns are on the road side. Besides this, it is mentioned that there are cinema halls, Bank, maternity homes, marriage celebration halls, etc. It is thus clear that besides five godowns in question, there are certain other godowns in the same locality. Undisputedly, these godowns are let out to carry out the business of transporting goods. Parking of trucks and carrying out loading and unloading is a normal activity of the business of transportation. This by itself could not be an act of nuisance. The respondents-landladies could not point out either in their pleadings or in their evidence any particular act on the part of the petitioners-tenants, besides their normal function which constitutes a nuisance as envisaged by the explanation to Clause 13(3)(ix) of the Rent Control Order, 1949. The loading and unloading of goods and parking of trucks in a locality which is predominantly meant for commercial activity, could not constitute a nuisance so as to resort to sub-clause (ix) of Clause 13(3) of the Rent Control Order, 1949. The permission granted in this behalf, cannot, therefore, be sustained.

12. In the result, all these petitions are allowed. The impugned orders passed by the Rent Controller and Resident Deputy Collector are hereby set aside. The applications as presented under Clause 13(3)(vi) and (ix) of the Rent Control Order, 1949 are hereby rejected. The respondents to bear the costs of the petitioners throughout.