
(2009) 11 BOM CK 0165

In the Bombay High Court

Case No : Writ Petition No. 3497 of 2001

Ashok Arjunrao Dhoble

APPELLANT

Vs

Geetabai Bhimraoji and Others

RESPONDENT

Date of Decision : 07-11-2009

Acts Referred:

Citation : (2010) 1 BomCR 224

Hon'ble Judges : Naik Vasanti A., J

Bench : Single Bench

Advocate : A.V. Bhide, for the Appellant; None for Respondent No. 1 and Anand Deshpande, A.G.P. for Respondent Nos. 2 and 3, for the Respondent

Judgement

Naik Vasanti A., J.—By this petition, the petitioner impugns the order passed by the Additional Collector, Yavatmal in an appeal, filed by the respondent tenant under Clause 21 of the C.P. & Berar Letting of Houses and Rent Control Order 1949 reversing the findings recorded by the Rent Controller granting permission to the petitioner landlord to terminate the tenancy of the respondent under Clause 13(3)(ii) and (vi) of the Rent Control Order.

2. The petitioner is the landlord. He had initiated the proceedings against the respondent under Clause 13(3)(ii), (vi), (vii) and (ix) of the Rent Control Order. It was the case of the petitioner that he required the suit premises for his bona fide occupation. It was pleaded by the petitioner that though the notice was issued to the respondent informing her about the purchase of the property by the petitioner in the year 1994, by both the original landlord and the petitioner also, according to the petitioner the respondent had failed to pay the rent to the petitioner. It was the case of the petitioner that the house was extremely old and dilapidated and it was necessary to terminate the tenancy of the respondent under Clause 13(3)(vi) also.

3. The respondent denied the claim of the petitioner and also denied that the landlord had purchased the premises for his occupation. The respondent pleaded

that she was giving rent from the month of April 1994 till March 1995 to the petitioner, but the petitioner had refused to issue any receipt in regard to the same. She denied that she was a habitual defaulter. It was also denied that the house was an old and dilapidated one and required immediate repairs and hence it was necessary to grant permission under Clause 13(3)(vii) of the Rent Control Order. The respondent sought for the dismissal of the application.

4. The Rent Controller considered the evidence on record and allowed the application filed by the petitioner. The respondent preferred an appeal against the same. The appeal was allowed and the matter was remanded to the Rent Controller. Again by an order dated 7.8.2000, the Rent Controller granted permission to the landlord to issue quit notice to the respondent. The respondent challenged the order dated 7.8.2000 in an appeal and the Appellate Court by the impugned order dated 7.7.2001, allowed the appeal and dismissed the application filed by the petitioner. The petitioner has challenged the order dated 7.7.2001 by filing the instant writ petition.

5. Shri A.V. Bhide, the learned Counsel for the petitioner submitted that the Appellate Authority had committed a serious error in reversing the findings recorded by the Rent Controller on perverse reasons. The learned Counsel for the petitioner submits that the Appellate Authority failed in its duty in not considering the evidence tendered by the parties on the issues involved in the case, though it was a final fact finding authority. The learned Counsel for the petitioner submitted that the order passed by the Appellate Authority is a cryptic order and does not even refer to the evidence tendered by the parties on record. According to the learned Counsel for the petitioner, the order passed by the Appellate Authority is liable to be set aside.

6. None appears on behalf of the respondent No. 1, though served.

7. Shri Anand Deshpande, the learned A.G.P. appearing on behalf of the respondent Nos. 2 and 3 supported the order passed by the Resident Deputy Collector, Yavatmal and sought for the dismissal of the writ petition.

8. I have considered the submissions made on behalf of the parties and have perused the impugned order along with order of the Rent Controller and the evidence tendered by the parties on record. On the basis of the evidence tendered by the petitioner and the admissions of the respondent in her cross-examination, the Rent Controller had held that the respondent was a habitual defaulter. The Appellate Authority however, did not consider the evidence tendered by the parties and recorded reasons in paragraph 4 of the impugned order which are, unsustainable. In case the Rent Controller had not decided anything on the issue of bona fide need, the Appellate Authority as a final fact finding Court was duty bound to have decided that issue, but the Appellate Authority failed to decide that issue. In fact the Rent Controller has considered the relevant oral and documentary evidence on record to hold that the house was in a dilapidated condition and required immediate repairs, but the first Appellate

Authority reversed the findings recorded by the Rent controller, without considering the evidence on record. It is rightly submitted on behalf of the petitioner that as a final fact finding Court, the Appellate Authority was duty bound to consider the evidence on record and record the reasons for reversing the findings recorded by the Rent Controller. However, this was not done in this case and the Appellate Authority reversed the findings recorded by the Rent Controller, without either discussing or even referring to the evidence tendered by the parties, on record. The order passed by the Appellate Authority on 7.7.2001 is unsustainable and therefore, is liable to be set aside. 9. In the result, the writ petition is partly allowed. The impugned order dated 7.7.2001 is hereby quashed and set aside. The matter is remanded to the Rent Control Appellate Authority for deciding the appeal filed by the respondent afresh on merits. Since the matter is an old one the Appellate Authority is directed to decide the same as early as possible and within a period of six months from the date of the appearance of the parties before the Appellate Authority. Since the respondent No. 1 is not represented in this Court by a Counsel, it would be necessary for the Appellate Authority to issue notice to respondent No. 1. The petitioner undertakes to remain present before the Appellate Authority on 7.12.2009 so that the matter could be further proceeded with. Rule is made absolute in the aforesaid terms with no order as to costs.