

(1993) 11 BOM CK 0047

In the Bombay High Court

Case No : Writ Petition No's. 4136 of 1981 and 287 of 1986

Balkisan Jainarayan Jaju (Deceased) through L.R's.

APPELLANT

Vs

Maniklal Ratanlal Agarwal and Another

RESPONDENT

Date of Decision : 07-11-1993

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13
Constitution of India, 1950 — Article 227

Citation : (1993) 95 BOMLR 181

Hon'ble Judges : Bhimrao N. Naik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Bhimrao N. Naik, J.—Writ Petitioner No. 4136 of 1981 is by the tenant and Writ Petition No. 287 of 1986 is by the landlord arising out of the same judgment and decree passed in Civil Suit No. 429 of 1972, confirmed in Civil Appeal No. 204 of 1978. Both these petitions are being, disposed of by me by a common judgment. The few facts which are relevant for the purpose of these petitions are that, petitioner in Petition No. 287 of 1986, who is the landlord filed suit for possession under the Rent Act on the ground of bona fide requirement as also on the ground of permanent construction erected by the tenant. The suit property consists of the northern portion admeasuring 39"x8" of the house bearing-No. 320, situated in Somwar Ward at Malegaon, District Nasik. It is the case of the landlord that the tenant constructed three new rooms as also one Mori, or bath room, without his written permission and thus carried out permanent constructions and in view of the provisions of Section 13(1)(b) a right was accrued to the landlord to claim possession. This specific case made out in the plaint has not been specifically denied by the tenant in his written statement. All that is stated in his written statement is that the construction of the three rooms does not amount to permanent construction and that the said construction was carried out with the permission of the landlord. In this view of the matter the tenant claims that the suit of the landlord should be dismissed.

2. The learned Civil Judge, Junior Division, Nasik by his judgment and order dated 31st August, 1978, inter alia held, that the tenant carried out construction of-three new rooms without the written permission of the" landlord and thus he erected the permanent structures and the landlord has proved his case u/s 13(1) (b) and is thus entitled to claim possession. However, on the question relating to bona fide requirement the Trial Court recorded a finding that the landlord failed to establish his case and in view of the fact that he failed to establish his bona fides the issue regarding comparative hardship becomes redundant. In this view of the matter on the ground of permanent construction the learned Civil Judge, Junior Division, Malegaon, decreed the suit of the plaintiff for possession.

3. Being aggrieved and dissatisfied by the aforesaid order, the respondent-tenant filed Civil Appeal No. 204 of 1978 and the landlord also filed cross-objections to the extent of the claim which was denied, relating to bona fide requirement. The Appeal Court confirmed the finding recorded by the Trial Court and dismissed the petition filed by the tenant and also the cross-objections filed by the respondent landlord.

4. Being aggrieved and dissatisfied by the above decision the tenant filed Writ Petition No. 4136 of 1981 and assailed the finding relating to permanent construction and landlord filed Writ Petition No. 287 of 1986 and assailed the finding relating to bona fide requirements.

5. Shri A. K. Abhyankar, learned Counsel appearing for the petitioner-tenant urged that the findings recorded by the two Courts, though concurrent is not correct. It is wrong on the part of the two Courts below to have decreed the claim of the landlord on the ground of permanent constructions. He did try to point out to me the lacunas in the judgment of the two Courts below. However, when he pointed out to me the specific averments made in the plaint pertaining to the nature of permanent construction and the denial to that extent in the written statement coupled with the evidence, both of the plaintiff and the Defendant, it would not need any discussion to record a finding that the three rooms newly constructed will not amount to permanent construction. Both the Courts, therefore, are justified in recording the finding that the tenant carried out and erected permanent construction and he newly constructed three rooms. I see no reason to interfere with the findings recorded by the two Courts below. Hence there is no substance in Writ Petition No. 3146/81.

6. Shri Rane, learned Counsel appearing for the petitioner-landlord in Writ Petition No. 287 of 1986 vehemently urged that the findings recorded by the two Courts below relating to the bona fide requirement is perverse and interference is called for by this Court in exercise of its jurisdiction under Article 227. Shri Rane was not in a position to point out any perversity or an error appeared in the fact of the record, with respect to, the findings relating recorded by the two Courts below. The findings relating to bona fide requirement is also a concurrent finding and nothing was pointed out to me as to how I can interfere with the said finding. The petition was filed some time in the year 1986 by way of abundant

precaution. Thus, there is a gross delay in filing the petition. I find no reason to interfere with the findings so recorded. Hence, Writ petition No. 287 of 1986 also deserves to be dismissed.

Hence, both these petitions are dismissed, Rule discharged, with no order as to costs.