

(1987) 09 BOM CK 0071

In the Bombay High Court

Case No : Letters Patent Appeal No. 106 of 1985 in Writ Petition No. 262 of 1983

Bhaskar Deshpande (since deceased) by L.Rs. Smt.
Wasundharabai Deshpande and Others

APPELLANT

Vs

Madhusudansingh Chouhan and Another

RESPONDENT

Date of Decision : 14-09-1987

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1988) 3 BomCR 57 : (1988) MhLj 409

Hon'ble Judges : V.A. Mohta, J;G.G. Loney, J

Bench : Division Bench

Advocate : K.H. Deshpande, for the Appellant; N.S. Munshi, for respondents 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

V.A. Mohta, J.—This Letters Patent Appeal filed by a tenant arises out of proceedings for permission to terminate his tenancy under Clause 13(3)(ii) & (vi) of the C.P. & Berar Letting of Houses and Rent Control Order, 1949 ("the HRC Order") initiated by the landlords. The Rent Controller as well as the Collector, as an appellate authority, rejected the application. Landlords filed a writ petition under Article 227 of the Constitution. The learned Single Judge partly allowed the petition by quashing the order of dismissal of the application and granting permission under Clause 13(3)(vi) of the H.R.C. Order. Aggrieved by the said order, the present Letters Patent appeal is filed by Bhaskar Deshpande, the original tenant (since deceased).

2. Madhusudansingh Chouhan and his mother Smt. Kamladevi the landlords-purchased a small house situated at Wani, District Yavatmal, on 9-6-1978. Madhusudansingh's father -Laxmansingh who is a practising lawyer, was already occupying a room in the said house as a tenant. The other portion was in occupation of Bhaskar Deshpande. On 7th August, 1978, an application was filed before the Rent Controller, alleging that the tenant Bhaskar Deshpande was a

habitual defaulter and that the landlords needed the house for bona fide residence and office, for which they have no other house of their own in the town. The family of the landlords, besides them, consists of the father and brother of Madhusudansingh. They all reside in a rented house and do not own or possess any other house in the town.

3. The Rent Controller decided the matter on 11th March, 1980, and the Collector decided the appeal on 30th June, 1982. Both held that the tenant was not a habitual defaulter and therefore, no case under Clause 13(3)(ii) of the H.R.C. Order was made out. They further held that (a) the house in question was not suitable for occupation of the landlords considering their status, (b) the landlady of the tenanted premises occupied by the family of the landlords had started any proceedings (c) Smt. Kamladevi had not entered into witness-box and, hence, no case for bona fide occupation was made out.

4. The learned Single Judge maintained the order under Clause 13(3)(ii) of the H.R.C. Order. He held that the order refusing permission under Clause 13(3)(vi) was perverse, in view of the certain undisputed position on record, and was pleased to grant the permission sought for. Those undisputed positions are (a) proceedings for permission were filed immediately after the purchase of the house; (b) a part of the premises was already in occupation of the father of Madhusudhansingh; (c) the family was residing in a rented house and it had no other house of its own in the town; (d) the house could be suitably repaired and remodelled to suit the need ; and (e) Madhusudhansingh had entered into witness-box.

5. Basic facts are already noticed. In our judgement, the learned Single Judge was absolutely right in interfering with the orders passed by the authorities and granting permission under Clause 13(3)(vi) of the H.R.C. Order. The authorities had acted contrary to the settled view on Clause 13(3)(vi). Bona fides of the landlords are writ large. Detailed and cogent reasons are given and the relevant precedents on the subject are noticed in the order of the learned Single Judge. We entirely agree with the reasoning adopted. We consider it unnecessary to repeat those very reasoning in this judgement.

6. We will first take up for consideration the preliminary objections raised by Shri Munshi, the learned Counsel for the respondents to the effect that the present Letters Patent appeal is not maintainable. The law on the point is concluded in the case of Umaji Keshao Meshram and Others Vs. Radhikabai and Another, wherein it has been held that no Letters Patent Appeal lies against an order passed in a writ petition under Article 227 of the Constitution, challenging the orders passed by the lower Tribunals. Considering the nature of the challenge, it seems to us that the preliminary objection is correct. The matter stands concluded against the maintainability of such appeal in the said judgment.

7. For the sake of completeness of the judgement, we take up for consideration, now, the submission of Shri K.H. Deshpande, the learned Counsel for the

appellants, that the order passed by the learned Single Judge is vitiated on account of non-consideration of the subsequent developments. Normally, a case has to be decided as it stands on the day when the proceedings are initiated, but there are certain causes that are exceptions to this principle. Cause which requires continuity in existence, is one such category. If the cause of action ceases to exist subsequently, the relief can be refused at the time of passing of the original order, and in appropriate cases also, at subsequent point of time and stages. By now, it is settled that in cases of bona fide requirement of landlord, the cause must not only exist at the initial stage but must continue to exist till the final decision of the matter. Last case on the point, which has taken review of almost all previous cases is the case of Amarjit Singh Vs. Smt. Khatoon Quamarain, wherein the Supreme Court has laid down that the courts must take cognisance of the relevant subsequent developments, but in a cautious manner. In most of these cases, subsequent events were (i) sufficient and suitable accommodation became available to the landlord subsequently, and despite his professed need he failed to occupy them, or (ii) the proper premises were actually made available and the need was satisfied. The list of example of relevant subsequent events, however, cannot be exhausted. All will depend upon the facts and circumstances of each case.

8. However, this does not mean that there is a licence to the tenant to raise disputed questions of fact at any stage at his own sweet Will. If subsequent events are not brought to the notice of the authority soon after they have taken place, despite knowledge of those events and the party knowingly allows the authority to adjudicate upon the question on the original cause of action and takes a chance of a judgement in his favour, he would be precluded from raising the question at subsequent stage. To hold otherwise, would lead to a never ending uncertainty to the list, a result which always has to be avoided. A party cannot be allowed to choose strategically his own time to raise the contention available to him.

9. Keeping these principles in view, let us examine the validity of the contention raised in the present case. What is the subsequent event? Madhusudansingh has been appointed as a Civil Judge and has left Wani for joining the post. When has that event taken place? Soon after the order was passed by the Rent Controller. When has this point been raised? Not even in appeal; not even before the learned Single Judge but, for the first time, in this Letters Patent appeal, five years after the event. In our judgement, there is absolutely no reason to allow the tenant to raise the point at this late stage; for to do so would result in obvious injustice to the landlords whose proceedings are going on since last long nine years. Apart from the question of delay, and the late stage, the subsequent event is also not such as would adversely affect the case of the landlords. Madhusudansingh is not the only member of the family. He has a father who is a practising lawyer, a mother and a brother. The need is for residence of the family and the office. Father is already having a small room in the house in question. He has not shifted from Wani. Mother may be visiting her son, but that does not

mean that she has left Wani permanently. The post of Madhusudansingh is transferable and, above all, the mother has no right to stay with her Judge-son to whom suitable accommodation may or may not be available.

10. It is next contended that the learned Single Judge has erred in issuing the writ of mandamus by grant of permission, for the first time, and the proper course for him, after quashing the order, would have been to remand the matter to the Rent Controller for fresh decision in the light of the findings arrived at by the learned Single Judge. It is difficult to accept this fallacious submission. A writ of mandamus is a necessary adjunct to a writ of certiorari. If the High Court is satisfied that a writ of certiorari has to be issued to quash the impugned order, two courses are open: (i) to issue a writ of mandamus to hear the matter afresh or (ii) to issue a writ of mandamus to grant the relief claimed. Which is the proper course to adopt will depend upon each case. But there are certain basic features which draw the line. In this connection, reference may be made to a Division Bench decision of this Court, to which one of us (Mohta, J) was a party, in the case of Chandrashekhar Roller Flour Mills Pvt. Ltd. v. Union of India, Writ Petition No. 2230 of 1982, decided on 3rd December, 1982. It is observed there:

"It is true that where there is some scope for exercise of discretion in the authority, normal direction should be to ask the authority to reconsider the matter if the direction is properly exercised. Affirmative direction can thus be issued only on being satisfied that the authority in whom the discretion is vested has no option whatsoever but to exercise it in a particular manner and no other. After all discretion of a public authority is never absolute and is always coupled with a duty and or obligation. Once satisfaction is reached on this aspect nothing prevents the Courts from issuing a writ of mandamus. After all, the nature of the relief depends upon exigencies of each case and can always be moulded to meet the ends of justice, for, our Courts are not confined by the technical rules relating to issuing of writs by the English Courts. The courts are not supposed to indulge in empty formalities and to delay unnecessarily the receipt of benefits of the successful litigation."

11. In the instant case, remand would have been an empty formality and unnecessary exercise. On quashing the order for the reasons stated, the only ultimate order that can be passed was to grant the permission sought for. Thus the learned Single Judge was quite right in issuing the writ of mandamus in the form in which it was issued.

12. Our attention was drawn to the following three cases dealing with the subject: Bishnu Ram Borah and Another Vs. Parag Saikia and Others, ; (b) Chingleput Bottlers Vs. Majestic Bottling Company, , and (c) State of U.P. and Another Vs. Raja Ram Jaiswal and Another, . The first two cases deal with the subject of grant of unliquor licence. After having quashed the order refusing licence, the High Courts, for the first time, adjudicated upon the rival claims of the contesting claimants for licence on comparative merits, which course was disapproved by the Supreme Court. The third case deals with a licence to exhibit

cinematograph. Licence was refused on the only ground that some prestigious institution had objected the existence of the theatre in the vicinity. The said view was quashed and the matter was remanded for fresh enquiry by the Appellate Authority. The Allahabad High Court, in a writ petition, by which the said remand order was challenged, not only quashed the said order but directed issuance of a licence to the petitioner. The Supreme Court quashed the latter direction of grant of licence issued by the High Court, observing that the High Court, had proceeded to "take over the functions of the licensing authority". With the assistance of the learned Counsel, we have examined all the above three decisions. We are unable to read in them any ratio upon which the submission advanced before us can be legitimately based. The facts and circumstances of these cases and the case at hand have no semblance whatsoever. In none of those three decisions, the principle, that in appropriate cases the writ of mandamus granting the relief can be issued, was doubted.

13. We, therefore, see no substance in this Letters Patent Appeal. It is dismissed. No order as to costs.