
(1981) 11 BOM CK 0006
In the Bombay High Court
Case No : Writ Petition No. 630 of 1981

C. Balan	Vs	APPELLANT
Vijay Shankar Khare and another		RESPONDENT

Date of Decision : 12-11-1981

Acts Referred:

Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 — Section 28

Citation : (1982) MhLj 570

Hon'ble Judges : M.S. Jamdar, J

Bench : Single Bench

Advocate : K.A. Ghatpande, for the Appellant; A.B. Oka for Respondent No. 1 and Respondent No. 2 served, absent, for the Respondent

Final Decision : Allowed

Judgement

M.S. Jamdar, J.—The dispute in this case relates to a block house bearing Municipal No. 465 situated on Tikekar Road, in Dhantoli locality of Nagpur City. The house originally belonged to late Shri Bhaskarrao Karandikar and after his death, it devolved on his son Gajanan Bhaskarrao Karandikar. The block in question was taken on lease by petitioner's father Shri L.S. Gopalan from Bhaskarrao Karandikar.

2. On 16th January 1978, Shri G.B. Karandikar executed an agreement of sale in favour of the petitioner, agreeing to sell the block in question for Rs. 20,000 and accepted Rs. 1,500 by way of earnest money. Thereafter on 11-5-1978, G.B. Karandikar filed an application before the Rent Controller for permission to terminate the tenancy of Shri L.S. Gopalan. In that proceeding Shri L.S. Gopalan filed reply on 5-9-1978 contending inter alia that he had already vacated the premises in January 1978. In view of this assertion, the application filed by G.B. Karandikar for permission to terminate the tenancy of L.S. Gopalan was rejected. Being aggrieved by this order of the Rent Controller, G.B. Karandikar preferred an appeal to the Appellate Authority under clause 21 of the Rent Control Order.

During the pendency of this appeal, G.B. Karandikar executed a sale-deed dated 14-5-1979 in favour of respondent No. 1, who incidentally is his son-in-law, in respect of the very portion which he had agreed to sell to the petitioner.

3. On learning about the sale-deed executed by G.B. Karandikar in favour of respondent No. 1, the petitioner filed regular Civil Suit No. 540 of 1979 for specific performance of agreement of sale dated 16-1-1978 executed by G.B. Karandikar in his favour. This suit to which respondent No. 1 is also a party defendant is still pending.

4. Respondent No. 1, who claims title to the block in question on the strength of the sale-deed executed in his favour by G.B. Karandikar, filed an application to the House Allotment Officer u/s 28 of the C.P. & Berar Letting of Houses and Rent Control Order, 1949 (hereinafter referred to as the Rent Control Order) for ejecting the petitioner on the ground that the petitioner was in unauthorised occupation of the block in question, within the meaning of clause 28 of the Rent Control Order. According to respondent No. 1, L.S. Gopalan original tenant, vacated the block on his own showing in January 1978, and this caused a vacancy which ought to have been intimated to the House Allotment Officer as per clause 22 of the Rent Control Order and as this vacancy was not intimated by G.B. Karandikar, the occupation of the present petitioner on the strength of the agreement of sale is unauthorised.

5. The proceedings commenced on the application filed by respondent No. 1 were numbered as Revenue Case No. 17/A-(6-A)/79-80. The petitioner filed his reply in this matter and disputed the title of respondent No. 1. Further, while admitting that he was put in possession of the block in part performance of the agreement of sale executed in his favour by G.B. Karandikar, he asserted that even after this agreement the nature of his occupation remained the same. According to him, he was born in the block in question and was all along residing in it and hence there was no vacancy which required to be intimated. He expressed ignorance about the reply filed by his father L.S. Gopalan in the application filed against him by G.B. Karandikar.

5-A. The Deputy Collector and House Allotment Officer, to whom the powers under clauses 23, 24, 24-A, 25 and 28 are delegated, rejected respondent No. 1's application on the ground that the fact that the block in question had actually fallen vacant was not established. This order came to be passed on 25-7-1980. Thereafter respondent No. 1 filed an application for review of the order dated 25-7-1980 on the ground that the said order was not logically sound, inasmuch as the present petitioner admitted that he was in possession of the block in question in part performance of the agreement of sale executed in his favour by G.B. Karandikar and hence the transfer of possession from L.S. Gopalan to the petitioner was impliedly admitted. The petitioner opposed this application for review on the ground that the House Allotment Officer had no power to review his own order. The learned Leave Reserve Deputy Collector and House Allotment Officer, Nagpur, however, ignored this challenge to his jurisdiction to review his

own order and held that the petitioner, who claimed to be in occupation in part performance of the agreement of sale in his favour, was in unauthorised occupation of the block, because the vacancy caused when L.S. Gopalan vacated the premises was not intimated, as contemplated by clause 22(1) of the Rent Control Order. He, therefore, reviewed the order dated 25-7-1980 and directed the petitioner to vacate the block in question within 15 days. It is this order of the House Allotment Officer, which is challenged in this petition.

6. As mentioned above, L.S. Gopalan, who was the original tenant of the premises, specifically averred in his reply to the application for permission to terminate his tenancy filed by G.B. Karandikar that he had vacated the premises in January 1978 itself. The petitioner admittedly claims to be in possession in his own right under the agreement of sale executed in his favour by G.B. Karandikar on 16-1-1978. It is not his case that his father still continues to be in occupation of the block in question and that he is residing in the block as a member of his father's family or that he is occupying the block on his father's behalf. It is, therefore, clear that the vacancy within the meaning of clause 22(1) of the Rent Control Order was caused.

7. Sub-clause (2) of clause 22 of the Rent Control Order lays down that no person shall occupy any house in respect of which Chapter III of the Rent Control Order applies except under an order under sub-clause (1) of clause 23 or clause 24 or on an assurance from the landlord that the house is being permitted to be occupied in accordance with sub-clause (2) of clause 23. Admittedly, no order under sub-clause (1) of clause 23 or clause 24 is passed in favour of the petitioner, nor it is his case that an assurance was given by the landlord that the house was permitted to be occupied in accordance with sub-clause (2) of clause 23.

8. Shri Ghatpande, learned Advocate for the petitioner, urged that sub-clause (2) of clause 22 of the Rent Control Order prevents only letting of the house in question and this provision is not attracted when the house is agreed to be sold and the prospective purchaser is put in possession of the house agreed to be sold. In support of this interpretation of sub-clause (2) of clause 22, he placed reliance on sub-clause (2) of clause 23, which permits the landlord to let a vacant house to any person if the Collector does not pass any order of allotment within 15 days from the receipt of the intimation contemplated by sub-clause (1) of clause 22. According to Shri Ghatpande as sub-clause (2) of clause 23 permits only letting the vacant house, only letting would be deemed to have been prohibited by sub-clause (2) of clause 22. I am unable to accept this interpretation. The whole scheme of Chapter III will show that once an intimation is given in accordance with clause 22, the Collector must make an order of allotment and decide the application, if any, of the landlord for permission to occupy the premises himself within a period of 15 days from the date of intimation, and if he fails to do so, he would not have any jurisdiction with respect to the said premises, and the landlord would be free to deal with the

premises in any other manner including letting out the premises to any person. Sub-clause (2) of clause 23 cannot be interpreted to mean that if the Collector fails to pass order within 15 days of the intimation, the landlord can only let the premises out to some other person and cannot deal with it in any other manner.

9. The plain reading of sub-clause (2) of clause 22 will also show that any form of occupation of a house in respect of which a vacancy has occurred, except under an order under sub-clause (i) of clause 23 or clause 24 or on an assurance from the landlord that the house is being permitted to be occupied in accordance with sub-clause (2) of clause 23, will be in contravention of the provisions of the Rent Control Order. What is prevented is occupation and not merely letting. This is in fitness of things otherwise, the provisions about allotment can be rendered nugatory by concealing the real nature of occupation by ostensibly executing other forms of agreement. There is, therefore, no substance in the contention urged by Shri Ghatpande that as the petitioner was put in possession of the block in pursuance of the agreement of sale, sub-clause (2) of clause 22 of the Rent Control Order was not attracted.

10. There is, however, very great force in the other contention urged by Shri Ghatpande that the learned House Allotment Officer was not competent to review his own order, which was admittedly passed under clause 28 of the Rent Control Order. As rightly urged by him, power to review an order must be specifically conferred by the Statute under which the order is passed. This contention is supported by the decision of the Supreme Court in *Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji*, . In that case, the question was whether the State Government or the Commissioner functioning as delegate of its functions could review the order passed u/s 63 of the Saurashtra Land Reforms Act. While holding that there was no such power, Their Lordships observed as follows in para 4 of the judgment:

It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to our notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order.

11. Shri Oka, learned Advocate for respondent No. 1, urged that the power to review an order passed under clause 28 of the Rent Control Order can be spelt out from the provisions contained in sub-clause (2-a) of clause 21. The said provision reads as follows :

The Collector may, either on his own motion at any time or on the application of any party interested made within ninety days of the passing of an order, review any order passed by himself or any of his predecessors in office and pass such order in reference thereto as he thinks fit so however that no order shall be varied or reversed unless notice has been given to the parties interested to

appear and be heard in support of such order.

Shri Oka urged that the power conferred on the Collector by this provision is very wide and it empowers him to review any order passed by him or any of his predecessors in office. He emphasised that the words "any order" are not qualified by any phrase denoting that only an order passed in appeal can be reviewed. Prima facie, this argument appears attractive and if the provision of sub-clause (2-a) of clause 21 is read independently of the other provisions preceding and following it, it appears very sound. But, as rightly urged by Shri Ghatpande, considering the context in which the provision appears, it is clear that the power of review is restricted to an order passed in appeal contemplated by clause 21.

12. Sub-clauses (i), (i-a) and (2) of clause 21 which precede sub-clause (2-a), are as follows:

21. (i) Any person aggrieved by an order of the Controller may, within fifteen days from the date on which the order is communicated to him, present as appeal in writing to the Collector of the district:

Provided that in computing the period prescribed above, the time properly taken in obtaining a copy of the order complained of shall be excluded.

(i-a) Every petition for appeal shall be accompanied by a certified copy of the order to which objection is made unless the authority to which the petition is made dispenses with its production.

(2) The Collector shall then send for the record of the case from the Controller and, after perusing such record and making such further enquiry as he may think fit, either personally or through the Controller, shall decide the appeal.

Sub-clause (3) of clause 21, which follows sub-clause (2-a), or to put it correctly before which sub-clause (2-a) is subsequently inserted by an amendment effected in 1952, reads as follows :

The decision of the Collector and subject only to such decision, an order of the Controller shall be final and no further appeal or revision or application for review shall lie from such decision to any authority whatsoever.

Admittedly, all the original sub-clauses of clause 21 govern an appeal against the order of the Controller. Hence the provision which is inserted by subsequent amendment between sub-clause (2) and sub-clause (3), both of which govern an appeal against the order of the Controller, must be deemed to govern an order passed in appeal contemplated by clause 21 of the Rent Control Order.

13. All these sub-clauses of clause 21 will have to be read together. As laid down by the Supreme Court in *Tahsildar Singh and Another Vs. The State of Uttar Pradesh*, the cardinal rule of construction of the provisions of a section with a proviso is to apply the broad general rule of construction, which is that a section or enactment must be read as a whole each portion throwing light if need be on

the rest. In *Sardar Gurmej Singh Vs. Sardar Partap Singh Kairon*, , Their Lordships of the Supreme Court emphasised that it is an elementary rule that construction of a section is to be made of all the parts together and not of one part only by itself, and that phrases are to be construed according to the rules of grammar. Reading all the sub-clauses of clause 21 together, it is clear that sub-clause (2-a) is applicable to an order in appeal contemplated by clause 21 of the Rent Control Order. It is true that the words, "any order" are general but they will have to be read in the context in which they appear.

14. It is also significant to note in this context that Chapters I and II of the Rent Control Order do not contemplate any order which is required to be passed by the Collector in his original jurisdiction. Such an order is contemplated by Chapters III and IV of the Rent Control Order. Clause 21 is contained in Chapter II of the Rent Control Order. The provisions contained in sub-clause (2-a) of clause 21 would not govern an order passed either in Chapter III or Chapter IV of the Rent Control Order.

15. The power of review conferred by sub-clause (2) of clause 21 is conferred on the Collector. It is not conferred on the Deputy Commissioner or an Officer empowered by him to exercise the Powers under clauses 23, 24, 24-A, 25 and 28. Sub-clause (2) of clause 28 which contains the provision incorporated for effective implementation of an order passed under sub-clause (1) of clause 28, recognizes the position that the Deputy Commissioner and the Collector are two distinct authorities. The opening words of sub-clause (2) of clause 28, which are relevant, are --

The Deputy Commissioner or any Officer authorised by a general or special order in writing in this behalf by the Collector may.....

For this reason also, the learned House Allotment Officer was not competent to exercise powers of review.

16. Even assuming that the Power of review contemplated by sub-clause (2-a) of clause 21 is available for reviewing the order passed under clause 28 and even assuming that the Deputy Commissioner and the Collector are the same authority, the House Allotment Officer in this case was still incompetent to review the order in question, because he exercised the power under clause 28 by virtue of the delegation contemplated by clause 29 of the Rent Control Order, It will be seen from clause 29 that only the Powers conferred under clauses 23, 24, 24-A, 25 and 28 can be delegated. These powers do not include the power of review contemplated by clause 21 (2-a). It is therefore abundantly clear that the order passed by the Leave Reserve Deputy Collector and House Allotment Officer, reviewing his original order dated 25 July 1980, was without jurisdiction and hence deserves to be struck down.

17. In the result, the petition is allowed with costs. Rule made absolute. The order dated 2nd February 1981, passed by the Leave Reserved Deputy Collector and House Allotment Officer, Nagpur, directing the petitioner to vacate the block

in question within a period of 15 days is quashed.