

(2009) 07 BOM CK 0093

In the Bombay High Court

Case No : Writ Petition No. 4529 of 2003

Chandrakant Pundlikrao Randive

APPELLANT

Vs

Lalit Kantilal Thakkar and Others

RESPONDENT

Date of Decision : 14-07-2009

Acts Referred:

Maharashtra Rent Control Act, 1999 — Section 58

Citation : (2009) 6 BomCR 164

Hon'ble Judges : C.L. Pangarkar, J

Bench : Single Bench

Advocate : A.C. Dharmadhikari, for the Appellant; A.M. Ghare, for the respondent No. 2 and A.N. Vastani, for the respondent No. 5, for the Respondent

Final Decision : Allowed

Judgement

C.L. Pangarkar, J.—Rule. Returnable forthwith. Heard finally with consent of parties.

2. Original plaintiff has filed this Writ Petition challenging the judgment and decree passed by the Adhoc Additional District Judge whereby he set aside the decree for possession in favour of the plaintiff petitioner .

3. The facts are as follows:

Petitioner-plaintiff is the owner of the two godowns at Peth Jogithana Umred. They bear house No. 24 and 25. Part of both the godowns were let out to one Kantilal Thakkar. The rent was Rs. 50/and 60/for the two godowns. The defendants are the heirs of said Kantilal who died about 10 years ago. The tenancy is monthly and begins on 1st day of each English Calender month. Both these godowns according to petitioner are very old they having been constructed more than 100 years ago. Since the time they were so constructed they were never repaired. The wooden rafters of the godowns have gone very week and have in fact broken down. The slab of the godown No. 1 has developed a crack and the walls are giving way. The godowns are likely to fall at any time. They are

by the side of the market area. The Municipal Council has served a notice on the petitioner plaintiff to demolish the same. The said godowns could not be demolished since the defendants obtained an injunction in Civil Suit No. 84 of 1998. The defendants own a two storeyed house opposite the godown. The defendant No. 1 runs a grocery shop there. Defendants have also taken two rooms in the Nagar Parishad Shopping Complex which are just by the side of the house of the defendants. There is also a godown available to the defendants which belongs to one Natwarlal.

4. Plaintiff is a teacher working in Bharat Mahila Vidyalaya at Nagpur. He has undergone gall bladder operation and is a sick person. He intends to take voluntary retirement due to the ailment. He wants to construct his own house at Umred and settle at Umred since his close relatives are stationed at Umred. Plaintiff submits that at present he is living at Nagpur and paying Rs. 950/P. M. as rent. He does not own any house at Nagpur and he has no other house at Umred except the godown. He wants to pull down the godowns and construct his house for his residence. Plaintiff had initially filed rent control proceedings for obtaining permission from the Rent Controller to determine the tenancy of the defendants under the provisions of Central Provinces and Berar Rent Control Order. When the said proceedings were pending the Maharashtra Rent Control Act came into force. Plaintiff therefore withdrew these proceedings and filed this suit.

5. The defendants filed their joint Written Statement. They admit that they are the tenants. They deny that the godowns in question have become dilapidated and they are going to fall down at any time. They deny that they have taken on lease the two shops of the Nagar Parishad Shopping Complex and they also deny that any godown is available to them. The defendants submit that they were required to file the suit against the plaintiff in order to avoid defendants being evicted without following due process of law. Defendants deny that they are not using the godowns . They also deny that plaintiff does not have a house in Umred and that his requirement is bona fide and reasonable. It is the contention of the defendants that the plaintiff's need can be satisfied even by utilising part of the godowns.

6. On these pleadings the learned Judge of the trial Court framed issues. He found that the house had become dilapidated and dangerous. Defendants were not using the suit premises. They have acquired alternative suitable accommodation and need of the plaintiff was bona fide. Holding so learned Civil Judge passed a decree for eviction. Defendants preferred appeal before the District Judge. Adhoc District Judge who decided the appeal found that house has become dilapidated and dangerous. He found that the plaintiff had failed to prove that alternative accommodation was available to the defendant and that need of the plaintiff was bona fide and reasonable. Although he recorded the findings on point No. 1 about the house being dilapidated and in dangerous condition, he did not pass a decree because he found that the suit was not maintainable on

account of the provisions contained in Section 58 of the Maharashtra Rent Control Act. He therefore allowed the appeal and dismissed the suit. Plaintiff therefore prefers this Writ Petition.

7. I have heard the learned Counsel for the petitioner and the respondents.

8. We have seen that the learned Judge of the trial Court had ordered ejectment of the defendants on as many as four grounds. Those grounds are:

- i) Bonafide and reasonable requirement
- ii) Defendant has not been using the suit premises.
- iii) Defendant has acquired alternative suitable accommodation and
- iv) Property has become dilapidated and requires demolition.

Appellate Court however concurred with the findings of the trial Court with regard to the premises being dilapidated and requires demolition. As seen earlier the appellate Court sets aside the decree only on the ground that the suit is not maintainable by virtue of provisions of Section 58 of the Maharashtra Rent Control Act although he finds that the house had become dilapidated and required demolition. It is therefore obvious that even though one of the ground is said to be made out by the plaintiff even during the appeal the learned Judge has refused to pass a decree on the ground that suit was not maintainable.

9. Although plaintiff challenges the dismissal of the suit, defendants respondents do not challenge the finding that the house has become dilapidated and requires demolition. It may also be mentioned that the respondents defendants did not advance any arguments that the finding of the District Judge that the premises are required to be demolished was incorrect. Similarly no arguments justifying the dismissal of the suit on the basis of Section 58 of the Maharashtra Rent Control Act was advanced. It must be assumed that respondent infact does not challenge the finding that the premises having become dilapidated. Only argument that was advanced on behalf of the respondents was that no decree should be passed on the ground of bona fide requirement.

10. I shall first deal with the question whether the suit could have been dismissed by the District Judge on the basis of the provisions of Section 58 of the Maharashtra Rent Control Act. Undisputed fact is that the plaintiff petitioner had instituted proceedings before the Rent Controller under the provisions of C. P. & Berar Rent Control Order for seeking permission to determine the tenancy. When those proceedings were instituted the Maharashtra Rent Control Act 1999 had not come into operation. Plaintiff pleads in para 7 of the plaint that within few days of institution of those proceedings the new Act came into force and the old C. P. & Berar Rent Control Order was repealed. Plaintiff, therefore had withdrawn the proceedings before the Rent Controller on 01.07.2000 and then filed this suit before the Civil Judge under the Maharashtra Rent Control Act. Section 58 of the Maharashtra Rent Control Act reads as follows:

58. Repeal and saving

(1) On the commencement of this Act, the following laws, that is to say:

(a) the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947;

(b) the Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946 including the Central provinces and Berar Letting of Houses and Rent Control Order, 1949; and

(c) the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954; shall stand repealed.

(2) Notwithstanding such repeal

(a) all applications, suits and other proceedings under the said Acts pending on the date of commencement of this Act before any Court, Controller, Competent Authority or other office or authority shall be continued and disposed of, in accordance with the provisions of the Acts so repealed, as if the said Acts had continued in force and this Act had not been passed;

(b) the provisions for appeal under the Acts so repealed shall continue in force in respect of applications, suits and proceedings disposed of thereunder;

(b) Any appointment, rule and notification made or issued under any of the repealed Acts and in force on the date of commencement of this Act shall, in so far as they are not inconsistent with the provisions of this Act, be deemed to have been made or issued under this Act and shall continue in force until it is superseded or modified by any appointment, rule or notification made or issued under this Act;

(c) all prosecutions instituted under the provisions of any of the repealed Acts shall be effective and disposed of in accordance with the law.

Learned Judge observes that since the pending proceedings before the Rent Controller under the old Act are saved plaintiff should have prosecuted them only. He observes that the landlord is therefore not permitted to withdraw those proceedings and take recourse to the Maharashtra Rent Control Act. The finding of the learned Judge is patently illegal and illogical. Saving clause infact gives an option to the landlord. It permits the landlord to prosecute the proceedings before the Rent Controller under the old Act if he so desires. There is no compulsion that he must continue to prosecute those proceedings and not resort to the new Act. Learned Judge had read something more in the section than what is there. New Maharashtra Rent Act does not put a restriction on the rights of the landlord to withdraw the proceedings filed under the old Act and to institute a fresh proceedings under the new Act. The provision is simple and clear giving option to the landlord. Interpretation of the learned Judge is wrong and that finding must be set aside.

11. In fact once this finding goes in favour of the petitioner there should be no

difficulty in allowing the Writ Petition and decreeing the suit as the ground of eviction on account of house having become dilapidated is recorded by both the Courts below in favour of the petitioner, but as the arguments were advanced by the lawyer only on a question of bonafide requirement I am required to look into that ground also. I assume that the petitioner seeks to challenge that finding and respondent opposes it, although such a finding may not be necessary as the decree for eviction must follow on the other count.

12. Trial Court has recorded finding on this ground of bona fide requirement in favour of the plaintiff petitioner. Appellate Court has refused to uphold that finding on the ground that there is neither pleading nor evidence on comparative hardship on behalf of the petitioner plaintiff. He finds that on account of the same the ground of eviction for bona fide requirement cannot be upheld. Plaintiff has specifically contended that he is the owner of the godowns and he wants to demolish the same and build his own house. He contends that at present he is living in a rented house at Nagpur and he wants to take voluntary retirement due to ailment and wants to settle at Umred as most of his relatives reside there. He also pleads that he has no other house at Umred. Shri Ghare learned Counsel for the respondents submits that this pleading itself is deficit to pass a decree for eviction. According to him there is no pleading how requirement is reasonable. He submits that the plaintiff does not plead how much space he requires and how many members are there in his family. He also submits that if there are only two members in the family then the plaintiff will not require both the godowns. He submits that due to this the need can neither be said to be bonafide nor reasonable. He relied on a decision in *Mangharam Chubarmal v. B. G. Patel* 1971 Mh LJ 369. The Court has explained what is bona fide and what is reasonable by observing as follows:

In the Bombay Rents, Hotel and Lodging House Rates Control Act in some of the clauses of Section 13 the words used are "reasonably and bona fide required". These words appear in Section 13(1)(g), (h), (hh) and (i). Full effect has to be given to these words. "Bona fide" means honestly and not actuated by bad faith or oblique motives. "Reasonably" means that which is rational, just, not excessive. As these two words are used to govern the word "require", all the three words must be construed in a manner which would be consistent with the object of the Act in general and Section 13 in particular. While considering the proof of bona fides and reasonableness of the requirement, a number of factors are bound to overlap. The words "reasonably and bona fide" are not and are not intended to be used disjunctively. In a given case, facts established must prove the bona fides without reference to the reasonable requirement. If want of bona fides, amounting to mala fides, is proved Courts can readily infer or hold that the requirement is unreasonable which will also have a bearing on the question of bona fides of the landlord. But at the same time it is possible to hold that the landlord has succeeded in establishing his bona fides, but that by itself will not give him a right to evict the tenant unless he also proves that his requirement is reasonable.

There is no doubt that requirement must be honest and just. As far as bona fides are concerned the plaintiff clearly comes out with a case that he is living in rented house at Nagpur and he wants to settle at Umred after taking voluntary retirement due to ailment. He also has contended that he has no other house at Umred except the suit house and he wants to settle at Umred because of the fact that his relatives are stationed at Umred. To my mind this pleading is more than enough for making out a case of bonafide requirement. One's desire to settle at a place where one's most of the relatives are stationed cannot be said to be fanciful or actuated by bad faith. On the other hand it is quite natural for a person growing old to be near his own relatives. Plaintiff has stated on oath that he is to retire in 2006 and he has undergone gall bladder operation and his physical condition is not good. He states that he has no other accommodation at Umred except the godowns and he wants to construct his own house and settled down at Umred. He also states that all his close relatives are stationed at Umred. There is nothing in the cross examination to suggest that what is stated in examination in chief may not be true. No doubt it elicited in cross examination that plaintiff was born and brought up and educated at Nagpur. That may be true. These questions were perhaps asked in order to show that plaintiff has no connection with Umred and is not likely to settle there but then it is clear from the evidence of the plaintiff that he does not own a house at Nagpur. If he wanted to stay at Nagpur he could have purchased the one at Nagpur. He does not have a house at Nagpur and therefore no oblique motive can be attributed to plaintiff when he says that he wants to settle at Umred instead of Nagpur. In fact now the law is well settled that ordinarily landlord's need must be held bonafide. In the instant case the plaintiff has no other house either at Umred or at Nagpur. When he says on oath that he wants to settle at Umred and his relatives are stationed there, the said need cannot be said to be actuated by any ill motive.

13. Shri Ghare learned Counsel submits that plaintiff does not give the size of his family, therefore his need cannot be said to be reasonable. He submits that even vacation of one godown can serve the purpose and that is why the size of the family is necessary. The contention is not correct. The land lord is the sole judge of his need. Court cannot decide that plaintiff should construct the house having a particular dimension only and that those dimensions would serve the purpose of the plaintiff if the plaintiff wants to construct a house. It is for the landlord to decide how big or small house he should construct. The imposition of such restriction is not expected. This Court in a decision in Balwant P. Doshi Vs. Shantaben Dhirajlal Shah and Another, observed as follows:

Both the Courts below have examined the evidence of the plaintiff's witness as a whole and have recorded clear finding of fact that the plain tiff has established need for herself and her family members being bona fide and reasonable. These findings of fact cannot be interfered in exercise of writ jurisdiction. The Appellate Court has rightly applied the settled legal position. It is well settle that the courts cannot ordinarily doubt the bona fide need of the landlord nor the courts can dictate to the landlord as to how the premises owned by him should be used. It

is sufficient for the landlord to express his desire to occupy the premises which are owned by him. It is not necessary for the landlord to establish dire necessity but it is enough to show that some need exists. (See *Prativa Devi Vs. T.V. Krishnan*, , *Mrs. Rena Drego Vs. Lalchand Soni, Etc.*, , *State of Rajasthan Vs. Prakash Chand and Others*, , *Mrs. Meenal Eknath Kshirsagar Vs. M/s. Traders and Agencies and another*, and *Dattatraya Laxman Kamble Vs. Abdul Rasul Moulali Kotkunde and Another*,). In the present case, the plaintiff has produced ample evidence on record and has established the bona fide need for herself and for her family members.

This Court in yet another decision in *Sharadabai Anandrao Durgule Vs. Ramchandra Manku Pol and Others*, observed as under:

Once the landlord has placed on the record the material evidence to support his bona fide and reasonable need and as it is proved, the question of hardship normally tilts in favour of the landlord. The tenants long occupation and acquisition of the goodwill in the said premises should not prevail over the rights of landlord to occupy his or her premises. The petitioner is staying in the said building and required the premises of the ground floor in the same building just cannot be overlooked. The submission that she can start her business at any other place and the tenant is ready to provide the suitable accommodation at his cost to the landlord, is in no way can be the ground to hold that the hardship would cause to the tenant, as his liquor business would be required to be shifted from the said premises. The landlady/landlord is the best judge of his/her requirement. The tenant cannot dictate that how they should adjust their need. The plaintiff landlady proved the reasonable and bona fide requirement of the premises and she would suffer greater hardship if the decree for possession is not passed and therefore is entitled for the possession of the suit premises as prayed and as granted by the trial Court.

It is thus clear that the law is well settled that the landlord is the best judge of his requirement. He can therefore seek eviction from both the godowns if he so wants. This has to be in context of the fact that defendant does not enter the witness box to rebut the evidence of the landlord at all or to attribute any bad faith to him. In the absence of any evidence in rebuttal by the defendants learned 19 Judge of the trial Court was right in accepting the evidence of the plaintiff. Shri Ghare learned Counsel for the respondents submits that the plaintiff petitioner has not pleaded anything with regard to comparative hardship and even trial Court had not considered that aspect. According to him since there is no pleading the Court cannot consider the evidence tendered by the plaintiff. He consequently cannot hold that defendant would suffer more hardship. Submission has no force for two reasons; first there is a pleading as well as evidence of plaintiff and secondly, the burden of proof is always on the tenant. Plaintiff pleads in para 5 of the plaint that defendants own a two storeyed house just opposite the suit house and they run a grocery shop in it. He also pleads that defendants have taken two shops on lease in Nagar Parishad Shopping

Complex at Umred. Further it is pleaded that there is a godown owned by one Natwarlal which is used by defendants. These facts ought to be said to be pleaded to show that if a decree for eviction is passed no hardship would be caused to the defendants as other premises are available. P. W. Chandrakant deposes to that effect. If the cross examination of P. W. 1 is seen it is apparent that defendants do not dispute that the house of defendants is two storeyed and they also do not seriously dispute that there are two shops available in the Municipal Shopping Complex. Thus alternative accommodation is available to the tenants while nothing is available to the plaintiff at all.

14. This Court in the following decisions has held that the burden of proof about hardship is always on the tenant; Parashram Tularam Belhekar since deceased through his L.Rs. Vatsalabai w/o Parashram Belhekar and Ors. v. Tejmal @ Kankamal Mulchand Jain deceased by his legal heirs Shantabai Kankamal Changedia and Ors. 2007(2) Mh LJ 610 and Goverdhandas Mulchand Agrawal and Others Vs. Bherulal Uderam Bagade and Another, .

Thus it was in fact for the defendants tenants to plead that hardship would be caused to them. The tenants do not plead so nor do they enter the witness box to prove the hardship or even to rebut the evidence of the plaintiff. Inference has to be drawn that had the defendants entered the witness box, they would not have been able to support their own cause. The learned Judge of the appellate Court had wrongly placed the burden on the plaintiff landlord and found that he has not offered proof of comparative hardship. That finding, therefore, has to be set aside. It must be held that if no decree is passed more hardship would be caused to the plaintiff. In view of the fact that the plaintiff has established that the house has become dilapidated and requires demolition and that his requirement is bona fide and reasonable, decree for eviction has to follow. In the circumstances the Writ Petition is allowed. The judgment and decree passed passed by the first appellate Court is set aside and that of the trial Court restored. Respondents shall pay the costs of this Writ Petition to the petitioner.

Shri Ghare, learned Counsel for the petitioner submits that the execution of the decree may be suspended for a period of two weeks. Mr. Dharmadhikari, learned Counsel for the petitioner objects to any time being granted since, according to him, the petitioner is fighting the litigation from 2000. After having considered the submissions, the execution of decree is stayed for a period two weeks.