
(2004) 09 BOM CK 0124

In the Bombay High Court

Case No : Writ Petition No. 2588 of 1990

Dinesh Dande

APPELLANT

Vs

Somani Radio Corporation and Others

RESPONDENT

Date of Decision : 29-09-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Constitution of India, 1950 — Article 136, 226, 227

Citation : (2005) 2 MhLj 800

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : Rohit Deo, for the Appellant; B.N. Mohta, for the Respondent

Final Decision : Allowed

Judgement

B.P. Dharmadhikari, J.—In this petition filed under Articles 226 and 227 of the Constitution of India, the petitioner challenges order dated 31-5-1990 passed by the Resident Deputy Collector, Amravati in Review Application and seeks restoration of the order passed by the Appellate Authority under C.P. and Berar Rent Control Order granting permission to terminate tenancy of the respondents under Clause 13(3)(vi) of the said order. It is pointed out that the first Authority i.e. Rent Controller had rejected the application.

2. The petitioner is landlord of the suit premises which consist of two adjacent rooms admeasuring altogether 264 sq.ft. located at Morshi Road, near Jaistambha Chowk, within the municipal limits of Amravati town. Thus, the rooms have been let-out to the present respondents on monthly rent of Rs. 285/-per month. The petitioner filed an application on or before 6th July, 1985 before the Rent Controller invoking Clauses 13(3)(vi) of Rent Control Order, 1949 and sought permission to terminate tenancy of the present respondent on the ground of his bona fide requirement. The petitioner points out that he is science graduate and wanted to start business of selling rubber parts in the name and style as "Usha Rubber Products". He registered the said name with Small Scale

Industries Corporation. He stated that the suit rooms are situated in the heart of business locality and ideal for his business. He has stated that he has no other place where he can start his own business. In their written statement filed before the Rent Controller, the respondents have stated that they have taken two rooms on rent in the year 1962 and that the reason of starting his own business given by the petitioner is false. They have alleged that there are several shops which are more suitable to the petitioner and instead of occupying those shops blocks, only to harass the respondents the proceedings have been initiated. It is stated that the relations between the parties are strained and on that count the landlord has taken such steps. It is stated that the landlord and his father insisted for increasing rent of suit premises to Rs. 500/- per month from Rs. 140/- per month and as the tenant refused the proceedings came to be filed.

2A. It is in this background that the parties led their respective evidence and the learned Rent Controller rejected the application on 23rd May, 1988 on the ground that the registration with Small Scale Industries Corporation was valid up to the year 1980 only and it has not been renewed thereafter. The Rent Controller has further found that between 1982-1983 the landlord has constructed some blocks in the town and rented out those blocks to others. It further found that the premises of one Dr. Bose, who expired about two years back, are available to the landlord but the landlord did not start business in that block. It found that the landlord has no urgency to start his business. It also found that he could have started his business in any one of the several blocks owned by him.

3. Aggrieved by this the landlord filed appeal under Clause 21 of C.P. and Berar Rent Control Order, 1949 vide revenue Appeal No. 251/71(2)/87-88 and the Appellate Authority after hearing both the sides passed order on 9th August, 1989 in favour of the landlord. The Appellate Authority has found that perusal of record reveals that the renewal certificate filed on record by the landlord is valid upto the year 1987-88. It found that the landlord has purchased, by Court auction, essential instruments and machineries for starting his business. It further found that the portion constructed by the landlord specifically is on interior side

of the building and not on main road. It found that the premises in occupation of the tenant have easy access and more conveniently located and every landlord has his choice in this respect. In relation to the defence of the tenant that landlord is owner of one more block and that the block of Dr. Bose is available, the Appellate Authority found that there are no pleadings on this line in tenant's written statement. It therefore, allowed the appeal and granted permission to the landlord to terminate tenancy of the respondent tenant under Clause 13(3)(vi).

4. It appears that against this order the tenant filed application under Clause 21(2)(a) of the Rent Control Order for review. The landlord appears to have filed an application for dismissal of the review petition by raising objection about the jurisdiction and requested the authority to decide that issue as preliminary issue. However, it appears that the Reviewing Authority has passed final order in this

respect on 31st May, 1990. It found that the registration obtained by the landlord which was valid for one year i.e. upto 1980 and thereafter it has not been renewed till date. It found that the landlord has not produced any record of training taken by him at Bombay about the business which he wanted to start. It further found that the landlord has married in the year 1985 and all the family members are together in mess. It found that the landlord has admitted that he did not make any effort to start business in rented premises and he did not take any premises on rent for his business. It found that the premises of Dr. Bose are vacant. It held that all these throw light on the conduct and intention of the landlord. According to it, the landlord failed to prove that he had bona fide desire to start any business. It held that what training landlord has taken at Bombay some 10 to 12 years back is not shown and why the landlord could not start his business in this period is also not shown. Knowledge, experience and capacity to start business is also not proved. It is this order which has been challenged by the landlord in the present petition.

5. After the arguments commenced, the tenants filed Civil Application No. 6278 of 2004 in this petition for permission to amend the Return. It is here pointed out that the respondent/tenant is partnership firm and all its seven partners have been shown as party-Non-applicants in the proceedings before lower authorities and they are respondent Nos. 1 to 7 in this petition. It appears that the partner i.e. Respondent No. 3 Ramesh expired during pendency of the petition and hence, on 6-1-2003 his legal heirs have been permitted to be brought on record as respondent Nos. 3-A to 3-E.

6. In the application for permission to amend Return moved by all these respondents, the respondents have stated that there are some subsequent events during pendency of the petition. They have pointed out that a Small Cause Suit No. 17 of 2000 has been filed by the landlord Dinesh against one Vinod Jain. In it the landlord has stated that his brother Prashant is his partner in Rubber Industry in M.I.D.C. since last 13 to 14 years. In the cross-examination there is also reference to block in possession of Dr. Bose. On the basis of this material the respondents wanted to add para No. 14-A in their Return to show that a shop block on the ground floor let out to Mr. Vijay Rathie was vacant and it has not been occupied by the landlord. It further points out that the landlord obtained permission against one Kedia who was tenant on ground floor but after winning the case landlord compromised the matter with M/s Kedia Agencies and increased rent only. It is stated that the premises of M/s Kedia Agencies are of father of the petitioner and they are just adjacent to the suit premises. It is further stated that the premises of Vijay Rathie stand recorded in the name of brother of the petitioner viz. Prashant Dande. The tenant therefore, contended that the ground floor portion belonging to partner in the business of the landlord had become available and still it was not used by the landlord. But it has been let out to another tenant at enhanced rent of Rs. 2,000/- per month. The respondents have also annexed photograph to show the location of these shops.

7. This application for amendment has been replied to by the petitioner through its rejoinder and in the said rejoinder the landlord has pointed out that manufacturing unit was setup in the year 1990 and Mr. Prashant Dande, brother of the petitioner, has been inducted as partner only in manufacturing activity. It is stated that Mr. Prashant Dande is not involved in sales and marketing business of rubber products. It is stated that the shop block is required by the petitioner to display rubber products of various manufacturers as well as prepared in his factory. He has pointed out that the block let out by Mr. Prashant Dande is not suitable for his business. He has stated that the said block is larger than his requirement and further the rent is not viable insofar as his business is concerned. He has further stated that Mr. Prashant Dande has no intention to let out the said block to the petitioner.

8. In view of this rejoinder filed by the petitioner the landlord-tenant has placed counter reply/affidavit on record to show that now the petitioner has stated that the business of sale and marketing of rubber products shall be done by the petitioner as sole proprietor and this is by way of afterthought. It is further stated that no deed of partnership between the petitioner and his brother Prashant is placed on record to show that Prashant is partner only in manufacturing unit. Arguments of parties are heard in this background.

9. Adv. Deo appearing for the petitioner contends that the Small Scale Industries registration obtained by the petitioner is only optional and no adverse inference could have been drawn by the Rent Controller or by the Reviewing Authority against the petitioner because of its alleged non-renewal. He contends that renewal was obtained and in fact since the year 1990 there is permanent registration. He states that manufacturing unit has been started in M.I.D.C. in the year 1990 and premises are needed for sale and exhibition of various products by the petitioner. He contends that alternate accommodation to which Rent Controller or the Reviewing Authority have made reference are located on first and second floors and further on rear side. He states that those premises are not suitable and viable for the business of the petitioner. He states that even the premises of Dr. Bose are located on first floor. He states that the reasons about his financial capacity, expertise or absence of urgency given by the Reviewing Authority are totally erroneous and contrary to the settled law on the point. He relied upon the various cases in support of his contention. He has pointed out that as settled by the Apex Court in Dattatraya Laxman Kamble Vs. Abdul Rasul Moulali Kotkunde and Another, lack of expertise on the part of the landlord cannot be made an issue by Rent Control Authority. He further says that inability of the land lord to commence business for several years also cannot be used by the Rent Control Authority to deny him permission

on the ground of bona fide need and relies upon the ruling reported at G.C. Kapoor Vs. Nand Kumar Bhasin and Others, for this purpose. He states that as laid down by the Apex Court in Dhannalal Vs. Kalawatibai and Others, the landlord is best judge of his need and block on first floor is not found convenient

or suitable even by the Apex Court. He also relies upon the ruling reported at 1997 (1) Mh.L.J. 121 , Meenal v. Traders and Agencies to support the argument that landlord is always best judge for selecting the premises suitable for his business. He states that as has been observed by the Apex Court in Akhileshwar Kumar and Others Vs. Mustaqim and Others, and R.C. Tamrakar and Another Vs. Nidi Lekha, , the landlord cannot be blamed for not using brother's premises which had fallen vacant. He states that need of landlord must be genuine and reasonable but is not required to be compelling or dire. He states that it has been held accordingly by the Hon'ble Apex Court in Raghunath G. Panhale (Dead) By Lrs. Vs. M/s. Chaganlal Sundarji and Co., . He relies upon this ruling also to support the contention that the landlord is best judge and training or expertise with the landlord is not relevant consideration.

10. In relation to the subsequent events sought to be placed on record by the tenants, the counsel for the petitioner states that these subsequent events have no bearing as the crucial date is the date on which the landlord moved an application and these events therefore, cannot be looked into by this Court. He relies upon the ruling reported at Kamleshwar Prasad Vs. Pradumanju Agarwal (dead) by LR's., and Netram Ganpat Ingale deceased through his L.Rs. Vs. Baliram Vyankat Mistri and another, for this proposition. He says that Clause 21(3) of Rent Control Order gives finality to the orders of Appellate or Reviewing Authority and therefore, when the writ petition is pending before this Court, subsequent events cannot be even looked into.

11. As against this, Adv. B. N. Mohta for respondent/tenants states that the entire conduct of the petitioner landlord has been considered by the Reviewing Authority. There is no bona fide need at all and it is only adamancy on the part of the landlord. He points out the deposition of the landlord Dinesh in which he states that in 1983 he had not thought of starting business and decided to start business in 1984. He points out that he also admitted in cross-examination that he is common in mess with his father. He further pointed out that in the premises of Dr. Bose another tenant was introduced and he has filed on record the plaint of the suit for ejectment of that tenant. He states that Mr. Vinod Jain is that tenant and landlord Dinesh Dande has filed Small Cause Suit No. 17 of 2000 against him. He further points out the rent receipts issued by the landlord Mr. Dinesh to Mr. Vinod Jain for the period after filing of the present writ petition. He also points out that his father viz. Balkrishna successfully obtained order of eviction against M/s, Kedia Agencies but then compromised the matter with Kedia and permitted them to continue to occupy after increasing rent. He contends that the documents to show that brother Mr. Prashant is his partner only in manufacturing process has not been filed. He states that had the need of the petitioner been genuine he could have very well started his showroom/office in the block of his brother Prashant. He also states that the petitioner could have asked the present tenant to shift to the first floor block which became Vacant after the death of Dr. Bose. In this background he specifically requested this Court to note respondents

readiness and willingness to shift to the first floor premises of Dr. Bose. He relies upon the judgment reported at Zakir Hussain Bohara Vs. Ravindrakumar Mohanchand Sahu and Another, to state that even the error of fact can be corrected by the Reviewing Court. He relies upon the ruling reported at Gaya Prasad Vs. Sh. Pradeep Srivastava, to assert that in view of subsequent event it is apparent that the alleged bona fide need of his landlord is completely eclipsed. Therefore, taking assistance from Ashok Kumar and Others Vs. Sita Ram, to contend that in Articles 226 and 227 this Court has limited jurisdiction and cannot interfere with the order passed in review, he prayed for dismissal of the petition.

12. Insofar as readiness shown by the tenant to shift to the first floor premises of Dr. Bose is concerned, I have inquired from the counsel for petitioner about it. The counsel for the petitioner has obtained instructions from the landlord and stated that the premises have been let out long back and are not presently available. He stated that such request has been made only with oblique motive knowing fully well that the premises are not available.

13. Coming to the merits of the controversy, rulings on which the landlord/petitioner has placed reliance show that the landlord is held to be the best judge of his need and he has power to choose between two or three accommodations which are available to him and to ask the tenant in the premises selected by him to vacate. Perusal of ruling reported at 1997(1) Mh.L.J. 121, Meenal v. Traders and Agencies (supra) in this respect is relevant. Paragraphs 13 and 20 of this ruling read as under :

"(13) In Prativa Devi Vs. T.V. Krishnan, to which our attention has been drawn by the learned counsel for the appellant, this Court has pointed out the correct test which has to be applied in finding out whether the requirement of the landlord is bona fide or not. It has held that:

"The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the Courts to dictate to the landlord how, and in what manner, he should live or prescribe for him a residential standard of their own.

There is no law which deprives the landlord of the beneficial enjoyment of his property."

"20 ...The appellate bench and the High Court considered the possibility of Eknath going back to that flat and occupying along with Sridhar and also the possibility that in case the landlady's appeal is dismissed and Eknath's appeal is allowed the flat, in its entirety, will become available to Eknath and on that basis held that the appellant's claim that she requires the suit premises reasonably and bona fide is not true. As pointed out by this Court it is for the landlord to decide how and in what manner he should live and that he is the best judge of his residential requirement. If the landlord desires to beneficially enjoy his own property when the other property occupied by him as a tenant or on any other

basis is either insecure or inconvenient it is not for the Courts to dictate to him to continue to occupy such premises."

Thus, the above argument of landlord needs to be accepted. Other ruling on which the landlord is placed reliance in this respect is reported at R.C. Tamrakar and Another Vs. Nidi Lekha, . Paragraphs 9 and 11 of this judgment are important. In this case the Hon"ble Apex Court has held that it is for the landlord to decide how and in what manner he should live and he is the best judge of his residential requirement, it is further held that the landlady cannot be compelled to reside with her son. These paragraphs read as under :

"Regarding bona fide requirement of the landlady, the trial Court after appreciation of the evidence on record held that the premises in question were required by the landlady for bona fide occupation for residential purpose for herself. The first appellate Court set aside the finding on the ground that need of the landlady was not bona fide as her son has constructed a house where she could stay. Though the tenant left the suit premises on his transfer to a place called Sivani where he has been provided accommodation by his employer, where he is living with his wife and he has. also a house at Sivani, the first appellate Court erroneously took into consideration that the suit premises are required for accommodation of his ailing grandmother and his son, who is doing business in the suit premises. These are absolutely extraneous considerations as while considering the bona fide need of the landlord under the Act, the Court need not take into consideration these facts.

Though the son of the landlady is a doctor and has constructed his own house, the landlady wants to stay in the suit premises, it is not the case of the tenant that the landlady has any other suitable accommodation. Therefore, the High Court rightly set aside the finding of the first appellate Court holding that the landlady could not be compelled to reside with her son as her case was that she wanted to stay by herself in the suit premises because of her health condition and the climatic condition of that place suits her."

The third ruling on this point is Dhannalal Vs. Kalawatibai and Others, . Paragraph 27 of this ruling reads as under :

"So far as the challenge to proof of requirement is concerned it merits a summary dismissal. The Rent Controlling/Authority and the High Court, both, have on a meticulous evaluation of evidence found the requirement proved. None of the landlords is possessed of any other suitable alternative accommodation of his or her own to satisfy the requirement found proved. A landlord cannot be compelled to carry on business in rented premises and the proved requirement cannot be defeated by the tenant submitting that the landlord can start or comfortably continue to run his business in rented premises. It has come in evidence that the landlords have secured possession of some premises in Ahilyapura locality situated at a short distance from the suit premises but the Ahilyapura accommodation is again a tenanted accommodation and hence

irrelevant for defeating the claim of the landlords. To be an alternative accommodation relevant within the meaning of Section 12(1)(f) or Section 23-A(b), it must be "of his own", that is, the one "owned" by the landlord. Another alternative accommodation pointed out by the tenant is the one situated on the first floor of the building. It has come in the evidence that the second floor of the building is used for residence of the landlords while the first floor is used partly as a godown and partly for stitching clothes which are sold as ready-made garments in the shop of Respondent 3. To amount to an alternative non-residential accommodation so as to defeat the requirement of the landlord for the suit premises, it should be a reasonably suitable non-residential accommodation. It should be suitable in all respects as the suit accommodation is. In *Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta* this Court has held that an alternative accommodation, to entail denial of the claim of the landlord, must be reasonably suitable, obviously in comparison with the suit accommodation wherefrom the landlord is seeking eviction. The availability of another accommodation, suitable and convenient in all respects as the suit accommodation, may have an adverse bearing on the finding as to the bona fides of the landlord if he unreasonably refuses to occupy the available premises to satisfy his alleged need. The bona fides of the need of the landlord for the premises or additional premises have to be determined by the Court by applying objective standards and once the Court is satisfied of such bona fides then in the matter of choosing out of more accommodations than one available to the landlord, his subjective choice shall be respected by the Court. For the business, which respondents 2 and 3 propose to start or continue respectively, an accommodation situated on the first floor cannot be said to be an alternative suitable accommodation in comparison with the shops situated on the first floor cannot be said to be an alternative suitable accommodation in comparison with the shops situated on the ground floor. A shop on the first floor cannot attract the same number of customers and earn the same business as a shop situated on the ground floor would do. Moreover, there is no evidence adduced by the appellants to show that in M.T. Cloth Market, Shops are also situated on the first floor of buildings and attract the same business as the shops on the ground floor do. The High Court and the RCA have held that none of the premises pointed out by the appellant tenants was such alternative accommodation as may defeat the respondents' claim. We find no reason to take a different view. Between the years 1987 and 1989 late Krishnadas, the then sole owner of the building, had sold three shops but that was an event which had taken place in the lifetime of late Krishnadas and cannot have relevance for denying the claim of the respondent landlords filed in the year 1995. "

The said ruling lays down that it is subjective choice of the landlord and it further lays down that the first floor cannot be said to be alternative suitable accommodation in comparison with the shops on the ground floor. The ruling reported at *Akhileshwar Kumar and Others Vs. Mustaqim and Others*, again lays down the proposition of law which is identical with the observations made above.

Paragraph 4 of this ruling is important and the Hon"ble Apex Court has left the choice of accommodation to the subjective choice of the landlord. In this case the Hon"ble Apex Court has further observed that the accommodation got vacated by the landlord to satisfy the need of other brother cannot be directed to be diverted for the use of landlord. It is thus, clear that the law as settled by the judgment is clearly in favour of the present landlord. It is matter of record that the tenant has examined witness by name Ramkisan and the said witness has accepted that the premises constructed by the landlord between 1982-83 are located either on first or second floor of the building and are on rear side. It is also accepted that the premises of Dr. Bose are on first floor. The witness for respondent by name Sharad Somani has admitted that no block was vacant with the landlord when he filed rent control proceedings. Adv. B. N. Mohta has not pointed out anything to contrary and therefore, arguments of the counsel for the petitioner based on these facts and supported by law quoted above need to be accepted.

14. The reason given by the Reviewing Authority that there is no proof of experience or know how is also held to be not sufficient reason to deny permission on the ground of bona fide need to the landlord. In this respect the counsel for the petitioner has invited attention of this Court to Paragraph No. 12 of the ruling reported at Dattatraya Laxman Kamble Vs. Abdul Rasul Moulali Kotkunde and Another, . Relevant paragraph 4 reads as under :

"If a person wants to start a new business of his own it may be to his own advantage if he acquires experience in that line. But to say that any venture of a person in the business field without acquiring past experience reflects lack of his bona fides is a fallacious and un-pragmatic approach. Many a business has flourished in this country by leaps and bounds which was started by a novice in the field; and many other business ventures have gone haywire despite vast experience to the credit of the propounders. The opinion of the learned Single Judge that acquisition of sufficient know how is a precondition for even proposing to start any business, if gains approval as a proposition of law, is likely to shatter the initiative of young talents and deter new entrepreneurs from entering any field of business or commercial activity. Experience can be earned even while the business is in progress. It is too pedantic a norm to be formulated that "no experience no venture".

Thus, lack of experience or lack of technical know-how cannot be taken as a fact to hold that it reflects lack of bona fides on the part of landlord. Similarly, in another ruling reported at Raghunath G. Panhale (Dead) By Lrs. Vs. M/s. Chaganlal Sundarji and Co., in paragraph 11 the Hon"ble Apex Court has observed thus :

"Joblessness is not a condition precedent for seeking to get back one"s premises. For that matter assuming the landlord was in a job and had not resigned it or assuming that pending the long-drawn litigation he started some other temporary water business to sustain himself, that would not be an indication that

the need for establishing a grocery shop was not a bona fide or a reasonable requirement or that it was motivated or was a mere design to evict the tenant. It is not necessary for the landlord to adduce evidence that he had money in deposit in a bank nor produce proof of funds to prove his readiness and willingness as in a suit for specific performance of an agreement of sale of immovable property. So far as experience is concerned, one would not think that a grocery business was one which required extraordinary expertise. It is, therefore, clear that the entire approach of both the Courts was absolutely wrong in law and perverse on fact, unfortunately the High Court simply dismissed the writ petition filed under Article 227 stating that the findings were one of fact. That is why we think that this is an exceptional case calling for interference under Article 136 of the Constitution of India."

Thus, it will be seen that financial capacity or experience is again not relevant material to examine the bona fides of the need of the landlord. It is thus, clear that the petitioner landlord has proved that he has good and valid reasons to seek permission against the respondent to issue quit notice. The petitioner is best judge of his need and selection of premises in occupation of the respondent/tenant by him cannot be faulted with. The Reviewing Authority as also the Rent Controller have over-looked the law flowing from above referred judgments of the Hon''ble Apex Court and thus, these authorities have refused to exercise jurisdiction vested in them and available to them in accordance with law.

15. Insofar as subsequent events are concerned, both the parties have relied upon the cases decided by the Hon''ble Apex Court between Gayaprasad v. Pradeep Shrivastava reported at 2007(2) Mh.L.J. 581 : (2001) 2 SCC 604 or (supra). The relevant observations as contained in paragraph 13 of this ruling are relied upon by the counsel for tenant to contend that when the subsequent event show that need of landlord has been completely eclipsed, such events are to be considered by this Court. However, from the discussion made above, it is clear that no such subsequent events are placed on record. The tenants have not shown that the premises belonging to landlord on ground floor have fallen vacant. It is on the contrary established by the landlord that he cannot forced to occupy the premises of his brother Prashant. In any case, there is no evidence about the nature of partnership between petitioner and his brother Prashant. Hence, the alleged subsequent event is of no assistance to the present respondents. In paragraph Nos. 15 and 18 of this judgment Gayaprasad's case the Hon''ble Apex Court has held that long years from the start to ultimate termination of rent control litigation is bound to give rise to several events in relation to the parties as well as the subject matter of the lis. The Hon''ble Apex Court has held that if the original cause of action is submerged due to such subsequent events, it would shatter the confidence of the litigations despite the impairment already caused to him. The Hon''ble Apex Court has felt that the High Court should evolve some concrete scheme for immediate decision in all such long pending matters. The counsel for landlord has relied upon the judgment reported at G.C. Kapoor Vs. Nand Kumar Bhasin and Others, to support the

contention that crucial date for determining the need of the landlord is the date on which he moves application and further no adverse inference could be drawn against the landlord for not starting business in the rented premises. Paragraph 13 of this judgment is important and it reads as under :

"Another reasoning of the Courts below is that as Rohit did not start the business between the years 1992 and 1997 by taking any property on rent, it could not be said that the appellant needed the suit premises to run the business. There is a categorical averment by the appellant that the business was to be started in the suit premises and the appellant would not be able to take any other premises on rent. Not starting the business in a rented premises during the abovementioned period, cannot be a ground to deny decree for eviction of the suit premises. This Court in *Gaya Prasad v. Pradeep Srivastava* relying on early decisions of this Court held that the crucial date for deciding as to bona fides of requirement of landlord is the date of his application for eviction. It was a case of bona fide requirement of the premises in question for starting clinic by the son of the landlord. The litigation continued for 23 years and during that period the son of the landlord joined Provincial Medical Service and was posted at different places. The Court refused to take notice of the subsequent event holding that the crucial date was the date of filing of the eviction petition."

16. The learned counsel for the petitioner has also relied upon the ruling reported at *Kamleshwar Prasad Vs. Pradumanju Agarwal (dead)* by LR's., . Paragraph 3 of this ruling is important and the Hon''ble Apex Court has held that the date of moving application for eviction is crucial date and even if the landlord has died subsequently such event cannot wipe out the bona fide need as originally pleaded. It is further laid down that under the Act order of appellate Authority is final and the said order is decree of the Civil Court and decree of competent Court having become final cannot be interfered with by the High Court in exercise of its powers of superintendence under Articles 226 and 227 of the Constitution of India.

17. The learned Adv. Deo by pointing out Clause 21 of the C.P. and Berar Rent Control Order, 1949 states that here also the order of the Appellate Authority is final under Clause 21(3). He therefore, states that the subsequent events as alleged by the tenant cannot be considered. He further relies upon the ruling reported at *Netram Ganpat Ingale deceased through his L.Rs. Vs. Baliram Vyankat Mistri and another*, in which the learned Single Judge of this Court has held that when subsequent events which have been brought on record are disputed, there is no necessity to consider such subsequent events that have taken place during pendency of the petition in the High Court. The learned Single Judge of this Court has infact, refuses the prayer for remand for adjudication of this disputed facts. In view of the law laid down by all these judgments it is clear that if such remand or request of entertaining subsequent events are accepted, it would dwindle the faith of litigant in the system and would further add to delays. It would seriously prejudice the entire administration of justice and therefore, as

laid down by the learned single Judge if subsequent events are in dispute, the same need not be considered. Here also the subsequent events and their effect is in dispute and hence, these subsequent events need not have been considered by the present Court.

18. Insofar as the application of mind by Reviewing Authority is concerned, the learned counsel for the petitioner-landlord has relied upon the ruling reported at 1985 Mh.L.J. 37, Tukaram v. Dayalnath. Paragraph Nos. 4 and 5 of this ruling are important. These paragraphs are reproduced below :

"This takes me to the real point involved in this matter. It is true that Clause 21(2)(a) does not prescribe any statutory limitations on the power of review unlike say for example Order 47, Rule 1, CPC where grounds for review are enumerated. Absence of restrictive language in the statute does make the scope of review wider. Review is not restricted to points of law only and in a given case may embrace even points of fact. Order under review may contain a manifest error of fact which has resulted into injustice. In such a case review may be entertained but this does not mean that evidence can be reappraised and a different conclusion arrived at only because other view of totality of evidence is possible. In other words, Court cannot under cover of review arrogate to itself the power to decide the case over again because it now feels that the assessment of the evidence etc. done formerly was faulty or even incorrect. Two views of evidence in a given case may be possible but that does not make it a fit case for review. To hold otherwise would amount to equate the review with appeal. The error of fact for being a valid ground for review must be so manifest and apparent on the face of the record that no reasonable Court would permit such an error. If the said error requires for its detection process of examining the whole material afresh and detailed reasonings, it cannot be called manifest. Moreover, it must also be seen whether the said error has resulted into injustice and does not involve mere academic interest. Not mentioning of a circumstance here and a circumstance there by the lower Court or tribunal is no ground to interfere with the end result even at appellate stage. By the very nature of review power it can neither be wider or even equal to appellate power. Certainty and finality to a decision is a vital feature of rule of law. If review is permitted on such grounds it would introduce an element of disconcerting unpredictability - usually associated with gambling -- and this is a reproach which any judicial process must carefully and scrupulously avoid.

Keeping these salient features in mind it seems to me that the reviewing authority in this case has clearly exceeded his jurisdiction and has disposed of the review as if he was sitting in appeal over the decision of his predecessor. The petitioner and/or his brother are tenants since 1968. No rent receipts were given since beginning. Assessment list from the year 1971 shows monthly rent of Rs. 7.50. The petitioner is an illiterate rickshaw puller who knows only putting his signature. Sometime, before initiation of the proceedings in 1974, receipt dated 4th October, 1973 purported to be for August, 1973 showing the rent of Rs. 21/-

is prepared and the signature of the petitioner is taken on its copy. Notice of demand dated 27th December, 1973 is given and proceedings filed almost immediately thereafter alleging agreement of rent at the rate of Rs. 21/- per month. Tenant had entered into witness-box and given his version about the signing of the rent receipt. Landlord also has been examined. Appellate Authority in the whole background preferred the evidence of the tenant as against the evidence of the landlord, accepted his Version about the circumstances in which his signature on the receipt was obtained and recorded the relevant finding. The reviewing authority on reappreciating whole evidence did not agree with this appreciation of evidence by his predecessor and chose to prefer the version of the landlord inter alia on the ground that the fact of having not replied to the notice was not considered. True it is that the appellate order does not specifically refer to this circumstance but from that an inference cannot be drawn that he was oblivious to the material on the record and that it was a case of non-application of mind. The appellate Order is well considered. Style of writing the order varies from individual to individual and it is not always that all circumstances which have influenced the decision are reflected in the Order. In this case, this error if any had not resulted in any injustice. "

It is thus clear that the Reviewing Authority cannot reappreciate the whole evidence and come to a different conclusion. The Advocate for the respondent/tenant has relied upon the ruling reported at Zakir Hussain Bohara Vs. Ravindrakumar Mohanchand Sahu and Another, to show that the Reviewing Authority has acted within its jurisdiction, he has relied upon paragraph No. 9 of this ruling. In this later ruling the learned Single Judge of this Court has drawn support from the above referred 1985 Mh.L.J. judgment only and this later judgment 2002 (3) Mh.L.J. does not support arguments of the tenant at all. Perusal of the order passed by the Reviewing Authority clearly reveals that the said Authority has misdirected the entire enquiry and has not even tried to find out as to how application of mind and appreciation of evidence by the Appellate Authority is perverse. Thus, the Reviewing Authority has acted without jurisdiction in reappreciating the evidence afresh and in reaching to a different conclusion. As noticed above the conclusions reached by the Reviewing Authority are also contrary to the settled law.

19. Adv. B. N. Mohta for respondent/tenant has relied upon the judgment reported at Ashok Kumar and Others Vs. Sita Ram, to contend that under Articles 226 and 227 the High Court cannot interfere with the finding reached by the Appellate Authority. If this judgment is seen, it is clear that the appellate authority did not accept the case of the landlord in relation to the bona fide requirement and it did not consider the question of comparative hardship. The Hon"ble Apex Court has noticed this aspect in paragraph No. 15 of this judgment which is reproduced below :

"In case the Authority comes to the conclusion that the case of bona fide requirement pleaded by the landlord is not believable and acceptable the

question of allowing the petition for eviction does not arise and so the necessity of marking a comparison between the hardship in allowing the petition for eviction and disallowing the same does not arise."

The Hon''ble Apex Court has found that when permission to evict itself was not being granted, there was no need to consider the aspect of comparative hardship. In paragraph 10 the Hon''ble Apex Court finds that the findings recorded by the Appellate Authority are final and should not ordinarily interfered with by the High Court in exercise of writ jurisdiction, unless the Court is satisfied that finding is vitiated by manifest error of law or is patently perverse. The Apex Court has held that the High Court should not interfere with the finding of fact simply because it feels persuaded to take different view on the material on record. Here the findings recorded by the appellate Authority are in favour of the petitioner-landlord. The Reviewing Authority reached to a totally perverse conclusion which are contrary to law settled by the Apex Court and thus, the Reviewing Authority has committed manifest error of law and its findings of fact are patently perverse. In fact, the Reviewing Authority has exercised jurisdiction not otherwise available to it. In such circumstances, the argument of tenant cannot be accepted and such errors can be corrected by this Court in exercise of jurisdiction available to it under Articles 226 and 227 of the Constitution of India.

With the result the writ petition is allowed. The order passed by the Reviewing Authority i.e. Resident Deputy Collector, Amravati on 31st May, 1990 in Review Application No. 116/71(2) of 1989-90 at Annexure-H with the petition, is hereby quashed and set aside. The order passed earlier by the Resident Deputy Collector, Amravati as Appellate Authority in Revenue Appeal No. 251/71(2)/87-88 of Amravati at Annexure-E with this writ petition is restored.

Rule made absolute in the above terms with no order as to costs.