
(2006) 06 BOM CK 0046

In the Bombay High Court

Case No : L.P.A. No. 137 of 1994 in Writ Petition No. 3102 of 1993

Dinkar Ranade

APPELLANT

Vs

Bhagwandas Bhalchand Lohana and Another

RESPONDENT

Date of Decision : 15-06-2006

Acts Referred:

Constitution of India, 1950 — Article 136

Citation : (2006) 5 BomCR 916 : (2006) 4 MhLj 731

Hon'ble Judges : S.R. Dongaonkar, J;J.N. Patel, J

Bench : Division Bench

Advocate : Sunil Manohar, for the Appellant; M.G. Bhangde, Advocate for Respondent No. 1, for the Respondent

Final Decision : Allowed

Judgement

S.R. Dongaonkar, J.—Heard learned Counsel for the parties.

This appeal under Clause 15 of the Letters Patent is directed against the Judgment of the learned Single Judge in Writ Petition No. 3102 of 1993 dated 18-8-1994; by which the order passed by Resident Deputy Collector as well as Rent Controller arising out of RM 27/71(2)/86-87 Yavatmal were confirmed.

2. The facts in nutshell required for the decision of this appeal; can be stated thus:

The appellant-landlord had applied for permission to terminate the tenancy of the respondent No. 1 under Clauses 13(3)(i)(ii)(iv) and (vi) of the C. P. and Berar Letting of Houses and Rent Control Order, 1949. The landlord-appellant had claimed a case for default in payment of rent, change of user and also for bona fide requirement. It may be stated that during the course of hearing of this appeal the learned Counsel for the appellant pressed the appeal only on the ground of bona fide occupation/requirement. The learned Rent Controller, Yavatmal had rejected the application of the appellant/landlord on this count so also others.

3. In appeal, the learned Resident Deputy Collector confirmed the order of the learned Rent Controller by his order dated 6-1-1992.

4. Writ Petition was preferred by the appellant in this Court bearing Writ Petition No. 3102/1993 to challenge these orders.

5. This Court dismissed the said writ petition by order dated August 18th, 1994. With the observations : "nothing in particular has been brought to my notice as to why such a conclusion could not have been reached by them on appreciation of evidence on record before them. The instant petition therefore, cannot be said to be warranting interference in writ jurisdiction with the orders passed by the two authorities below."

6. This appeal seeks to challenge this order and the orders of the learned authorities below.

7. learned Counsel for the appellant Shri Sunil Manohar relying on G.C. Kapoor Vs. Nand Kumar Bhasin and Others, , Siddalingamma and Another Vs. Mamtha Shenoy, , Balwant P. Doshi Vs. Shantaben Dhirajlal Shah and Another, . contended that the landlord/appellant has proved his case for bona fide requirements of the rented premises. According to the learned Counsel, the tenant cannot question the bona fides of the landlord. In fact landlord is doing certain business and therefore, he requires the tenanted premises for his bona fide occupation and use for running that business. He also intends to reconstruct the same for proper utilization of the tenanted premises. He also requires the suit premises for reconstruction of his residence as well.

8. learned Counsel for the respondent Shri Bhangde while relying on Neta Ram Vs. Jiwan Lal, . AIR 1975 1297 (SC) and India Pipe Fitting Co. Vs. Fakruddin M.A. Baker and Another, . contended that as the findings of the learned lower authorities are not perverse or illegal and against weight of evidence of record, they were rightly not interfered with by the learned Single Judge of this Court and therefore, they cannot now be interfered with and consequently this appeal should be dismissed.

9. Before appreciating the rival contentions of the learned Counsel, it is necessary to bear in mind that the Rent Controller by his order dated 8-6-1989 has found that the landlord could not establish his case for bona fide occupation which was confirmed in appeal.

10. In G.C. Kapoor Vs. Nand Kumar Bhasin and Others, it has been held by the Hon"ble Supreme Court thus :

The appellant produced revenue records to show his ownership over agricultural land in addition to the suit premises and made a categorical statement that he would be able to raise funds from financial institutions so as to start his business. Both the Courts below, with mathematical precision, considered this aspect while coming to the fact that he did not have financial capacity. The finding on this point of the Courts below is not sustainable because while considering the bona

fide requirement of the landlord such considerations are totally irrelevant.

11. In Raghunath G. Panhale (Dead) By Lrs. Vs. M/s. Chaganlal Sundarji and Co., , the Apex Court has held thus:

This is a fit case for interference under Article 136 of the Constitution inasmuch as the Courts were wrong in thinking that the plaintiff must prove not his need but his "dire or absolute necessity". Though it is well settled that the Supreme Court would not ordinarily interfere, it can go into the correctness of findings of fact where "the concurrent decision of two or more Courts or tribunals is manifestly unjust". This burden is no doubt to be discharged by the appellant. But once that burden is discharged, it is not only the right but the duty of the Supreme Court to remedy the injustice.

12. In Balwant P. Doshi Vs. Shantaben Dhirajlal Shah and Another, this Court has observed; "It is not necessary for the landlord to establish dire necessity but it is enough to show that same need exists."

13. As pointed out above the learned Counsel for the respondent has relied upon above mentioned authorities only to show that this Court cannot interfere with the concurrent findings of the lower authorities as the learned Single Judge of this Court has observed in the writ petition.

14. It would be seen from the evidence which is recorded by the Rent Controller that the respondent himself in cross-examination has stated that the applicant is doing dairy business in the shop adjacent to the disputed premises, though, he has further stated that the said shop is sufficient for his business.

15. In further cross-examination he has admitted that the applicant is doing the business of dairy product and he has no other premises to do this business in Yavatmal except this one and these premises are situated in the market area. This would go to clearly show that the appellant/landlord is in need of the premises for his business. The landlord had deposed about his need in his evidence. In the cross-examination, no doubt he had admitted that he had not submitted any plan for demolishing the tin-shed and new construction and further that he did not prepare any estimate for his expenditure nor he had applied for loan to any bank, but it is obvious that all this can be done once the suit premises comes to his possession; for his business. It is well known that if there is some place or premises in ones possession having ownership; the banks would advance loans to such persons very easily on the strength of the same.

16. The learned Counsel for the respondent has taken us through the cross-examination of respondent wherein he has stated that he is doing this dairy business in the premises of his brother. However, this fact by itself will not be sufficient to dislodge the claim of the appellant/landlord; who has shown his intention to start dairy business of his own; in the suit premises. The observations in the Judgments referred by the learned Counsel for the appellant; of the Apex Court clearly support the case of the appellant.

17. Therefore, it is clear that the appellant/landlord had established his need of the disputed premises for starting of his business of dairy and dairy products, although he has not been able to show the plans and estimates for the construction. The evidence on record is sufficient to show his need to occupy the premises for his own business to be natural, real, sincere and honest and hence bond fide.

18. In our opinion, therefore, the orders passed by the learned lower authorities and learned Single Judge do not sustain at law and therefore, this appeal needs to be allowed. Mere confirmation of concurrent findings of the lower authorities by learned Single Judge of this Court, would not be a bar for interference with their orders, in view of Raghunath G. Panhale (Dead) By Lrs. Vs. M/s. Chaganlal Sundarji and Co., . Hence this appeal is allowed. Orders in Writ Petition No. 3102 of 1993 dated 18-8-1994, Revenue Appeal No. 55/71/1987-88 dated 6-4-1992 and Revenue Application No. 27/71(2)/1986-87 dated 8-6-1990 are hereby set aside. Appellant landlord is accorded permission to terminate tenancy of respondent under Clause 13(3)(vi) of the Rent Control Order. No orders as to cost.