

(1994) 10 BOM CK 0009
In the Bombay High Court
Case No : Writ Petition No. 221 of 1990

Elizabeth Barreto

APPELLANT

Vs

Shri Milton Sequeira and Others

RESPONDENT

Date of Decision : 07-10-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 — Section 23(1)

Citation : (1995) 4 BomCR 106

Hon'ble Judges : E.S. Da Silva, J

Bench : Single Bench

Advocate : S.K. Kakodkar, S.A. and R.V. Kamat, for the Appellant;

Final Decision : Allowed

Judgement

E.S. Da Silva, J.—The challenge in this petition is the judgment of the Administrative Tribunal, Goa, Daman & Diu (hereinafter called the Tribunal) dated 23rd May, 1990 in Eviction Appeal No. 28 of 1979 which has unsettled the judgment of the Rent Controller, Goa North Division, Panaji, dated 3-11-78 in Case No. RENT/64/74. By the said judgment the Rent Controller had dismissed an application for eviction filed by Milton Sequeira since deceased, who was the original applicant in the application for eviction, as a result whereof the judgment of the Tribunal had the effect of directing eviction of the petitioner from the suit premises.

2. The admitted position is that the suit premises which was consisting of a residential house situated at Mapusa was leased to the petitioner by one Tamaturgo de Souza by a written lease somewhere in the year 1961. At the time of the execution of the lease Tamaturgo claimed to be the owner of the ground floor of the building, part of which was leased out by him to the petitioner. On 15-7-1974 the said Milton Sequeira filed an application for the petitioner's eviction from the premises on the ground of personal occupation. The case of the

said deceased Milton who is now represented by his legal representative the respondent Ida Sequeira as averred in his application is that he is owner and landlord of the ground floor of the building described in the Conservatoire Predial Bardez under No. 2798 and that part of the ground floor namely House No. E8/6 was in possession of the petitioner as a statutory tenant thereof. It was also stated that the petitioner was paying to him a monthly rent of Rs. 35/- in respect of the suit house. Since Milton was in Bombay all these years, the house was given on lease to the petitioner in the year 1961 by his brother-in-law Tamaturgo de Souza who was looking after the house and was his attorney in respect of his assets in Goa. Therefore and since he is retired from his job he has decided to leave Bombay and settle down in Mapusa. Since he had no premises of his own at Mapusa therefore he required the house for his personal occupation.

The petitioner contested this application and although admitting that he was the tenant of one half of the ground floor of the suit house he denied that he was paying rent to Milton. Regarding the ownership of Milton he submitted that the petitioner knew about it only when the said Milton by his letter dated 6th June, 1974 written through his Advocate disclosed his title. Till then the respondent was always under the impression that the owner was Tamaturgo.

3. The Rent Controller upon recording evidence dismissed the application of the said Milton which judgment was reversed by the Tribunal vide the impugned judgment under consideration.

4. The first proposition sought to be raised by Shri Kakodkar, learned Counsel for the petitioner, is that the application of Milton before the Rent Controller for the petitioner's eviction was not maintainable in law. It was contended that the petitioner admitted that he was the tenant of the building but never admitted that Milton was his landlord. The lease was executed by one Tamaturgo de Souza who claimed to be the owner in possession of the premises. He had never disclosed that he was acting as power-of-attorney of Milton and actually the power-of-attorney which was produced by him during evidence was from the year 1971. Hence when the lease was executed in the year 1961 Tamaturgo could not prove that he was the power-of-attorney for Milton. Learned Counsel urged that for this reason he could never be regarded a tenant of the deceased Milton. In this respect several contentions were canvassed by the learned Counsel but in my view it is not necessary for me to deal with them because this petition can be conveniently disposed of on the second proposition advanced by Shri Kakodkar.

5. Indeed the learned Counsel submitted that even assuming that the application was maintainable the question which would arise was as to what would happen to Milton's application filed by him on the ground of personal occupation as a result of the death of the said Milton during the pendency of the said application. Learned Counsel stated that the answer to this question was certainly that such application would lapse. He submitted that Milton has expired on 7-3-81 during the pendency of the appeal. He was alive when the Rent Controller dismissed his

application. Thereafter he went on appeal and during its pendency he died. It was contended that the appeal being a continuation of the original proceedings and the ground of eviction being a ground of personal occupation the cause of action for the application has ceased with the death of Milton. It was further urged that need for personal occupation of the landlord is different from need for occupation of any other member of his family namely his wife and legal representatives. It was submitted that both could co-exist but need of personal occupation of Milton was certainly distinct from the need of occupation of his family.

6. There is certainly a very valid point in the submission of the learned Counsel. Section 23 of the Goa, Daman and Diu Building (Lease, Rent and Eviction) Control Act, 1968 (hereinafter called the Act) confers on the landlord right to obtain possession and sub-section (1)(a) provides that in case it is a residential building if the landlord is not occupying a residential building of his own in the city, town or village concerned and he requires it for his own occupation or for the occupation of any member of his family he may apply to the Controller for an order directing the tenant to put him in possession of the building. This shows that the law contemplates two types of needs in this case, being one the need of the landlord itself for his own occupation and the need of the landlord for the occupation of any member of his family. In the instant case the application filed by Milton was ostensibly made for the eviction of the petitioner on the ground of his personal occupation. This much has been averred by him both in paras 3 and 10 of his application for eviction. Nowhere it has been brought on record during the course of evidence that the eviction has been sought by Milton for the purpose of his personal occupation as well as of his family.

7. On the other hand the law in this respect appears to be settled to the effect that the need should subsist and continue till the last stage of the proceedings i.e. the need should be very available and actual at the time of the decision given in the application. This much has been held in the case of *Rajagopala v. P. Revanna* by Legal Representatives, 1974 R.C.J. 474. This was a case under the Karnataka Rent Control Act and its section 21(1) (h) which was dealing with bona fide personal requirement of landlord, wherein an application for eviction was made by the landlord on the ground of personal occupation, no mention had been made of the landlord's sons or other dependents' needs. On the question as to whether after the death of the landlord during the pendency of the application his legal representatives could continue the proceedings, the Court held that it was his personal requirement and, on his death, his legal representatives could not take up that plea and much less they could contend that the premises were bona fide required by them. The tenant had no opportunity to put forward his defence against the bona fide requirements of the legal representatives of the landlord. The evidence adduced in the case by the heirs of the landlord that the premises were needed by them was therefore contrary to the pleadings in the case and could not therefore be looked into. Admittedly the record shows that original respondent Milton died on 7-3-81

during the pendency of the appeal. No pleadings were contained in his application for eviction that the said eviction was sought for personal occupation of any member of his family besides his personal occupation. No evidence was also led by him in this regard.

8. Shri Kakodkar has also urged that subsequent events could be taken into consideration by this Court. In this regard reliance was placed by learned Counsel on the case of Pasupuleti Venkateswarlu Vs. The Motor and General Traders, , Hasmat Rai and Another Vs. Raghunath Prasad, and Ramesh Kumar Vs. Kesho Ram, . The sum and substance of these decisions is that when during the pendency of proceedings under the Rent Control legislation by the landlord for permission to evict the tenant a subsequent event in the facts of the case taken place which has a material bearing on the landlord's right to evict, the approach of the High Court in revision, in taking cognizance of the new development cannot be said to be wrong or illegal. Therefore the fact of Milton having expired during the pendency of the appeal should have been considered by the Tribunal at the time of disposal of the appeal as having the effect of ceasing the cause of action for the landlord to get the tenant evicted from the suit premises on the ground of his personal occupation. On this count alone the petitioner is bound to succeed.

9. The petition is hereby allowed and rule accordingly made absolute. There will be however no order as to costs.