

(1999) 02 BOM CK 0045

In the Bombay High Court

Case No : Writ Petition No. 4270 of 1992

Gopal Vishnu Vanarase and others

APPELLANT

Vs

Mahadev Govind Khire and others

RESPONDENT

Date of Decision : 25-02-1999

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1)
Maharashtra Regional and Town Planning Act, 1966 — Section 37

Citation : (1999) 3 BomCR 174 : (2000) 1 MhLj 143

Hon'ble Judges : T.K. Chandrashekhara Das, J

Bench : Single Bench

Advocate : P.K. Dhakephalkar, for the Appellant; R.L. Patil, for the Respondent

Judgement

T.K. Chandrashekhara Das, J.—The petitioner is the tenant. He has challenged the decree passed against him by the courts below evicting him from the premises which was let out to him as open space comprising City Survey No. 1019 and 1020 admeasuring to an extent of 6056 sq. ft. Originally the premises was leased out to one Bagade by the father of the present respondent No. 1. It appears that the original tenant without permission of the landlord constructed a shed in the premises and started running floor mill and oil mill in the said shed. On 27th September, 1964 the aforesaid Bagade sold oil mill to Vishnu Narayan Vanarase father of the present petitioner No. 1 and Vaman Mulay. Consequently rent note was executed by Mahadev Khire, the father of the respondent No. 1 accepting them as tenant and the rent was also refixed at Rs. 150/- per annum. Said Mr. Mulay expired and father of the petitioners became sole owner.

2. On 10-1-1979 a Notice to quash was issued by Mahadev G. Khire the father of respondent No. 1 to Vishnu N. Vanarase, the father of the petitioners in respect of City Survey No. 1019/B and 1022-A/2 on the ground that the premises are required by the landlord. On 31-1-1980, the present suit was filed by Mahadeo Khire the father of the first respondent for reasonable and bona fide requirement for starting business. In the meantime Vishnu N. Vanarase expired and the

present petitioners was substituted in his place. It appears that consequently by the amendment in March, 1986 the purpose of eviction has been changed from 13(1)(g) to 13(1)(1). In the meantime the original landlord died and present respondent No. 1 as legal representatives of the deceased were impleaded. The parties contested the matter on the ground that the landlord requires the land for constructing Mangal Karyalaya. Both the courts below found that the reasonable and bona fide requirement for construction of the building has been proved and eviction have been ordered. In normal situation, there is no scope for this Court to interfere on the concurrent findings on facts regarding bona fide requirement.

3. I heard learned Counsel for the petitioner Mr. Dhakephalkar and Mr. R.L. Patil for respondent.

4. Mr. Dhakephalkar, learned Counsel for the petitioner took me through various evidence led before the Court and has tried to argue that certain conclusions arrived at by the courts below are perverse and illegal warranting interference by this Court. He has taken me through various circumstances which touches upon the reasonableness and bona fide requirement of the respondent. He has pointed out that the first respondent is an employee working in a bank. The first respondent could manage to obtain the plan for the purpose of constructing Mangal Karyalaya from the Municipality which carries so many conditions to be fulfilled. One of the conditions is that the suit premises is situated in the Industrial Zone and Mangal Karyalaya is not industry. Therefore, characteristic of the zone has to be changed u/s 37 of Maharashtra Regional Town Planning Act, 1966. Conditions laid down in the permission requires cumbersome procedure. Not only that, all those procedure has to be fulfilled by the Municipality, Town Planning authority and the Government. If supposing that one of the authorities does not fulfil the requirement required to be done by them according to law, the conditions stipulated in the licence cannot be carried out. In other words those conditions which were incorporated in the permission has to be done by the third party not by the petitioner. If the condition to be fulfilled by the petitioner and he can do it by his own effort, then it cannot be said that the conditions are impossible conditions. But here in this case as pointed out by the learned Counsel for the petitioner the conditions imposed for the permission are conditions which may or may not be carried out. Therefore such permission cannot be" treated as a valid permission in the eye of law. According to the Counsel for the petitioner it is only eye wash just to satisfy the Court that the respondent is having permission to construct a building.

5. Mr. Dhakephalkar also pointed out another circumstances, which may vitally affect the bona fides of the respondents. The said permission was earlier rejected by the Municipality on 8-7-1985 for the reason that the proposed construction is in Industrial Zone. It was again applied. The evidence of the parties was closed on 25-2-1986 and the argument was over on 20th March, 1986 and at that stage, an application was made to examine P.W. 7 who is the signatory of the

permission who is the Chief Officer of the Municipal Council. He was examined as P.W. 7 on 24-3-1986. At that time, so called permission was not there in existence and his evidence was closed on that day. Curiously enough the permission was issued on 12-5-1986 and then P.W. 7 was recalled and examined on 17-6-86. At the time of examination he was confronted with Clause (1) of the permission relating to the removal of Industrial Zone. He explained that in Clause (1) of the permission, the words "Existing Industrial use" was really used to mean Existing Industrial Zone. In other words, the very permission will come into existence only when the Industrial Zone is removed in respect of Survey No. 1019-B and 1022-A-B/2 which is the subject matter of the dispute. In view of this explanation given by P.W. 7 by no stretch of imagination, one can hold that so called permission issued on 12-5-1986 is permission to construct building. At this juncture, it is relevant to refer to section 37 of the Maharashtra Regional Town Planning Act 1966 which stipulates that :

"Modification of final Development Plan. (1) where a modification of any part of or any proposal made in a final Development plan is of such a nature that it will not change the character of such Development plan, the Planning Authority may or when so directed by the State Government shall within sixty days from the date of such direction publish a note in the Official Gazette and in such other manner as may be determined by it, inviting objection and suggestions from any person with respect to the proposed modification not later than one month from the date of such notice; and shall also serve notice on all persons affected by the proposed modification and after giving a hearing to any such persons submit the proposed modification (with amendments, if any) to the State Government for sanction."

6. The learned Counsel for the respondent Mr. R.L. Patil has contended that the permission issued by the Local Authority with condition to do certain things does not lose its character as "permission. It cannot be assailed as a permission not obtained legally or bona fide. The question is whether the conditions imposed in such permission can be fulfilled by the petitioner himself or the person concerned himself or to be carried out by the third party. Then, unless third party fulfils condition, construction cannot be carried out because permission itself shows that it comes into existence only when the conditions are fulfilled. As 1 pointed out earlier, the condition which was imposed in the permission is to be carried out by the Town Planning Authority and the Government. In such situation one cannot say that he has obtained a valid permission to proceed with the construction.

7. The learned Counsel for the respondent Mr. R.L. Patil has submitted that in order to establish the bona fides of the landlord, it is necessary to have the permission from the local Authority. He is required to prove only the reasonableness and bona fide need. He also sought a decision of this Court reported in Chandrakant Bhalchandra Nalavalkar and Another Vs. Hiralal Mulchand Shah, . There is no quarrel about that proposition. But the question is

whether the landlords requirement was bona fide and reasonable. The Court which is taking the task of examining bona fides of the landlord has to consider various circumstances of the case. In some cases, it may be relevant to establish the bona fides of the landlord whether he has sufficient fund or "to" whether he has necessary plan or whether he has other materials required for the construction of the building for which the premises was sought to be evicted. In that enquiry all these factors becomes relevant. In another situation these factors may not be relevant at all. Supposing that landlord comes and tells the Court that he has got only one place of land under the sun, and that is occupied by the tenant and the said piece of land is required for his residence. In such circumstances perhaps the Court may not to look into any other circumstances as to whether he has got sufficient means or whether he has obtained plan or permission from the local authority etc. The question is whether the landlord is in dire necessity and this necessity is not with any oblique motive. In this case as pointed out earlier the circumstances which are narrated above will caste a doubt on the bona fides of the landlord, particularly the circumstances in which P.W. 7 was brought in for his evidence. On scanning through his evidence it is clear that he has spoken before the Court quite contrary to what has been written by him in the permission. This circumstance will go a long way to question the bona fides of the petitioner. As I pointed out earlier the landlord has only established his desire. Of course, he has got sufficient financial means. He is working as employee of the bank. He says that Mangal Karyalaya proposed to be constructed in the premises can be run by his wife or his mother. Mr. R.L. Patil has strenuously argued that the landlord cannot be blamed for having such desire. The landlord is a final authority to decide what is to be done with his land. Definitely there cannot be any quarrel about this proposition. However, the Court has to examine for what purpose he wants to evict the tenant. Statute insist that such landlord should establish bona fide requirement and the requirement should be reasonable. It is in this context, the materials and evidence adduced by the parties had to be scanned through by the Court.

8. Mr. R.L. Patil pointed out a decision in *Krishnapasinha Rao Kundapur v. Dattatraya Krishnaji Karani*, reported in AIR 1966 S C 1024 where the Supreme Court had occasion to examine the scope of section 13(1)(1). Based on this decision, he argued that the landlord is justified in asking for his land which he has leased out. In executing this requirement, the building existing in the plot has to be demolished and in that case the oil mill that is being in existence of the property has to be demolished and he has to get vacant possession of the open land. As I stated earlier, section 13(1)(1) does not dispense with the requirement of bona fide and therefore, the main task of the Court to examine whether the landlord has established his bona fide. In the glaring circumstances noted above, I fail to see any bona fides in the requirement of the landlord. Both courts below committed a grievous error in allowing the suit.

9. In view of the above discussion, the order passed by the courts below are unable to be set aside. I do so.

10. In the result, writ petition is allowed. Rule is made absolute in terms of Prayer Clause (a). No orders as to costs. C.C. expedited.

Prayer Clause (a) :

"Quash and set aside the judgement and Order dated 27th June, 86 passed by the Civil Judge, Junior Division, Wai in Regular Civil Suit No. 38/80 as well as the judgement and order dated 17-8-92 passed by the District Judge, Satara in Civil Appeal No. 397/86 and dismiss the Regular Civil Suit No. 38/80 filed by the respondents."

11. Petition allowed.