

(2009) 07 BOM CK 0242
In the Bombay High Court
Case No : Writ Petition No. 187 of 2009

Guruprasad Raghunath Swar

APPELLANT

Vs

Mr. Aleixo Fernandes (since deceased) (Query Fernandes,
Jenet Fernandes and Jeoffry Fernandes) and Mrs. Estera
Fernandes

RESPONDENT

Date of Decision : 29-07-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227

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

Citation : (2009) 07 BOM CK 0242

Hon'ble Judges : A.H. Joshi, J

Bench : Single Bench

**Advocate : M.B. Da Costa and J.A. Lobo, for the Appellant; C.A. Coutinho, for
the Respondent**

Final Decision : Dismissed

Judgement

A.H. Joshi, J.—Rule. Rule is made returnable forthwith and is heard by consent.

2. This is a petition by the tenant who has suffered the order of eviction of house tenancy u/s 23 of Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968.

3. Heard both learned Advocates. Perused the record, produced with the petition and precedents cited at bar.

4. The landlord claimed eviction on the ground of bonafide personal requirement.

5. The bonafide personal requirement is narrated in the plaint/petition for eviction in para 10 thereof which reads as follows:

As the premises presently occupied by the applicants and their family are grossly inadequate for the accommodation of the applicants' family, they require the suit premises for their additional accommodation. These premises are required

bonafide for their accommodation.

6. The averment contained in para 10 of eviction petition has been answered by petitioner herein saying that the premises in possession and occupation of landlord are adequate and sufficient to meet the requirement for landlord's family.

7. Certain developments have occurred during the pendency of petition namely, in year 2001 eastern portion of the part of the house occupied by the tenant had collapsed due to heavy monsoons and age of building which was then 82 years.

8. At the tenant's request the building was inspected by municipal authorities. This fact is seen from the petitioner's communication dated 7.7.2003 which is at page 147 and 149 of the petition paper book.

9. It is a common ground and admitted fact that by judicial orders, the tenant was permitted to carry out necessary repairs which he has carried out, and continued to occupy and enjoy the house.

10. The landlord has led own evidence and other witnesses who have been cross examined by the tenant.

11. The Rent Controller has decided the case by judgment and order dated 19.11.2001, who has allowed the application and directed the tenant to vacate the premises. Present petitioner/tenant carried appeal before Administrative Tribunal, which has been registered as Eviction Appeal No. 1/2002.

12. During the pendency of appeal further development occurred namely the house has suffered total collapse except door frames which were embedded in small part of wall which did not collapse, as is seen from photographs which are placed on record by the petitioner ? tenant.

13. The landlord filed application before the Administrative Tribunal averring that in view of the collapse of the house and tenanted premises the tenant's appeal had become infructuous, and prayed that the tenant's appeal should be dismissed.

14. The tenant in reply contended that the fact of collapse of the house was an outcome of misconduct of the landlord and, the landlord should not be allowed to take benefit of own wrong and prayed that his appeal should be allowed as due to collapse of house landlord would not be able to occupy the house, and hence the bonafide personal requirement was frustrated.

15. Tenant's appeal has been dismissed by the appellate authority on merits.

Tenant has therefore preferred present petition under Articles 226 and 227 of Constitution of India.

16. The same points as argued before the appellate authority are reiterated and pressed before this Court urging that the landlord's need ? bonafide personal requirement has ceased to exist. He further urges that the existence and

continuation of requirement should be taken into account till last moment. He further urges that now landlord should reconstruct the house and give it to the tenant.

17. It is not in dispute that the tenant has vacated the suit premises i.e. has ceased to occupy and has shifted elsewhere.

18. Learned Advocate for the appellant did not cite any judgment and argued based on facts and submissions noted herein before.

19. In reply learned Advocate for the respondent Mr. C. A. Coutinho has placed reliance following judgments:

(i) Deep Chandra Juneja Vs. Smt. Lajwanti Kathuria (Dead) through L.Rs., ,

(ii) Parasmal Chunnilal Chordia Vs. The Additional Collector, Amravati, Ramjivan Bangatlal Daga, Bangatlal Ramjivan Daga, Narendrakumar Bangatlal Daga and Nareshkumar Bangatlal Daga, .,

(iii) Prativa Devi Vs. T.V. Krishnan, ,

(iv) 2001(4) All MR 536 in S.R. Babu v. T.K. Vasudevan and Ors.,

(v) Musaji Mohamadali Master and Sons and Another Vs. Mr. Gulamali Dadabhai Amreliwala since Decease through his Legal Representatives and Another, ,

(vi) Sushilabai Raut and Others Vs. Navnit Lakhotiya, .

20. The judgments and propositions noted herein before do reveal legal position which can be summarized as follows:

(a) Whenever landlord seeks bonafide need of house premises, the landlord has to prove the same.

(b) Whenever evidence has brought by landlord, it has to be falsified by the tenant.

(c) The landlord is best judge of his need.

(d) The need of landlord is landlord's personal perception and perspective, and it is to be objectively seen, and cannot be subjectively scrutinized by the Court.

(e) The manner in which additional premises should be used by landlord cannot be dictated by the tenant.

(f) Bonafide personal requirement on the date of application will have to be seen.

21. On facts of the case, it is seen that the landlord did not pray for eviction urging that the house needs demolition/re-construction it being dilapidated. Collapse of house is an intermittent development, which cannot be used as a weapon of destroying landlord's claim for eviction on bonafide personal requirement.

22. The Rent Controller had held that the landlord was very much in need of premises as the children who were too young and family was growing.

23. The law as applicable does not provide for any consideration such as comparative hardship. The result is obvious, namely once landlord's need proved to be bonafide, the result to follow is the decree for eviction of the tenant.

24. It is further seen that though the tenant has attempted to suggest that the house in occupation of land owner could have been sufficient for him, and that the owner could have managed with available accommodation or who was not in need of additional accommodation. Extent of need is not a matter which can be scrutinized. Tenant has failed to show that bonafide personal requirement did not exist.

25. In these premises, it is clear that the petitioner has failed to make out a case for assailing impugned order.

26. In the result, this Court is satisfied that the petition has no merit and it deserves to be dismissed.

27. Rule is discharged with costs.