

(1999) 06 BOM CK 0040

In the Bombay High Court

Case No : Writ Petition No. 3084 of 1999

Hastimal Nayanmal Jain

APPELLANT

Vs

Dattatraya Sayanna Tote

RESPONDENT

Date of Decision : 08-06-1999

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1)
Constitution of India, 1950 — Article 226, 227

Citation : (1999) 3 ALLMR 257 : (2000) 1 BomCR 186 : (2000) 2 BOMLR 913

Hon'ble Judges : D.K. Deshmukh, J

Bench : Single Bench

Advocate : H.A. Cazi and G.M. Khambete, for the Appellant; V.S. Gokhale, for the Respondent

Judgement

D.K. Deshmukh, J.—By this petition, the petitioner takes exception to the order passed by the Additional District Judge, Pune in Civil Appeal No. 457 of 1989. By that order the learned District Judge has allowed the Appeal filed by the respondent and has passed a decree of eviction against the petitioner/ tenant. The decree has been passed against the tenant on the ground that he has acquired alternate accommodation. It appears that an amendment was carried in the plaint during the pendency of the Appeal before the learned District Judge.

2. It was the case of the plaintiff/landlord that the tenant during the pendency of Appeal had acquired residential accommodation being Flat No. 22. After the plaintiff was allowed to amend his plaint, it appears that the tenant had filed his Written Statement. The parties also led evidence. The Court after appreciating the evidence found that the plaintiff has established that the tenant has acquired alternate accommodation.

3. The learned Counsel appearing for the tenant/petitioner submitted that Flat No. 22 was not acquired by the tenant, but was acquired by the uncle. In the submission of the learned Counsel as the Flat No. 22 was not at all acquired by the tenant, it cannot be termed as an alternate accommodation.

4. Bare perusal of the additional written statement filed by the tenant shows that there is no substance in the submission made by the learned Counsel. Relevant portion of the additional written statement reads as under:-

"The family of the defendants had increased considerably during the pendency of the suit and the civil appeal as lot of time has elapsed. The requirement for additional accommodation has increased. Hence, the present defendants who are the legal representatives of the deceased tenant, had to acquire additional accommodation and they are now using both the suit premises as well as the aforesaid flat "corner view". Even the total accommodation now with the defendant, consisting of the suit premises and the flat in "corner view" is not sufficient for their requirements. By acquiring the said flat in "corner view" the defendants cannot be said to have acquired suitable accommodation elsewhere within the provisions of the Bombay Rent Act..... The defendants submit that they have not made themselves liable for eviction by acquiring the "corner view" flat."

5. From these statements made in the additional written statement one is left in no doubt that the petitioner/tenant did not dispute that it is the tenant who has acquired a flat in "corner view". The case of the tenant was that the accommodation at "corner view" is not an alternate accommodation, but is an additional accommodation. There is nothing on record to show as to how the tenant has established his case that the flat at "corner view" is not an alternate accommodation but additional accommodation. The Court has held that the tenant has failed to establish the aspect of suitability of the flat at "corner view". The learned Counsel for the petitioner sought time to place oral evidence recorded before the District Judge on record. This request was made after arguing the matter for some time. It is further to be seen here that in view of series of judgments of the Supreme Court, the jurisdiction of this Court to interfere with the finding of facts recorded by the courts below and to reappreciate the evidence on record is extremely limited. In my opinion, in the face of clear statements made in the written statement and in view of the finding recorded by the Court that the tenant has not placed any evidence on record on the aspect of the suitability of other accommodation, in my opinion, it will not be possible to this Court to reappreciate the oral evidence that has been recorded. The petition has thus no substance. It is summarily rejected.

6. Petition dismissed.