

(2008) 09 BOM CK 0143
In the Bombay High Court
Case No : Writ Petition No. 5469 of 2008

Indira Chetan Puri

APPELLANT

Vs

LIC of India

RESPONDENT

Date of Decision : 09-09-2008

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226, 227
Life Insurance Corporation Act, 1956 — Section 21
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 15, 2, 3, 5(1), 5(A)

Citation : (2008) 6 ALLMR 842 : (2008) 6 BomCR 576 : (2008) 6 MhLj 652

Hon'ble Judges : V.C. Daga, J

Bench : Single Bench

Advocate : Rajiv Narula and Anuj Narula, instructed by Jhangiani Narula and Asso, for the Appellant; Y. Sanglikar, for the Respondent

Final Decision : Dismissed

Judgement

V.C. Daga, J.—Heard learned Counsel for the parties.

2. Perused the petition.

3. This petition is directed against the order dated 1-7-2008 passed by the Principle Judge of the Bombay City Civil Court in Misc. Appeal No. 66 of 2005, confirming the order of eviction dated 13-4-2005 passed by the Estate Officer appointed u/s 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 ("the Act of 1971" for short).

The Factual Matrix:

4. The factual matrix reveal that the petitioner is a tenant in respect of the premises situate at Village No. 5, Row No. 3, Ground Floor, Jeevan Bima Nagar, Borivali (West), Mumbai-400 103, owned by the Life Insurance Corporation of India, Mumbai ("the L.I.C." for short) since 1962.

5. The L.I.C. through its Advocate issued notice dated 12-9-1996 terminating petitioner's tenancy on the ground that the petitioner has constructed a weather-shed and has also erected a fence around the shed to prevent the respondent's staff from coming near it. The petitioner was in arrears of rent for September-October, 1993. The petitioner claims to have replied vide his letter dated 1-11-1996. It appears that from June, 1997 onwards the L.I.C. has not been accepting rent.

6. The L.I.C. filed application for eviction on 20-5-1999 before the Estate Officer being Case No. 182 18A of 1999. The Estate Officer issued show cause notice dated 1-7-1999 under the Act of 1971.

7. The petitioner filed written statement contending that the weather-shed was in existence since 1976 and that the fencing was done in pursuance and in accordance with the permission granted vide letter dated 9-9-1976 and that the construction of temporary shed which is shelter for her car is opened from all sides and does not constitute any building or structure forbidden by Public Premises Act, 1971. The petitioner also pleaded that she has paid rent and produced documentary proof in respect of payment of rent for the period from September, October, 1996.

8. The Estate Officer framed issues. Both parties were permitted to lead evidence. The Estate Officer passed a reasoned order u/s 5(1) of the Act on 13-4-2005 and directed recovery of arrears of rent u/s 7(1)(2-A), damages under Sections 7(2)(2-A) and 5-A(2) of the Act.

9. Being aggrieved by the above order dated 13-4-2005, the petitioner filed the statutory appeal before the City Civil Court, Bombay being Misc. Appeal No. 66 of 2005 and obtained stay of the execution of the eviction order. The appeal was finally heard by the City Civil Court and came to be dismissed on 1-7-2008 by the impugned order.

10. Not being satisfied with the above order, the petitioner has filed this petition under Article 227 of the Constitution of India to challenge the said order.

Submissions:

11. Mr. Narula, learned Counsel for the petitioner urged that the construction of weather-shed open from all sides consisting of asbestos sheets standing on the poles fixed with nuts and bolts cannot be said to be a permanent structure or a building in the nature of and within the meaning of Section 5(A) of the Act. He further submits that the action of eviction resorted to by the L.I.C. is a disproportionate punishment to the petitioner and termination of tenancy is highly illegal and high-handed. He tried to press into service the doctrine of proportionality by the L.I.C. and went on to urge that the drastic power of presumption and forfeiture should be exercised only by way of last resort. He further submits that the car shed was constructed in or about 1976 admeasuring 10 x 40 ft. and went on to urge that the petitioner could have been asked to

remove the same.

12. Mr. Narula also tried to rely upon the guide-lines issued by the Central Government and went on to urge that as per the Division Bench of this Court, guide-lines u/s 21 of the Life Insurance Corporation Act, 1956 ("the LIC Act for short") are and they are binding on the L.I.C. He further urged that the power to terminate tenancy of the petitioner has been exercised in a mala fide and capricious manner. Hence, it is not a bona fide exercise of power. He also tried to attack the valuation report given by Mr. Ashok Kelkar on the basis of which the mesne profits were determined and urged that the said valuation report has not been proved by examining the author of the valuation report.

13. Mr. Narula also attacked the appreciation of the evidence done by the Estate Officer as well as by the lower Appellate Court and urged that the appreciation done by both the authorities below is perverse, warranting interference at the hands of this Court in exercise of writ jurisdiction under Article 227 of the Constitution of India.

14. I was taken through the rival pleadings, the evidence and the findings recorded by both the authorities below so as to persuade me to reappraise the same once again.

Consideration :

15. Having heard the learned Counsel for the petitioner, at length, in order to appreciate the submissions made, one has to turn to Section 2(g) of the Act which runs as under:

"Unauthorised occupation" in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of granting any other mode of transfer) under which he was shown to occupy the premises has expired or has been terminated for any reason whatsoever.

16. The aforesaid Section shows that the possession could be unauthorised if the authority under which the person was allowed to occupy the premises has been terminated for any reason whatsoever. Under the Act, the instances of this "reason" are not given. The petitioner has relied on guide-lines issued in this regard by the Central Government and I have gone through the guide-lines. The purpose behind the guide-lines appears to be to see that the decision of the authority is not capricious, arbitrary and there is fairness and reasonableness in the decision in view of Articles 12 and 14 of the Constitution. It is observed in the guide-lines that for resuming possession, the authority has rights similar to private landlord under the Rent Control Act in dealing with genuine legal tenants. It is also observed in the guide-lines that only on the basis of the notice of termination, the person in occupation should not be treated as unauthorised occupant.

17. There is one more case in which this Court has made similar observations but I am referring to it in a different context at appropriate place. On the same point, Hon''ble Apex Court has made some observations at para 23 in the case reported as New India Assurance Company Ltd. Vs. Nusli Neville Wadia and Another, . which are as under:

Issuance of such guide-lines, however, is not being controlled by statutory provisions. The effect thereof is advisory in character and thereby no legal right is conferred upon the tenant.

18. As there are no grounds specifically mentioned in the Act for termination of tenancy. It can be said that it is advisable for the authority like LIC to take a hint from the guide-lines. On the basis of the guide-lines, it can be said that the grounds given in Rent Control Act can be seen and used by the authority for taking action like termination of tenancy. It cannot be disputed that the purpose behind the Act and Rent Legislation are little bit different and to come out of the rigors of rent legislation, additional powers are given to the authority under the Act. This can be seen again in Section 15 of the Act which shows that civil courts are prevented from entertaining such matters. In the Act, summary procedure is provided for enquiry of such matters and a separate authority is created for making such enquiry. Further, in the case reported as Crawford Bayley and Co. and Others Vs. Union of India (UOI) and Others, . It is observed by the Apex Court that the provisions of the Act would prevail over the Rent Control Act. In Writ Petition No. 1854 of 2002 between H.R. Gandhi and Ors. v. The Oriental Insurance Co. decided on 10-1-2005 the Division Bench of this Court has relied on the said Supreme Court case and it is observed that the provisions of Maharashtra Rent Control Act cannot prevail over the provisions of the Act. In the reported case Nusli Neville Wadia Vs. New India Assurance Co. Ltd. and Another, . this Court has observed that the principles of Rent Act would apply and aforesaid guide-lines would bind the authority if the case is against a genuine and lawful tenant. This point is also considered by the Hon''ble Apex Court in the case cited supra New India Assurance Co. Ltd. v. Nusli Neville Wadia and Anr. and it is observed that in a particular case this point can be considered. As on this point the case of "Crawford Bayley & Co. and Ors. v. Union of India and Ors." is squarely applicable, this Court is bound by the decision delivered by the Hon''ble Apex Court.

19. I hold that the observations made by this Court with regard to the application of principles of Rent Control of Act cannot be used in strict sense in favour of the appellants. However, it must be added that in view of the discussion already made with regard to the guide-lines and Articles 12 and 14 of the Constitution of India, it is necessary for the authority to make out atleast grounds for eviction. Strict interpretation of various terms made under the Rent legislation cannot be used, though the grounds can be used by the authority for eviction purpose. It can be said that the grounds will have to be established by the authority. Under the Rent legislation, eviction can be sought on the grounds like subletting, non-

user and having alternate accommodation by the tenant. Thus, in strict sense, the authority will not be required to prove that the grounds available for terminating tenancy available in the Act. It would be sufficient for the authority to prove that the tenant would be sufficient for the authority to prove that the original tenant has committed an act not permitted by contract of tenancy.

20. With the aforesaid understanding and in backdrop of Section 2(g) of the Act, let me turn to the order of the lower Appellate Court to find out as to whether the ground for termination of tenancy is made out by the Respondent-L.I.C.

21. One of the grounds upheld by both the Authorities below relates to the shed constructed by the petitioner. The appellant has admitted in her evidence the dimension of shed as 9 x 16 though this admission is with regard to the old structure. The son of the petitioner has admitted before the Estate Officer that in 1996 they replaced the shed with asbestos sheets. He has stated that the frame of the shed is fixed by using nut and bolts. He has given a clear admission that the permission of the L.I.C. or B.M.C. for erection of this structure which was made in 1996 was not obtained. The evidence is available on record to show that notice for removal of unauthorised construction was given in 1997.

22. However, no further action was taken. At that time, there was report of construction of the shed admeasuring 15 x 10 feet. The evidence, now, shows that in 1996 again inspection was carried, and at that time it was noticed that size of the shed was much bigger. The ample evidence is on record to show that there was no consent of L.I.C. permitting the petitioner to construct the said shed. On the contrary, right from 1987 the petitioner was asked to remove the construction in the year 1996. Ignoring this warning, virtually, larger size shed was constructed by the petitioner which is clear from the admission of the petitioner, appearing on page 111 of the petition which reads as under:

It is right that we have not obtained B.M.C. permission when we constructed it in 1996. It is right that we have neither written to L.I.C. nor obtained L.I.C. permission for erection of weather shed after 1996 or thereafter.

23. So far as fencing is concerned, there is ample evidence on record to show that permission for temporary fencing was given which was limited in width, not more than five feet from the outer wall. Admittedly, the space which is enclosed by fencing is having width of more than five feet. Fencing appears on three sides. Much more space is enclosed by fencing so as to use of this space and shed for exclusive use of the petitioner so as to prevent its user by others. This factual scenario based on evidence accepted by both the authorities leads to the conclusion that sufficient grounds were available with the respondent to terminate tenancy of the petitioner. Both the Courts below have recorded concurrent findings of facts in this behalf which can be supported on the basis of the evidence available on record including admission given by the petitioner.

24. The submission made, pressing into service the doctrine of proportionality is also misplaced in view of the acts committed by the petitioner-tenant referred to

hereinabove.

25. The last submission made by the learned Counsel for the petitioner leading to determination of damages relying upon the valuation report of Mr. Kelkar, Valuer, examined by the L.I.C., is also misplaced.

26. The first contention of the petitioner in this behalf is that the valuation report has not been proved. The submission is unsustainable since the said valuation report has been used by the petitioner for the purpose of cross-examination. The Apex Court in the case of Ram Janki Devi and Another Vs. Juggilal Kamlatpat, ruled that once document, filed by the opponent is used for cross-examination, the said document has to be taken as "proved" and same can be read in evidence. Reading the said document would clearly show that rate of damages was calculated @ Rs 14 per sq. ft. per month in respect of both the tenanted as well as encroached premises. According to the petitioner, the rate of Rs. 14/- sq. ft. p.m. is on higher side. Considering the rate of rent prevailing in the area, especially, in the area of Borivali, one can conveniently, opine that nobody can get residential premises in that area @ Rs 14 per sq ft. per month. In my considered view, the damages calculated by the valuer are on much lower side. It appears that at the back to the mind of valuer, the old tenancy of the petitioner appears to have resulted in slashing down the rate of rent per square feet per month.

27. This Court, not being the Court of appeal, in exercise of Writ jurisdiction under Article 227 of the Constitution of India, cannot reappreciate the evidence or substitute its own views.

28. Having said so, as indicated hereinabove, I am bound by the parameters of interference by the High Court in petition under Article 227 of the Constitution of India.

29. The Apex Court in the case of Trimbak Gangadhar Telang and Another Vs. Ramchandra Ganesh Bhide and Others, the Apex Court in para 3 held that:

As would be apparent from the above narrated, the instant case does not involve any substantial question of law of general or public importance. Although Counsel for the appellants has strenuously assailed the correctness of the finding of the Revenue Tribunal and of the High Court, we are unable to accede to his contention. We have not, despite careful consideration of the judgments and objections submitted to us, been able to discern any legal infirmity or error either in the decision of the Revenue Tribunal or of the High Court. It is well settled rule of practice of this Court not to interfere with the exercise of discretionary power under Articles 226 and 227 of the Constitution merely because two views are possible on the facts of a case. It is also well established that it is only when an order of a Tribunal is violative of fundamental basic principles of justice and fair play or where a patent or flagrant error in procedure or law has crept in or where the orders passed results in manifesting justice, that the Court can justifiably interfere under Article 227 of the Constitution.

30. The Apex Court in the case of Waryam Singh and Another Vs. Amarnath and Another, considered the scope of Article 227. It was held that the High Court has not only administrative superintendence over the subordinate courts and tribunals but it has also the power of judicial superintendence. The Court approved the decision of the Calcutta High Court in Dalmia Jain Airways Ltd. v. Sukumar Mukherjee AIR 1975 Cal 193 where the High Court said that the power of superintendence conferred by Article 227 was to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting their mere errors. The Court said that it was, therefore, a case which called for an interference by the Court of the Judicial Commissioner and it acted quite properly in doing so.

31. In AIR 1975 1297 (SC) the Apex Court again reaffirmed that the power of superintendence of the High Court under Article 227 being extraordinary was to be exercised most sparingly and only in appropriate cases. It said that the High Court could not while exercising jurisdiction under Article 227, interfere with the findings of fact recorded by the subordinate court or tribunal and that its function was limited to seeing that the subordinate court or tribunal functioned within the limits of its authority and that it could not correct mere errors of fact by examining the evidence or reappreciating it. The Court further said that the jurisdiction under Article 227 could not be exercised, "as the cloak of an appeal in disguise. It does not lie in order to bring up an order or decision for rehearing of the issues raised in the proceeding.

32. In Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, the Supreme Court observed as under:

It is thus, clear that the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the powers under Article 226 of the Constitution. Under Article 226, the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Article 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority.

33. I must observe that in exercise of writ jurisdiction under Article 227 of the Constitution of India reappreciation of the evidence by the writ Court is not permissible unless found to be palpably erroneous and perverse. No perversity could be demonstrated by the petitioner. This Court, not being a Court of Appeal, is not expected to substitute its views in place of the impugned order, if the view taken is found to be possible and reasonable in the facts and circumstances of the case.

34. In the above view of the matter, the petition is without any substance. The same is liable to be dismissed.

35. In the result, the petition is dismissed in limine with no order as to costs.

36. At this stage, learned Counsel for the petitioner prayed for stay of the eviction order, so as to enable the petitioner to approach the higher forum. The prayer is opposed by the learned Counsel appearing for the Respondent. However, in the interest of justice action of eviction is stayed for a period of eight (8) weeks from today subject to the petitioner depositing Rs. 1.50 lacs with Life Insurance Corporation of India within two weeks from today and furnishing security for the balance amount within four weeks from today to the satisfaction of the Estate Officer.

37. In addition to this, the petitioner shall also furnish an undertaking duly signed by all adult members of the family that in the event of unsuccessful before higher forum/Court, she shall vacate the subject premises on their own without driving the respondent for execution of the order and shall not create any third party interest in the subject premises. Order accordingly.