

(2002) 09 BOM CK 0038

In the Bombay High Court

Case No : Writ Petition No. 5220 of 1990

Indubai Govindrao Lad and Others

APPELLANT

Vs

Smt. Anjelinabai Jitendrakumar Bafna

RESPONDENT

Date of Decision : 03-09-2002

Acts Referred:

Bombay Rent Act, 1953 — Section 13(1)
Constitution of India, 1950 — Article 227

Citation : (2002) 09 BOM CK 0038

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : A.K. Abhyankar, for the Appellant; A.I. Baphana, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Khanwilkar, J.—This writ petition under Article 227 of the Constitution of India takes exception to the Judgement and Decree passed by the 3rd Additional District Judge, Nasik dated 24th Sept. 1990 in Civil Appeal No. 85 of 1986.

2. The premises in question are portion of varanda on the ground floor in Municipal House No. 480/37 situated at Sharanpur, Dist. Nasik. The said house property was purchased by the Respondent some time in the year 1981 and thereafter, tenancy of the Petitioner was attorned to her. This fact is not in dispute. After attornment of tenancy, the Respondent terminated the tenancy of the Petitioner by giving notice to the original tenant predecessor of the Petitioners by notice dated 22.4.1982. Thereafter, the Respondent instituted a suit for possession of the suit property on the ground of default, reasonable and bonafide requirement, nuisance and annoyance. That suit was instituted before the Civil Judge, J.D. Nasik bearing R.C.S.No. 855 of 1982. The Trial Court on analyzing the materials on record however, decreed the suit on the ground of reasonable and bonafide requirement alone. Against that decision the Petitioner tenant carried the matter in appeal before the District Court. There is no dispute that there was no cross objection filed by the Respondent landlady assailing the

finding on the other grounds are concerned. The matter was therefore, confined only to the ground of reasonable and bonafide requirement. The Appellate Court by the impugned Judgement and decree has confirmed the view taken by the Trial Court on the issue of reasonable and bonafide requirement in favour of the Respondent landlady. Besides, the Appellate Court has also affirmed the finding recorded by the Trial Court relating to the issue of comparative hardship in favour of the Respondent-landlady. As a consequence of this finding, the decree of possession passed in favour of the Respondent has been affirmed by the Appellate Court. This concurrent decisions are the subject matter of challenge in the present writ Petition under Article 227 of the Constitution of India.

3. With the assistance of learned counsel appearing for both sides, I have gone through the relevant pleadings, evidence as well as Judgements of the two Courts below.

4. The learned counsel for the Petitioners contends that the tests applied by the Courts below in answering the issues of reasonable and bonafide requirement as well as issue of comparative hardship are improper and if that be so, the conclusion reached by the two Courts below though concurrent will have to be reserved and consequently the suit for possession filed by the Respondent will have to be dismissed.

5. The learned counsel in the first place contends that the suit property was purchased by the Respondent some time in 1981 with full knowledge that there was a sitting tenant in the suit premises. If that be so, it was not open to the Respondent landlady to terminate the tenancy on the ground of reasonable and bonafide requirement. According to him, in such a situation there can be no cause of bonafide requirement. However, this submission does not commend to me. To my mind, merely because the landlady has purchased the suit property only in the recent past that by itself would not preclude the landlady from instituting the suit for possession on the ground of bonafide and reasonable requirement. This view is fortified by the legislative changes to the relevant provisions of the Bombay Rent Act. Inasmuch as, Clause A to Explanation for the purposes of Clause (g) of Sub-Section (1) of Section 13 of the Act was deleted by the Bombay Act 61 of 1953. The effect of that is that even the purchase landlord/landlady can institute a suit for possession on the ground of bonafide requirement. If that be so, it is not possible to preclude the landlady from instituting the suit on the ground of bonafide requirement. The Court will have to examine the bonafide need on its own merit by applying the settled principle in that behalf. It will therefore, be necessary to go into the question as to whether the tests applied by the two Courts below while answering the question of bonafide requirement can be said to be perverse and manifestly wrong. To my mind, the Courts below have taken into account all the relevant facts on record and, on analyzing the evidence on record, answered the issue in favour of the landlady. That finding essentially is a finding of fact which can not be over turned in exercise of writ jurisdiction under Article 227 of the Constitution of India. The

Courts below have rightly applied the settled legal position that court cannot proceed on the assumption that the need is not a bonafide need. Whereas, the fact that the need is not bonafide has to be established by the tenant by adducing positive evidence in that behalf. That is absolutely lacking in the present case. If that be so the finding reached by the two courts below that the need set up by the Respondent landlady is genuine and bonafide cannot be doubted and interfered with.

6. The next contention raised on behalf of the Petitioner is that the case set up by the Respondent landlady is only of mere desire and there is no element of need in it. In support of this plea, reliance is placed on the averments in the plaint (Para 5 thereof), to contend that the Respondent has stated that she has intention to settle in Nasik and run and start her maternity home. No doubt, the expression used in Para 5 of the plaint is "Pramanik Ettcha" which ordinarily would mean "honest desire". but on reading the plaint as a whole, it is not possible to accept this contention. On the other hand, it would appear that the Respondent landlady has clearly asserted that she bonafide requires the suit premises and that her need is bonafide and imperative one. Even during the evidence the Respondent has deposed in support of the stand that her need was bonafide and reasonable. The Courts below have examined that aspect of the matter and recorded finding of fact that the case set up by the Respondent was one of genuine and bonafide need. If that be so, it is not possible to accept the grievance made that the case made out by the Respondent was only of desire and not of need. On the other hand the pleadings as well as the evidence on record if analyzed as a whole, and, as has been observed by the two Courts below, the case set up by the Respondent did involve element of need as she has stated that she was to retire within two years from the institution of the suit and since she possessed the necessary qualification she would start maternity home in the suit premises. She has also deposed that she wanted to start Maternity home also because she wanted to supplement her income because she only gets Rs. 500/ towards the pension. It is well settled that the landlord is competent to pursue such remedy even with regard to his need in close proximity. (See Raghunath G. Panhale (Dead) By Lrs. Vs. M/s. Chaganlal Sundarji and Co.,). Taking over all view of the matter, it is not possible to doubt the bonafide of the landlady and in particular the finding recorded by two courts below that the case set up did involve an element of need. It is possible to suggest as was contended by the Petitioners, that the two courts below have not carefully considered this aspect of the matter. But on close reading of the Judgments of two Courts below, I am of the view that the courts have really proceeded on the premises that the Respondent has set up and also established her case which involved element of need. Therefore, the courts below have answered the Issues of bonafide requirement in favour of the Respondent-landlady.

7. The next contention raised by the Petitioner is that, the Respondent after getting vacant possession of the portion of the premises, let out part thereof to

one Mr. Gupta. The case of the Respondent, however, is that, Mr. Gupta was not inducted as tenant but was staying in the premises as the friend of her son. The Appellate Court has discussed this aspect in Para 9 of its judgment and accepted that plea. Even the Trial Court has accepted that plea of the Respondent. The Appellate Court has further observed that the tenant has not established that the said Gupta was staying in the premises as tenant. This finding of fact needs no interference as in effect the Petitioners would invite this Court to reappraise the evidence and that is not the scope of proceeding in exercise of writ jurisdiction under Article 227 of the Constitution of India.

8. That takes me to the next contention advanced on behalf of the Petitioners that the Appellate Court in Para 11 of the Judgment has made observation that the Plaintiff has 4 rooms in her possession but she has three sons and they appear to be grown up as one of them is taking education in the third year B.Com., second in S.S.C. and the third is in 9th Std. Looking to the ages of the said sons of the Plaintiffs and other attending circumstances, the need must be held to be reasonable one. According to the Petitioners, this was not the case made out by the Respondent-Plaintiff, but the Appellate Court has proceeded on some conjecture and surmise to answer the issue of reasonable requirement. It is not possible to over turn the conclusion reached by the two courts below on the issue of bonafide and reasonable requirement;- Assuming that the Appellate Court had proceeded on wrong premise and made out a new case, to my mind, this reason has been used by the Appellate Court only to support its reasoning with regard to the finding on the plea of the Respondent Plaintiff that premises were required by her for herself and need of her family. If that be so, this finding is not so fatal that the Court would be required to over turn the concurrent conclusion reached by the two courts below. Even if this finding was to be effaced, the other reason recorded by the two courts below being cogent and relevant for answering the issue of bonafide and reasonable requirement, to my mind, no interference is warranted on this issue.

9. That takes me to the next contention raised on behalf of the Petitioner that the Respondent owns flat at Bombay. This plea was taken even before the Appellate Court as can be discerned from Para 7 of the decision. The Appellate Court has dealt with the said contention and negatived the same. According to me, the Appellate Court has right in observing that merely because the Respondent owned a flat at Bombay would be of no consequence so as to answer the issue of bonafide or for that matter reasonable requirement of the landlady. The Courts below have considered that aspect of the matter. To my mind, no fault can be found with the said approach of the two courts below in that behalf. The fact remains that the suit premises are at Nasik and the landlady has made it very clear that after her retirement she wanted to settle down at Nasik for various reasons including the fact that she wanted to start maternity home in the suit premises. If that be so, neither bonafide or genuiness of the need of the Respondent can be doubted nor reasonable requirement can be questioned on that basis because, the suit premises are at Nasik, whereas the flat owned by the

Respondent is at Bombay. Understood thus, merely because the Respondent owns a flat at Bombay cannot be the basis for doubting the bonafide and reasonable requirement of the Respondent.

10. The next argument on behalf of the Petitioners is that the suit premises consists of portion of varanda (balcony) in the suit premises and the same would be incapable of being put to use for running a maternity home. There is no substance even in this contention because the Respondent has made it clear that she wanted the suit premises along with the other premises which is already in her occupation, for her own residence as well as for running a Maternity home. As the suit premises are varandha which is attached to those premises, the same can be conveniently used by the Respondent for the need which has been set up in the suit instituted by her. The two courts below have examined all the aspects and have found that the need pressed into service by the respondent was reasonable one. Besides, the suit premises though is only a portion of varanda, the same was not required singularly but together with the other premises by the Respondent, to start her maternity home. If that be so, it is not possible to over turn the concurrent finding of fact recorded by the two Courts below.

11. That takes me to the next contention raised on behalf of the Petitioners that, the Respondent during her evidence has deposed that after getting the possession of the premises from the tenant she intends to use southern side portion for the residential premises and start maternity home in the suit premises which is on the northern side by making some additional construction if required. It was contended that by the very nature of the stand taken by the Respondent, at best the case made out may be relevant for Clause (i) of Section 13(1) which postulates that the premises are land such land is reasonably and bonafide required by the landlord for the erection of a new building. It is submitted that if this is the case made out then, no decree u/s 13(1)(g) could be made. The learned counsel also pointed out that, with regard to the conflict between Clause (g) and Clause (i) of the Act the matter is pending before the larger Bench of this Court. However, in the fact situation of the present case, the question will not arise for consideration. In the first place Clause (i) can be used by the landlady where the premises are land. However, in the present case, admittedly, the premises are portion of varanda in the suit property and not open land as such. Accordingly Clause (i) will have no application at all. Moreover, the Respondent in her evidence has clearly deposed that she would start nursing home in the suit premises which are presently in occupation of the Petitioners which is on the northern side and she has further stated that if required, she would make additional construction to the present structure. In that sense, it is not possible to proceed on the assumption that Clause (i) will be attracted in the present case but the landlady has rightly invoked Clause (g) for claiming possession of the suit premises from the sitting tenant.

12. That takes me to the next contention raised on behalf of the Petitioners that the conclusion reached by the two courts below on the issue of comparative

hardship is improper. To my mind, on examining the discussion recorded by two courts below on this issue, it is not possible to accept this grievance. Both the courts below have applied the correct principles. The Appellate Court in Paras 13 and 14 has dealt with that aspect. No fault can be found with the approach of the Appellate Court. In any case, that being a finding of fact, it is not open for this Court to reappreciate the evidence on record to take a different view of the matter.

13. However, what is contended on behalf of the Petitioners is that, the Courts below have failed to examine the possibility of partial decree because the suit premises are varanda and partial decree would have been proper in such a situation. To my mind, this submission clearly over looks the fact that the Respondent has claimed possession of the suit premises for starting a maternity home. The running of maternity home and allowing the mutton shop to be operated in the suit premises would be absolutely incompatible situation. If that to be so, even assuming that there was possibility of granting partial decree, which in fact there is none having regard to the evidence on record, however, such an arrangement will have to be rejected outright for the nature of the business to be conducted by the Petitioner in the suit premises.

14. A priori, on scrutiny of the finding and the conclusion reached by the two Courts below on the issue of reasonable and bonafide requirement as well as comparative hardship, I see no reason to interfere with the same in writ petitioner under Article 227 of the Constitution of India. To my mind, the finding of facts recorded by two Courts below as well as conclusion reached by them cannot be said to be perverse or manifestly wrong so as to invoke the jurisdiction under Article 227 of the Constitution of India.

15. In the circumstances, this petition is devoid of merits and the same therefore, deserves to be dismissed. Accordingly this Petition is dismissed with costs all through out.