

(1986) 07 BOM CK 0046
In the Bombay High Court
Case No : Writ Petition No. 281 of 1985

Joao Xavier Pinto

APPELLANT

Vs

Oswald J.C. Velho and Others

RESPONDENT

Date of Decision : 02-07-1986

Acts Referred:

Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 — Section 16, 16(3), 32, 32(1), 32(3)

Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Rules, 1969 — Rule 7

Citation : (1987) 1 BomCR 113

Hon'ble Judges : G.F. Couto, J

Bench : Single Bench

Advocate : M.S. Usgaoncar, for the Appellant; J. Coelho Pereira, for the Respondent

Final Decision : Dismissed

Judgement

G.F. Couto, J.—The petitioner challenges in this petition, the judgement passed in appeal by the third respondent whereby it was held that he has not show sufficient cause and therefore, his eviction of the suit premises had been ordered u/s 32(4) of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968.

2. A few facts may be stated. The respondent No. 1, through his father, entered into an agreement of lease with the petitioner herein on 2nd June, 1969. The rent agreed was of Rs. 200/- per month and the premises were for the commercial purpose of running a barber's shop. The said rent was subject to valuation made by the Revenue Authorities and, accordingly, such valuation was made on 13th August, 1969 and the rent was fixed at Rs. 50/- per month. In spite of this fixation of the Rent by the Revenue Authorities, the petitioner continued to pay the rent at the rate of Rs. 200/- per month. A new agreement was entered into between the petitioner and the first respondent on 1st March, 1973 and it was agreed, once again, that the rent was of Rs. 200/-. Later on, in

the course of the same year 1973, a dispute was raised by the petitioner, for he contended that the rent payable was only at the rate of Rs. 50/- per month and, as such, he had paid rent in excess to the first respondent to the tune of Rs. 7,500/-. He requested therefore, that the said excess, in rent paid by him be adjusted with the rents that became due. Then the respondent No. 1 filed eviction proceedings for non-payment of rent against the petitioner. The petitioner filed his written statement and a few months later, particularly on 15th October, 1974, the first respondent moved an application to the Rent Controller u/s 32(4) of the Act praying that the proceedings be stopped and the petitioner be directed to put the first respondent in possession of the premises. It appears that a notice was given to the petitioner and in reply to the said notice, the petitioner showed cause by his application on reply dated 30th January, 1975. His case was that the rent payable was at the rate of Rs. 50/- per month and that he had paid rents in excess. Therefore, according to the petitioner, there was no reason for granting the first respondent's application under-section 32(4) of the Act. He also prayed that an inquiry be held to fix the quantum of the rent. By his order dated 25th October, 1976, the Rent Controller, Goa, North Division, held that no sufficient cause had been shown and therefore, allowed the application of the first respondent and directed the petitioner to hand over vacant possession of the demise premises to the landlord within three months from the date of the order. The petitioner being aggrieved, moved an appeal to the Administrative Tribunal and this appeal was allowed by judgment dated 25th June, 1977 and the case was remanded to the Rent Controller with a direction to decide the application afresh in accordance with law. The first respondent being aggrieved by the said judgment of the Administrative Tribunal, filed a writ petition in the Court of the Judicial Commissioner. The learned Additional Judicial Commissioner by his judgment dated 22nd July, 1980, was pleased to allow said writ petition and therefore, reversing the judgment of the Administrative Tribunal, remanded it for fresh decision in compliance with this order of remand. The Administrative Tribunal decided the case afresh by the challenged judgment dated 24th July, 1965.

3. Mr. M.S. Usgaoncar, the learned Counsel appearing for the petitioner contended that the respondent No. 3 failed too appreciate that there was a rent fixed by the Revenue Authorities and therefore, it was not open and permissible to revise the said rent by a fresh agreement. He contended that u/s 16 of the Act, that was not permissible and any stipulation to raise the rent fixed by the Revenue Authorities would be hit by sub-section (3) of the said section 16. The learned Counsel further submitted that section 32(1) of the Act provides that no tenant against whom a proceedings for eviction has been instituted by a landlord shall be entitled to contest such proceedings unless he has paid to the landlord or deposited all the arrears to rent due in respect of the building up to the date of payment or deposit and continues to pay or deposit any rent which may subsequently become due in respect of the building. Sub-section (3) provides that where there is any dispute as to the amount of the rent to be paid or

deposited, the Controller or the Appellate or Revisional Authorities, as the case may be, shall, on application made either by the tenant or by the landlord and after making such inquiry as he deems necessary, determine summarily the rent to be so paid or deposited. According to the learned Counsel, although section 32(1) is to be read with Rule 7 of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Rules, 1969, the provision of sub-section (3) is not to be read with the said rule. He submitted that the deposit or payment of the arrears of rent is to be made within 30 days from the service of the notice of the institution of the proceedings, but such requirement of making the application for fixation of the rent in case of dispute, within 30 days does not exist under sub-section (3). Therefore, according to the learned Counsel, even-though the application for holding an inquiry was made by the petitioner beyond that period of 30 days, that is fatal and the Rent Controller and the Administrative Tribunal ought to have seen whether or not, in the circumstances of the case, a sufficient cause has been shown by the petitioner. He contended that the answer to this question has necessarily to be in the affirmative, for the first respondent himself has brought out before the Rent controller a case of a dispute about the amount of the rent. He has indeed averred in his application, that the petitioner was claiming that the rent payable was only Rs. 50/- when, in fact, the rent agreed to be paid was of Rs. 200/- per month. Then, the same case has been brought by the petitioner in his written statement and in the circumstances, the Rent Controller was bound to hold an inquiry to fix what was the rent payable. In the circumstances, where if the rent payable is only of Rs. 50/- as alleged by the petitioner, there will be an excess of rent paid and therefore, there will be no arrears of rent. This being the case, according to the learned Counsel a sufficient cause was shown by the petitioner.

4. It was however contended by Mr. Coelho Pereira, the learned Counsel appearing for the respondent No. 1, that there is no reason whatsoever for this Court to interfere with the judgment of the Administrative Tribunal. In fact, the Tribunal, in compliance with the directions given by the Additional Judicial Commissioner in his order of remand, had looked into the matter in detail and from all the relevant angles. The Tribunal had also considered the law as laid down by the Divisional Bench of this Court in Letters Patent Appeal No. 42/83 and applying the law laid down in the said decision of the Division Bench, held that the case at hand was of a persistent defaulter and that the payment of rents had not been done at the earliest opportunity, but only after the application u/s 32(4) had been filed and the petitioner found himself in a right corner. The Tribunal held the view that the conduct of the petitioner was all the while not only grossly negligent, but also mala fide. Then, the learned Counsel placing reliance on the decision of a Single Judge of this Court delivered on 5th October, 1983, in Writ Petition No. 113/83, K.P. Bandekar & another v. Member of the Administrative Tribunal, Goa, Daman and Diu, submitted that an application for holding an inquiry under sub-section (3) of section 32 of the Act has necessarily to be made within the period of 30 days as laid down in Rule 7 of the aforesaid

Rules. Then admittedly, the application was made much after the expiry of the said period of 30 days and consequently, no inquiry could have been held by the Rent Controller to that effect. He further contended that as rightly pointed out by the Administrative Tribunal, the first respondent has not raised any dispute as to the amount of the rent payable in his application for eviction of the petitioner. What he did was to state all the facts, though, all the while, his case has been that the rent payable was of Rs. 200/-. He further argued that the Rent Controller could not have held the inquiry under sub-section (3) of section 32 suo motu for the said provision of law specifically lays down that such inquiry is to be held either on the application of the landlord or of the tenant. Turning to the contention of the learned Counsel for the petitioner based on sub-section (3) of section 16 of the Act, Mr. Coelho Pereira submitted that what section 16 prohibits is the receipt of a premium and not any stipulation of a different rent. In this connection, reliance was placed by him on the decision of a Single Judge of the Madras High Court in *S. Venkataramanaswami Ayyar Vs. S. Abdul Wahab*,

5. In the impugned judgment, the respondent No. 3 has observed that it was not correct to say that the landlord has raised a dispute in respect of the amount of the rent payable in his application for eviction, for what he has done was to claim rent from August, 1973 and he has only stated that the petitioner was not paying the rents on the allegation that the rent payable was of Rs. 50/- only. The Tribunal also observed that the petitioner has not filed an application u/s 32(3) of the Act within the period of 30 days and therefore, the Rent Controller was correct in holding that no inquiry could be held in that connection. Then, after discussing the relevant provisions of law and the facts and circumstances of the case, the Tribunal held the view that this was a case where the tenant petitioner herein was persistently defaulting in the payment of the rent and this was being done with gross negligence and mala fide. On going through the facts of the case in detail, I find no infirmity in the reasoning of the learned Tribunal. Indeed, it is an admitted fact that the application for inquiry was not made within 30 days from the serving of the notice on the petitioner of the institution of the eviction proceedings. It is true that in sub-section (3) of section 32 of the Act, no time is fixed for making the application, but one has also to bear in mind the provision of sub-section (1) which lays down that no tenant shall be entitled to contest the proceedings unless he has paid or deposited the arrears of rent and continue to pay or deposit the rents that subsequently become due. In sub-section (1), also no time is fixed for deposit or payment of rent, but in the rules framed under the Act, particularly in Rule 7, it is laid down that such payment or deposit is to be made within one month from the serving of the notice of the institution of the eviction proceedings. Now, if under sub-section (1) of section 32 a tenant is not entitled to contest the eviction proceedings unless he pays or deposits the rent within the aforesaid period of 30 days, it is obvious that the application under sub-section (3) has also to be made within the same period of 30 days. This view was otherwise held in the judgment passed in Writ Petition No. 113/83 relied upon by Mr. Coelho Pereira.

6. But the question that arises is whether in the facts and circumstances of the case, the cause shown by the petitioner is sufficient to preclude the use of the powers to order eviction u/s 32(4). In fact, the petitioner has come out with a case that he has paid rents in excess and therefore, there were no arrears of rent at all. At first glance, this cause appears to be a sufficient cause, but on a deeper consideration of the matter, it is obvious that if the cause shown by the petitioner is accepted the provision of sub-section (3) of section 32 read with Rule 7 will be circumvented and this obviously, is not possible. Now, if the application for inquiry for fixation of the quantum of the rent has to be made within 30 days from the serving of the notice, then such inquiry cannot be made at any other stage. Besides, if no application under sub-section (3) was made, obviously, fixation of the quantum of the rent cannot be made by way of other evidence in order to avoid the eviction by operating of the provision of sub-section (4). This being the case, the Tribunal was correct in holding that on that count the cause shown was not sufficient.

7. Coming now to the submission of Mr. Usgaoncar based on the provision of section 16 of the Act, I may say that I find myself entirely in agreement with Mr. Coelho Pereira when he submits that the said provision of law does not prohibit the stipulation of a new rent in a new agreement of lease. In fact, the said provision of law only prohibits the receipt of a premium. It lays down as follows:-

"Section 16:- Prohibition of receipt of premium:- (1) Where the fair rent of a building has not been so fixed, the landlord shall not, after the commencement of this Act, claim, receive or stipulate for the payment of an extra amount or other like sum in addition to the agreed rent :

Provided that the landlord may claim, receive or stipulate for the payment of amount not exceeding one month's rent by way advance.

(2) Save as provided in sub-section (1), any sum paid in excess of the agreed rent after the commencement of this Act is consideration of the grant, continuance or renewal of the tenancy of the building after such commencement shall be refunded by the landlord to the person by whom it was paid or, at the option of such person, shall be otherwise adjusted by the landlord.

(3) Any stipulation in contravention of sub-section (1) or sub-section (2) shall be void."

The heading of the section itself deals with prohibition of receipt of premium and what is provided is that the landlords shall not, after the commencement of the Act claim, receive or stipulate for the payment of an extra amount or other like sum in addition to the agreed rent. Sub-section (3) lays down that such stipulation if made, shall be void. Mr. Usgaoncar urged that the expression "agreed rent" occurring in sub-section (1) is the rent agreed in the lease agreement and therefore, in the present case, the agreed rent is the rent which was in the original lease agreement. In this connection, he specifically invited my attention to Clause 1 of the said agreement. The said clause is written in

Portuguese language and it is stated therein that the lease is for the purpose of a barber's shop commencing on 1st June, 1969 and ending on 30th April, 1970 on the monthly rent of Rs. 200/- which is to be paid at the landlord's residence up to the fifth of the next month. It is also specifically stated that the said rent would be altered in according with the fixation made by the Government. The learned Counsel submitted that in view of the wording of the said clause, it is obvious that the rent fixed by the Revenue Authorities becomes the agreed rent and thus, the bar under sub-section (3) of section 16 fully operates. There is a great fallacy in the reasoning of the learned Counsel. No doubt the construction of Clause 1 of the lease Agreement dated 2nd June, 1969 can be the one given by the learned Counsel, but this does not mean that there is any prohibition u/s 16 of the Act for the landlord and tenant to enter into a new lease agreement. What the section forbids is the stipulation of any extra amount or other like sum in addition to the rent which is agreed. Now, it is common ground, that the petitioner entered into a fresh lease agreement with the first respondent on 1st March, 1973 and that at that time, the agreed rent was of Rs. 200/- per month. There is no stipulation of the payment of any amount in addition or extra to the said agreed rent of Rs. 200/- and in the circumstances, it is not possible to hold the view advanced by Mr. Usgaoncar. I am supported by the decision of the Single Judge of the Madras High Court in Venkataramanaswami Ayyar's case (supra). Dealing with the provisions of sub-sections (2) and (3) of section 7 of the Madras Buildings (Lease and Rent Control) Act which is *pari materia* with section 16 of the Goa, Daman and Diu Rent Control Act, the learned Judge observed that he failed to see how anything in the said section 7 of the Madras Act invalidate an agreement between a landlord and a tenant for a rent different from the then prevailing rent. He observed that afresh agreement need not necessarily be for enhancement of the rent and it can equally be for a reduced rent; that what sub-section (2) of the aforesaid section 7 prohibits is the receipt of the by the landlord of any amount as premium or like sum in addition to the agreed rent and that the expression "agreed rent" has not been defined in the Act and its ordinary meaning is rent agreed between the parties not any unilateral demand to which the tenant has not consented. The learned Judge also relying on the decision of Abdul Rahim v. State of Madras, (1962) 1 Mad.L.J. 272 held that the expression "other like amount" occurring in the said section 7 has to be understood in the light of the doctrine of *ejusdem generis*. In the light of the above observations and for the reasons given by me above, I do not find any substance in the contention of Mr. Usgaoncar based on section 16 of the Act.

8. The result therefore, is that this petition fails and is consequently, dismissed with costs. The rule is accordingly discharged.