
(1976) 12 BOM CK 0010

In the Bombay High Court

Case No : Special Civil Application No. 2033 of 1971

Laxman Dattatraya More and Others

APPELLANT

Vs

Manohar Namdeo Konde

RESPONDENT

Date of Decision : 01-12-1976

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1), 13(3A)

Constitution of India, 1950 — Article 227

Citation : AIR 1978 Bom 22

Hon'ble Judges : Aggarwal, J

Bench : Single Bench

Advocate : Anita Agarwal and A.C. Agarwal, for the Appellant; D.S. Marathe, for the Respondent

Judgement

Aggarwal, J.—In this writ petition under Article 227 of the Constitution, the petitioners landlords challenge the validity of the judgment and order dated 28th June 1971 passed in Civil Appeal No. 822 of 1970 setting aside the decree of the trial Court and directing the petitioners to put the respondent-tenant in possession of one room on the first floor of the suit property which is vacant and in their possession.

2. The respondent had taken on lease one room on the ground floor of house No. 348/2, Genesh Peth, Poona, owned by the original petitioner's mother Sonubai Dattatraya More. Sonubai had filed Civil Suit No. 4444 of 1964 for recovery of possession of the said room against the respondent on the ground that the same was required by her for the purpose of erecting new construction on the premises sought to be demolished as provided u/s 13(1)(hh) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "the Bombay Rent Act"). That suit was finally decreed in Sonubai's favour on 25th February 1967. Sonubai had given necessary undertakings in the said suit as required by Section 13(3-A) of the Bombay Rent Act. On making new contraction she had agreed to allow the respondent to occupy one room

tenement therein.

3. Thereafter, on 25th April 1967, the respondent sent a written notice to Sonubai which was delivered to her on 27th Apr. 1967, informing her of his intention to occupy a room in the newly constructed house and his willingness to pay the standard rent in respect of the tenement and that his occupation shall be on the same terms and conditions on which he occupied the premises immediately before the eviction. On 28th Apr. 1967, the respondent handed over possession of the premises in his occupation to Sonubai. Thereafter, according to the respondent, he gave oral notices to Sonubai during her life-time. Sonubai died some time in Sept. 1967. Second notice dated 23rd Nov. 1967 was also served upon the present petitioners as the legal representatives of Sonubai, whereby the respondent registered his claim for possession of a tenement in the newly constructed house in accordance with the provisions of Section 17-B of the Bombay Rent Act. The petitioners by their reply dated 26th Dec. 1967 contended that the said notice dated 23rd Nov. 1967 was bad since the respondent had failed to give notice within six months from 28th Apr. 1967 when he delivered vacant possession to Sonubai. For this reason the said notice was not in compliance with the provisions of Section 17-B and that the respondent never gave notice to deceased Sonubai after 28th Apr. 1967 or to the petitioners as required by the provisions of the Rent Act of his intention to occupy a tenement in the new building. Therefore, the petitioners refused to provide accommodation in the new building-Hence the respondent brought the present suit being Civil Suit No. 1793 of 1968.

4. As regards the evidence of the respondent regarding oral notice to Sonubai, the trial Court disbelieved the say of the respondent. The trial Court held that the notice dated 23rd November 1967 was given beyond six months from the date on which vacant possession was delivered to deceased Sonubai and it was not a valid notice as contemplated by Section 17-B. In these circumstances, the trial Court held that the respondent was not entitled to possession of one room in the new building and no obligation was cast on the petitioners u/s 17-C to give a room to the respondent. In the result, the suit was dismissed.

5. The appellate Court reappraised the evidence and came to the conclusion that the respondent had in fact given oral notice to Sonubai during her life-time. That Court also took a different view of the provisions of Section 17-B and held that the notice contemplated by Section 17-B must not necessarily be in writing and an oral notice is valid. In that view of the matter, the appellate Court allowed the appeal and directed the petitioners to put the respondent in possession of one room on the first floor which is vacant and which is in their possession.

6. On behalf of the petitioners, it was contended that oral notice is not contemplated u/s 17-B and if oral notice is held to be valid it would lead to several complications. Though the section does not say that the notice has to be in writing, but it has necessarily to be in writing because tenant has to comply with certain formalities. The main question before me is one of interpretation.

7. Clause (hh) of sub-section (1) of Sections 13, 13 (3-A) and (3-B) and Sections 17-A, 17-B and 17-C were added by Bombay Act 53 of 1950 as there was no provision under the Born. Rent Act by which a landlord could recover vacant possession of his premises for the purpose of demolishing them and erecting in their place new larger premises. It was felt that the absence of such provision came in the way of development of properties to the fullest extent, especially in cases where small structures stood in the middle of big plots of land. In order to encourage the fullest development of all plots with a view ultimately to providing the maximum number of tenements on them, Clause (hh) was introduced in sub-section (1) of Section 13. At the same time, to prevent abuse of this right on the part of landlords, certain conditions were imposed before getting vacant possession of the premises. In order to see that the landlords do not abuse the order of eviction obtained on the faith of Clause (hh), the Legislature took special care in introducing sub-section (3) in Section 17-A to make certain breaches penal for a term which may extend to three months or with fine or with both.

8. The Scheme of Section 13(1)(hh) and (3-A) and Sections 17-B, 17-B and 17-C is to see that a tenant who has been dishoused on the ground that the landlord reasonably and bona fide requires the premises for the immediate purpose of demolishing coupled with the purpose of erecting new building on the premises sought to be demolished, is restored possession in the new building if he intends to occupy them. Sub-section (3-A) of Section 13 puts restrictions on the Court from passing a decree for eviction unless the landlord produces at the time of the institution of the suit a certificate granted by the Tribunal under sub-section (3B) and undertakes to do various acts and things specified in sub-section (3A). In a case where a landlord, after obtaining a decree for eviction u/s 13(1)(hh), fails to start erection of a new building not later than one month after the work of demolishing the premises has been carried out and fails to complete the new building not later than three months from the date he recovers possession of the entire premises, the tenant may give to the landlord a notice u/s 17-A of his intention to occupy the premises from which he has been evicted, and if the landlord does not heed to such a request, the tenant is given a right to make an application to the Court within six weeks of the date on which he delivered vacant possession of the premises to the landlord. An obligation is cast on a landlord u/s 17-C to intimate to the tenant the date on which the erection shall be completed. That obligation is to be fulfilled by him on receipt of a notice from the tenant u/s 17-B. The Legislature has fixed the period during which such intimation is to be given to the tenant.

9. u/s 17B, a tenant against whom a decree for eviction has been passed on the ground specified in clause (hh) of Sub-section (1) of Section 13 and the work of demolishing the premises and of the erection of a new building has been commenced by the landlord, may, within six months from the date on which he delivered vacant possession of the premises to the landlord, give notice to the landlord of his intention to occupy a tenement in the new building on its completion on two conditions laid down in that section. If a tenant wants to

rehabilitate himself in the new building, he has to give a notice to his landlord. If no such notice is given, the landlord is not bound to offer a tenement in the new building. A period of six months is provided during which a tenant can make up his mind whether he intends to occupy a tenement in the new building on its completion on the condition that he has to pay the standard rent in respect of the tenement and if it is a residential tenement, the tenant concerned shall not be required to pay rent in relation to the area at more than double the rate at which he paid rent for his former premises, immediately before his eviction under the decree, unless the landlord obtains, an order of the Court fixing the standard rent in respect of the tenement at a higher rate as laid down in condition (a). Condition (b) is that his occupation of the tenement shall be on the same terms and conditions as the terms and conditions on which he occupied the premises immediately before the eviction.

10. In Sections 17A and 17B, the Legislature uses the expression "notice", whereas in Section 17C it uses the expression "intimate" in addition to the expression "notice". The Legislature has not stated that "notice" or "intimation" is to be given in writing. The manner in which such notice or intimation is to be given either by a tenant to a landlord or by a landlord to a tenant is not stipulated. On the other hand, it has taken care u/s 12(2) to stipulate that the notice should be in writing and specifically provides the manner in which the service of the notice is to be effected. Again, in sub-section (1) of Section 21, it is provided that every landlord shall, upon a notice served upon him by the tenant by post or in any other manner, furnish the particulars referred to therein. Here, by making reference to the manner of service which is by post or in any other manner, the intention is made clear, inasmuch as such a notice has to be in writing, otherwise it cannot be forwarded by post. Therefore, the type of notice required to be given u/s 21(1) has perforce to be in writing if it is sent by post. Service can be effected in any other mode as is evident by use of the expression "or in any other manner". It is, therefore, left to a tenant who desires a landlord to furnish him particulars contemplated under that section to find out a suitable and convenient manner of serving a notice upon his landlord. The same type of phraseology is used in sub-section (2) of Section 23 which is enacted for the purpose of casting a duty on a landlord to keep the premises in good repair. Here again, a tenant is required to serve a notice upon his landlord by post or in any other manner.

11. In the light of these provisions, in my opinion, the reasonable construction that I should put on Section 17B is that the notice contemplated under that section need not be in writing. An oral notice is good and sufficient notice. The purpose of the notice is to notify to a landlord of the tenant's intention to occupy a tenement in the new building on its completion on the conditions laid down in Section 17B. The provision regarding the giving of notice should receive liberal interpretation. Such interpretation is not contrary to the language and spirit of the section. This broad approach is consistent with the aim and object of the legislation which is to provide security of residence to a tenant. This construction

is also proper in my opinion having regard to the entire scheme of evicting a tenant who is otherwise in enjoyment of property and makes it available to his landlord on the faith and understanding that the house is to be demolished and a new erection is to be made thereon rapidly, and as soon as the premises are ready, a choice is given to a tenant to intimate to his landlord that he desires to occupy premises in the new building on the conditions laid down in Section 17B. In this view of the matter, I am not impressed by the contentions raised on behalf of the petitioners.

12. In the present case, the appellate Court has held that the respondent had given an oral notice to Sonubai during her life-time and, in my opinion, that fulfils the requirements of Section 17B in view of the interpretation that I have placed on that section,

13. In the result, the petition fails. The rule is discharged with costs. The petitioners are directed to hand over possession to the respondent of the one room on the first floor as provided in the appellate order dated 28th June 1971 within six weeks from the date of the judgment.

14. Petition dismissed.