

(2011) 03 BOM CK 0048

In the Bombay High Court

Case No : Writ Petition No. 2120 of 1995

Mohan Vishwanath Mulay

APPELLANT

Vs

Shamrao Raghunathrao Karyakarte

RESPONDENT

Date of Decision : 04-03-2011

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1), 13(2)

Citation : (2011) 7 ALLMR 691 : (2011) 3 BomCR 765 : (2011) 3 MhLj 662

Hon'ble Judges : D.G. Karnik, J

Bench : Single Bench

Advocate : Miss Pallavi Dabholkar, i./b., G.S. Godbole, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

1. Heard learned Counsel for the Petitioner. None appears for the Respondent though served.

2 This petition is directed against the judgment and order dated 29th March 1993 passed by the Additional District Judge, Solapur, allowing the appeal filed by the Respondent tenant and thereby dismissing the suit for eviction filed by the Petitioner landlord.

3. House No. 39-C, City Survey No. 8576/11 belongs to the family of the Petitioner and his brothers. In the year 1966, one room (hereinafter referred to as "the suit premises") admeasuring about 10" x 10" situated on the first floor of the property was let out by the mother of the Petitioner to the Respondent when the Petitioner was employed at Thane in Maharashtra State Electricity Board. He was transferred to Solapur on 23rd December 1987. According to him, on his transfer he came to Solapur and started occupying one small room on the courtesy of Subhash Divekar as he had no accommodation for his residence at Solapur. At the same time, he noticed that for about 2 years prior to 1987 the Respondent had shifted to Pune on his transfer and had kept the suit premises

locked. He therefore requested the Respondent to surrender the suit premises which the Respondent initially promised but ultimately refused to vacate. The Petitioner therefore filed a suit bearing RCS No. 252 of 1988 against the Respondent for eviction inter alia on the ground of bonafide requirement as also on the ground of non-user and acquisition of suitable residential premises by the Respondent at Pune. The trial Court decreed the suit and passed a decree for eviction. However, on appeal, the appellate Court reversed the decision. Aggrieved by the decision of the appellate Court, the Petitioner is in this Court.

4. In the trial Court, the Petitioner examined himself and one witness. The Respondent examined himself and six witnesses. After consideration of the evidence adduced by the parties, the trial Court held that the Respondent had not used the suit premises without any reasonable cause for a continuous period of 6 months immediately preceding the suit and also held that the Respondent had acquired the suitable residential premises at Pune and accordingly passed a decree for eviction. The appellate Court confirmed the finding of the trial Court that the Respondent had acquired on rent the premises at Pune but held that it was not an acquisition of suitable residence within the meaning of Section 13(1) (I) of the Bombay Rents, Hotels and Lodging House Rates (Control) Act, 1947 (for short "the Bombay Rent Act"). It also held that the Respondent was required to stay at Pune by reason of his service and therefore the non-user was not without reasonable cause. It further held that the family members of the Respondent and in particular his father was required to come and stay at Solapur frequently for medical treatment and the suit premises were not kept locked and closed for a period of 6 months immediately preceding the suit. The appellate Court also held that the Petitioner had not proved that he required the suit premises reasonably and bonafide for his own residence. On these findings, the appellate Court reversed the decree for possession on both the counts.

5. In his deposition, the Respondent has stated that he was a permanent resident of Solapur and the joint family had agricultural lands at Kurduwadi at a distance of about 50 km. from Solapur. He stated that he was required to go to Pune on account of his transfer and had acquired only one room admeasuring 10" x 10" at Sant Nagar at Pune. His father, who stayed at Kurduwadi, frequently comes and stays at Solapur for the purpose of medical treatment and the premises are not kept locked but are used by him and his family.

6. Learned Counsel for the Petitioner submitted that since the Respondent had admitted that he had taken on rent one room by paying a premium of Rs. 10,000/-, it must be assumed that the Respondent had permanently shifted to Pune and had acquired a suitable residence at Pune. I am unable to agree for the reasons mentioned below.

7. In J. Marathe (since deceased through his legal heirs Mrs. Uma Vijay Gune and Another) Vs. P.V. Kaloke, a Division Bench of this Court hearing a reference has considered whether acquisition of residential premises by a tenant in a different town can per se be considered as an acquisition of suitable residential premises

within the meaning of Section 13(1)(I) of the Bombay Rent Act. The Division Bench overruling the decision of a Single Judge in *Rajendraprasad Kedarprasad Tiwari Vs. Shankar Vithu Kuveskar*, held:

11. We are not inclined to agree with the view expressed by Rebello J. in *Rajendraprasad*'s case. It seems that the learned Judge was of the opinion that even if the tenant has constructed house in Pune or Delhi, he would be construed to have acquired suitable residential premises u/s 13(1)(I) on the basis that such acquisition shows that he had the capacity to construct the house elsewhere. In our view, the capacity of a tenant to acquire suitable premises is not a relevant consideration for considering eviction u/s 13(1)(I) while it may be relevant for considering the hardship u/s 13(2) of the Bombay Rent Act while decreeing his claim on the ground of reasonable requirement u/s 13(1)(g) of the said Act. We are in respectful agreement with the view expressed by C.S. Dharmadhikari, J. that ordinarily acquisition or allotment of residential premises outside the local area will not automatically forfeit the protection given by the Rent Act. It will ultimately depend upon the facts and circumstances of a particular case and if the court comes to the conclusion that acquisition of such premises is suitable for residence of a tenant, decree can be passed u/s 13(1)(I) of the Rent Act. The reference is answered accordingly.

It is thus clear that acquisition of premises in a different town per se cannot be considered as an acquisition of suitable premises, but the issue would be required to be decided on facts of each case.

8. In the present case, the Respondent admittedly is a government servant and his job is transferable. He was transferred from Solapur to Pune some time in the year 1985 or thereabout. He was therefore required to go to his place of transfer at Pune. Obviously he had to secure some premises at Pune for his residence. He did not purchased any property at Pune but took on rent only one room barely necessary for his residence. Submission made by the learned Counsel for the Petitioner that since the Respondent has paid a premium of Rs. 10,000/-for acquisition of the premises on rent shows that the Respondent intended to stay at Pune permanently, cannot be accepted. It is a matter of common knowledge that in large metropolitan towns like Pune the landlords do not let out the premises either without a premium or without sufficient amount as a deposit. Payment of small amount of Rs. 10,000/-as a premium or deposit would not show the intention of the Respondent to shift to Pune permanently. The Respondent has stated on oath that Solapur is his permanent residence. The appellate Court, which is a final Court of facts, has believed this evidence. The view taken by the appellate Court is not only a possible view but, in my opinion, is preponderant view on the facts of the case and requires no interference.

9. As regards the non-user, the Respondent examined his father who has stated on oath that he was required to go to Solapur frequently and stay in the suit premises for the purpose of medical treatment. The medical doctor was examined by the Respondent who deposed on oath that the Respondent's father

comes to consult him at Solapur for medical treatment. The appellate Court has believed this evidence and has held that the premises were used by the Respondent's father. In any event, since the Respondent himself was transferred, there was sufficient cause for him to temporarily shift to Pune which was a place of his transfer and it cannot be said that the Respondent had not used the suit premises without any reasonable cause. I see no reason to interfere in the finding of the appellate Court that the Petitioner had failed to prove non-user of the suit premises without any reasonable cause for a continuous period of 6 months or more.

10. As regards the bonafide requirement, the trial Court held that some other tenants had vacated the premises in their possession and on the date of hearing of the suit the Petitioner was in possession of two rooms in the suit building. The trial Court further held that the Petitioner's family consisted of only 4 members and disbelieved his case that his in-laws (relatives from wife's side) were also staying with him. The trial Court held that two rooms were sufficient for the purpose of accommodation of the Petitioner, his wife and two children and his need for the suit premises was not bonafide. On the question of hardship, however, the trial Court recorded a finding that in the event the finding on requirement was in favor of the Petitioner, the finding of hardship would be in his favor as no hardship would be caused to the Respondent. The appellate Court confirmed the finding of the trial Court that on the date of hearing of the suit the Petitioner was in possession of two rooms with one balcony and that accommodation was sufficient for him and his family. In my view, the two Courts below have overlooked the decision of the Supreme Court in the case of Mst. Bega Begum and Others Vs. Abdul Ahad Khan (Dead) by Lrs. and Others, . In that case, the Supreme Court was considering Sections 11(1)(h) of the Jammu and Kashmir Houses and Shops Rent Control Act, 1966 which is pari material with the provisions of Section 13(1)(g) of the Bombay Rent Act. That section enables a landlord to obtain a decree of eviction of a tenant on the ground of reasonable and bonafide requirement like Section 13(1)(g) of the Bombay Rent Act which enables a landlord to obtain a decree on the ground of reasonable and bonafide requirement. While interpreting the words "reasonable requirement", the Supreme Court observed

The words "reasonable requirement" in the Sub-section undoubtedly postulate that there must be an element of need as opposed to a mere desire or wish. The distinction between desire and need should doubtless be kept in mind but not so as to make even a genuine need as nothing but a desire. The connotation of the term "need" or the word "requirement" should not be artificially extended nor its language so unduly stretched or strained as to make it impossible or extremely difficult for the landlord to get a decree for eviction. Such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds. The Act strikes a just balance between the genuine need of the landlord on the one hand and the great inconvenience and trouble of the tenants on the other.

In the light of aforesaid decision, the Courts below ought not to have come to the conclusion that the requirement of the Petitioner was not reasonable. The Courts below have held that there were other tenants in the premises and as the Petitioner had not taken appropriate steps for their eviction, his need was not bonafide. The Courts have forgotten that it is the choice of the landlord to decide against which of the tenants the suit should be filed if he requires the premises. If the Petitioner thought that the Respondent was not residing in the suit premises while other tenants were actually residing and chose to file suit only against the Respondent, the choice could not be faulted with. Apart from that, he had made the right choice for filing a suit for eviction against the tenant who was likely to suffer least hardship. The trial Court has also recorded a finding of fact that no hardship would be caused to the Respondent in case the decree for eviction is passed against him. In the light of these facts and particularly in the light of the decision of the Supreme Court in the case of Bega Begum v. Abdul Ahad Khan (*supra*), both the Courts below, in my view, clearly misdirected themselves in considering the need to be not reasonable and bonafide. Even if it is assumed that the Petitioner has the family of only four persons, his desire to have third room can certainly not be said to be unreasonable or malafide. Out of the two rooms, one room would be used as kitchen; the Petitioner and his wife would require a bedroom for themselves and a separate bedroom for the children. This need cannot be said as unreasonable or malafide. Consequently, in my view, both the Courts below ought to have therefore passed a decree for eviction on the ground of reasonable bonafide requirement.

11. For these reasons, the writ petition is allowed. The Rule is made absolute and the decree for eviction passed by the trial Court is restored though on a different ground of reasonable and bonafide requirement.