
(2005) 08 BOM CK 0028
In the Bombay High Court
Case No : Writ Petition No. 975 of 1988

Mohanlal Nevadram Bhatia	Vs	APPELLANT
State of Maharashtra and Others		RESPONDENT

Date of Decision : 26-08-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 3 ALLMR 131 : (2006) 2 BomCR 787 : (2006) 1 MhLj 467

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : A.S. Mardikar, for the Appellant; Deepak Thakre, AGP for respondent No. 1 and B.N. Mohta, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Dharmadhikari, J.—Heard Shri Mardikar, Advocate for the petitioner - tenant and Shri Mohta, Advocate for respondents No. 5 to 9 landlords and Shri Thakre, learned AGP for respondent No. 1 - State of Maharashtra.

2. In this writ petition filed under Article 226 of Constitution of India, challenge is to the order dated 19-11-1982 passed by the Appellate Authority under provisions of C.P. and Berar Letting of Houses and Rent Control Order, 1949, (hereinafter referred to as Rent Control Order) and subsequent order passed in review on 30-1-1987. Though the initial application filed by the landlords i.e. present respondents No. 5 to 8 was seeking permission under Clause 13(3)(i) to (vi), the Appellate Authority has granted permission only under Clause 13(3)(ii) viz. Habitual default. The petitioners - tenants applied for review of said order and that review has been rejected and therefore, the tenants are before this Court in the present writ petition. The landlords have not questioned rejection of their application under other heads. Therefore, this Court is required to consider the controversy only in relation to Clause 13(3)(ii) of the Rent Control Order.

3. This writ petition appears to have been ordered to be considered along with

Writ Petition No. 966 of 1988. Writ Petition No. 966 of 1988 was already compromised between the parties and has been disposed of accordingly.

4. The landlords in their application, while seeking permission under Clause 13(3) (ii) of Rent Control Order have stated that the monthly Rent was Rs. 170/- per month and the tenancy month commenced from 1st day of each English Calendar month and expired on the last date thereof. Rent was stated to be payable in advance during the course of the month or at the most at the end of the month. The landlords filed schedule to demonstrate that the Rent was not being paid as agreed. In the schedule which commences from the month of July, 1973 and covers period upto 23-4-1980, the months for which Rent was paid together with date on which Rent thereof was paid and also the amount of Rent has been mentioned. There are total 21 items which cover the period from July, 1973 to March, 1979. The petitioners/tenants in their written statement admitted the rate of Rent and in written statement have contended that Joharabi wife of Nuruddin was the owner of property but Rent receipts were issued by Nuruddin and his brothers as if they were the owners of the house. It is further stated that practice was to pay the Rent whenever Nuruddin came to recover it and the tenants were punctual in its payment whenever demanded. It was further stated that in the year 1979, Nuruddin demanded higher Rent @ Rs. 250/- per month and as the tenant - Mohanlal did not agree to it, Nuruddin did not come to collect the Rent from the shop. The schedule filed is denied as not correct. It was also denied that the tenants were habitual defaulters in payment of Rent.

5. The Rent Controller has considered this aspect in para 7 and has found that the Rent was payable for cumulative period of three months and it was the practice adopted between the parties. He, therefore, concluded that tenants cannot be said to be not paying the Rent at the end of the month and therefore are not the habitual defaulters. This order dated 20-1-1982 is passed by one K. G. Bijwal, in his capacity as Rent Controller.

6. The respondents/landlords challenged this order of Rent Controller in appeal under Clause 21 of the Rent Control Order. The appeal was heard by Resident Deputy Collector with Appellate powers and in para 4, after considering the Schedule on record, he found that the practice of paying Rent after a period of three months is not made out. The Appellate Authority has found that Rent for the period of July, 1978 to March, 1979 was paid on 13-7-1979 while Rent for the period from 1-4-1979 to 31-3-1980 was paid on 6-9-1980. The Appellate Authority has found that these payments militate against the practice of payment of Rent after the period of three months. The Appellate Authority has further found that the story of landlords asking for enhancing the Rent was not convincing. The Appellate Authority has further found that it was also not known why the Rent for the period from July, 1978 to March, 1979 was withheld and therefore has concluded that the plea of tenants that it was agreed to pay Rent as per the convenience of parties was not convincing. In view of these findings, the Appellate Authority held that that tenants were habitual defaulters and was

pleased to grant permission to the landlords under Clause 13(3)(ii) of Rent Control Order.

7. Against this order, the tenants filed review under Clause 21(2-A) of C.P. and Berar, House Rent Control Order, 1949 and in review, the reviewing Authority has maintained the permission granted in favour of landlords. The order in review is passed by Resident Deputy Collector with Appellate powers.

8. Shri Mardikar, learned counsel for the petitioners - tenants has contended that the Appellate Authority has reversed the finding on the ground of habitual default only because of two instances. He invites attention to the schedule on record to point out that out of total 21 instances mentioned therein, Rent has been paid on 17 occasions after three months. He further states that initially Rent has been paid for two months on first occasion, thereafter for three months on second occasion and thereafter for four months on third occasion. He further states that on last occasion as mentioned in the schedule, Rent has been paid for 9 months. According to him, the findings recorded by the Rent Controller after perusal of this schedule did not call for any interference. He has further stated that precisely on this ground, a review was also filed but the review is also rejected. He further states that during the pendency of review application, application was filed by tenants seeking permission to amend their written statement to contend that last respondent before Rent Controller, Bhatia Boot House was a partnership concern and all its partners were necessary parties. He has further contended that this application for amendment has been rejected by the reviewing Authority while writing its final order and as such prejudice has been caused to the petitioners because they could not challenge that order earlier. He has also invited attention of this Court to the judgment dated 28-1-1993 delivered in Small Cause Suit No. 112 of 1983 in which while answering issue No. 5, the Civil Court has held that the present petitioners have proved that Smt. Joharabi was the real landlady and argued that as there was reasonable doubt entertained by the petitioners about the ownership of present respondents/landlords, if on certain occasions Rent was paid belatedly that was on account bona fide doubt and the mental attitude of remaining in arrears/default cannot be supported by this late payment. He has contended that if the landlords wanted to receive the Rent regularly at the end of month or for every month, it was necessary for them to issue a notice in advance intimating the tenants of their intention and if after receipt of such notice, the petitioners did not pay the Rent as demanded, then only the finding that petitioners are habitual defaulters as required by Clause 13(3)(ii) of Rent Control Order could have been given. In support, he has relied upon the judgment of the Hon'ble Apex Court reported at 1989 Mh.L.J. (SC) 207, Rasiklal v. Shah Gokuldas, judgment of this Court reported at 1988 (1) Mh.L.J. 632, Vinodkumar Choudhary v. Resident Deputy Collector, where the said judgment of the Hon'ble Apex Court is followed and also unreported judgment of this Court dated 21-3-2005 in Writ Petition No. 2003 of 1992. He has further contended that as Order 30 of CPC is not applicable, all partners of Bhatia Boot House are necessary parties before the Rent Controller and as that has not been

done, the application seeking permission deserves to be rejected. In support he has relied upon the judgment of the Hon'ble Apex Court reported at 1984 Mh.L.J. (SC) 839, Chhotelal Pyarelal v. Shikharchand.

9. The learned counsel for the petitioners has also invited attention of this Court to the Notification dated 7-5-1984 issued by the Under Secretary to Government of Maharashtra which specifies that the Government of Maharashtra invested Deputy Collector and Special Land Acquisition Officer (General), Akola with the powers of Collector under Clause 21 of said order for hearing appeals made under said Clause 21 against orders passed by Shri K.G. Bijwal, Deputy Collector, Akola. He contends that in this case, the order appealed against was passed by Shri Bijwal and therefore, the Resident Deputy Collector did not possess Appellate powers to entertain appeal against the said order. He has further contended that as the Appellate powers against the orders of Shri Bijwal, were with Deputy Collector and Special Land Acquisition Officer (General) Akola, the powers to review under Clause 21(2-A) also could not have been exercised by the Resident Deputy Collector and said powers ought to have been exercised by the Deputy Collector and Special Land Acquisition Officer (General). In support he has placed reliance upon the Division Bench judgment of this Court in the case of Damodar v. Ramratidevi, reported at 1989 Mh.L.J. 425, particularly para 6 thereof.

10. In reply Advocate B. N. Mohta, appearing for landlord has contended that the notification at Annexure-A, on which the petitioner relies in order to contend that the order in review could not have been passed by the R.D.C. is not relevant for deciding the controversy. He has further contended that the ruling on which the learned counsel for the petitioner has relied is also not attracted in the facts and circumstances of the case.

11. He has further stated that in appeal which was filed by the landlord before the Appellate Authority the present respondent No. 9 i.e. M/s Bhatia Boot House was party respondent. When the review came to be filed, it was not filed by M/s Bhatia Boot House. He has further stated that M/s Bhatia Boot House was also not made party respondent in that review. It is his contention that in view of the circumstances, which are available on the record, provisions of Order 30 are not attracted. He contends that the ground in relation to the application of Order 30 was sought to be raised in review by moving application for amendment and that application was not allowed by the reviewing Authority. It is his further contention that as the Rent Controller has found that Mohanlal, i.e. the petitioner himself is the owner of the said establishment namely M/s Bhatia Boot House, provisions of Order 30 of CPC are not relevant at all. He has further contended that in Written Statement filed by the petitioner there is no specific challenge to the usual mode and manner of payment. He has stated that no specific contract in relation to the payment of Rent has been pleaded in the entire written statement and the contention of the tenant then was that Rent was to be paid whenever it was demanded. He contends that Rent Controller has not found that

the Rent was payable whenever demanded and the Appellate Authority also has found that the finding of the Rent Controller that there was practice of paying Rent after every three months is misconceived. He contends that this being the finding of fact is binding in writ jurisdiction and this Court should not re-appreciate the evidence to arrive at different finding. He has further contended that in view of the position emerging on record the law as explained in the case of Rasiklal (supra), is not relevant for decision in the matter. He further invites attention to the judgment of the Civil Suit in Small Cause Suit No. 112/1983 and states that the issue No. 4 which has been answered by the Small Causes Court in affirmative is only a incomplete finding on that issue. He states that the Small Causes Court has thereafter, recorded that at the relevant time the defendant before the Small Causes Court were not tenant of Johrabi. He invites attention to the finding recorded against issue No. 1 in which the Small Causes Court has held that the plaintiffs i.e. the present respondents have proved that the defendant No. 1 in the suit i.e. the present petitioner is their tenant. He contends that in view of this finding no interference is called for in the matter and the judgment of the Appellate Authority needs to be maintained.

12. In reply to the arguments of Advocate Mohta, Advocate Mardikar, has invited attention to para No. 4 of the written statement filed by the petitioner in which it has been mentioned that the present petitioner and his brothers are carrying out business in the name and style of M/s Bhatia Boot House and as such there is no subletting.

13. The Rent Controller has considered the case under Clause 13(3)(ii) and findings recorded by him are that the Rent was payable after every three months as per practice. In view of this finding the Rent Controller has relied upon the judgment of the Apex Court reported in 1977 Mh.L.J. 710, Deshmukh v. Shah Nihal and has held that the obligation of a monthly tenant to pay Rent from month to month is subject to a contract to contrary, which need not be reflected in a document, but can be spelt out from the conduct of the parties spread over a fairly long period. It is to be noticed that the Rent Controller has not found that the Rent was payable as and when demanded by the landlord. If in this background the schedule which is produced along with the rent control application by the respondent landlord is seen, it is apparent that the Rent has been paid on majority of occasions after three months. However, on 4 occasions it has been paid after two months, three months, four months and nine months respectively. As already stated above, the schedule is covering the period upto March, 1979 while the application under Clause 13(3)(ii), has been filed in April, 1980. The schedule contains a note that Rent from 1-4-1979 is still due and has not been paid. Thus, entire schedule if seen together does not reveal that there is a practice of paying Rent after 3 months. The finding of the Rent Controller in this respect is therefore perverse and has been rightly interfered with by the Appellate Authority. Advocate Mardikar has argued that the case of petitioner/tenant was that the Rent was payable as and when demanded. In this respect it is to be noticed that there is no such finding given by the Rent Controller or even

by the Appellate Authority or in review by the Reviewing Authority. The finding reached is after appreciation of evidence and in the background of finding reached by the Rent Controller itself, it is difficult to accept such contentions. The petitioner tenant has in his written statement contended that in the year 1979 Noorudin (landlord) demanded higher Rent @ Rs. 250/- per month to which tenant Mohanlal did not agree and therefore, Noorudin did not take away the money (arrears) from the shop and filed the present application before the Rent Controller. If this stand is considered, it is apparent that after demanding higher Rent when petitioner Mohanlal did not agree to pay it, the landlord did not take away the Rent from the shop and in such circumstances it was obligatory on the part of the petitioner to adduce some evidence to substantiate this stand. Perusal of the order of the Rent Controller reveals that the story about seeking such higher Rent by landlord is not accepted by the Rent Controller while the Appellate Authority and the Reviewing Authority has also find it not convincing. If the Rent was not collected from March, 1979 till the date of filing of the application, before the Rent Controller i.e. practically for entire one year, the petitioner ought to have taken appropriate steps to bring that developments on record. It is to be noticed that Rent for 9 months i.e. for period from July, 1978 to March, 1979 has been paid on 17-3-1979. The story as pleaded about landlord seeking hike in Rent also does not inspire confidence in absence of any details about the place and time of landlord contacting the tenant for such purpose. In view of material which is available on record, the theory put forth by the tenant that Rent was payable as and when demanded by the landlord can also not be accepted. In any case the findings recorded by the Appellate Authority in this respect cannot be called as perverse.

14. Advocate Mardikar, has assailed the finding reached by the Appellate Authority in this respect by contending that merely because the Rent was paid on some occasions beyond the period of three months, the appellate Court has reversed the finding of the Rent Controller. As already discussed above the schedule itself shows that the Rent has been paid at least on 4 occasions for different periods and on the date of filing of the application Rent from 1-4-1979 onwards was due. In such circumstances, the finding of the Rent Controller that there was practice between the parties to pay Rent after every three months cannot be sustained. The Appellate Authority has rightly interfered with the same and it has been correctly maintained by the reviewing Authority. No case is made out for interference in this respect.

15. This is not a case in which the tenant is pleading that he was misled by any practice. But his attempt is to plead contract to the contrary and as that effort has failed he is to be labelled as habitual defaulter. The dates of payment are rightly appreciated by the Appellate Authority and even subsequent payment is looked into. I do not find any perversity in it.

16. Advocate Mardikar, has placed reliance upon the judgment of Hon"ble Apex Court 1989 Mh.L.J. (SC) . 207 (supra), in support of his contention that as the

landlord has not given any notice of his intention to change the practice and to ask for Rent every month, the tenant cannot be held to be defaulter under Clause 13(3)(ii). In this respect it is to be noted that normally the tenant is under obligation to pay Rent every month and if something is to be shown to the contrary, the burden is on tenant. The tenant has pleaded an express contract to the contrary. The tenant has only stated that the Rent was payable as and when demanded by the landlord. However, with whom this agreement was arrived at and at what time this agreement was arrived at, was not disclosed. It is to be noted that the tenant have seriously disputed the status of the respondent No. 5 to 8 as their landlords and have contended that one Zohrabai is their landlord. In such circumstances, by merely taking a plea that Rent was payable as and when demanded a contract to be contrary to cannot be established. Similarly as already held above, the practice of paying Rent after every three months is also not established. Petitioner did not plead that he was mislead by any practice and hence the ruling in the case of Rasiklal (supra) is not applicable at all. The learned counsel has also invited attention of the judgment of the learned Single Judge of this Court reported in 1998(1) Mh.L.J.632 (supra). In this ruling the above mentioned judgment in the case of Rasiklal, has been followed. For the same reasons even this ruling has no application. The learned counsel has also invited attention to unreported judgment of this Court delivered in Writ Petition No. 2003/1992, dated 21-3-2005. In the said judgment there were concurrent findings by the Rent Controller as also the Appellate Authority, that no case was made out by the landlord for grant of permission under Clause 13(3)(i) and (ii) of the Rent Control Order. The tenant was mislead by the settled practice and the judgment of the Hon''ble Apex Court in the case of Rasiklal, was appreciated in that context. The unreported ruling therefore, has no application in the facts and circumstances of the case.

17. The counsel for petitioner has further stated that the application for amendment moved in review petition has been rejected while rejecting the review application on merits. I do not find anything wrong in the matter. By the said application the applicant/tenant wanted to incorporate a plea in the written statement to contend that the proceedings instituted before the Rent Controller were vitiated because the partners of firm M/s Bhatia Boot House were not joined as party to the proceedings. The tenant wished to rely upon the provisions of Order 30 of CPC in support. It is to be noted that M/s Bhatia Boot House was non-applicant before the Rent Controller and written statement has been filed on its behalf in December, 1980. In the said written statement it was nowhere disclosed that M/s Bhatia Boot House was a partnership concern/firm. Even in the application for amendment which was moved for review, the names of partners were not disclosed. It is to be seen that whether the original non-applicant No. 2 and present respondent No. 9 is the firm or not, who are partners of that firm are of question of facts and the said question could not have been allowed to be raised for the first time in the review petition. The authorities were therefore, right in rejecting the application. Advocate Mardikar, has relied upon

the judgment of Hon"ble Apex Court reported at 1984 Mh.L.J. (SC) 839 (supra), to contend that as all the partners of the firm were not joined as parties before Rent Controller were initiated. As already stated above the factual matrix, to consider the application of this judgment is absent in this case and therefore, this ruling has no application. It is clear that the plea of partnership was deliberately not raised before Rent Controller because of permission on the ground of subletting then sought by landlords. The amendment was roving effort made after rejection of permission on that ground became final.

18. Insofar as the contention of the petitioner about the competency of the Resident Deputy Collector to decide the Rent control appeal is concerned. It is to be noted that the appeal filed by the present respondent Nos. 5 to 8 has been decided finally on 19-11-1982, while the Government Notification satisfying the Deputy Collector and Special Land Acquisition Officer, as Appellate Authority against the order passed by Shri K.G. Bijwal has been issued on 7-5-1984. Thus on 7-5-1984 the appeal against the order of the Rent Controller Shri K.G. Bijwal was already decided by the Resident Deputy Collector and therefore, no fault can be found with the said order dated 19-11-1982.

19. Advocate Mardikar, has further contended that the order in review has been passed after issue of this notification. It is no doubt true that the order in review in this case is passed on 30-1-1987 i.e. after the notification at Annexure-A, came to be issued. However, the said review application was filed on 9-2-1983 i.e. much before the notification at Annexure-A. The review application was filed in the Court of Resident Deputy Collector, Akola which has passed the Appellate order. Thus the very same Authority which has decided the appeal has also decided the application for review.

20. It appears that Shri K.G. Bijwal, earlier worked as Rent Controller at Akola and in due course of time he was promoted as Deputy Collector, Akola. It appears that he also acted as Appellate Authority under Clause 21 of the Rent Control Order, 1949. Therefore, in order to avoid the controversy in which the appeal against his own order would be placed before him for consideration a notification at Annexure-A came to be issued. In this case there was no such occasion because the appeal filed against the order of Shri Bijwal, was already disposed of by the R.D.C. and it is not in dispute that on 19-11-1982, the R.D.C. was the Appellate Authority. It is also apparent that the proceedings in review were filed before the very same authority and the said Authority has decided the review on 13-1-1987. Thus the notification issued on 7-5-1984 has no application in the facts and circumstances of the case.

21. Advocate Mardikar, has tried to contend that in 1987 when the review came to be decided the reviewing Authority was not the Appellate Authority under Clause 21 of the C.P. and Berar Rent Control Order, 1949 and as such it should not have decided the review. In support of he has relied upon the judgment in L.P.A. of the Division Bench of this Court reported in 1989 Mh.L.J. 425(supra). By relying upon this judgment particularly para No. 6 thereof. Advocate Mardikar,

has contended that the notification at Annexure-A, was withdrawn after 15-11-1988 i.e. the date on which the learned Single Judge decided the controversy which formed subject-matter of Letters Patent Appeal. However, in the facts and circumstances, of the present case, as the appeal itself was decided by the Resident Deputy Collector and the Resident Deputy Collector was the Appellate Authority when review came to be filed, the review has been rightly considered and decided by the same Authority. The contingency explained above, in which the notification at Annexure-A came to be issued did not govern the facts of the present case at all. Therefore, this ruling also has no application here.

22. If such arguments is accepted, it would retrospectively change the Appellate Authority also when in this case appeal was already decided. The review was validly entertained by the Appellate Authority. It is to be noticed that no such objection was raised before the reviewing Authority also. The notification at Annexure-A is issued to take care of particular situation and its purpose cannot be overlooked. Here the petitioner has not pointed out any prejudice because his review is considered by the Resident Deputy Collector. It is not the case of the petitioner that Resident Deputy Collector was not Appellate Authority at all in relation to orders passed by the other Rent Controller, except Shri Bijwal. Hon"ble Division Bench was not required to consider such controversy. The appeal of petitioner was rejected by the competent authority and this Court after examining the matter on merits, is rejecting all contentions of tenant in writ jurisdiction. Hence after about 22 years, there is no point if trying to find fault with the orders in review, on such technical grounds in absence of any proof of prejudice.

23. In the circumstances, no case is made out for interference in writ jurisdiction. Writ petition fails and is accordingly dismissed. No costs.