

(2002) 01 BOM CK 0060
In the Bombay High Court
Case No : Writ Petition No. 531 of 1993

Parasmal Chunnilal Chordia

APPELLANT

Vs

The Additional Collector, Amravati, Ramjivan Bangatlal Daga,
Bangatlal Ramjivan Daga, Narendrakumar Bangatlal Daga
and Nareshkumar Bangatlal Daga

RESPONDENT

Date of Decision : 31-01-2002

Acts Referred:

Central Provinces and Berar Letting of Premises and Rent Control Order, 1949 —
Section 13(3)
Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1

Citation : (2002) 3 ALLMR 824 : (2002) 4 BomCR 163

Hon'ble Judges : R.S. Mohite, J

Bench : Single Bench

Advocate : Anand Parchure, for the Appellant; Shri J.N. and J.J. Chandurkar, for the Respondent

Final Decision : Allowed

Judgement

1. Heard the advocates for the parties.
2. This writ petition challenges the judgment and order dated 30.11.1992 passed by the Additional Collector, Amravati, in exercise of the powers of Review under clause 21 (2-a) of the C.P. and Berar Letting of Premises and Rent Control Order, 1949, (hereinafter referred to as Rent Control Order). The brief facts of the case are as under :
 - (a) On 7.4.1987, the petitioner landlord filed an application under clause 13(3) (vi) of the Rent Control Order before the Rent Controller, Amravati, seeking permission to give notice to determine the lease of the non-applicants. Out of the non-applicants, non-applicants No. 3, 4 & 5 were the partners of Respondent No.2 - M/s. Ramjivan Bangatlal Daga, which was a partnership firm. The permission was sought in respect of a shop admeasuring 80 ft. x 60 ft., bearing Municipal House No. 58/2 situated at Municipal Ward No.44, Taluka & District

Amravati. The case of the applicant as made out in his application was that the applicant had a bonafide need to occupy the shop. The details of his need, as made out in para 3 of his application, are reproduced herein under :

"The applicants family consists of the applicant himself, his wife, four major sons, two daughters and one daughter-in-law, in all 9 members. The applicants eldest son Dineshkumar is married and of about 28 years of age. The applicants second son Navinkumar is aged 23 years. His third son Pravinkumar is of about 21 years of age and the fourth son Rajeshkumar is about 18 years of age. The applicants sons Navinkumar, Pravinkumar and Rajendrakumar are not doing any business and are unemployed. Applicants son Dineshkumar is doing business of selling and purchasing Vehicles etc. on commission basis on a very small scale and this is because the applicant and his sons do not have any shop premises to start their business. The applicants youngest son Rajeshkumar is taking education. He also wants to do his own business as he is not interested in further education. The applicants sons want to start their own business in steel utensils in wholesale and retail in the said shop in occupation of the non-applicants. The applicant or his sons do not own or possess any shop in Amravati city or elsewhere excepting the said shop."

(b) A written statement was filed on behalf of the non-applicants No. 1 & 2. In the said written statement, after denying the contentions of the applicant, a positive case was made out, the relevant part of which is as under :

"It is submitted that the applicant and his sons are doing number of businesses. They deal in Silver and gold satta on large scale. They also deal in vehicles at large scale. They are also doing money lending business in the name and style "Navin Finance". They had also invested huge money in purchasing plots with an intention to sell the plots at profit.

This is also their business. They were running Touring talkies at Lonar (Dhar) in Buldhana district but they had closed their said business. They were also doing cloth business in Joshi market at Amravati. They were having the shop premises in Joshi Market, but they have closed their said business and sold their shop by receiving Pagri amount of Rs. One lakh or so. It is also learnt that they have sold their licence of Touring talkies by receiving pagri of Rs. five lakhs or so. It is submitted that Joshi Market is one of the most famous markets of Amravati, wherein all sorts of shops are situated. The shop in the Joshi Market would have been most suitable for doing the applicants so called business of Utensils. In fact, the applicant and his sons did not want to deal in utensils and, therefore, they have not started the said business in their shop in Joshi Market, Amravati. In fact, the applicant and his sons are engaged in the various businesses referred above and, therefore, they had closed their cloth business and Touring Talkies business."

(c) A separate written statement was filed on behalf of non-applicants No. 3 to 5. In this written statement, apart from denying the bonafide need of the landlord,

no separate positive case was made out.

3. In this background, the matter proceeded. The landlord examined himself and one of his sons Pravinkumar as witnesses to prove his bonafide need. The non-applicants also examined 7 witnesses to prove their allegations. In fact, non-applicant No.5 himself entered the witness box. An application was made for production of documents to prove their allegations. The existence of those documents were denied.

4. After the conclusion of evidence, by an order dated 13.6.1991, the Rent Controller granted permission to determine the lease of the non-applicants under clause 13(3)(vi) of the Rent Control Order, 1949. The order passed by the Rent Controller is a detailed order running into 27 pages in which he has considered the entire oral and documentary evidence produced by both the parties. He held that in view of the evidence given by the parties and documents filed, it was proved that the applicant had four major sons, applicants three sons were unemployed, the said shop was suitable for the business of steel utensils and the applicant had sufficient funds to commence the steel business and as such the need of the applicant for the tenanted premises was bonafide and genuine.

5. The five non-applicants then preferred Appeal No.259/71(2)/90-91 before the Resident Deputy Collector, Amravati. The Resident Deputy Collector, Amravati, by his order dated 9.4.1992, came to a concurrent finding of facts to the effect that the need of the landlord and his sons was bonafide. He, therefore, confirmed the order passed by the Rent Controller, Amravati, as having been passed after due consideration and as correct.

6. The original non-applicants No. 1, 3 & 5 then preferred a Review Application before the Additional Collector, Amravati, being Review Application No. 11/71(2)-1992-93 Amravati, under clause 21(2-a) of the Rent Control Order. After hearing both sides, by his judgment and order dated 30.11.1992, the Additional Collector, Amravati, was pleased to allow the Review Application. He then directed a fresh enquiry to be made after giving chance to the parties concerned to establish their claims properly by best available evidence, either oral or documentary. He further directed that the need of Dineshkumar should also be considered while deciding the case afresh and after examining him and his brothers. It is this order that has been impugned in this writ petition.

7. Before I deal with the facts on merits, a few observations relating to the scope of review under clause 21(2-a) of the Rent Control Order, would be of relevance. This scope has earlier been considered by a number of decisions of this Court. A plain reading of clause 21(2-a) of the Rent Control Order indicates that the limitations on the exercise of a power of review expressly laid down under order 47 rule 1 of the CPC are not to be found under clause 21(2-a) of the Rent Control Order. On a plain reading of the clause, it appears that the powers of review exercisable by the Collector thereunder have no fetters but the limitations on his powers had been read into the clause by numerous decisions of this Court. In the

case of Navinchandra Vs. Md. Akbar Khan, Additional Deputy Commissioner, reported in 1960 NLJ 17 it was observed as under :

"It is not possible to lay down limitations for the reviewing authority as sub-clause (2-a) of clause 21, C.P. and Berar Letting of Houses and Rent Control Order, 1949, which sanctions review does not contain any such provision. The authority dealing with review proceedings has however to take note of the fact that it is not deciding an appeal and that it is reviewing a decision. To that extent it has to be cautious. The Court would be competent to interfere with an appellate order provided, according to the reviewing authority, manifest injustice has occasioned or patent error is made out. Whether such an error has been made out has again to be decided by the reviewing authority itself."

8. In the case of Mahendrabhai Purushottam Patel Vs. Vasant Mahadeorao Sangole, reported in 1996 (1) Mh.L.J. 339 delivered by R.M. Lodha, J. on 18.1.1995, in reference to a power of Review under clause 21(2-a) of the Rent Control Order, this Court has observed as under:

"The power of review under the aforesaid clause cannot be said to be restricted to correction of errors of law apparent on the face of the record or such like errors. In deserving case, it is open to the reviewing authority to exercise the power of review where gross errors of fact or facts are apparent. Such errors of fact may have been occasioned either by misreading of relevant pleadings or evidence or overlooking or ignoring the material pleading or evidence or taking into account extraneous considerations and such error of fact or errors of fact have resulted in manifest injustice. It is true that every error in the garb of review cannot and should not be corrected nor the reviewing authority would hear the review application as an appeal against his own order, but at the same time the power of review under clause 21(2-a) cannot be confined to correction of errors of law. The power of review under clause 21(2-a) though normally and ordinarily should not be exercised in a routine manner, but there are no limitations and restrictions on the reviewing authority to exercise its power to correct its findings of facts which are patently erroneous and have resulted in failure of justice."

9. In the present case, the Review Application has been allowed by the Additional Collector on the following grounds :

(a) Though the landlord had alleged need for all his sons, the appellate Court has considered the need of three sons only which was a basic blunder and it was necessary for the Courts to consider need of all four sons.

(b) That, the landlord examined only himself and his one son Pravinkumar but did not examine his other three sons viz., Dineshkumar, Navinkumar and Rajendrakumar, who could have been the best witnesses.

(c) That, though it was admitted that the family was joint and it had been claimed that the business of one son Dineshkumar was independent, no supporting

evidence has been placed on record to show that his business was independent though the family was joint and the fact of Dineshkumar having started the business of Mahavir Traders was suppressed.

(d) That the reviewing authority was convinced that in this case, it was necessary for respondent No. 1 to examine Dineshkumar, Navinkumar and Rajendrakumar also in addition to Pravinkumar.

(e) That the evidence of one Madhukar Charhate, who had stated in his evidence that on the documents of Navin Finance Corporation, Navin Jain has signed as Proprietor/ Manager and that the similar signatures are there on hire purchase agreement forms of Navin Finance Corporation, had not been considered.

(f) That, the burden of proof lay on the applicant - landlord to prove his bonafide requirement and the lower Courts failed to consider this aspect.

10. I find that the approach of the Additional Collector, Amravati, while exercising the powers of review are not only totally unjustified but perverse. I will now deal with all the grounds given by him for allowing the application.

11. As regards ground No. (a), the pleadings in the application made for grant of permission clearly indicated that the applicant had sought permission because three of his sons viz., Navinkumar, Pravinkumar and Rajendrakumar were not doing any business and they were unemployed. The landlord had fairly stated that his son Dineshkumar was doing a small business of selling and purchasing of vehicles on commission basis. He has stated that the applicants sons wanted to start their own business of steel utensils in wholesale and retail in their own shop in occupation of the non-applicants. It is well settled that the bonafide need of the landlord extends to the need of his dependent family members. If the Rent Control Authority concludes that there was a bonafide need for landlord and some of his family members, though it may be that some other family members may not need the tenanted premises, this by itself would be sufficient for granting permission u/s 13(3)(vi) of the Rent Control Order. In the present case, the landlord had contended that all his four sons wanted to start their steel utensils business and the suit shop was required for the said purpose. Even assuming that only three sons of the petitioner landlord were held to be in bonafide need of the shop, this by itself would be sufficient. In such a situation, in exercise of power of review, there was no need to start a fresh enquiry for determining the alleged need of the fourth son. In this respect, it would have been a different matter if the reviewing authority had come to a conclusion that there was no evidence to show the bonafide need of the petitioner landlord for providing business premises for his three sons.

12. As regards ground No. (b), it is for the landlord to decide in which manner and through whose evidence he has to prove his case. The landlord himself was a good witness to prove his own bonafide requirement and in this case not only he had stepped into a witness box but he had also examined one of his sons Pravinkumar. It was for the landlord to decide who was his best witness and

based upon the evidence produced by him, at his discretion, the Rent Controlling Authorities were required to decide if bonafide need was proved as required by law. The authorities under the Rent Control Order can not direct a landlord to examine other witnesses who they consider to be the best witnesses when the landlord himself did not feel the necessity to do so. Suffice to say that in most cases, the bonafide requirement can be sufficiently proved through the evidence of landlord, who is seeking the permission. Such landlord is infact the best witness to speak of his needs and the needs of his family members and it is not necessary to examine each and every family members, whose need is at issue, to prove his own requirement.

13. As regards ground No.(c), the finding of the reviewing authority is vague. A glance at the order passed by the Rent Controller indicates that he considered several admissions given in the evidence of non-applicant No.5, who had stepped into the witness box, e.g. the judgment of the Rent Controller states that non-applicant No.5 himself had admitted that from last seven years Dinesh Chordiya was not running Touring Cinema and what he was doing since then was not known to him. The non-applicants witness Jugal Kishor Gattani shown his ignorance as to who was the licensee of said cinema. He had considered the evidence of the petitioners son Pravinkumar and the independent evidence of Shri Madhukar Charhate from the R.T.O.s office who had stated that Dinesh Chordiya was the sole proprietor of Navin Finance Corporation. None of these aspects have been referred to by the Additional Collector, Amravati, in his review order. The Resident Deputy Collector, Amravati, in his order, passed in appeal, also discussed the evidence and concurrently affirmed the finding of fact that though the petitioner and his son was joint in mess, they were separate in business. The finding given by the authority in review is not precise and is vague.

14. As regards ground No. (d), as stated above, it is not for the authorities under the Rent Control Order to dictate to any party as to what evidence the party needs to lead. The parties approaching the authorities under the Rent Control Order have the discretion to decide themselves about the sufficiency of evidence and to prove their case and the authorities are only required and called upon to judge whether the necessary requirement of law, like bonafide need is made out within the four corners of law.

15. As regards ground No. (e), evidence of Madhukar Charhate has been specifically considered by the appellate Authority. It has been stated in his judgment that this witness, examined by the tenant, had specifically admitted that Dinesh Chordiya alone was the proprietor of Navin Finance Corporation. He has further categorically stated that neither the petitioner nor his other three sons were concerned with the said Navin Finance Corporation. It is in view of these categorical admissions that the appellate Court gave a finding that three sons of the petitioner were not involved in the sole proprietorship business of Dineshkumar. These findings given by the appellate Authority are not even referred to in the review judgment. Some stray sentences to show that there

were some signatures of Navin on some agreement, without referring to the further aforesaid admissions, are made a ground for reviewing the orders of the lower authorities. The evidence of this witness further indicated that he had stated that anybody could sign for the sole proprietor. Even this has not been referred to in the judgment under review.

16. As regards ground No. (f), i.e. the question of burden of proof, both the lower courts, on evidence before them, have held that the petitioner had discharged the burden of proof. The tenants had come out with a separate positive case that the need of the petitioner was not bonafide as the petitioner and his sons were doing other various businesses. As far as such allegations were concerned, since they were made on behalf of the tenant, the burden was on the tenant to prove these allegations, which burden was found not to be discharged by two concurrent findings. It is well settled that the onus is on tenant to show that the suit premises are neither reasonably nor bonafidely required by the landlord. (See Shankar Bhairoba Vadangekar, since deceased, by his Heirs and Legal Representatives Vs. Ganpati Appa Gatare, since deceased, by his Heirs and Legal Representatives, Hence, this ground given for allowing the review is improper.

17. In the result, the impugned order dated 30.11.1992, passed by the Additional Collector, Amravati, is quashed and set aside and the rule issued in this writ petition is made absolute in terms of prayer clause (ii) and (iii) in the petition. However, in the facts and circumstances of the case, there shall be no order as to costs.