
(1999) 02 BOM CK 0084

In the Bombay High Court

Case No : Writ Petition No. 5768 of 1995

Pramila Madhav Damle and others

APPELLANT

Vs

Shri Waman R. Koparde

RESPONDENT

Date of Decision : 17-02-1999

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1), 14(1)

Citation : (1999) 2 ALLMR 334 : (1999) 2 BomCR 371 : (1999) 1 MhLj 830

Hon'ble Judges : T.K. Chandrashekhara Das, J

Bench : Single Bench

Advocate : Prasad S. Dani, for the Appellant; Smt. Shakuntala Joshi, for the Respondent

Judgement

T.K. Chandrashekhara Das, J.—The petitioner is a tenant. A suit bearing No. R.A.E. Suit No. 5467 of 1969, was filed against him by the respondent landlord for eviction on three grounds namely bona fide requirement, alternative accommodation and sub-letting. It appears from the records that the last ground of sub-letting has been given up at the time of hearing by the trial Court. On examining the materials and evidence adduced before the trial Court, the suit of the respondent was dismissed. The respondent filed appeal against the trial Court's order being Appeal No. 226 of 1981. The Appellate Court set aside the trial Court's order and the ground of alternative accommodation was found in favour of the landlord respondent and decree of eviction was passed against the petitioner by judgement dated 6/7-9-1995. It is in this circumstances, that the matter came up before this Court by way of this writ petition.

2. It is disclosed from the record that the tenanted premises consisting of three rooms was originally belonged to the petitioner. In the year 1949, the petitioner sold the entire premises to the respondents and he had retained one room in his possession as tenant of the respondent. Therefore, from the year 1949, the petitioner was staying with his family in one room which was retained by him as

a tenant; Both the courts found that there is an acquisition of accommodation by the wife of the petitioner in the year 1968. It has also come out in the evidence that acquisition was made by the wife of the petitioner out of her own funds. It has also come out that all other family members except the petitioner, shifted to the new accommodation acquired by the wife. The Lower appellate Court has found that the acquisition by the wife of the alternative accommodation will give cause of action to the respondent to seek eviction of the petitioner on the ground of section 13(1)(1) of the Bombay Rent Act, namely the acquisition of alternative accommodation. Section 13(1)(1) of the Bombay Rent Act, reads as follows :

"That the tenant after the coming into operation of this Act has built, acquired, vacant possession of or been allotted a suitable residence."

3. Relying on the decision of the Supreme Court in B.R. Mehta Vs. Atma Devi and Others, . The Lower appellate Court found that the petitioner has acquired alternative accommodation as envisaged u/s 13(1)(1) of the Bombay Rent Act. On following the said decision and also on examination of the case records, it can be found that the lower appellate Court has misapplied the decision. In fact the Supreme Court in the aforesaid judgement in para 4 has held thus :

"Looked at from that point of view unless there is acquisition of a premises or a flat or allotment of a premises or apart of a premises by the tenant in which he has domain which he can reasonably and alternatively use as a substitute for the place he is using in the tenancy it cannot lead to a forfeiture of his right to occupy his tenanted premises. The case would be otherwise, however, if a tenant comes into possession of a premises or is allotted a piece of residence or acquires vacant possession of the premises then such a tenant cannot prevent, if other conditions are fulfilled u/s 14(1)(h) of the Act being liable to forfeiture of his tenancy."

It is to be noted that the Supreme Court has decided the case under the provisions of section 14(1)(h) of the Delhi Rent Act, which is almost in para materia of the Bombay Rents, Hotel Lodging House, Rents Control Act, 1947. In the said paragraph, the Supreme Court has further observed as under :

"Mr. Avadh Bihari Rohtagi learned Counsel strenuously contended before us that (sic) this proposition that acquisition of a flat by the wife was acquisition by the tenant and such acquisition in all circumstances would be within the mischief of section 14(1)(h) of the Act and would disentitle the tenant to retain his flat in question. We are unable to accept this reading of the said Act. The said decision rested on the facts of that case. There in that case, this Court found that the respondent's wife had purchased a flat in Saket and further found that the flat was available to the respondent. In those circumstances, it was held that there was acquisition of vacant possession of a residence and as such section 14(1)(h) of the Act would be attracted. It cannot however be laid down as a general proposition of law that acquisition of flat by the wife in all circumstances would amount to acquisition of flat by the tenant."

From the above observations it can be seen that the said decision has to apply in favour of the tenant. Instead lower appellate Court wrongly applied the decision in favour of the landlord in this case.

5. It has come out in evidence that the alternative accommodation has been acquired by the wife out of her fund. The tenant has no right or domain over that premises. The tenant can only stay there so long as his wife permits him. In view of the Supreme Court decision in order to bring the case under the mischief of section 13(1)(1) of the Bombay Rent Act, the tenant should acquire or must be able to reside in the alternate accommodation as a matter of right; then only section 13(1)(1) of the Bombay Rent Act, will be attracted. In view of this, discussion, I do not think the lower appellate Court was justified in setting aside the order of the Lower Court dismissing the suit of the respondent.

6. In the result, writ petition is allowed. The lower Appellate Court's order dated 6/7/-9-1995 is set aside.

Rule made absolute accordingly.