
(2001) 08 BOM CK 0042

In the Bombay High Court

Case No : Writ Petition No. 4503 of 1989

Ramchandra Bhau Marathe

APPELLANT

Vs

Smt. Shaila Marutirao Naik

RESPONDENT

Date of Decision : 10-08-2001

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12(3)

Citation : (2002) 1 ALLMR 412 : (2002) 2 MhLj 716

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : R.V. Govilkar, for the Appellant; V.A. Thorat, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Khanwilkar, J.—This writ petition under Article 227 of the Constitution of India takes exception to the judgment and order passed by the Small Causes Court at Bombay dated 16th September, 1989 in Appeal No. 696 of 1986.

2. Briefly stated some of the undisputed facts are that the petitioner is in possession of Shop No. 3 in Fatimabai Chawl (Farook House), 565A, N. M. Joshi Marg, S. Bridge, Bombay-400011. The petitioner is the original defendant, whereas the respondent is the original plaintiff. The suit premises were originally owned by one Abdul Latif Abbas Waghoo, who had constructed the suit house. The petitioner was inducted by the original owner in the suit premises on monthly rent basis. According to the respondent/plaintiff, the said Abdul Latif Abbas Waghoo died leaving behind his widow Fatimabai and nephew Abdul Rahim Suleman Waghoo. It is the respondent's case that after the death of the original owner Abdul Latif Abbas Waghoo, his nephew, said Abdul Rahim Suleman Waghoo, being the heir and legal representative, succeeded to the property and started managing the affairs of the said property. According to the respondent, there was a partnership venture between the respondent and the said Abdul Rahim Suleman Waghoo in which certain disputes arose, resulting in filing of the suit before the City Civil Court being S.C. Suit No. 5721 of 1978. The said suit

was however, compromised between them on January 15, 1979, pursuant to which the respondent became the owner of the suit property. It is the respondent's case that even before the consent decree, the respondent was actually looking after the suit property and in fact the petitioner was duly informed by the owner to pay the monthly rent to the respondent from time to time. It is not in dispute that the petitioner paid rent directly to the respondent for the period between October 1977 till September 1978. After the consent decree was passed, the respondent, in her own rights, claimed the rent in respect of the suit premises from the petitioner. However, it appears that the petitioner remained in arrears consequent to which the respondent issued demand notice on February 18, 1980 demanding arrears from the period between 1st June, 1978 to 31st January, 1980. It is not in dispute that the petitioner did not tender rent as demanded in the suit notice nor raised any dispute regarding the standard rent under the provisions of Section 11 of the Bombay Rents Hotel and Lodging House Rates Act, 1947 [hereinafter referred to as "the Act"] within the specified period of one month from the date of receipt of the said notice. Accordingly, the respondent instituted a suit in the Court of Small Causes at Bombay being a RAE Suit No. 773/2685 of 1980 for recovery of possession of the suit premises on the ground of default within the meaning of Section 12 of the Act. Ordinarily, in view of non-payment of rent within one month from the date of receipt of suit notice and failure to raise dispute regarding the standard rent within such period, the tenant would become liable for eviction within the meaning of Section 12(3)(a) of the Act. But in the present case, the defence of the petitioner was that he was not liable to pay any amount to the respondent because, according to him, the respondent was not the landlady.

3. On the basis of stand taken by the rival parties, the said matter went for trial. The trial Court found that the respondent was not the landlady and, therefore, had no locus to file the suit for possession against the petitioner. The trial Court held that the land is the Corporation land and, after the demise of Abdul Latif Abbas Waghoo - the original lessee, the land reverted back to the Corporation and the petitioner became the protected licensee and direct tenant of the Corporation. Taking this view of the matter, the trial court was pleased to dismiss the suit filed by the respondent.

4. The respondent carried the matter in Appeal before the appellate Bench of Small Causes Court at Bombay by way of Appeal No. 696 of 1986. The Appellate Court has reversed the decree passed by the trial Court and instead allowed the Appeal holding that from the evidence on record it is established that the respondent is the landlady and was, therefore, entitled to demand monthly rent as well as to institute a suit for possession against the petitioner. This view taken by the Appellate Court is the subject matter of challenge in the present writ petition.

5. The learned counsel for the petitioner mainly contends that the respondent is

not the owner of the subject land and, therefore, has no locus to either demand the monthly rent or file the suit for recovery of possession on the ground of default. According to the petitioner, assuming that the respondent was the rent collector, in that case the rent collector has no right to terminate the tenancy or to institute a suit for recovery of possession. In support of his plea reliance has been placed on the decision of this Court reported in AIR 1976 Bom 427. Besides this, reliance is also placed on the decision of the Supreme Court reported in Sri Ram Pasricha Vs. Jagannath and Others, and on the decision of Gujarat High Court reported in Nanalal Girdharlal and Another Vs. Gulamnabi Jamalbhai Motorwala and Others, . The learned counsel for the petitioner further contends that, in any case, after the respondent had become the owner, no attornment was done in favour of the respondent and, therefore, the respondent had no locus to demand monthly rent or institute the suit for recovery of possession. According to the petitioner, the attornment was in fact done only in February 1983. Insofar as finding recorded by the Appellate Court that the petitioner had accepted the respondent as his landlady having regard to the admitted fact that the petitioner had paid monthly rent directly to the respondent between October 1977 to September 1978, would be of no avail to the respondent for the mistake committed by the petitioner cannot vest right in favour of the respondent of a landlady or owner of the suit premises. The learned counsel for the petitioner has criticized the observations made by the Appellate Court and contended that since the same are founded on inappropriate basis, it cannot be sustained in law. Be that as it may, the learned counsel for the petitioner has not seriously challenged the findings recorded by the Appellate Court on the issue of default within the meaning of Section 12(3)(a) of the Act, but the challenge is essentially concentrated relating to the title of the respondent that of landlady.

6. On the other hand, the learned counsel for the respondent has adopted the reasons given by the Appellate Court to support the order passed by the Appellate Court. According to the respondent, the respondent has acquired the title in respect of the suit property by virtue of the consent decree dated January 15, 1979 which has become final and has not been challenged by any person who is likely to be affected by the said decree. It is further argued that in any case, if the petitioner had any grievance about the title of the respondent in respect of the suit property, the appropriate remedy such a situation was to file an interpleader suit. In other words, it is contended that the petitioner neither chose to take recourse to filing an interpleader suit nor tendered the amount which was demanded by the suit notice nor raised any dispute retarding the standard rent and, therefore, the petitioner was liable to be evicted within the meaning of Section 12(3)(a) of the Act. The learned counsel for the respondent has placed reliance on Section 5(3) of the Act to contend that the definition of "landlord" is wide enough even to encompass the rent collector who is authorized not only to demand the rent but to terminate the tenancy and also to institute suit for recovery of possession, except on the ground of bona fide requirement u/s 13(1) (g) of the Act by virtue of Explanation (b) to Sub-section (2) of Section 13 of the

Act. The learned counsel for the respondent made emphasis on the admissions in the evidence given by the petitioner/respondent, which, according to him, were sufficient enough to sustain the findings of the Appellate Court and no other inquiry was really necessary. The learned counsel for the respondent further submits that the trial Court was completely in error in assuming that after the death of the original lessee Abdul Latif Abbas Waghoo, the property vested with the Corporation and the petitioner became the direct tenant of the Corporation. He placed reliance on the decision reported in 1999(1) Mah.LJ. 37 to contend that law recognizes dual ownership. According to the respondent, no doubt the land in question belongs to the Corporation, but the structure standing on the said land was erected by the predecessor of the respondent and the ownership of the said structure, being of that person, was the landlord and after his demise his successors have inherited the property and, in turn the respondent has purchased the property from the said successors. Therefore, the respondent was the landlady and entitled to raise demand regarding the monthly rent and also competent to terminate the tenancy and to institute the suit for recovery of possession.

7. Before I proceed to examine the rival contentions, it needs to be noted that it is well settled that the scope of interference under Article 227 of the Constitution of India is very limited. This court cannot interfere with the finding of fact recorded by the Appellate Court merely because there is some error here or there. But, it is only when it is successfully demonstrated that serious miscarriage of justice has occasioned, the court may exercise its writ jurisdiction. In the present case, to my mind, the findings of fact recorded by the appellate Court, are supported by the evidence on record. The Appellate Court to conclude that the respondent is the landlady, has considered the fact that the nephew Abdul Rahim Suleman Waghoo was recovering the rent for and on behalf of the original lessee and that after the demise of the original lessee, he continued to recover the rent of the suit premises from the petitioner. The Appellate Court has found that the nephew inherited the suit property after the demise of the original lessee. The Appellate Court has further taken into account the fact that the said nephew of the original lessee has entered into consent terms pursuant to which the respondent became the owner in respect of the suit structure including the suit premises and that the said consent decree has not been assailed by any interested party. The Appellate Court has also held that the evidence on record would indicate that the petitioner had accepted the respondent as landlady and as such there was no necessity of attornment. The Appellate Court has further taken into account the fact that the petitioner paid rent between 1st September 1977 till 30th September 1978 directly to the respondent, obviously on the basis of instructions so given to him on behalf of the original lessee, in that sense, the Respondent was in any case the rent collector at the relevant time. The Appellate Court on taking overall view of the matter, has recorded the finding that the respondent became the landlady by virtue of the consent decree.

8. While challenging these findings, the petitioner contends that merely because

the petitioner had paid rent directly to the respondent on account of certain misconception and misrepresentation, that would not enure to the benefit of the respondent and in any case that will not create any right in favour of the respondent as such. According to the petitioner, the respondent should establish her right independent of the said fact. It is further contended that the Appellate Court has clearly misdirected the inquiry by assuming that the consent decree is between the original lessee of the Corporation viz. Abdul Latif Abbas Waghoo and the respondent.

9. It is not in dispute that the consent decree has been obtained between the respondent and the nephew of the original lessee. It is, however, the case of the respondent that the nephew of the original lessee has inherited the property, being, the heir and legal representative and was competent to enter into the said consent terms even in relation to the suit structure including the suit premises. It is not in dispute that the respondent instituted the suit on the premise that she was the landlady in respect of the suit premises. This assertion finds place in the plaint filed before the trial Court. While refuting the averments in the plaint, the petitioner, however, took a stand that he was not aware as to whether the respondent was the landlady in respect of the suit property, and, the only defence that was taken, as is obvious from para-1 of the written statement, is that the tenancy of original lessee Abdul Latif Abbas Waghoo was terminated by the corporation and because of this fact the petitioner became the direct tenant of the corporation. This defence taken by the petitioner has been repelled by the plaintiff/respondent by pointing out that termination of lease by the Corporation was subsequently recalled and these proceedings have culminated with an order accepting the respondent as the direct lessee of the Corporation which, however, happened in 1983. It is not in dispute that the Corporation has recognized the respondent as lessee essentially on the basis of consent decree between the nephew of the original lessee and the respondent. It is pertinent to note that the respondent/plaintiff has deposed in her evidence that the earlier landlord had directed the petitioner/tenant to pay the rent to her directly. According to the respondent this intimation was given to the petitioner in writing and registered acknowledgment receipt of such intimation was duly received which has been placed on record. It is not in dispute that the acknowledgment receipt was placed on record and marked as Exhibit "F". This assertion made in the evidence by the Respondent-Plaintiff has gone unchallenged, much less not even a suggestion has been put to this witness during the cross examination in this behalf. On the other hand, in the examination-in-chief the petitioner has conceded the fact that the owner of the chawl known as Fatimabai Chawl was Abdul Latif Abbas Waghoo, who was no more alive; and that he was inducted by him as a tenant in respect of Shop No. 3; that he was paying rent at the rate of Rs. 40/- per month to the said Abdul Rahim Waghoo, who was the nephew of the original lessee. Besides this what is relevant for our purpose is the clear admission of the petitioner in the examination-in-chief itself to the effect that after the death of landlord Abdul Latif his nephew became the legal representative. To my mind, on

this evidence itself it was sufficient for the Court below to hold that since the petitioner has admitted that the nephew of the original landlord was the legal representative, consequently he has acquired the rights in respect of the suit structure, who in turn, has entered into the consent terms with the respondent. Once this position is established, then it necessarily follows that the nephew of the original lessee had authority to enter into consent terms and by virtue of which the respondent has become the owner in respect of the suit structure. The evidence of the petitioner would, however, further establish the fact that after he stopped paying rent to the respondent/plaintiff, nobody came to him to demand rent and that he did not pay rent to anybody nor did he receive any letter from any one claiming interest in the property on behalf of the earlier landlord and calling upon him to refrain from paying the rent to the respondent/plaintiff. But in the same breath, the petitioner has also accepted that he had received some intimation which was shown to him and Exhibit "F" contains his signature. Thus taking into consideration the totality of the evidence, which has been adduced by the parties and more particularly the admissions of the petitioner which clearly establish that the respondent has become the owner. Moreover, the evidence also establishes that the respondent has since been recognized as the direct lessee of the Corporation. In the circumstances, it is not possible to entertain the submission that the respondent is not the landlady. On the other hand, I find no reason to interfere with the findings of fact so recorded by the Appellate Court that the respondent the landlady in respect of the suit premises and that the petitioner had accepted her as the landlady. A fortiori, the respondent was competent not only to issue the demand notice but also to maintain the suit for recovery of possession on the ground of default against the petitioner.

10. The decisions relied upon on behalf of the petitioner to contend that the rent collector is not entitled to terminate the tenancy or to maintain the suit would be of no avail in the fact situation of the present case. The Appellate Court has found that the respondent is the landlady. Insofar as the grievance made that there has been no attornment before issuance of the suit notice or institution of the suit has been answered by the Appellate Court holding that the evidence on record would indicate that the petitioner had accepted the respondent as his landlady inter alia having regard to the fact that the petitioner paid amount towards rent directly to the respondent for sufficiently long time without any - demur on the instruction's of the former landlord, may be under mistaken belief as is now sought to be contended, but then the petitioner was estopped from questioning the title of the respondent that too on the ground that there has been no attornment. To my mind, the abovesaid view taken by the Appellate Court is based on analyzing the evidence on record and in essence is a finding of fact recorded by that court. I find no reason to disturb this view merely because another view was possible on reappraisal of the evidence, for that is not the scope of jurisdiction of this proceeding.

11. No doubt in the demand notice the respondent has claimed rent for the period between 1st June 1978 till 31st January 1980, whereas she has become

the owner only by virtue of the consent decree dated 15th January 1979. In this context, the learned counsel for the petitioner contends that the suit notice was invalid because the respondent had no right to claim any amount prior to January 1979 because she was not the owner of the property during the said period. No doubt, the demand notice relates to the period prior to January 1979, but that by itself would not invalidate the suit notice as enunciated in para - 11 of the Division Bench of this Court reported in 1983 Mah.LJ. 254 . Such a notice will have to be liberally construed. It was open to the tenant to pay the admitted amount and contest the matter. But in the present case the petitioner is not at all disputing the correctness of the demand as such, but only the title of the respondent. Moreover, merely because the demand notice relates to the period prior to January 1979, that by itself would not make it invalid so long as the amount due and payable towards the rent is in excess of six months, so as to disentitle the respondent/plaintiff for maintaining the suit. As a matter of fact, this argument was not raised before the Courts below but was pressed only before this Court that too during the course of argument, in that sense, it would be inappropriate to entertain this argument. Even if I were to answer the same, I would answer against the petitioner because in the present case the petitioner has not taken any steps on receipt of the suit notice to show that he was ready and willing to pay the rent. But on the other hand, he took a specific stand that the respondent was not the landlady. In such a case, the tenant cannot be said to be ready and willing to pay the rent or regularly pay the amount towards rent and permitted increases to the landlord. This is not a case of dispute regarding the standard rent as such, so as to get extricated from the rigours of Section 12(3)(a) of the Act. On the other hand, once the petitioner has failed on the main ground that the respondent is not the landlady, no other enquiry would be necessary since the rigours of Section 12(3)(a) will be straightway attracted to the present case leaving no choice to the court but to pass decree of eviction on that count.

12. The learned counsel for the respondent has rightly relied on the decision of this Court reported in 1999 (1) Mah.L.J. 57 to contend that the law recognizes dual ownership, it is well settled that the land may be owned by one person, whereas the structure may be owned by the other and that person who owns the structure is nevertheless a landlord and competent to maintain suit for recovery of possession against the sublessee. In the present, case, however, it will be wholly unnecessary to examine the plea that the petitioner has become the direct tenant of the Corporation inasmuch as the Corporation has already granted lease in favour of the respondent/lessee. In that sense, the respondent has become the direct lessee of the Corporation and also the owner of the suit structure after the consent decree. In such a situation, it will be preposterous to contend that the petitioner has become the direct lessee or tenant of the Corporation. Moreover there is absolutely no iota of evidence to show that there is any privity of contract between the petitioner and the corporation in this behalf.

13. In the circumstances, I find no reason to interfere with the conclusion

reached by the Appellate Court that the respondent is the landlady in respect of the suit property including the suit premises and was, therefore, entitled to demand the amount towards the monthly rent and also entitled to terminate the tenancy or to maintain the suit for recovery of possession. In the present case, admittedly, the petitioner, after receipt of notice dated 18th February 1980," did not tender the amount demanded in the said notice, but instead started questioning the title of the respondent. It is not in dispute that the petitioner neither tendered the amount, nor raised any dispute regarding the standard rent within the specific period of one month. Therefore, in such a situation, the court will have no option but to decree the suit within the meaning of Section 12(3)(a) of the Act.

14. In the circumstance, this petition fails and same is dismissed with costs.

15. At this stage, the learned counsel Mr. Govilkar, prays that the interim relief granted by this court be continued for a period of six weeks to enable the petitioner to approach the Apex Court.

The learned counsel for the respondent, however, opposes this prayer. Since the petitioner is in possession of the suit premises for sufficiently long time; and the ground for recovery of possession is only default, I would think it appropriate to grant six weeks time to the petitioner as prayed for. Interim relief granted by this Court on 6-11-1989 to continue for a period of six weeks from today. Certified copy expedited.