

(2015) 06 BOM CK 0139

In the Bombay High Court

Case No : Writ Petition Nos. 5079 and 5080 of 2014

Rameshchandra D. Padia and Others

APPELLANT

Vs

Jayantilal Nandlal Kothari and Others

RESPONDENT

Date of Decision : 25-06-2015

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13A2, 31E, 31F, 31F(2)
Constitution of India, 1950 — Article 227
Maharashtra Rent Control Act, 1999 — Section 22, 23, 24, 41, 44

Citation : (2015) 4 ABR 688

Hon'ble Judges : M.S. Sonak, J

Bench : Single Bench

Advocate : Dakshesh Vyas and D.S. Sabnis i/b. Lex Firmus, for the Appellant

Judgement

M.S. Sonak, J.

1. The learned counsel for the petitioners states that the respondents have been served and that necessary affidavit of service will be filed in the course of the day.
2. This Court, by its order dated 28 August 2014 had put the parties to notice that these petitions will be disposed of finally at the stage of admission and that in case the respondents fail to appear, the Court will decide these matters on merits. Accordingly, Rule. The Rule is made returnable forthwith in view of the order made on 28 August 2014.
3. Both these petitions question common order dated 24 February 2014 made by the Additional Divisional Commissioner, Konkan Division, holding that the revisions petitions under Section 44 of the Maharashtra Rent Control Act, 1999 (MRC) are maintainable to impugn orders made by the competent authority under Section 13A2 of the Bombay Rent, Hotel Lodging House Rates Control Act, 1947 (Bombay Rent Act). The impugned order came to be made in the context of consideration of applications seeking condonation of delay in instituting the revision petitions.

4. In these cases, the Court is really not concerned with the issue of delay, because the fundamental question raised by the learned counsel for the petitioners is that no revisions petitions were at all maintainable before the Additional Divisional Commissioner, Konkan Division, under Section 44 of the MRC in view of the provisions contained in Sections 46 and 58 of the MRC.

5. In the years 1992 and 1996, the respondents instituted proceedings for the eviction of the petitioners under Section 13A2 of the Bombay Rent Act, which reads as under:

"13A2. Landlord entitled to recover possession of premises given on licence on expiry of licence.- (1) Notwithstanding anything contained in this Act, a licensee in possession or occupation of premises given to him on licence for residence shall deliver possession of such premises to the landlord on expiry of the period of licence; and on the failure of the licensee to so deliver the possession of the licensed premises, a landlord shall be entitled to recover possession of such premises, a landlord shall be entitled to recover possession of such premises from a licensee, on the expiry of the period of licence by making an application to the Competent Authority; and the Competent Authority, on being satisfied that the period of licence has expired, shall pass an order for eviction of a licensee.

(2) Any licensee who does not deliver possession of the premises to the landlord on expiry of the period of licence and continues to be in possession of the licensed premises till he is dispossessed by the Competent Authority shall be liable to pay damages at double the rate of the licence fee or charge of the premises fixed under the agreement of licence.

(3) The Competent Authority shall not entertain any claim of whatsoever nature from any other person who is not a licensee according to the agreement of licence.

Explanation.- For the purpose of this section,-

(a) the expression "landlord" does not include a tenant or a sub-tenant who has given premises on licence;

(b) an agreement of licence in writing shall be conclusive evidence of the fact stated therein)."

6. The petitioners objected to the jurisdiction of the competent authority *inter alia* on the grounds that they were the owners of the suit premises and in any case in view of the assertion in the respective complaints that the petitioners herein were "gratuitous licensees" the competent authority lacked jurisdiction in the matters. With effect from 31 March 2000, the MRC came into force. Section 58(1) of the MRC has repealed Bombay Rent Act. Notwithstanding such repeal, in view of the provisions contained in sub section (2) of section 58 of the MRC, the proceedings instituted by the respondents before the competent authority continued. The competent authority however made an order on 11 February 2011 upholding the objections raised by the petitioners and dismissed the

respondents applications under Section 13A2 of the Bombay Rent Act, holding that it lacked jurisdiction in the matters.

7. The respondents, instituted revision petitions under Section 44 of the MRC before the Additional Divisional Commissioner, Konkan Division, questioning orders dated 11 February 2011 made by the competent authority, wherein, the impugned order came to be made. The Additional Divisional Commissioner, Konkan Division, without, any discussion, has held that the MRC has "retrospective effect", and on the said basis, revision petitions under Section 44 of the MRC in order to impugn the orders made by the competent authority under Section 13A2 of the Bombay Rent Act are maintainable.

8. In my judgment, the view taken by the Additional Divisional Commissioner, Konkan Division, is required to be interfered with. There is no discussion whatsoever on the aspect of retrospectivity of the MRC and yet, the impugned orders proceed to hold that MRC has a retrospective effect. The issue of retrospectivity cannot be decided in such a manner. Reference in this regard was necessary to the special provision with regard to pending proceedings as well as provisions for repeal and savings. The MRC may be retrospective for some purposes and prospective for others. Since this case is governed by the specific provisions contained in Sections 46 and 58 of the MRC, there was really no reason to advert to the general aspects of retrospectivity, and in any case, certainly not in the manner the impugned orders have proceeded with.

9. Before advertng to the provisions of the MRC, it would be useful to note that as against an order made by the competent authority under section 13A2 of the Bombay Rent Act, there was no provision of appeal. However, under Section 31F(2) suo moto or otherwise revisional powers were conferred upon the High Court for satisfying itself that an order made in any case by the competent authority under Section 31E is according to law and to pass such order in respect thereto as it thinks fit. Section 31E provide special procedure for disposal of applications under Part IIA. The applications under Part IIA, for which special procedure of summary disposal was applied, include inter alia proceedings under Section 13A2 of the Bombay Rent Act. It is clear therefore that orders under Section 13A2 of the Bombay Rent Act were not appealable, but were revisable by the High Court and not by any other authority.

10. Section 46 of the MRC, reads thus :

"46. Pending suits and proceedings in court.-(1) Subject to sub-section(2), all suits and proceedings filed by landlords, being the landlords referred to in clause (a) or (b) or (c) of section 41 for eviction of tenant on the grounds specified in section 22 or 23 or 24 and pending on the date of commencement of this Act, unless the landlord withdraws the same in relation to relief of recovery of possession of the premises claimed therein, be heard, proceeded with and disposed of by the Court in which such suit or proceeding is pending as if this Act had not been passed.

(2) Any such landlord seeking to evict the tenant on the grounds specified in section 22 or 23 or 24 may, if he has already proceeded against the tenant in a suit or in a proceeding in the court and withdraws the suit or proceeding in relation to the claim made therein with leave of court, proceed against the tenant in accordance with the provisions of this Chapter."

11. Section 24 of the MRC makes provisions enabling a licensor to recover possession of the premises from the licensee, inter alia on the ground that the period of licence has expired. Section 13A2 of the Bombay Rent Act, was also a provision which enabled licensor to recover possession of the suit premises from the licensee, inter alia on the ground that the period of licence has expired. To that extent, the ground for recovery of possession as contained in Section 13A2 of the Bombay Rent Act and Section 24 of the MRC is one and the same. The proceedings initiated by the respondent before the competent authority under Section 13A2 of the Bombay Rent Act had to be regarded as proceedings pending on the date when the MRC came into force and further, such proceedings were ones seeking eviction on grounds specified in Section 24 of the MRC. Accordingly, the proceedings instituted by the respondent, in terms of Section 46(1) of the MRC itself were required to be heard, proceeded with and disposed of by the Court in which such suit or proceedings were pending as if the MRC had not been passed.

12. Further, Section 58 of the MRC, reads thus :

"58. Repeal and saving.- (1) On the commencement of this Act, the following laws, that is to say,-

(a) the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bom. LVII of 1947);

(b) the Central Provinces and Berar Regulation of Accommodation Act, 1946 (C.P. And Berar Act XI of 1946) including the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949; and

(c) the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954 (Hyd. Act No. XX of 1954); shall stand repealed.

(2) Notwithstanding such repeal-

(a) all applications, suits and other proceedings under the said Acts, pending, on the date of commencement of this Act before any Court, Controller, Competent Authority or other office or authority, shall be continued and disposed of, in accordance with the provisions of the Acts so repealed, and if the said Acts had continued in force and this Act had not been passed;

(b) the provisions for appeal under the Acts so repealed shall continue in force in respect of applications, suits and proceedings disposed of thereunder;

(c) any appointment, rule and notification made or issued under any of the repealed Acts and in force on the date of commencement of this Act shall, in so

far as they are not inconsistent with the provisions of this Act, be deemed to have been made or issued under this Act;

(d) all prosecutions instituted under the provisions of any of the repealed Acts shall be effective and disposed of in accordance with law."

13. As on 31 March 2000, the Bombay Rent Act stood repealed. However, in terms of sub section (2) of Section 58 of MRC, notwithstanding such repeal, all applications, suits and other proceedings under the Bombay Rent Act pending on the commencement of the MRC before any competent authority were to be continued and disposed of in accordance with the provisions of Bombay Rent Act, as if the Bombay Rent Act had continued in force and the MRC had not been passed. Even the provisions for appeal under the Bombay Rent Act since repealed, were to continue in force in respect of applications, suits and proceedings disposed of thereunder.

14. True, there is no specific reference with regard to provision of revision under sub section (2) of section 58 of the MRC. However, that by itself, would make no significant difference. From the provisions contained in Sections 46 and 58(2) of the MRC, it is quite clear that the legislature, notwithstanding the repeal of the Bombay Rent Act, intended that the proceedings thereunder, be disposed of on the basis that the Bombay Rent Act had continued in force and the MRC had not been passed. At least, this much is clear that the legislature, in respect of proceedings instituted under the Bombay Rent Act and which were pending on the date of coming into force of the MRC, did not intend to provide the parties with the remedy of revision before the Additional Divisional Commissioner, Konkan Division, under Section 44 of the MRC. The revision petitions instituted by the respondents before the Additional Divisional Commissioner, Konkan Division, under Section 44 of the MRC were therefore not competent and consequently, there was no question of the Additional Divisional Commissioner, Konkan Division, making the impugned orders condoning the delay in instituting such revision petitions. The impugned orders are therefore required to be set aside and are accordingly set aside.

15. The aforesaid however, does not mean that the respondent is without any remedy to question the orders dated 11 February 2011 made by the competent authority under Section 13A2 of the Bombay Rent Act. As noted earlier, under Section 31F of the Bombay Rent Act, such order is revisable by the High Court. Even if there is some ambiguity arising out of absence of reference to revisions under sub section (2) of Section 58 of the MRC, remedy under Article 227 of the Constitution of India is always available to the respondent. However, remedy under Section 44 of the MRC by way of revision petitions before the Additional Divisional Commissioner, Konkan Division, was not competent.

16. Under the aforesaid circumstances, the impugned order dated 24 February 2014 made by the Additional Divisional Commissioner, Konkan Division, which is a common order to both the petitions is quashed and set aside. Rule is

accordingly made absolute in both the petitions. There shall be no order as to costs in both the petitions.