

(2004) 11 BOM CK 0049

In the Bombay High Court

Case No : Civil Revision Application No. 669 of 1990

Ripudaman Avtarsingh Vohra

APPELLANT

Vs

Dr. Shyam Sadashiv Damale and V.P. Pitale, Competent
Authority

RESPONDENT

Date of Decision : 30-11-2004

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13A2,
31C, 6(3), 6(4)

Citation : (2004) 11 BOM CK 0049

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : S.M. Mhamane, for the Appellant; Suhasini Mutalik, for the
Respondent

Final Decision : Dismissed

Judgement

R.M.S. Khandeparkar, J.—Heard the learned Advocates for the parties. Perused the records.

2. The petitioner challenges the order passed by the Competent Authority directing eviction of the petitioner from the suit premises and further for payment of damages.

3. Few facts relevant for the decision are that, the respondent (No. 1) filed an application in the Court of Competent Authority at Pune for recovery of possession of the suit premises from the petitioner on the ground that the petitioner was a licensee pursuant to the agreement of licence executed in April, 1989 and the said licence had expired and yet the premises had not been vacated by the petitioner. The proceedings were preceded by the notice dated 6-2-1990 calling upon the petitioner to deliver the possession of the premises and as the petitioner failed to deliver the possession, the proceedings for eviction were initiated on 17-4-1990. The proceedings were contested by the petitioner on the ground that the petitioner is not a licensee but the tenant in respect of

the suit premises and the Competent Authority had no jurisdiction to entertain the application. It was his case that in any case the petitioner had been in occupation of the suit premises since 1977 and even assuming that he was in occupation of the premises thereof on licence basis, the provisions of Section 6, sub-section (4) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, hereinafter referred to as "the said Act", were not attracted in the case in hand and there is no case for summary procedure to be adopted in the matter. After hearing the parties, the Competent Authority rejected the contentions raised by the petitioner and allowed the application for eviction as well as for payment of damages, as stated above, by the impugned order.

4. The impugned order is sought to be challenged on three counts. Firstly, that considering the provisions of law comprised u/s 6(4) of the said Act had come into force with effect from 1-10-1987, as the petitioner was in occupation of the suit premises since 1977 continuously, even assuming that he was occupying the same on licence basis, the provisions which were attracted were those comprised under sub-section (3) of Section 6 and not sub-section (4) of Section 6 and therefore the Competent Authority could not have adopted summary proceedings in the matter. Secondly, it is sought to be challenged on the ground that the premises were allowed to be used for residential as well as for office purposes and being so, the provisions of Section 13A2 of the said Act were not at all attracted in the matter and on that count also the Competent Authority had no jurisdiction to entertain the application. It is the case of the petitioner that the premises were being used for composite purposes i.e. for residence and office purposes and this is evident from the undisputed fact that the petitioner had been a company secretary and is having his office in the suit premises. Thirdly, it is the contention of the petitioner that the proceedings for eviction of the petitioner on the ground of expiry of licence was not available to the respondent as the agreement under which the petitioner was inducted in the suit premises was not signed by the owner of the premises and in the absence of the owner being a party to such an agreement, the proceedings u/s 13A2 were not maintainable and in that regard attention is sought to be drawn to Section 31C as well as to the decision of this Court in the matter of Dinesh Keshav Deshmukh v. Vasantdada Sugar Institute, Pune, reported in 1997 (1) M.L.J. 188. Reliance is also placed in the decision in the matter of Ramesh Ramrao Hate v. Parvez B. Bhesania, reported in 1997 (1) M.L.J. 295. On the other hand, it is the case of the respondent that the eviction of the petitioner was sought for on account of expiry of the agreement executed in the year 1989 and the said agreement was entered into between the parties after terminating the earlier agreement of licence and therefore the provisions of Section 6(4) of the said Act were squarely applicable to the facts of the case. As regards the parties to the agreement, attention is drawn to the testimony of the respondent No. 1 whereby he had ratified the agreement in question which was executed by his wife on his behalf. Being so, it is the contention of the respondent that the agreement was by a person on behalf of the co-owner of the premises and therefore there is no

substance in the challenge in that regard on behalf of the petitioner, besides that no such objection was raised either before the Competent Authority in the written statement or during the course of the trial. Thirdly, it is stated that at no point of time the plea regarding the premises being utilised for business purposes or office purposes was raised before the Competent Authority and such a plea is sought to be raised for the first time in the writ petition without laying any factual foundation in that regard. In any case, according to the learned Advocate for the respondent, the evidence on record clearly discloses that the petitioner had admitted in his testimony before the Competent Authority that the premises were being used for residential purpose by the petitioner and his family members in the year 1989. Attention is also drawn to the clear finding to that effect by the Competent Authority in the impugned order on analysis of the evidence on record.

5. As regards the first ground of challenge regarding the absence of jurisdiction on account of non-applicability of the provisions of Section 6(4) of the said Act, undisputedly, the said provisions came into force with effect from 1-10-1987 and the present proceedings were initiated in the year 1990 on the ground that the agreement of the year 1989 stood terminated and therefore there was cause of action for eviction of the petitioner from the suit premises on the ground that the licence granted to the petitioner had expired. The agreement of the year 1989, on the face of it, clearly discloses that the earlier agreement had been terminated and consequent to termination of the earlier agreement, the said agreement was executed on 13-4-1989. The explanation to Section 13A2 clearly provides that an agreement of licence in writing shall be conclusive evidence of the facts stated therein. In other words, once the agreement clearly discloses that the earlier agreement was terminated and thereafter the agreement in question was executed, it goes without saying that it was not continuation of earlier licence, as is sought to be argued on behalf of the petitioner. The last agreement of licence was a fresh agreement and it cannot be construed as continuation of the earlier licence granted to the petitioner. In any case, apart from the agreement itself, no other cogent evidence was brought on record to establish that the petitioner had continuous licence to occupy the premises till it was terminated and possession was asked for by the notice issued in February, 1990. Merely because the petitioner continued to occupy the premises on account of licence granted from time to time, that does not by itself amount to say that it was a continuation licence. In these circumstances, therefore, the contention of the petitioner that the petitioner was a continuous licensee in relation to the suit premises cannot be accepted.

6. Once it is clear that the petitioner was occupying the premises pursuant to the licence granted in the year 1989, the proceedings for eviction of such a licensee would be covered under the provisions of law comprised u/s 6(4) and not under sub-section (3) thereof and that itself discloses that the Competent Authority had jurisdiction to entertain such application.

7. As regards the contention about the composite use of the premises, the finding arrived at by the Competent Authority discloses that the premises were being used for residential purposes and not for business or office purposes prior to 1989. It is only after 1989 a plea is sought to be raised that the premises were being used for office purposes. In fact, the affidavit in reply filed by the petitioner before the Competent Authority itself discloses that:-

"At the time I took over the said premises in 1977, the prevalent rates for residential premises for a tenement of 1100 sq.ft. were not that high but still the landlord demanded and I agreed to pay the said agreed charges because of this consideration that I can use the said premises for commercial or professional purposes".

Undisputedly, the agreement itself does not disclose that the premises were allowed to be used for commercial or professional purposes. At the same time, there is a clear statement on oath by the petitioner that "National Telematics" of which the petitioner is the proprietor is having its office in the suit premises since 1989. Obviously it discloses that prior to 1989 the premises were used only for residential purposes. Apart from the fact that there is a clear admission on the part of the petitioner that the premises were essentially a residential premises, the finding arrived at by the Competent Authority in that regard cannot be found fault with as it is clearly borne out from the records. Once it is apparent that the premises were let out for residential purposes only, the contention raised by the petitioner about the use thereof for commercial purposes and on that count the provisions of Section 13A2 cannot be applicable, is to be held to be totally devoid of substance.

8. The contention regarding the agreement of licence being executed by a third party and not by the owner and on that count the proceedings for eviction being bad in law are also devoid of substance. As rightly pointed out by the learned Advocate for the respondent, that the respondent No. 1 has clearly ratified the agreement between the parties and there was no challenge to the same by the petitioner at any point of time, besides no such objection seems to have been raised before the Competent Authority. The decision in Dinkar Keshav Deshmukh's case (supra), therefore, is of no help to the petitioner to contend that the proceedings for eviction u/s 13A2 r/w Section 31C to be bad in law. Undoubtedly, the proceedings for eviction were initiated by the owner of the flat and who had clearly asserted before the Court that the licence which was granted to the petitioner to occupy the premises was on his behalf by his wife and the said fact was not disputed by the petitioner. Being so, no illegality can be found in the agreement of licence in relation to the suit premises to the petitioner, nor there is any case made out about any illegality in the proceedings initiated for eviction of the petitioner on termination of such a licence.

9. The decision in Dinkar Keshav Deshmukh as well as in Ramesh Ramrao Hate's case (supra) in no way assists the petitioner to seek interference of this Court in the impugned order. In Dinkar Keshav Deshmukh's case it was held that the

provisions of Section 13A2 are prospective in operation and are not applicable to the cases where the licence stood terminated prior to 1-10-1987 or the proceedings were pending in the Court on that day. Undisputedly, in the case in hand, the licence in question was terminated much after 1-10-1987 and even the licence itself was granted after the said date. It was also held in the said case that the conditions to attract Section 13A2 are that the licensor should be the owner of the flat, the premises must have been given on licence, the period of licence should have expired and the licence agreement should be in writing or oral. Apparently, all these four ingredients were satisfied in the case in hand and, therefore, the decision in no way helps the petitioner to seek interference of this Court in the impugned order.

10. In Ramesh Ramrao Hate's case it was held that once the Legislature has provided that a written agreement of licence shall be conclusive evidence of the facts stated therein, it provided a special rule of evidence for the purpose of proceedings u/s 13A2. Admittedly, in the case in hand, there was a written agreement and it disclosed that the earlier licence was terminated prior to the grant of licence in question. It was also held in Ramesh Ramrao Hate's case that there is no difference between the effect of the expression "conclusive evidence" from that of "conclusive proof", the aim of both being to give finality to the establishment of the existence of a fact from the proof of another.

11. In the facts and circumstances, therefore, there is no case for interference in the impugned order passed by the Competent Authority, nor there is case to hold that the Competent Authority had no jurisdiction to entertain the application. Hence, the petition fails and is dismissed. The rule is discharged with no order as to costs.