
(2001) 09 BOM CK 0048
In the Bombay High Court
Case No : Writ Petition No. 96 of 1998

Safiabi and others

APPELLANT

Vs

Delfina Gomes and others

RESPONDENT

Date of Decision : 20-09-2001

Acts Referred:

Transfer of Property Act, 1882 — Section 111(g)

Citation : (2001) 09 BOM CK 0048

Hon'ble Judges : P.S. Patankar, J

Bench : Single Bench

Advocate : S.S. Kantak, for the Appellant; S.G. Dessai with R.B. De Sa, for the Respondent

Judgement

P.S. Patankar, J.—The question involved in this petition is whether the learned Additional Rent Controller III was right in passing the decree of eviction u/s 22(2) (g) of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (hereafter referred to as "the Rent Act") and the Administrative Tribunal, Goa, in confirming the same by judgment and order dated 18th August, 1997.

2. A few facts :

The respondents issued a notice calling upon the petitioners to pay the arrears of rent of Rs. 401/- from February, 1976 to March, 1980. It seems that thereafter the petitioners filed an application u/s 8A of the Goa, Daman and Diu Mundkars (Protection From Eviction) Act, 1975, in 1980, (hereafter referred to as "the Mundkar Act"), contending that they are mundkars of the house and protected under the said Act. This claim of the petitioners came to be rejected finally on 23rd July, 1987.

3. On 21st December, 1981, the respondents filed an application for eviction of these petitioners on the ground of arrears of rent and u/s 21 read with sections 22(2)(g) of the Rent Act for denial of the title of the landlord. It was alleged that the said denial was not bona fide. The Additional Rent Controller-III did not

accept the ground for eviction on arrears of rent. However, he came to the conclusion that as the petitioners have filed the application u/s 8A of the Mundkar Act, there was a denial of title of the respondents and the same was not bona fide. Hence the decree u/s 22(2)(g) came to be passed. The Administrative Tribunal confirmed the said findings.

4. The learned advocate appearing for the petitioners raised two contentions:

(i) Both the Courts below have not gone into the question whether there was any landlord and tenant relationship between the parties. It was necessary to go into the same; and

(ii) It was an error to infer that there was denial of title of the landlord merely because the petitioners have filed an application u/s 8A of the Mundkar Act. The petitioners were only claiming protection under the said Act and it was an error to read as denial of title of the landlord. This may, at the most, amount to denial of title as a landlord.

5. As against this, the learned Senior Advocate appearing for the respondents submitted that the Additional Rent Controller-Ill has come to the conclusion that there was relationship of landlord and tenant between the parties. He further submitted that what was required in view of section 2(j) of the Rent Act, was to plead that the respondents were not entitled to recover the rent. This would amount to denial of title. As the petitioners claimed that they were mundakrs and their claim came to be rejected, they have in fact denied that thus were liable to pay any rent to the respondents and hence they have denied the title of the respondents. Hence, he submitted that there is no error whatsoever committed by the two authorities below.

6. After scrutinizing both the judgments, I find that there is no finding whatsoever recorded regarding the relationship of landlord and tenant between the parties. They have jumped to the conclusion that the dispute was raised by the petitioners regarding the title of the respondents as application was filed by them u/s 8A of the Mundkar Act and the claim came to be rejected throughout by the authorities under the said Act. In that context it was observed that the petitioners have failed to prove that there was no relationship of landlord and tenant between them. In fact, it was for the respondents to prove that there was relationship of landlord and tenant. The learned counsel for the petitioners relied upon unreported judgment of a learned Single Judge of this Court in Smt. Sumati Naik vs. Shri Dilip Fatarpekar and ors. (Writ Petition No. 78/1998 decided on 24th November, 1998). The facts in the said case are similar to the one before me. The learned Single Judge first considered the definition of "tenant" contained in section 2(e) and of "landlord" in section 2(j) and observed :

"Section 22(1) of the said Act provides that a landlord who seeks the eviction of his tenant shall apply to the Controller for a direction in that behalf. It is, therefore, apparent that the eviction by the Court of Rent Controller can be sought of a person who can qualify to be a tenant within the meaning of the

expression "tenant" under the said Act and by a person who can qualify to be a "landlord" within the meaning of the said expression under the said Act and not otherwise. Therefore, it is necessary for the Rent Controller in order to assume jurisdiction to entertain the application for eviction of the opponent, that there must be a relationship of landlord and tenant between the applicant and the opponent. Therefore, when the Rent Controller decides to proceed to hold an enquiry on the ground of denial of title of the applicant as the landlord by the opponent, the Rent Controller has necessarily primarily to satisfy himself that prima facie there exists relationship of landlord and tenant between the parties to the proceedings. The question of denial of title of relationship can arise only when such title exists either by way of admission or prima facie proof in that behalf."

I find that such as finding or satisfaction that there is relationship of landlord and tenant is not at all recorded in the present case. Both the authorities have virtually proceeded on assumption. In view of this, ordinarily I would have remanded the matter to the first Court for fresh decision on the said aspect. However, I am considering the second contention raised in this case, i.e. whether claiming of a right as mundkar under the Mundkar Act in respect of the house amount to denial of title of the landlord within the meaning of section 21 read with section 22(1) (g) of the Rent Act.

7. Relevant part of section 21 of the Rent Act provides as under:

"Bar on eviction of tenants ? Not with standing anything to the contrary contained in any other law or contract, a tenant shall not be evicted, whether in execution of a decree or otherwise, except in accordance with the provisions of this Chapter."

Section 22 of the Rent Act gives the grounds for eviction. Section 22(1)(g) of the Rent Act is as under :

"(g) that the tenant has denied the title of the landlord or claimed a right of permanent tenancy and that such denial or claim was not bonafide."

It is clear from this that the tenant should deny the title of the landlord. It is not merely sufficient to deny the title as a landlord (Emphasis supplied). The Mundkar Act gives protection to the mundkars in respect of the house. Section 2(p) of the Mundkar Act defines "mundkar". The relevant part thereof is an under:

"Mundkar" means a person who, with the consent of the bhatkar or the person acting or purporting to act on behalf of the bhatkar lawfully resides with a fixed habitation in a dwelling house with or without obligation to render any services to the bhatkar and includes a member of his family but does not include :

- (i) person paying rent to the bhatkar for the occupation of the house;
- (ii) a domestic servant or a chowkidar who is paid wages and who resides in an

out-house, house-compound or other portion of his employer's residence....."

It is clear from the said definition that a mundkar is (i) a person who is staying in the house with the consent of the bhatkar; (ii) he resides lawfully; (iii) within a fixed habitation in a dwelling house; and (iv) with or without obligation to render any services to the bhatkar.

8. "Bhatkar" is defined u/s 2(f) of the Rent Act as under:.

"(f) "bhatkar" means a person who owns the land on which the mundkar has a dwelling house."

Therefore, merely because a person has claimed the right to reside in a mundkarilal house, it cannot be said that he has denied the title of the bhatkar. In fact he accepts the title but claims protection of the Mundkar Act. Precisely in this case petitioners only claimed the statutory protection under the Mundkar Act and it was an error to read as denial of title of the landlord. In fact they accepted the title and claimed protection. Section 15 of the Mundkar Act gives right to a mundkar to purchase the mundkarial house and to a limited extent land below the house. This is on payment to the landlord. Thus there is recognition of title by the mundkar of the landlord. Position can be visualised under various statutes giving protection to weaker community persons. The question involved in such proceedings is very limited as in the present case whether petitioners can get protection of Mundkar Act. If it is held that they get protection then legal consequences follow. But claiming of such protection cannot amount to denial of title.

9. The learned counsel for the respondents first relied upon the judgment of the Supreme Court in Majati Subbarao Vs. P.V.K. Krishna Rao (Deceased) by Lrs., . It was under Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 tenant has denied title of the landlord in those proceedings. A contention was raised that the ground regarding eviction, i.e. denial of title was only taken in the written statement by the tenant and the title was not denied by him earlier to it. Hence, the plaintiff could not take advantage thereof and get a decree of eviction. The suit can be filed by the landlord on the ground of denial of title only when it was denied prior to the filing of the suit for ejectment on the ground of forfeiture of tenancy. The Apex Court considered the provisions of section 111(g) of the Transfer of Property Act, 1882, section 10(2)(vi) of the Rent Control Act and negated the said contention. This case has no application here.

10. Learned advocate for the respondents then relied upon the judgment of the Apex Court in Dr. Ranbir Singh Vs. Asharfi Lal, . In the said case a suit came to be filed for eviction on various grounds under the Rajasthan Rent Control Act. One of the grounds was denial of title. In the said case a contention was raised by defendant-tenant that plaintiff has failed to show how the property came to him and how he became owner thereof. Hence no decree can be passed on the ground of denial of title. In that context it was observed in para 9 as under :

"9. It may be pointed out that it is well-settled law that the question of title of the property is not germane for decision of the eviction suit. In a case where a plaintiff institutes a suit for eviction of his tenant based on the relationship of landlord and tenant, the scope of the suit is very much limited in which question of title cannot be gone into because the suit of the plaintiff would be dismissed even if he succeeds in proving his title but fails to establish the privity of contract of tenancy. In a suit for eviction based on such relationship the Court has only to decide whether the defendant is the tenant of the plaintiff or not, though the question of title if disputed, may incidentally be gone into, in connection with the primary question for determining the main question about the relationship between the litigating parties."

11. It is necessary to note that in the said case the trial Court decreed the suit on the grounds of denial of title and on the ground of bona fide need and this decree came to be confirmed by the Appellate Court. The High Court in second appeal allowed the appeal only on the ground that the plaintiff therein had failed to establish his title. In the present case, section 21 of the Rent Act itself provides that the tenant should deny the title of the landlord or claim a right of permanent tenancy. Therefore, the question will have to be gone into whether the title of the landlord has been denied in the present case or not. Claiming to be a mundkar and holding that petitioners are not mundkars cannot amount to denial of title. In addition, the proviso to section 21 also indicates that the denial may not involve forfeiture of lease. Therefore, the ratio of the said case cannot be applied in the present case.

12. The learned counsel for respondents then relied upon the judgment of the Supreme Court in *Sultan and Others Vs. Ganesh and Others*, . In the said case, the suit came to be filed under the provisions of the Rajasthan Rent Control Act alleging the relationship of landlord and tenant between the parties. The defendant claimed ownership by adverse possession. The Apex Court considered section 13 and 13-A of the Rent Control Act and in the facts of the case held that there was denial of title by the defendant when he himself claimed ownership by adverse possession. Again this has no application here.

13. Learned counsel for the respondents next contended that section 2(j) of the Rent Act defines "landlord" to mean a person who is entitled to receive the rent of the premises. When the defendant came out with the case that the plaintiff is not entitled to receive the rent, it means that there is a denial of title of the landlord. He submitted that the ground for denial of payment of rent does not matter. It is not possible to accept such a narrow view of the matter. It may be pleaded for various reasons that the plaintiff is not entitled to receive the rent. It will be necessary to find out whether there is a denial of title so that the tenant comes within the clutches of section 21 read with section 22(g) of the Rent Act and a decree of eviction can be passed against him. In fact, section 21 of the Rent Act begins with the non-obstante clause as quoted above. It is necessary that the protection should be real. Particularly in this case the application u/s 8A

of the Mundkar Act claiming the mundkarship of the house was filed in 1980 by the petitioner. The Eviction Petition came to be filed by the respondent on 21st December, 1981. Application filed by the petitioners was decided finally on 23rd July, 1987. Therefore, the petitioners, who had filed their written statement, had taken the same stand or defence in the present case also. But it cannot be inferred therefrom that they have denied the title of the respondents. This defence was not taken even after rejection of the claim as mundkar. In my view such a narrow interpretation would lead to defeating the object of protection given by the Rent Act to a tenant.

14. In view of this, I pass the following Order :

Rule is made absolute. The judgment and Order dated 27th December, 1990, passed by the Additional Rent Controller-III and passed by the Administrative Tribunal dated 18th August, 1997, are set aside.