

(1981) 08 BOM CK 0030

In the Bombay High Court

Case No : Special Civil Application No's. 336 and 2542 of 1979

Sardar Amolak Singh

APPELLANT

Vs

Sewakram Tahilram Lalwani and Others

RESPONDENT

Date of Decision : 31-08-1981

Acts Referred:

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

Citation : (1982) 2 BomCR 455 : (1982) MhLj 174

Hon'ble Judges : R.S. Padhye, J

Bench : Single Bench

Advocate : V.A. Bobde and S.A. Bobde, in Spl. C.A. No. 336 of 1979, V.R. Manohar, in Spl. C.A. No. 2542 of 1979, for the Appellant; K.H. Deshpande and V.C. Palshikar, in Spl. C.A. No. 336 of 1979, K.R. Deshpande, in Spl. C.A. No. 2542 of 1979, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Padhye, J.—Respondent Sewakram presented two applications on 16-2-1974 in the Court of Rent Controller, Nagpur under Clause 13(3)(vi) of the C.P. and Berar Letting of Houses and Rent Control Order, requesting for grant of permission to determine the tenancies of Bombay Stores through Balkrishna Rekhi and Sardar Cycle Company through Sardar Amolak Singh in respect of two premises used for shop in House No. 498 situated in Sadar area of Nagpur. Revenue Case No. 460/A71/(2)/73-74 was registered in respect of the application against Bombay Stores and Revenue Case No. 457-A-71/20/73-74 was registered in respect of application against Sardar Cycle Company. Both these cases came to be decided by a common order dated 6th November, 1975 by Rent Controller, Nagpur, granting permission under Clause 13(3)(vi) of the Rent Control Order to terminate the tenancies of Bombay Stores and Sardar Cycle Company on the ground that Sewakram required both the shops for his bona fide occupation. Application under Clause 13(3)(vi) of the Rent Control Order was rejected. Feeling aggrieved by this order two appeals were preferred by the tenants. Both these appeals being Revenue Appeal No. 64/A-71(2) 75-76

filed by Sardar Amolak Singh and Revenue Appeal No. 62/A-71(2)/75-76 filed by Bombay Stores through Balkrishna Rekhi came to be dismissed by two separate orders passed by Additional District Magistrate and Deputy Collector, Nagpur exercising appellate powers under Rent Control Order on 26-6-1978 and 17-6-1977 respectively. A revision petition was filed by Bombay Stores for review of appellate order in Appeal No. 62/A 71(2)/75-76 and it was dismissed on 26-9-1978. The two petitions referred above seek to challenge all these orders.

2. Original applications filed by respondent Sewakram against Bombay Stores as well as Sardar Cycle Company any similarly worded. Referring to paragraphs 4, 5 and 7 it was urged on behalf of both the petitioners that respondent Sewakram had prayed for permission under Clause 13(3)(vi) of the Rent Control Order for starting his own business of Deepak Steel Furniture and expanding the said business. It was submitted that though reference to Deepak Agencies has been made in the application, respondent Sewakram did not ask for permission to terminate the tenancy of the petitioner on the ground that he wanted to start his partnership business known as Deepak Agencies in the premises at Sardar. Admittedly, respondent Sewakram is carrying on his proprietary business of Deepak Steel Furniture and partnership business of Deepak Agencies on Central Revenue Road, Nagpur in premises taken on rent. Permission has been granted by Rent Controller, Nagpur on the ground that respondent Sewakram that he needed the premises for the partnership business also the learned Rent Controller, Nagpur, had committed an error in granting permission also on the ground that he needed the premises for his partnership business also. Shri K.H. Deshpande, the learned Counsel for respondent Sewakram submitted that even granting that the pleadings were not clear enough, the parties did understand the case of applicant to mean that he wanted the premises both for his business Deepak Steel Furniture as well as for his partnership business Deepak Agencies. A reference to written statement filed by both the petitioners discloses that they wanted to deny that the respondent Sewakram needed the premises for his partnership business of Deepak Steel Furniture. My attention was further invited to the evidence of Balkrishna Rekhi of Bombay Stores and Sardar Amolak Singh of Sardar Cycle Company. According to both of them market for scooters and scooter parts in which Deepak Agencies is dealing was not there in Sardar area of Nagpur and, therefore, the respondent Sewakram could not bona fide need the premises in Sardar area for the partnership business. It is thus clear that the parties clearly understood the case of respondent Sewakram to be a case for the need of his own business as well as for his partnership business.

3. It was then contended for the petitioners that before granting permission under Clause 13(3)(vi) of the Rent Control Order, it was mandatory for the Rent Controller to enquire into the needs of the landlord and if on enquiry the Rent Controller is satisfied that the need of the landlord could be met by occupation of a portion of the premises asked for permission is to be given for that portion only and not for the entire premises asked for. This mandate is contained in Sub-Clause 8 of Clause 13 of the Rent Control Order which is in the following words :

"When the landlord applies to the Controller under Item (vi) of Sub-Clause (3), the Controller shall enquire into the needs of the landlord and if on enquiry the Controller is satisfied of that the needs of the landlord will be met by the occupation of a portion of the house he shall give permission in respect of such portion only".

While interpreting Clause 13, Sub-Clause 8 of the Rent Control Order in the case of *Ratanlal v. The Collector, Akola*, 1969 Mh.L.J. 41, this Court has held that---

"burden is on the tenant to show that the need of the landlord can be satisfied by occupation of a lesser portion of the house than applied for."

The petitioners did not plead that need of landlord could be satisfied by grant of a smaller area of the premises demanded. They did not say so in their evidence. In the absence of pleading in that behalf and in the absence of evidence on the point it is difficult to come to a conclusion at the stage of proceedings in these two petitions at this stage in writ jurisdiction that the impugned orders are liable to be set aside for want of clear finding under Clause 13(8) of the Rent Control Order giving details of the area occupied by the landlord presently and details of the area which is needed by the landlord. Reliance was also placed on the decision of the Supreme Court of India in the case of *Rahman Jeo Wangnoo v. Ramchand and others*, 1971 (1) R C R 572. While interpreting a similar provision in Jammu and Kashmir Houses and Shops Rent Control Act, 1966, it was observed that the trial Court and the First Appellate Court had not considered the question as to whether the need of the landlord could be satisfied by evicting the tenant from the entire premises but only from the part of the premises. It appears that there was no plea to that effect and, therefore, the Rent Control Authority did not allow eviction to be recorded on that score. According to the Supreme Court, the relevant provision mandates the Court to consider whether partial eviction as contemplated therein should be ordered or the entire holding should be directed to be evicted and Rent Control Authority was bound to examine this position even if there was no pleading in that behalf. I do not think that the decision can come to the help of the petitioner in the present case because the question of Clause 13(8) of the Rent Control Order was definitely present to the mind of the Rent Controller as is apparent from the observation of the learned Rent Controller contained at the end of discussion of Point No. 2. It is true that details for coming to a conclusion that tenements of both the tenants were required by respondent Sewakram have not been given. But absence of details supporting the finding of fact could not be by itself a ground to interfere with the said finding of fact. Moreover such a ground was not raised in the appeal and, therefore, the Appellate Court has naturally not examined this question. In the absence of challenge to this finding as the appellate stage the petitioners could not be allowed to challenge it for the first time in these petitions.

4. The important question that is raised on behalf of the petitioners in their two petitions seems to be as to whether the need of landlord in respect of a house for the purpose of "his bona fide occupation" as contemplated by Clause 13(3)(vi) of

the Rent Control Order included the need of the house for the partnership business of the landlord. In some of the Rent Control Acts similar provisions relating to eviction of tenant on the ground of landlord's need to occupy the premises either for residence or for business have been made by specifically providing that landlord's need included the need of his family member or included the need of those who depended upon him. Expression "his bona fide occupation" in Rent Control Order and similar expression in section 13 of Bombay Rent Act has been judicially interpreted to mean and include the need of the members of the family of the landlord as well as those who are dependent upon the landlord. Similarly "occupation" also has been judicially interpreted to mean occupation for residence as well as occupation for business. The question that falls for decision in the present case is as to whether need to occupy for the business of a firm of which a landlord is partner is or not covered by the expression "his bona fide occupation" in Clause 13(3)(vi) of Rent Control Order. I was told by the learned Counsel for the parties that they could not find a decision of this Court on this question.

5. Provisions of section 13(3)(vi)(c) of the Rent Control Order as it stood then came for interpretation before a Division Bench of Nagpur High Court in the case of Rajniklal and Company v. Vithal Pandurang Kawade (shop) and another, 1952 N.L.J. 371. The clause was :

"If after hearing the parties Controller is satisfied that the landlord needs the house or a portion thereof for the purpose of a bona fide business of his own which he intends to start or is already carrying on in the city or town concerned.....".

Permission to terminate the tenancy could be granted. The landlord in that case was carrying on wholesale aluminium business in partnership and required the premises in the occupation of his tenant to meet demands of rapidly growing partnership business. It was contended that partnership business could not be said to be a "business of his own". The Division Bench held :

"Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Persons who have entered into partnership with one another are called individually "partner" and collectively "a firm" and the name under which the business is carried on is called the "firm name." It is settled law that a firm is not separate legal entity and the firm name is a compendious way in which the business of the partner is carried on. Each partner carries on business for himself as principal and also as an agent for the other partners. Mutual agency is an essential condition of partnership. It must, therefore, be held that the landlord himself is carrying on the wholesale business in aluminium. The learned Counsel relying on the words "his own" contends that the business must be exclusive business of landlord. There is no warrant for such a construction. As has been held in (V.M. Deshmukh v. K.M. Kothari), 1951 N.L.J. 250.

"It would appear that what is meant by the word "own" is something in which the landlord or his family have pecuniary interest".

"The landlord in this case has undoubtedly a pecuniary interest in the business which he is carrying on along with his other partner".

This decision was quoted with approval in the case of M/s. Sha Rikhasdas Amritlal v. Pathalam Venkatasubbiah Chetty and another, 1964 (2) Mad.L.J. 132 decided by a learned Single Judge of the Madras High Court. (Mr. Justice K.T. Venkatadri). It was held in that case that :

"an application by a partner of a firm for eviction of tenant on the ground of their requiring the premises for the purpose of carrying on their partnership business is maintainable and it is not necessary that the building should be required by the landlord for his personal exclusive business."

Besides the decision in the case of Rajniklal & Company (supra) some unreported decisions also were referred to in the Madras case.

6. Shri Bobde, the learned Counsel for the petitioner M/s. Bombay Stores invited my attention to a decision of the another Division Bench of the Nagpur High Court in the case of Tansukhdas v. Shrimati Shambai and another, 1954 N.L.J. 100 and pointed out that the tenant, who allowed a partnership business to occupy the premises taken by him on rent was held to have sublet the premises to the firm on a reasoning that the partnership which the tenant entered into along with the third parties was, clearly a personality in law, distinct from that of the petitioner himself. A reference to the case of Rajniklal & Company (supra) was made by the learned Judges in the case and it was observed that the case of Rajniklal and Company v. Vithal Pandurang "was a case where a single person was carrying on business in the name of a firm, which was treated as a mere alias for the person himself and it was in those circumstances that this Court held that the first was not a legal entity separate from the person himself". With respect, it must be point out that the observation is not correct. In Rajniklal's case (supra) the landlord in partnership with others was carrying on wholesale aluminium sales depot under the name and style "Nagpur Aluminium Stores" and to meet the demands to this business the landlord required the premises in dispute.

7. Shri Bobde, the learned Counsel for the petitioner M/s. Bombay Stores relied upon a decision of the Supreme Court of India in the case of Shantilal Thakordas and Others Vs. Chimanlal Maganlal Telwala, wherein it has been observed that :

"It was doubtful whether the requirement of the premises by the landlord for occupation by the partnership firm in which he is a partner will be tantamount to "occupation by himself"".

It appears that the question was left undecided though certain decisions of some High Courts were brought to the notice of the Supreme Court of India and the Court refrained from expressing any opinion on this question. It was held :

"We assume, as seems to have been the view of the High Court in this case (Gujarat High Court) that the requirement of the premises for the use of a partnership firm by the landlord in which he is a partner is covered by section 13(1)(g) of the Bombay Rent Act."

The case was decided on some other point. It will thus appear that Gujarat High Court has also taken a similar view of wording used in section 13(1)(g) of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, where it is stated that a landlord shall be entitled to recover the possession of premises if they are "reasonably and bona fide required by the landlord for occupation by himself" and it was held that occupation by himself included occupation for the purpose of partnership business in which the landlord is a partner.

8. Clause 13(3)(vi)(a) contemplates that a right of occupancy is needed for being utilised by the landlord for his own benefits. It could be so utilised for carrying on business of his own. It could also be utilised by carrying on a partnership business in which the landlord is vitally interested. In the present day complex business structure, it will be extremely difficult to deny a person a right to occupy his own premises only because he is carrying on a business not by himself but in partnership with others. It will certainly be open for the Rent Controller to find that the need of partnership business put forward by a landlord was nothing but a guise and that his interest in a given partnership was merely nominal. It cannot however be forgotten that there can be a genuine case of a landlord being dependant on partnership business for his livelihood and requiring the premises for that purpose. If the words "his occupation" are interpreted to mean his own proprietary business alone, it would lead to many hardships. Rent Control legislation being a restrictive legislation creating new rights for tenants by curtailing rights of landlord to occupy premises owned by him must be construed in a reasonable and general spirit and, therefore, "his" need cannot mean "his alone" but must mean his need for a partnership business in which he is substantially interested. I am, therefore, of the view that Clause 13(3)(vi) contemplates the need of premises for partnership business of the landlord also.

9. Shri Bobde, the learned Counsel for the petitioner M/s. Bombay Stores submits that permission granted against tenant Hakim in respect of the third shop has become final and ejectment suit is pending. According to him landlord Sewakram is bound to get this shop since the order granting permission to terminate the tenancy of Hakim has become final and it is only a question of time for the landlord for getting possession of the shop occupied by the tenant Hakim. He submitted that this fact should be taken into account while deciding these two petitions and relied on a decision of the Supreme Court of India in the case of Pasupuleti Venkateswarlu Vs. The Motor and General Traders, . It was observed in that case that :

"Where during the pendency of proceeding under Rent Control legislation by the landlord for permission to evict the tenant, a subsequent event in the facts of the case takes place which has a material bearing on the landlord's right to evict,

the approach of the High Court in revision, in taking cognizance of the new development cannot be said to be wrong or illegal."

Suffice it to say that this observation was with reference to revisional jurisdiction and not writ jurisdiction. Even otherwise the question cannot have any bearing on the decisions of these petitions for the simple reason, that finding of fact regarding to extent of the need of the landlord contemplated by Clause 13(8) of the Rent Control Order, as recorded by Rent Controller, Nagpur, is not, as observed by me earlier, liable to be disturbed.

10. Requirement of premises, either for residence or for business is always a personal factor and landlord's statement in that behalf ordinarily deserves great weight. In the present case, respondent Sewakram resides on the first floor and it has been found by the authorities below that his need for occupation of the shops on the ground floor is genuine inasmuch as he would be able to pay greater and closer attention to his business by having his shops on the ground floor in the building where he resides. This is a concurrent finding of fact by the Rent Controller as well as the Appellate Court and I do not see any reason to interfere with this finding.

11. The result, therefore, is that both the petitions are dismissed. In the circumstances of the case costs will be as incurred.