

(1994) 11 BOM CK 0010
In the Bombay High Court
Case No : Writ Petition No. 112 of 1994

Shri Avdut Deuba Dessai

APPELLANT

Vs

Administrative Tribunal Goa at Panaji and Others

RESPONDENT

Date of Decision : 14-11-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 1, Order 14 Rule 2
Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 — Section 21

Citation : (1996) 5 BomCR 207

Hon'ble Judges : T.K. Chandrashekhara Das, J

Bench : Single Bench

Advocate : L.V. Talaulikar, for the Appellant; A.P. Lawande, for the Respondents 4 to 8, for the Respondent

Judgement

T.K. Chandrashekhara Das, J.—The petitioner is a landlord who sought eviction of his tenants respondents 4 to 8 from the shop No. 241(1) situated in the property known as "Tinto Bag". Before the Rent Controller the stand taken by the respondent No. 3 is that though the original tenant was his father Shri Vassudev Damodar Kamat, after his death, he was running his office in the building as a tenant. The other respondents who are also the legal representatives of the deceased tenant Vassudev Damodar Kamat took up a stand that they are not the tenants and they have nothing to do with the building. For convenience sake, their statement is reproduced below. In paragraph 8 of the Written Statement, they say:---

"With reference to paras 11 & 12 of the application, those respondents submit that these respondents never had any tenant landlord relationship with the applicant in respect of the suit premises and that the applicant was never the landlord of those respondents."

On the basis of the plea, the Rent Controller framed an issue as if they are disputing the title of the landlord. I am at a loss to understand how this plea in

the written statement can be taken as a denial of the title of the landlord. It is relevant to read in this context the section 21 of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (hereinafter called the Act).

"21. Bar on eviction of tenants.--Notwithstanding 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."

Proviso to section 21 reads as follows:---

"Provided that where the tenant denies the title of the landlord or claims a right of permanent tenancy, the Controller shall decide whether the denial or claim is bona fide and if he records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in a Civil Court and the Court may pass a decree for eviction on any of the grounds mentioned in this Chapter even though the Court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded."

In the light of the contention raised by the respondents 4 to 8, I do not think that an issue covering the proviso to section 21 will arise. The Court below seems to have misconstrued the facts and the law. On the basis of the framing of the aforesaid issue, the Rent Controller found that there is a denial of title. Against that a revision has been filed by the respondents 4 to 8 before the Administrative Tribunal and the Tribunal allowed the revision. Again, the respondents 4 to 8 filed an application dated 22-8-1991 praying for a declaration that the said petitioner had no right to sue them for eviction and that the present application, as contended, cannot be entertained and is not maintainable. This application also has been contested by the landlord before the Rent Controller who rejected this prayer. Against that, a revision has been filed before the Administrative Tribunal. The Administrative Tribunal, on the contrary, found that because of the earlier Order he has to approach the Civil Court.

2. I have heard the Counsel for the petitioner and the respondents 4 to 8 and examined the orders impugned in the petition. As indicated earlier, all the authorities below, and the parties to some extent, misconceived the facts and the law involved in this case. When the respondents 4 to 8 say that they have nothing to do with the suit premises and they are not tenants, the Rent Controller ought to have left the matter there as regards those respondents are concerned and proceeded against the third respondent who is actually occupying the premises. The landlord also was going on contesting the matter against the orders passed by the lower authorities.

3. In the backdrop of the facts set out earlier, the interest of justice will be met if I dispose of the writ petition with following directions:---

(1) As per the pleadings and evidence adduced before the authorities, it is clear

that the respondents 4 to 8 have nothing to do with the building and they are disclaiming the tenancy in respect of the property, the eviction proceedings against them stand dropped.

(2) In the light of the contention raised by the respondents 4 to 8 the only remaining tenant is the respondent No. 3 who is actually occupying the premises claiming to be the tenant of the petitioner herein. Therefore, it can be seen that at present the relationship of the tenant and the landlord only exists between the third respondent and the petitioner herein.

4. The parties can proceed with the matter on the legal perspectives which have been stated above.

5. In the circumstances, I set aside all orders of the Rent Controller and the Administrative Tribunal in this case and remand the matter to the Rent Controller for fresh disposal in the light of the above observations and directions.

6. I direct the Rent Controller, as the matter is very old, to dispose of the same and resolve the matter between the third respondent and the petitioner herein within 4 months from the date of the receipt of this order.

7. The writ petition is disposed of as above. There shall be no order as to costs.