

(1998) 07 BOM CK 0087
In the Bombay High Court
Case No : Writ Petition No. 195 of 1992

Shri Chandramohan S. Madkaikar

APPELLANT

Vs

Shri Manohar Roghuvir Borkar (since deceased) through his
legal heirs and another

RESPONDENT

Date of Decision : 03-07-1998

Acts Referred:

Burmah Shell (Acquisition of Undertakings in India) Act, 1976 — Section 3, 4, 9
Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 — Section
22(2), 23, 23

Citation : (1998) 4 ALLMR 586 : (1998) 4 BomCR 209

Hon'ble Judges : R.K. Batta, J

Bench : Single Bench

Advocate : S.D. Lotlikar, for the Appellant; G.S. Sardessai, for the Respondent

Judgement

R.K. Batta, J.—The original respondent/landlord (since deceased) now represented by his widow; son and daughter had filed eviction proceedings before the Additional Rent Controller, Ponda against the present petitioner on the grounds contained in section 22(2)(a), (b) and (f) as well as section 23 of the Goa, Daman and Diu Buildings (Lease, Rent, and Eviction) Control Act. 1968 (hereinafter called the said Act).

2. The original respondent/landlord is owner of the building denominated "Durga Prasad" commonly known as "Borkar's House" at Tisk, Ponda, Goa and this building consists of six tenements. Two of the tenements are in the basement and four tenements are on the ground floor. Each tenement has two rooms, one independent balcony with independent entrance, one W.C. and one bathroom. One of the said tenements was leased to the present petitioner sometime in September, 1974. The case of the original respondent is that the present petitioner fell in arrears of rent from June, 1985 to September, 1985; that the present petitioner ceased to occupy the said tenement which is now occupied by the father of the petitioner who is conducting his personal business in the suit premises. In view of the same, the original respondent terminated the tenancy of

the present petitioners. The respondent's case further is that he was employed in Bombay with M/s. Bharat Petroleum Corporation and has since retired from 1-9-1982; that the said building was constructed by him with the intention to settle down in Goa and the said tenements in the said building are so constructed that the same could be connected inter se to make one unit for the purpose of residence of the petitioner and his family. The respondent thus sought eviction also on the ground of personal occupation. It was also averred that the original respondent did not own or possess any other building in the city of Ponda or anywhere in Goa.

3. The present petitioner contested the eviction proceedings and the Additional Rent Controller, Ponda, vide judgment dated 28th June, 1989 dismissed the eviction application filed by the original respondent. The Addl. Rent Controller had framed issues on the grounds urged in the eviction application, namely, that the present petitioner was in arrears of rent; that the present petitioner ceased to occupy the said tenement; that the present petitioner had transferred his right under the lease or sublet the said tenement to his father and the same was being used for the purpose other than for which it was leased and that the petitioner ceased to occupy the said tenement. An issue had also been framed in respect of personal and bona fide occupation of the respondent. The Addl. Rent Controller after assessment of the evidence led before him, rejected the eviction sought for on all grounds. It may also be mentioned here, after hearing of the final arguments on 3-5-89, the original respondent had filed an application on 10-5-89 seeking amendment of the eviction application by adding the ground for eviction u/s 23-A which had been incorporated in the said Act by way of amendment dated 24-12-87. This application for amendment was rejected by the Addl. Rent Controller. The Addl. Rent Controller found that the original respondent was already in occupation of one tenement consisting of two rooms, W.C., bathroom, separate balcony and separate entrance and two other such tenements were available for his occupation at any time, as revealed by him in the course of his evidence. The said two tenements were leased to one Shri Narvekar and one Shri Talaulikar who, according to the deposition of the original respondent, were ready to vacate the same at any time. On this basis, it was held by the Addl. Rent Controller that the said three tenements were sufficient for the occupation of the original respondent and his family. The Addl. Rent Controller also came to the conclusion that in the circumstances greater hardship shall result to the present petitioner if eviction was ordered as he had no alternate accommodation of his own.

4. The findings of the Addl. Rent Controller were challenged before the Administrative Tribunal, who examined the case of the original respondent on the ground of personal occupation u/s 23 and 23-A of the said Act. The Administrative Tribunal first examined the case of the original respondent u/s 23-A and on the basis of Clause (3)(c) of section 23-A, came to the conclusion that provisions contained in section 23-A are applicable to all applications pending before the Controller/Tribunal and, as such, the Addl. Rent Controller should have

granted the amendment application to incorporate additional ground u/s 23-A of the said Act. The Tribunal thus granted the amendment application and simultaneously rejected the request for remand made by the Advocate for the present petitioner. The Tribunal, on the basis of the evidence adduced by the original respondent that he wanted to settle down in Goa which had not been challenged in cross-examination and that one tenement of 20 to 30 sq. m. could not be said to be sufficient accommodation for the status of a person like the original respondent, held that the petitioner was liable to be evicted u/s 23-A(3) of the said Act. The Tribunal also found that the case of the original respondent fell within the ambit of Clause (1) (a) (i) of section 23 of the said Act since the original respondent was not actually occupying any part of the said building and, as such, section 23(3) of the said Act was not attracted in the facts and circumstances of the case. The Administrative Tribunal thus reversed the order of the Addl. Rent Controller and ordered the eviction of the present petitioner u/s 23(1)(a)(i) and section 23-A of the said Act. This order is challenged by the petitioner/ tenant in this writ petition.

5. The learned Advocate Shri S.D. Lotlikar, appearing on behalf of the petitioner/ tenant urged before me that the Notification upon which reliance has been placed by the original respondent, for claiming to be Central Government servant, declares the employees of Bharat Petroleum as Government servants only for the purpose of pay and for no other purpose; that the 1994 Amendment to Clause (3) of section 23-A would not apply in the circumstances of this case and that even otherwise no certificate to the effect that the original respondent does not possess any other suitable residence in the local area where he or the members of his family can reside has been produced from the Head of the Public Sector undertaking. It was next urged by learned Advocate Shri Lotlikar, that the Administrative Tribunal did not follow the procedure prescribed u/s 3(A) of section 23-A and more particularly relating to leave to defend.

6. Thirdly, it was urged that the petitioner failed to make out any case for personal occupation or that of his family and that the original respondent was otherwise in possession of three tenements consisting of six rooms, three W.Cs. and three bathrooms, besides three balconies and separate entrance thereto which was sufficient for the occupation of the original respondent and his family. He also pointed out that the case of the original respondent would, in fact, be a case of additional accommodation u/s 23(3) and if the interpretation put by the Administrative Tribunal on the expression "occupying" is accepted then the landlord will go on seeking eviction against his tenants and even inspite of eviction order, would not occupy such premises so as to frustrate the provisions contained in section 23(3) of the said Act. He also pointed out that the Administrative Tribunal erred in stating that the original respondent had in his possession only one tenement, whereas the evidence of the original respondent was to the effect that two other tenements would also be available to him. It was also pointed out by Advocate Shri Lotlikar that the son of the original respondent is married and he has a permanent job at Bombay and he is staying at Bombay;

that the daughter of the respondent is married and her husband is abroad and that three tenements which are available to the original respondent are sufficient for his occupation and that of his wife. He, therefore, urged before me that the order of the Administrative Tribunal should be set aside and the order of the Addl. Rent Controller be restored.

7. Learned Advocate Shri G.S. Sardesai, appearing on behalf of the original respondent/landlord, urged before me, that section 23(3) is not attracted since the original respondent was not in occupation of any part of the building; that the original respondent retired as Central Government employee and is entitled for eviction of the petitioner u/s 23-A of the said Act; that the husband of the daughter of the original respondent died on 19-5-96 and the daughter is now dependent on her mother and has to live along with her and that the findings of the Administrative Tribunal are well founded and do not call for any interference. He relied upon a number of rulings to justify that a case of bona fide personal occupation has been made out. The rulings relied upon by him are :--Maria Aninha Cardoso and others v. Vatin Camilo Silveira, All India Rent Control Journal, 616, Som Nath Sharma Vs. Prem Lata and Others, , Mst. Bega Begum and Others Vs. Abdul Ahad Khan (Dead) by Lrs. and Others, , Krishna Das Nandy Vs. Bidhan Chandra Roy, , Ramnikal Pitambardas Mehta Vs. Indradaman Amratlal Sheth, , Budhwanti and Another Vs. Gulab Chand Prasad, , Kedar Nath Bhatnagar v. Dharam Pal, 1978 (1) R.C.J. 159 and Shri Ramchandra M. Kamat v. Shri Damodar Ramchandra Mashelkar and two others.

8. I have examined the matter in the light of the contentions advanced before me. I shall first deal with the arguments which have been advanced in relation to the eviction sought u/s 23-A of the Act. The respondent/landlord claimed that being a Central Government servant, he was entitled to get eviction of the petitioner for his bona fide requirement for occupation of the suit premises. This ground, as I have already pointed out, was not taken in the application for eviction to start with, but was sought to be added only after the final arguments were heard by the Addl. Rent Controller who had in fact rejected the amendment in this respect which was granted by the Administrative Tribunal. The objections raised by learned Advocate Shri Lotlikar in this behalf are that the Notification upon which reliance has been placed declares employees of Bharat Petroleum as Government servants only for the purpose of pay and for no other purpose and that the 1994 Amendment to Clause (3) of section 23-A would not apply to this case. Insofar as these submissions are concerned, I do not find any merit since by section 3 of the Burmah Shell (Acquisition of Undertakings in India) Act, 1976, on the appointed day, the right, title and interest of Burmah Shell, in relation to the undertakings in India, shall stand transferred to, and shall vest in the Central Government. By section 4 all existing liabilities including payment of pension and other pensionary benefits to the persons employed in relation to its undertakings in India and obligations of whatever kind then subsisting of Burmah Shell were taken over by the Central Government. Section 9 of the said Act further provides for transfer of service of existing employees of Burmah Shell and

it lays down that every whole-time officer or other employee of Burmah Shell who was immediately before the appointed day, employed by the Burmah Shell in connection with its undertakings in India, and every whole time officer or other employee of Burmah Shell who was immediately before the appointed day, temporarily holding any assignment outside India, shall become officers or other employees of the Central Government or the Government Company and shall hold office or service under the Central Government or Government Company, as the case may be. In view of the same, the original respondent/landlord would qualify to seek eviction u/s 23-A, for the purpose of bona fide occupation of the suit premises by him.

9. In this connection, it was also submitted by learned Advocate Shri Lotlikar that the original respondent/landlord had not produced any certificate from the Head of Department which is required u/s 23-A(3)(ii) of the said Act that he does not possess any suitable residence in the local area where he or members of his family can reside. Admittedly, the certificate was not issued by the Head of Department where the petitioner was working and by letter dated 30th October, 1987 which was placed before me in the course of arguments, that the Bharat Petroleum Corporation Ltd. had regretted to issue a certificate to that effect. The original respondent/landlord had retired from Bombay and he had residence in Bombay, as a result of which the Department must have been reluctant to issue a certificate that he did not possess any other suitable residence in the local area where he or the members of his family can resident. The Administrative Tribunal in fact rightly held that if such certificate was not produced, it would not debar an employee from adducing evidence in the Court on this aspect. Therefore, nothing would turn on the question of non-production of the said certificate. It was also urged by learned Advocate Shri Lotlikar that the Administrative Tribunal did not follow the procedure prescribed u/s (3)(a) of section 23-A which speaks of leave to defend. Since no summary eviction/immediate possession had been ordered, the question of leave to defend would not arise in the facts and circumstances of the case and in fact, on this count no prejudice has been caused to the present petitioner since a full-fledged hearing was given and the petitioner could have sought leave to produce additional evidence in case he so desired in this respect. The petitioner merely was interested in remand of the matter which was rightly rejected by the Administrative Tribunal.

10. The main question which is required to be examined is whether the original respondent/landlord had succeeded in establishing that he required the suit premises for his bona fide personal occupation or that of any member of his family u/s 23 or section 23-A of the said Act. In this respect the case of the original respondent/ landlord initially was that he does not own or possess any part of the building which consisted of six tenements or any other building in Goa. On appreciation of evidence, the Rent Controller found that three tenements consisting of six rooms with three W.Cs. and three bathrooms, three verandas and three separate entrances were available for the occupation of the original respondent/landlord which were sufficient for accommodating the

original respondent/landlord and his family which consisted of his wife and two unmarried children. The original respondent/landlord has already died.

11. The learned Advocate for the respondents had placed document No. 13 in the course of arguments which shows that respondent No. 1(b) Milind Manohar Borkar, son of the original respondent/landlord is a permanent employee of the New India Assurance Company Ltd. and is stationed at Bombay and he has applied for his transfer to Goa. The respondent No. 1(c) was stated to be married and it was further stated that her husband had died. Therefore, the present requirement is restricted to that of the wife and widowed daughter of the original respondent/landlord. In the course of evidence, the original respondent/landlord had admitted that a block on the first floor was vacant and it was in his possession and that two other tenants had complied with his request and vacated their respective premises. During cross-examination he however changed his stand but stated that they will vacate the same for his use. This means that three tenements consisting of six rooms, three W.Cs., three bathrooms, three verandas and three separate entrances are available to the respondent for their occupation. Taking these factors into consideration, the Addl. Rent Controller had rejected the eviction application. However, the Administrative Tribunal wrongly interpreted the evidence on record and came to the conclusion that only a block of 20 or 30 sq. meters was available which was not sufficient for the accommodation for the status like the applicant, namely the respondent/landlord. In fact, except for a bare statement of the original respondent/landlord, there was no material on record that he or any of his family members wanted to occupy the suit premises for their bona fide personal occupation. The original respondent/landlord continued to reside at Bombay after his retirement and his son, respondent No. 1(b) was permanently employed at Bombay. Moreover, as I have already pointed out, that three of the tenements were available to the original respondent and his family for occupation and in such circumstances, he could not come out with a case that he did not possess any part of the building in which the suit tenement exists. The Administrative Tribunal took a technical view of the word "occupying", meaning thereby that the landlord must reside in such part of the building. If the expression is interpreted in its technical sense, it is likely to be misused as has been pointed out by learned Advocate Shri Lotlikar that the landlord would go on seeking eviction of his tenants of the same building, one after another and would not occupy the same and continue to seek eviction order against the other tenants u/s 23(3) of the said Act. What has to be seen is whether part of the building is available for the occupation of the landlord and whether he requires additional accommodation for his own use or that of any of his family members, In such cases, hardship has to be taken into consideration and the Rent Controller found that equity on the issue of hardship was in favour of the petitioner/tenant.

12. In view of the above, I am of the opinion that the original respondent/landlord had failed to make out a case for bona fide personal occupation of the suit premises and the Addl. Rent Controller was right in rejecting the application

for eviction of the original respondent/landlord. The Administrative Tribunal was not justified in reversing the said finding. Accordingly, the order of the Administrative Tribunal dated 9th March, 1992 in Eviction Appeal No. 31/89 is hereby set aside and the order dated 28th June, 1989 of the Addl. Rent Controller, Ponda is hereby restored.

13. In the other grounds on which eviction was sought there was no merit and the same were not rightly considered by the Administrative Tribunal. The result is that the writ Petition is allowed and Rule is made absolute. In the facts and circumstances, I would leave the parties to bear the costs.

14. Petition allowed.