

(2017) 06 BOM CK 0081
In the Bombay High Court
Case No : 2326 of 1997

Shri Jainarayan Bodhram Tiwadi since deceased through his legal heirs & representatives, & Ors. APPELLANT

Vs

Smt. Kesarbai Babulal Badhai since deceased through her legal heirs & representatives, & Ors. RESPONDENT

Date of Decision : 27-06-2017

Acts Referred:

Constitution of India, Article 227 -
Power of superintendence over all courts by the High Court
Bombay Rents, Hotel and Lodging House Rates Control Act, 1947,
Section 13(1)(

Citation : (2017) 06 BOM CK 0081

Hon'ble Judges : M. S. Sonak

Bench : SINGLE BENCH

Advocate : S. G. Surana

Judgement

1. Heard Mr. S. G. Surana, learned counsel for the petitioners. The respondents, though served, neither present nor represented.

2. The petitioners are the tenants - legal representatives of the tenants in respect of the suit premises, of which, the respondents are the landladies - legal representatives of the landladies. The suit premises comprised one room situate in CTS No. 664, Raviwar Peth, Pune (suit premises).

3. The landladies in the year 1982 instituted Suit No. 2150 of 1982 in the Small Causes Court, Pune (trial Court) seeking the eviction of the petitioners on the following grounds:-

(A) That the tenant has acquired vacant possession of a suitable residence. This is a ground contemplated under Section 13 (1)(I) of the Bombay Rents Hotel and Lodging House Rates Control Act, 1947 (Rent Control Act);

(B) That the suit premises are reasonably and bona fide required by the

landladies for their personal occupation or by persons for whose benefits the suit premises are held. This is a ground contemplated under Section 13(1)(g) of the Rent Control Act.

4. The trial Court, by judgment and decree dated 16th April 1985, decreed the landladies suit and ordered the eviction of the tenants on both the aforesaid grounds. Aggrieved by the same, the tenants, instituted appeal to the District Court at Pune, which appeal, was made over to the Additional District Judge, Pune (Appeal Court) and numbered as Civil Appeal No. 801 of 1985. The Appeal Court, by judgment and decree dated 3rd March 1977, has dismissed the Appeal. Hence the present petition by the petitioners - tenants and legal representatives of the tenants.

5. Mr. Surana, learned counsel for the petitioners has made the following submissions in support of the petition :-

(A) That the material on record very clearly establishes that it is not the tenant who has acquired any alternate suitable residence but it is the sons of the tenants who have acquired alternate residences for their own use. In such circumstances, it could never have been held that the ground as contemplated under Section 13(1)(l) of the Rent Control Act was made out. There is jurisdictional error in ordering eviction upon the said ground. The view taken by the two Courts is contrary to the decisions of this Court in the case of Amrut Vishnu Keskar vs. Bhaskar Trimbak Gokhale, 1983 Mh.L.J. 1017 and Shankar Nana Waychal & Ors. vs. Mohan Ganesh Date & Anr., 1984 Mh.L.J. 834

(B) The trial Court and the appeal Court have clearly erred in holding that this was a case of joint family and therefore the acquisition of alternate suitable residences by the sons of the original tenant attract the ground as contemplated by Section 13(1)(l) of the Rent Control Act. Mr. Surana submits that this was not even the case pleaded by the landladies in their suit seeking decree of eviction. In any case, Mr. Surana submits that there is absolutely no evidence to sustain such a finding.

(C) The case of bona fide requirement has not been made out in the facts and circumstances of the present case. This is because the plaintiff nos. 2 and 3 were the married daughters of the original tenant i.e. plaintiff no. 11. Secondly, the plaintiff no. 3 was residing at Jalgaon and plaintiff no. 2 at Hadapsar. The requirement of plaintiff nos. 2 and 3, could never be regarded as bona fide requirement. In any case, the issue of comparative hardship, in such circumstances, was required to be decided in favour of the tenants and not the landladies.

(D) After the impugned decree for eviction were made, the landladies, have secured possession of premises admeasuring 450 sq. ft. in the very same building in which the suit premises are located from Mr. Tulshiram Mundada. Mr. Surana submits that the cognizance is required to be taken of this subsequent development and upon such cognizance being taken, the ground of bona fide

requirement no longer survives. Mr. Surana relies upon the provisions of Order XLI Rule 27 or in any case principles thereof, in support of his submission that such additional evidence be taken into consideration at this stage.

6. With the assistance of Mr. Surana I have perused the impugned judgments and decrees as also the material on record. Mr. Surana has also taken me through the averments in the additional affidavit filed by and on behalf of the petitioners on 20th June 1997 as well as the affidavit in reply filed by the respondents - landladies, in response to the same. The issue which arises for determination in this petition is whether, the concurrent findings of fact recorded by the trial Court and confirmed by the appeal Court warrant interference by this Court in the exercise of its extra ordinary jurisdiction under Article 227 of the Constitution of India.

7. Section 13(1)(g) of the Rent Control Act entitles the landlord / landlady to recover possession of the tenanted premises where, such premises are reasonably and bona fide required by the landlord / landlady for personal occupation or occupation by any person or whose benefit the premises are held. Section (2) of Section 13 of the Rent Control Act however provides that no decree for eviction shall be passed on the grounds specified in Section 13(1)(g) of the Rent Control Act if the court is satisfied that, having regard of the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or a tenant, greater hardship could be caused by passing the decree than by refusing to pass it. Further, where the court is satisfied that no hardship would be caused either to the tenant or to the landlord by passing the decree in respect of the part of the premises, the court shall pass the decree in respect of such part only.

8. In this case, as noted earlier, the suit premises comprises of a single room situate on the first floor in the building on Plot bearing CTS No. 664, Raviwar Peth, Pune. The plaintiff no. 1 occupies the another one room to tenement with open terrace on the second floor of the same building. The ground floor comprised two shops, one of which, was tenanted to Mr. Mundada and the other to Mr. Alwani. The second room on the first floor i.e. the room adjacent to the suit premises is also tenanted to one Smt. Shah.

9. There is evidence on record that the plaintiff no. 2, who is also, the landlady in respect of the suit premises resides at Hadapsar, Pune in a slum area with her family, since, there was no enough room, in the premises of the second floor held by the plaintiff no. 1, her mother. Similarly, the plaintiff no. 3, who normally resides at Jalgaon, but, who has to visit Pune very often, also, had no suitable place to stay in Pune. The plaintiffs - landladies therefore instituted proceedings for eviction and recovery of possession of the suit premises on the ground that the same are bona fide and reasonably required by the plaintiffs for their occupation.

10. There is ample material on record to establish the ground of reasonable and

bona fide requirement. It is settled position in law that the requirement is required to be construed from the perspective of the landlords / landladies and it is not for the tenants to dictate any terms to the landlords / landladies in such matters. However, the requirement has to be both reasonable and bona fide. There is accordingly, no unfettered discretion vested in the landlords / landladies and it is for the courts to determine whether the requirement is indeed reasonable and bona fide, taking into consideration all the circumstances of the case. Further, the Court, is not to make a decree of eviction on this ground, unless, it is satisfied that, having regard to all the circumstances of the case including question whether the other reasonable accommodation is available to the landlord or the tenant, whether, greater hardship would be caused by passing the decree of eviction than by refusing to pass the same. Further, the court is also required to consider whether the decree can be made only in respect of part of the premises.

11. In the present case, as noted earlier, the suit premises is only a single room tenement. Therefore, there is no question of making a decree only in respect of part of the premises. Mr. Surana, learned counsel for the petitioners did not even make any such submission, possibly because it was his case that there is no material on record to sustain any decree on the ground as contemplated by Section 13(1)(g) of the Rent Control Act.

12. The material on record, very clearly establishes both reasonability and bona fides of the requirements of the landladies. Admittedly, all the plaintiffs, are accepted to be the landladies in respect of the suit premises. This position was never seriously contested and therefore, there is no scope to entertain the submission that since the plaintiff nos. 2 and 3 were married daughters, they were disentitled to seek eviction or in any case no eviction decree can be made at their behest. The material on record further establishes that it is reasonable even for the plaintiff no. 1 to require additional space, on the first floor, when, she is admittedly residing in a similar one room tenement on the second floor, in order to accommodate the plaintiff nos. 2 and 3 who are her daughters and also landladies in their own right along with their family members.

13. The plaintiff no. 2, as per the material on record, is forced to reside at Hadapsar in a slum and there is nothing unreasonable or nothing mala fide in plaintiff no. 2 wanting to occupy her own premises, though tenanted to the petitioners. Similarly, there is nothing unreasonable in the claim of the plaintiff no. 3, though, the claim of the plaintiff no. 3 may not stand at par with the claim of the plaintiff nos. 1 and 2. The trial Court and the appeal Court had recorded concurrent findings of fact on the aspect of bona fide and reasonable requirement. There is no perversity in the record of such findings of fact. There is no exclusion of any relevant material nor is this the case where any irrelevant material has influenced the record of the findings of fact. This is also not a case of "no evidence" so as to warrant interference with concurrent findings of fact under Article 227 of the Constitution of India.

14. On the aspect of comparative hardship, there is more than ample evidence on record to sustain findings concurrently recorded by the two Courts. In this case, the original respondent - tenant was a very old person, 90 years of age. In the building adjacent to the building in which the suit premises are located, the petitioners have a flat in Kalyan Society having three rooms and a toilet. There is evidence on record in the form of voters list and ration card which establishes that tenant was in fact staying in this flat along with his son Laxminarayan. That apart, again, in the neighbourhood, the petitioners, have another premises with two storeys, which is in the name of Ramkishan. Again, the premises in Kalyan Society and the two storied building occupied by some of the petitioners have all modern amenities and it is, in these premises, that the original tenant, who was aged more than 90 years, was really residing with his children. Therefore, even if a decree of eviction were to be made requiring the petitioners to vacate the single room tenement i.e. the suit premises, no hardship would really be caused to the petitioners. In any case, the hardship which will occasion the landladies by denying them a decree of eviction will be far greater than any hardship which will occasion the petitioners in the facts and circumstances of the present case. Therefore, the two Courts, have quite correctly decided the issue of comparative hardship in favour of the landladies and there is really no case made out to interfere with the same.

15. Without going into the issue of a procedure, even if the additional affidavit filed by the petitioners is taken into consideration, there is really no case made out to interfere with the concurrent findings of fact recorded by the two Courts on the aspect of bona fide and reasonable requirement or comparative hardship. In the affidavit filed by one of the landladies in response to the additional affidavit filed by one of the petitioners there is no denial of the circumstances that the landladies have obtained possession of one of the shops on the ground floor from Mundada. However, what is pointed out is that such possession was obtained some time in the year 1995 and further, to the knowledge of the petitioners, the shop, has been tenanted to one Smt. Parmar. It is pointed out that despite knowledge, the plea which is now sought to be raised by way of affidavit was never raised earlier by the petitioners. Such a plea was also not raised in writ petition no. 4284 of 1985 which was disposed of by this Court on 18th October 1996. Further, it is pointed out that the shop premises admeasure only 132 sq. ft., whereas, the suit premises admeasure 369 sq. ft. The ground as contemplated under Section 13(1)(g) of the Rent Control Act was invoked by the landladies in the context of their personal requirement for additional residential space. Therefore, even if, the landladies have acquired 132 sq. ft. of space on the ground floor, which was a shop and which continues to be a shop, such ground is not sufficient to interfere with the findings of fact concurrently recorded. Therefore, even after taking into consideration the additional material produced on record by the petitioners, there is no case made out to disturb the concurrent findings of fact recorded by the two Courts in so far as ground as contemplated by Section 13(1)(g) of the Rent Control Act is concerned. The

decree of eviction is therefore liable to be confirmed on this ground.

16. In so far as the ground as contemplated by Section 13(1)(l) is concerned, there is no necessity of deciding whether such ground stands established in the facts and circumstances of the present case. This is because once the decree is sustained on the ground as contemplated by Section 13(1)(g), the petitioners, cannot escape eviction from the suit premises. However, it must be noted that there is prima facie merit in the submission of Mr. Surana that the ingredients of the ground as contemplated under Section 13(1)(l) of the Rent Control Act may not have been made out in the present case. This is because the material on record does establish that the two residential premises referred to by the landladies are in the name of the two sons of the original tenant. It does appear to have been the case of the landladies that the tenant was a joint family and therefore, acquisition of alternate suitable residences by members of the joint family have afforded them cause of action for secured eviction under Section 13(1)(l) of the Rent Control Act.

17. In *Amrut Vishnu Keskar (supra)*, the learned Single of this Court has held that a tenant (aged father) who, on account of his old age began staying with one of the sons in the son's self acquired property, cannot be evicted on the ground of acquisition of alternate suitable residence. No doubt, in the facts of the said case, another son, continued to occupy the suit premises. Similarly, in case of *Shankar Nana Waychal (supra)*, this Court has held that acquisition of independent residence by the tenant's son cannot be a ground for eviction of the tenant under Section 13(1)(l) of the Rent Control Act.

18. Thus, for the reasons as aforesaid, there is no case made out to interfere with the impugned orders in the exercise of extra ordinary jurisdiction under Article 227 of the Constitution of India. This petition is therefore dismissed. Interim order, if any, is hereby vacated. There shall however be no order for costs.

19. At this stage, learned counsel for the petitioners seeks for continuation of interim relief granted at the time of admission of this petition for further period of eight weeks. The request is reasonable and therefore the interim order is extended by a period of eight weeks from today, subject to the condition that even the petitioners shall maintain status quo in respect of the suit premises. Learned counsel for the petitioners assures this Court that it is the petitioners who are in possession of the suit premises.