

(2009) 12 BOM CK 0144
In the Bombay High Court
Case No : Writ Petition No. 432 of 2009

Shri Maruti Keni (since deceased), represented by his legal representatives; Mrs Prema M. Keni, widow, expired on 3.11.2004 and represented by her L.Rs. hereinbelow and Others APPELLANT

Vs

Smt. Candida Baptista and Jose Pedro Fernandes (since deceased) through his legal representatives; Maria Piedade Fernandes and Others RESPONDENT

Date of Decision : 10-12-2009

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2009) 12 BOM CK 0144

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : V.A. Lawande, for the Appellant; M.P. Almeida, Advocate for the Respondent nos. 2(a) to 2(d), for the Respondent

Final Decision : Dismissed

Judgement

R.M. Savant, J.—This Petition takes exception to the Order dated 16.06.2009 passed by the Administrative Tribunal, Goa, by which Order, the Appeal filed by the Petitioners being Eviction Appeal no. 28/1996 came to be rejected and the Order of eviction passed by the Addl. Rent Controller, Margao, came to be confirmed. The Respondent nos. 1 and 2 herein, were the original Applicants before the Rent Controller in case no. BLDG/65/ARC-IV/88. The Respondents had filed an application on 01.09.1978 for the eviction of the Petitioners invoking Section 23(a)(ii) of the Goa Daman & Diu Building (Lease Rent & Eviction Control) Act, 1968, on the ground that they require the suit premises for their bonafide personal use and occupation.

2. The sum and substance of the case of the Respondents in the application was that the premises which were in their occupation were insufficient to house the families of four brothers who were residing together. The said application was

resisted by the Petitioners on the ground that the premises which were available with the Respondents, were sufficient for their accommodation and secondly on the ground that the Respondents had another house at Mungul. The Applicant no.2 deposed in the said proceeding and stated that at the time when the suit premises were given on rent, he was newly married but at the time when the application was filed, he had five children and since he was staying with his brother, the one room which was available to him in the existing house was insufficient. It was further deposed that the need is of the entire family as the premises available for the residence of the four brothers was insufficient. The Petitioners herein also led their evidence. On the basis of the material which was before the Rent Controller, the Rent Controller recorded a finding that the premises the Applicants are presently occupying were insufficient for the residence of their family and that they bonafidely require additional premises for their own occupation. The Rent Controller also recorded a finding that the Petitioners herein had failed to prove that the other house belongs to the Applicants and that the house presently occupied by the Applicants was sufficient for their accommodation. The Rent Controller, therefore, by his Order dated 15.11.1996, directed the eviction of the Petitioners herein.

3. Aggrieved by the eviction Order passed by the Rent Controller, the Petitioners filed Eviction Appeal No. 28/1996, before the Administrative Tribunal, Goa. The Administrative Tribunal in exercise of the appellate powers, confirmed the findings of the Rent Controller. The Tribunal observed that the Petitioners herein had failed to produce any material on record showing the existence of a separate house allegedly owned by the Respondents. The Administrative Tribunal in so far as bonafide requirement is concerned, also confirmed the findings of the Rent Controller and observed that the appreciation of the evidence by the Rent Controller was proper. The Administrative Tribunal observed that though the application is styled as one under 23(ii)(a), it is in fact under 23(1)(a)(ii) as the Applicant had proved the personal bonafide requirement.

There is merit in the submission of the learned Counsel for the Respondents that the hardship would be more on the side of the Respondents than the Petitioners as the need is of four brothers staying together with their families and therefore the need of additional premises is dire.

4. It is sought to be contended on behalf of the Petitioners that since the Applicant no.2 is dead, the ground of personal bonafide requirement does not survive. It is further contended that the Respondents have another house where they can easily accommodate themselves.

5. In my view, both the contentions are misconceived in the teeth of the findings recorded by the Rent Controller as affirmed by the Administrative Tribunal. The need of personal bonafide requirement was that of the entire family and not only the Applicant no.2 and, therefore, the said contention cannot be countenanced. Having heard the learned Counsel for the parties, in my view, no case for interference in the writ jurisdiction of this Court under Article 227 of the

Constitution of India is made out.

6. The Writ Petition is accordingly dismissed. However, considering the fact that the Petitioners are the heirs of the original tenant Maruti Keni and they are two ladies who are widows, they are granted time up to 15.12.2010 to vacate the premises on the following conditions :

(1) That they file an undertaking in this Court that they are in possession of the premises and that they or any other person claiming through them would vacate the suit premises by 15.12.2010.

(2) The undertaking to also mention that during the intervening period, they would not part with possession or create any third part rights.

(3) That they would pay the rent of the premises as applicable till they vacate the premises.

(4) The undertaking to be filed by 15.01.2010. If the undertaking is not filed on or before the said date, the benefit of this Order in so far as time up to 15.12.2010 is concerned for vacating the premises, would not ensure to the benefit of the Petitioners and the Respondents herein would thereafter be entitled to execute the Order of eviction.

(5) The learned Counsel for the Respondents states that he has no objection to the Petitioners carrying out tenantable repairs by giving prior intimation to the Respondents.