
(1996) 11 BOM CK 0010
In the Bombay High Court
Case No : Writ Petition No. 482 of 1992

Shri Mohan Narayan Naik and Another	APPELLANT
Vs	
Smt. Amalia Fernandes and Others	RESPONDENT

Date of Decision : 06-11-1996

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 — Section 22

Citation : (1997) 4 BomCR 288

Hon'ble Judges : F.I. Rebello, J

Bench : Single Bench

Advocate : S.S. Usgaokar, for the Appellant; G.V. Tamba, for the Respondent

Final Decision : Dismissed

Judgement

F.I. Rebello, J.—This petition has been filed against the judgment dated 18th August, 1992, passed in Eviction Appeal No. 2/90 by the Administrative Tribunal, Goa, Daman and Diu. By the said judgment, the Tribunal has confirmed the order of the Additional Rent Controller dated 6th October, 1989, passed in BLDG. Case No. 102/78.

2. The respondent No. 1 Shri Joao Vincent Fernandes moved an application u/s 22(2) (a) (b) (ii) of Goa, Daman and Diu Buildings (Lease, Rent & Eviction) Control Act, 1968, for eviction of the petitioner Shri Mohan Narayan Naik and his brother Shri Vishnu Narayan Naik from Room No. 4 of a building belonging to the applicant Joao Vincent Fernandes. The case of the original applicant in the application was that Shri Mohan Narayan Naik was his tenant paying monthly rent of Rs. 100/-. It was the case of the applicant that Shri Mohan Narayan Naik had been allotted premises by the Mormugao Port Trust and had shifted but had sub-let the premises to Shri Vishnu Narayan Naik his brother, who was opponent No. 2. The opponents filed their reply and pointed out that the lease was created in favour of Vishnu Naik who was the elder brother and not in favour of the

opponent No. 1. It was further contended that the original applicant was demanding additional rent at the rate of Rs. 200/- per month instead of Rs. 100/- per month.

3. During the course of the proceedings and within the time stipulated u/s 22(3) of the Goa, Daman and Diu Buildings (Lease, Rent & Eviction) Control Act, 1968, the rents were deposited and consequently the ground of eviction for non-payment of rent was rejected by the Additional Rent Controller. The Additional Rent Controller on the evidence however, arrived at the conclusion that Shri Mohan Narayan Naik was the tenant and that the applicant had been able to establish that Mohan Narayan Naik the tenant had sub-let the premises to Shri Vishnu Narayan Naik, his brother. The said finding of the Additional Rent Controller was sustained by the Tribunal by its judgment dated 18th August, 1992.

4. During the pendency of the proceedings before the Administrative Tribunal, the original applicant expired and his widow Smt. Amalia Fernandes and his son Shri Anthony Fernandes were brought on record. During the pendency of this petition, Smt. Amalia Fernandes also expired and her name has been deleted from the proceedings.

5. Shri Usgaokar, learned Counsel for the petitioners, contends that both the Additional Rent Controller and the Administrative Tribunal did not address themselves to the real question, namely as to whether in fact the original applicant had proved that there was sub-letting. He points out that though the petitioner No. 1 had been allotted premises by the Mormugao Port Trust, none the less he had not surrendered the premises and in fact, continued to go and reside in the premises. He further points out that initially he alongwith his brothers were residing jointly after having left the tenanted premises of one Redkar. It is his contention that in these circumstances, there could be no sub-letting as there was no transfer from the petitioner No. 1 to the petitioner No. 2. It is his contention that the stand in the very beginning was that it is Vishnu, petitioner No. 2, who was the tenant; that this contention has been negated by the Additional Rent Controller. It is however his contention that even if these contentions were negated the original applicant was duty bound to establish that there was sub-letting as that was the only ground that remained to be considered by the Additional Rent Controller after the arrears of rent had been deposited.

6. Shri Tamba, on the other hand, contends that there are concurrent findings of fact by the Additional Rent Controller and the Administrative Tribunal that there has been sub-letting. It is his contention that this Court in exercise of jurisdiction under Articles 226 and 227 should not interfere with the concurrent findings of fact. It is his further submission that if the entire evidence is read together it would be clear that the petitioner No. 2 entered the premises after petitioner No. 1 had vacated the same and contrary to their contention, this was a clear case of sub-letting and, as such, this Court should not interfere with the concurrent

findings on facts. Mr. Tamba wanted me to go through the entire evidence afresh which I have refused to do as this is a petition under Articles 226 and 227. Apart from that, the evidence has been gone into and I shall deal with this aspect of the matter when I am dealing with the contentions raised in the petition.

7. The petition has to be allowed on the short point that the original applicant has been unable to establish that there has been sub-letting. Under the provisions of the Goa, Daman and Diu Buildings (Lease, Rent & Eviction) Control Act, 1968, the applicant who seeks to evict has to establish that the tenant has without written consent of the landlord, transferred his right under the lease or sub-let the entire building or any portion thereof. In other words, that the tenant is no longer in control over the tenanted premises and possession has been parted with in favour of another. In the present case, in his examination-in-chief, petitioner No. 1 Mohan Narayan Naik has admitted that he has been allotted the premises by the Mormugao Port Trust and consequent thereto he has shifted to the premises. However, he has further averred that he occasionally stays in the suit room (premises). This statement of Shri Mohan Narayan Naik in his examination-in-chief has not been challenged by the original applicant. The question is that after Mohan Narayan Naik who, according to the original applicant is his tenant, has deposed that he stays in the room, whether the Additional Rent Controller and the Administrative Tribunal could have arrived at the finding that there was sub-letting. The entire evidence on record has been that the petitioners No. 1 and 2 came to reside in the premises. The case of the original applicant is that the tenant was petitioner No. 1 and not petitioner No. 2. That however, today is not material as the application for eviction is not on the ground that the tenant has denied the title of the landlord or, for that matter, on the ground that the tenant has been allotted alternate premises. The application is only on the ground of sub-letting. Therefore, the Additional Rent Controller and the Administrative Tribunal had to address themselves only to the question whether the original applicant had proved sub-letting. In his cross-examination the original applicant has deposed as under :-

"I was told by the opponent No. 1, that he was staying in the same area as his family was large he wanted to shift premises leaving the old premises with other family members. At the time of occupation of premises, he never told me that his family consists of his wife, and brothers. He had told me that his family consists of wife and children."

He has thereafter deposed as under :-

"I do not know whether at present Mohan or Vishnu with their wife are staying in the suit premises."

Be that as it may, the question was whether the original applicant has satisfied the predicates of sub-letting. It is true that all that a landlord must establish is that the tenant has parted with the possession of the premises in favour of another. In the instant case, that another is his brother. Even in the case of a

brother, there could be sub-letting if the evidence on record was clear that the brother had entered the premises after the original tenant had left the premises. It will also be established if the evidence on record was clear that the original tenant had nothing to do with the premises and that the premises were exclusively with the brother. This clear-cut evidence the original applicant failed to produce on record. If the evidence of Mohan had been challenged, namely that he was not residing in the premises after he had quit the premises and that possession was exclusive to Vishnu, the findings given by the Additional Rent Controller and the Administrative Tribunal could have been sustained. In the present case, the Additional Rent Controller and the Administrative Tribunal did not address themselves to the evidence of Mohan Narayan Naik that he continued to go and reside in the premises. In the face of their evidence the findings given by the Additional Rent Controller and the Administrative Tribunal that there was sub-letting cannot be sustained.

8. Shri Tamba then submitted that the Court should go into the entire evidence *de novo*. The question does not arise. If in the cross-examination of Mohan Narayan Naik the aspect regarding his possession over the premises had been challenged or tested, the question of examining the other evidence would have arisen. In this case, the evidence of Mohan Narayan Naik on that aspect has not been challenged or questioned. The question of going into the rest of the evidence does not at all arise. It is true that the Court has gone into the aspect of evidence. This was required to find out as to whether the findings given by the Additional Rent Controller and the Administrative Tribunal were based on the material before the Tribunal. The Addl. Rent Controller and Tribunal ignored material evidence which resulted in their arriving on a wrong inference on the point of sub-letting. This the Court can do, i.e. examine the evidence in exercise of its extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India, when relevant material on record has been ignored by the Additional Rent Controller and Administrative Tribunal.

9. In my opinion, therefore, the original applicant had failed to make out a case of sub-letting. For the aforesaid reasons the judgments of the Additional Rent Controller dated 6th October, 1989 and of the Administrative Tribunal dated 18th August, 1992, have to be quashed and set aside. The application for eviction filed by the original applicant and now by Shri Anthony Fernandes, stands dismissed. Rule made absolute in the aforesaid terms. In the circumstances of the case, there shall be no order as to costs.