
(1998) 01 BOM CK 0050
In the Bombay High Court
Case No : Writ Petition No. 99 of 1995

Shri Mulam Abubakar

APPELLANT

Vs

State of Goa and others

RESPONDENT

Date of Decision : 06-01-1998

Acts Referred:

Evidence Act, 1872 — Section 3, 59, 61

Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 — Section 22(2), 23

Citation : (1998) 3 ALLMR 687 : (1998) 3 BomCR 57 : (1998) 2 MhLj 108

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : Joseph Rodrigues, for the Appellant; A.P. Diniz, for the Respondent

Judgement

R.M.S. Khandeparkar, J.—By the present petition, the petitioners are assailing the orders passed by the respondents No. 2 and 3 allowing the application for eviction against the petitioner filed u/s 22(2)(b)(ii), (c) and (d) of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (hereinafter called as "the said Act").

2. The facts, in brief, relevant for the decision are that somewhere in February, 1977, the owner of the premises by name Dr. Joao Manual Pacheco de Figueiredo filed proceedings for eviction of the petitioners on the grounds of change of user, material alterations and nuisance to the other occupants of the building and while the matter was pending at the appellate stage, transferred the property, including the suit premises in favour of the respondents No. 4 and 5 by deed of sale dated 15-12-1981 and the said respondents were substituted as parties to the proceedings in place of the original owner by order dated 17-3-1982, passed by the respondent No. 2 herein.

3. The case of the petitioners was that they had been residing in the suit premises right from the time of grant of lease and simultaneously were carrying on the business of selling articles such as cigarettes, biscuits, sweetmeats,

matches etc. as well as kerosene oil on retail basis with the consent of Jose Furtado who was incharge of the building of Dr, Joao Figueiredo. During the pendency of the eviction proceedings, the property along with the leased premises, was sold by Dr. Joao Figueiredo to the respondents No. 4 and 5 by Deed of Sale dated 15-12-1981.

4. Shri Jose Rodrigues, learned Advocate appearing for the petitioners while assailing the impugned orders submitted that the cause of action for initiating the eviction proceedings which was disclosed in the application for eviction by Dr. Joao Figueiredo did not survive to the purchasers of the said property and, therefore, the respondents No. 2 and 3 could not have allowed the application for eviction without considering the said basic aspect of the case. In support of his contention that the cause of action in such cases does not survive to the purchasers of the property, learned Advocate sought to rely upon a judgment of the Rajasthan High Court in the matter of Wg. Com. Lal v. Dr. Satish Chand & others, reported in IV (1996) C.L.T. 289. He then submitted that the respondents No. 2 and 3 also erred in ignoring the proviso to section 23 of the said Act, while allowing the application for eviction in favour of the respondents No. 4 and 5. According to the learned advocate, the courts below ought to have considered that in view of the fact that the property was acquired by the respondents No. 4 and 5 by virtue of the sale deed dated 15-12-1981, they could not have initiated eviction proceedings for a period of 5 years, having acquired the property by deed inter vivos in view of specific bar provided u/s 23 of the said Act. He further submitted that the findings arrived at by the tribunal as well as by the Rent Controller as regards the nature of the lease, have no basis at all in the evidence on record. Lastly, he submitted that the tribunal as well as the Rent Controller ought to have considered that merely because some portion of the leased premises was incidentally used for business purposes that would not amount to change of user and, therefore, there was no material available on record to justify the finding of the change of user. In support of his submission, he sought to rely upon the judgment of the Apex Court in the matter of Smt. A.N. Kapoor Vs. Smt. Pushpa Talwar, .

5. On hearing the learned Counsel for the petitioners and the respondents No. 4 and 5 and on going through the record, it is seen that the eviction proceedings were initiated on the ground of change of user, material alterations resulting in damage to the property and causing nuisance to the other occupants of the building. The grounds are available for eviction of a tenant in terms of section 22(2), (b), (ii), (c) and (d) of the said Act. The eviction was not sought on the ground of requirement of the premises for personal occupation by the original landlord. Therefore, the cause of action for eviction of the petitioners, in the instant case, was not that of the personal requirement of the erstwhile owner of the premises. The cause of action, in other words, relates to the acts on the part of the petitioners. The same relates to the user of the premises in question. In case when eviction is sought on the ground of need for personal occupation of the landlord, the need ceases to exist the moment the property is sold by the

landlord to a stranger. In case of eviction on the ground of change of user or damage to the premises or nuisance by the tenant to the other occupants of the building, the cause of action does not cease to exist on transfer of ownership by the landlord in favour of a stranger, but does survive in favour of the purchaser. The judgment of the Rajasthan High Court relied upon by the petitioners has, absolutely, no applicability to the case in hand, as the same was on the point that the right of bona fide requirement cannot be passed on to a subsequent purchaser either by inheritance or by succession. The cause of action for eviction in the instant case being not a personal requirement of the erstwhile landlord, the submission on behalf of the petitioners that the cause of action does not survive to the purchaser is devoid of substance.

6. As regards to submission regarding failure on the part of the authorities to take note of provisions contained in section 23 of the said Act, the record clearly discloses that the eviction proceedings were sought u/s 22 of the Rent Act and not on the ground of personal requirement comprised u/s 23 of the said Act.

7. The bar prescribed for eviction proceedings on account of acquisition of right by virtue of deed inter vivos, is not applicable nor required to be considered in cases of the proceedings initiated on the grounds of eviction contained in section 22 of the said Act and, therefore, the submission on this count also is without any substance.

8. The order of the tribunal clearly discloses that the findings regarding nature of the lease has been arrived at after proper analysis of the entire evidence on record and after taking into consideration the correspondence between the parties as well as other documentary evidence placed on record by the respondents. Detailed analysis of the evidence in that respect is to be found in paras 5 and 7 of the judgment of the tribunal and, therefore, the submission of the learned Advocate that the findings as regards the nature of the lease has been arrived at without any evidence on record, is not correct.

9. As regards the last contention of the learned Advocate that incidental use of a small portion of the premises for different purposes, cannot change the nature of the use of premises, is also devoid of substance, since it was never the case of the petitioners before the Rent Controller or the tribunal that a small portion of the premises was being used for different purposes. A specific case put forth by the petitioners in this regard was that the petitioners had been selling cigarettes, biscuits, sweetmeats, etc., including the kerosene oil in the premises right from the beginning with the consent of one Jose Furtado, the person who used to administer the properties of Dr. Joao Figueiredo. The judgment of the Apex Court in the matter of Smt. A.N. Kapoor v. Smt. Pushpa Talwar (supra), is not applicable to the case in hand. It was the case where eviction was sought on the ground of need for personal occupation of the landlord of the premises and not on the grounds on which eviction of the petitioners was sought for. Being so, the decree is not applicable to the case in hand.

10. In the result, no case is made out for interference in the impugned judgment and the petition is liable to be rejected. The same is, hereby, dismissed with costs of Rs. 1,000/-, payable by the petitioners to the respondents No. 4 and 5 within a period of 30 days from today.

11. At this stage, learned advocate for the petitioners requests for stay of execution of the eviction order, which is objected to by the advocate for the respondents. However, the execution of the eviction order shall remain stayed for a period of 6 weeks from today.

12. Petition dismissed with costs.