

(1975) 08 BOM CK 0018

In the Bombay High Court

Case No : Special civil Application No. 676 of 1971

Sitaram Shobharam and Another

APPELLANT

Vs

Nandram Chunilal

RESPONDENT

Date of Decision : 04-08-1975

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : AIR 1976 Bom 35

Hon'ble Judges : Lalit, J

Bench : Single Bench

Advocate : A.P. Deshpande, for the Appellant; J.N. Chandurkar, for the Respondent

Judgement

1. Respondent No. 1 is the owner of the municipal houses Nos. 9/913 . 9/914 and 9/915 situate within Amraoti Municipal limits. The petitioners are in occupation of the Municipal House No. 9/913. The municipal house No. 9/913 consists of shop premises on the ground floor and three other rooms in the same building. Two rooms are on the first floor and one room is situate on the second floor. Respondent No 1 made an application in the Court of the Rent Controller , Amroati for permission to terminate the tenancy on four grounds. In that application it was alleged that respondent No. 2 was the tenant and he had sub-let the premises to the petitioners and also to respondent No. 3 Respondent No. 1 claimed that he was entitled to get possession of the entire property on the ground that it was sub-let by respondent No. 2 to the petitioners and respondent No. 3 under clause 13 (3) (iii) of the C. P. and Berar Letting of Houses and Rent Control Order): the other grounds on which the tenancy was sought to be terminated were that the house required essential repairs that the petitioner was a habitual defaulter in payment of rent and that respondent No. 1 bona fide required the premises for opening a kirana shop. Respondent No. 2 had made similar application for permission to terminate the tenancy of the tenants in the adjoining shop premises in possession was Municipal House Nos. 9/914 and 9/915. The Rent Controller Amraoti, granted permission to respondent No. 1 to

terminate the tenancy on the ground of bona fide requirement, essential repairs and also on the ground of habitual arrears in the payment of rent. The prayer of respondent No. 1 for permission to terminate the tenancy on the ground of sub-tenancy was rejected. The cases of the other two tenants in Municipal Houses Nos. 9/914 and 9/915 were tried along with the case of the present petitioners and in those cases also respondent No. 1 was given permission to terminate the tenancy of the tenants in those two cases.

2. Against the order made by the Rent Controller, the petitioners filed an appeal being R.A. No. 329/71 (2) /67-68 of Amraoti. The learned Resident Deputy Collector. Amraoti who heard the matter found that respondent No. 1 was entitled to terminate the tenancy on the grounds of bona fide requirement, essential repairs and habitual arrears in the payment of rent. He confirmed the findings made by the rent Controller that there was no sub-letting and that respondent No.1 was not entitled to terminate the tenancy on the ground. As a consequence of these findings, he dismissed the appeal filed by the petitioners. The petitioners have now filed this writ petition to challenge the order made by the Resident Deputy Collector.

3. Mr. Deshpande, the learned advocate for the petitioner, sought to challenge all the findings recorded by the authorities against his clients. He submitted that it was not proved that the house required essential repairs and submitted that the repairs were not of such a nature as to require the petitioners to give possession. He also challenged the finding about the bona fide requirement of respondent No. 1 and contended that it was not established that respondent No. 1 required the shop premises for the purposes of opening a kirana shop. He also submitted that the claim of respondent No.1 that the two shops on the ground were required for the adativas was not established. Lastly, he also challenged the findings that his clients were in habitual arrears of payment of rent. Before I go to these three points which were advanced by Mr. Deshpande I must also take note of one submission made by Mr. Deshpande, that the original application was based on the allegation that only respondent No. 2 was the tenant and the petitioners were his sub-tenants. He contended that in the original application respondent No. 1 sought permission to terminate the tenancy of respondent No. 2 and it was never the case of respondent No. 1 that the petitioners were his tenants. It is therefore submitted by Mr. Deshpande that the relief which is being given to respondent No. 1 about the permission to terminate the tenancy of the petitioners was a relief which could not be given on the original application, which is given to the respondent is in variance with the pleadings in the application . It is not possible for me to accept this submission of Mr. Deshpande. It is true that the original case of respondent No. 1 was that respondent No. 2 was a tenant and he had sub-let the premises to the petitioners. It was the case of the petitioners that they were the tenants. They denied the sub-tenancy and that case has been established. The findings now are that the petitioners are the tenants. Now if those are the findings the relief naturally has to be in consonance with those findings. No prejudice has been caused to the petitioners as they had

led evidence with regard to the points of bona fide requirement essential repairs and habitual arrears in the payment of rent. The permission to terminate the tenancy has been granted. When the petitioners had the opportunity to cross-examine the witnesses of respondent No. 1 (sic). It is not the case where the petitioners have been misled or in any way prejudiced. Since the parties were at issue about the main ground on the basis of which permission was sought, there is no merit in the submission of Mr. Deshpande.

4. Then Mr. Deshpande has challenged the finding that respondent No. 1 required the entire house for carrying out essential repairs. Now the findings in this behalf is that the entire portion required repairs and the repairs have to be made to the back portion from the bottom to the top. In fact when the matter was pending before the Resident Deputy Collector, he took cognizance of the fact that the landlord has filed photos to show that even the shops on the ground floor had fallen down on account of recent rains. The Resident Deputy Collector found that it was necessary that even the tenants in the shop premises would be required to vacate the premises as the house required essential repairs. The Resident Deputy Collector took into consideration this additional evidence and found that the entire building required re-construction. As that finding is supported by evidence, there is no reason why that finding should be set aside in the present writ petition. I, therefore, confirm the finding of the Resident Deputy Collector and that the entire house requires reconstruction on the ground of essential repairs.

5. The permission to terminate the tenancy was prayed on the ground of bona fide requirement of running a shop Respondent No 1. wants the shop premises in possession of the petitioners on the ground floor because he wants to run a kirana shop there. It is the case of the respondent No. 1 that he requires two rooms on the first floor for accommodating the adativas who come to him on account of the business purposes. Respondent No. 1 has purchased this property on June 7, 1965 for a consideration of Rupees 17,000/-. He has purchased it as he wanted to run a kirana business in the suit property. Evidence has also come on record that the landlord of respondent has started proceedings against him in respect of the premises in his possession. These facts would clearly go to show that the requirement of respondent No. 1 is bona fide. Respondent No. 1 wants possession not only from the petitioners but from the occupants of the Municipal Houses Nos. 9/914 and 9/915 also. In fact he has got permission against those two tenants. It has come in evidence that the sales tax which respondent No. 1 pays is about Rs. 8,000/- . It is also the evidence that the turn over of respondent, No. 1 in his business is about Rupees 30,00,000/-. These circumstances clearly support the finding that respondent No.1 requires all the three shop premises on the ground floor. Thus the permission which is being granted to respondent No.1 on the ground of bona fide requirement appear to be clearly justified.

6. Mr. Deshpande in this behalf argued that respondent No.1 has already another

shop in his occupation in the adjoining locality. He submitted that on account of the availability of this house, respondent No.1 does not bona fide require the suit premises. The question whether another house is available and whether it was in a business locality has been considered by the two authorities below. Even after considering all this they have come to the conclusion that respondent No.1 require the suit premises, bona fide. That , in my opinion, is purely a finding of fact and it cannot be interfered with in this writ petition. Mr. Deshpande further wanted to argue that respondent No. 1 has already obtained possession from the tenants in Municipal House Nos. 9/914 and 9/915 and , therefore, submitted that the area of those two shops is sufficient for the purposes of opening a shop. It has to be stated that this fact has not been mentioned anywhere. It is not so stated in the present petition. Even assuming that respondent No.1 has obtained possession from those two tenants the findings given by both the authorities are that respondent No. 1 needs three shops for his bona fide requirement. Each shop is having an area of 6.3 1/2" x 16".9". the frontage being 6".33/4 A person who is carrying on a large scale business having a turnover of Rs. 30,00,000/- would reasonably require three adjoining shops of the above said area. If respondent No. 1 gets all the three shops, he will have an area of about 19" x 16"9". Thus the above finding of the two Courts below appear to be justified.

7. The last ground is about habitual arrears in the payment of rent. The monthly rent of the premises is Rs.40/- It seems that the petitioners have paid rent occasionally in the following sums: Rs. 40. Rs. 17. Rs. 72. and Rs.120/- This clearly shows that the payments are irregular and the petitioners seem to be habitually in arrears of rent. That finding has been made that they are habitual defaulters in payment of rent. That finding has been made by both the Court below. Such a finding cannot be interfered with in this writ petition. In the evidence also the petitioners have not given any explanation as to how the rent came to be paid in the above manner. Their only case was that the rent was payable every year. That part of the case has been rejected. In fact there is not a single instance where the payment has been made for the entire year. The finding made by the authorities in this behalf appear to be justified and on this count also respondent No. 1 is entitled to get permission to terminate the tenancy of the petitioners.

8. As all the findings made by the Resident Deputy Collector are confirmed, this petition deserve to be dismissed. The rule is dismissed. However, in the circumstances of the case, there will be no order as to costs.

9. Petition dismissed.