

(1995) 02 BOM CK 0017

In the Bombay High Court

Case No : Writ Petition No. 1215 of 1990

Smt. Mandakini Damkondawar

APPELLANT

Vs

Smt. Nirmaladevi and Others

RESPONDENT

Date of Decision : 16-02-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1996) 2 BomCR 80 : (1995) 97 BOMLR 534

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

Bench : Single Bench

Advocate : Bhushan Gawai, for the Appellant; Sambre, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Lodha, J.—By this petition, the petitioner is seeking to challenge the order passed by the Resident Deputy Collector, Chandrapur on 19-4-1990 confirming the order of the Rent Controller dated 22-2-1990, whereby permission has been granted to the respondent to determine the tenancy of the petitioner under Clause 13(3)(vi) of the Rent Control Order, 1949.

2. Smt. Nirmaladevi - respondent (for short "landlady") filed application before the Rent Controller, Chandrapur against Smt. Mandakini (for short "tenant") on 1-4-1986. By the said application, landlady sought permission of the Rent Controller to determine the tenancy of the tenant under Clause 13(3)(vi) of Rent Control Order, 1949. It was averred by the landlady in the said application that she was owner of the premises situated at Plot No. 151 of Bhanapeth, Chandrapur, where Shrikrishna Talkies is located. The said premises were initially taken on rent by one Radhakrishna, husband of the tenant for a period of 5 years from 1-8-1954 to 31-7-1959 by way of registered lease-deed. After the expiry of the said lease, said Radhakrishna became statutory tenant on monthly basis. Radhakrishna died on 8-1-1986 and thereafter, the present tenant became the tenant. The landlady averred that she has three daughters. One of the daughters is divorcee and there two daughters were unmarried. Eldest daughter Shobha

was a graduate. The other two daughters viz. Usha was B.A.B.Ed. and Bina was M.A.B.Ed. Since they had no other source of income, Usha joined service as teacher in City High School, Chandrapur and Bina joined as Teacher in New English High School, Chandrapur, while Shobha continued to be unemployed. All the three daughters intended to run cinema talkies and to have substantial income for better future and they were competent to do the said business.

3. The tenant contested the case filed by the landlady and admitted that initially the said premises were taken on lease by her deceased husband by way of registered lease-deed for a period of five years and after expiry of the lease, her husband Radhakrishna became contractual tenant and after his death, she was the tenant in the premises in question. The tenant did not dispute that landlady had 3 daughters but denied the requirement pleaded by the landlady by saying that both the daughters Usha and Bina were serving as teachers for the last 10 years and, therefore, they were not desirous of running cinema talkies and the need alleged was tainted. The tenant also submitted that excepting the building premises, entire furniture machinery and other equipments were owned by the tenant and the landlady and her daughters have no experience, skill and capacity to run the cinema talkies and, therefore, need alleged is actuated with ulterior motive.

4. The landlady by way of amendment inserted para 3-A in the application and it was averred that after the death of original tenant Radhakrishna landlady has informed Collector, Chandrapur that she wanted to run the cinema talkies and licence should be given to her instead of wife of deceased tenant Radhakrishna. Ultimately, State Government by order dated 27-1-1988 refused to grant licence on the ground that the premises were not in her possession. As regards furniture, machinery and other equipments, landlady submitted that all these were available in the market on installment basis and they have decided to run cinema talkies and have sufficient working capital for the same.

5. The tenant also made amendment in the written statement and after para 1, para 1(a) was inserted in the written statement. The Rent Controller held enquiry, in which landlady examined herself and one of her daughters Bina, as also one Ramesh Jain. On the other hand, tenant examined Vijay, Sharif, Prafulla, Balwant, Fakira; Vasant and Baban. Thereafter, Rent Controller heard the arguments of the learned Counsel for parties and by order dated 22-2-1990 and on perusal of evidence, oral as well as documentary, found that the landlady needed the disputed premises for her requirement and consequently granted permission to the landlady to terminate the tenancy of the tenant under Clause 13(3)(vi) of Rent Control Order, 1949.

6. The tenant filed appeal before the Resident Deputy Collector, Chandrapur against the order passed by the Rent Controller. The Appellate Authority after hearing learned Counsel for parties by order dated 9-4-1990 found that no error has been committed by the Rent Controller in granting permission to the landlady to determine the tenancy of the tenant.

7. As observed above, concurrent finding of fact and concurrent orders passed by both the authorities below are under challenge in this petition at the instance of the tenant.

8. I have heard both the learned Counsel for parties and perused the record of the case. Mr. Gawai, learned Counsel for petitioner-tenant has raised three fold submissions : (1) that the proceedings before the Rent Controller, Chandrapur were vitiated because of the mala fides of the Presiding Officer; (2) that compromise was arrived at between the parties in a proceeding for fixation of standard rent and by order dated 14-2-1974, rent was increased from Rs. 400/- to Rs. 600/- per month and therefore, the present application on its face is male fide and intended only to enhance the rent and (3) that previously also landlady had filed application seeking permission for determining the tenancy of the husband of the present petitioner before the Rent Controller and the said application was ultimately dismissed by this Court by order dated 15-12-1971. Mr. Gawai thus submits that the landlady's intention is to get the premises vacated on one pretext or the other and when she failed in having the order for determination of tenancy against husband, none again fresh proceedings have been initiated by setting up a false plea that the premises are required for her daughters.

9. On the other hand, Mr. Sambre, learned Counsel for landlady submits that both the authorities below on proper appreciation of evidence on record have concluded that premises in question are required by the landlady bona fide and the said finding of fact being based on evidence on record is not open for interference by this Court in its extra ordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

10. Though Mr. Gawai, learned Counsel for petitioner contended that the proceedings before the Rent Controller were vitiated because of mala fides of the Rent Controller, from the order sheets referred to by him at pages 78, 79 and 80 of the Paper Book (Annex. N), no such inference can be drawn that the Rent Controller proceeded mala fide against the tenant. This objection was raised by the tenant before the Appellate Authority and the Appellate Authority found on perusal of the order sheets dated 29-1-1990, 13-2-1990, 19-2-1990, 22-2-1990 that there was no merit in the contention of the counsel for the tenant. The Rent Controllers, who discharge functions under the Rent Control Order are expected to deal with the applications filed under the Rent Control Order expeditiously and when Rent Controller, Chandrapur proceeded with the matter expeditiously, it cannot be said that the Rent Controller proceeded with hot haste. The Appellate Authority has rightly considered this aspect and rightly observed that there was no merit in the contention of the tenant that the proceedings were conducted by the Rent Controller with malice. The Appellate Authority also found that no prejudice was caused to the tenant even if order was passed on 22-2-1990 and even before me, nothing has been shown as to how any prejudice has been caused to the tenant. I, therefore, negative the first contention raised by Mr.

Gawai and the same is devoid of any force.

11. As regards second contention raised by learned Counsel for tenant that on 14-2-1974, the parties arrived at a compromise and under the terms of the compromise, rent was increased from Rs. 400/- to Rs. 600/- and, therefore, the need alleged is tainted, it may be observed that the said compromise was entered into between the parties in a proceedings of fixation of standard rent under Rent Control Order. It is landlady's right to have the rent fixed under the Rent Control Order if rent payable by the tenant is too low and merely because proceedings for fixation of rent have been initiated by the landlord or that the rent has been fixed in the proceedings under Rent Control Order, it cannot be said that the entire intention of the landlord is to have rent enhanced. Moreover, the rent was enhanced way back in the year 1974 i.e. about 12 years before rent proceedings were initiated by the landlady and it cannot be said that on the basis of that compromise for all times to come, the landlady could not have initiated the proceedings to determine the tenancy if any ground under Rent Control Order was available to her. In this view of the matter also, no merit is found in the contention of the learned Counsel for the tenant that in view of the compromise entered into between the parties, intention of the landlady was to increase the rent and present need alleged is actuated with ulterior motive.

12. Mr. Gawai, learned Counsel for tenant's third contention was that previously also the landlady had filed proceedings under Clause 13(3)(vi) of Rent Control Order, 1949 against the husband of tenant. He submits that the said proceedings were ultimately dismissed by this Court by order dated 15/16-12-1971 and the landlady was found to have no need.

13. Previous proceedings were initiated by the landlady seeking determination of tenancy under Clause 13(3)(i), (ii) and (vi) on 26-11-1965 and the need alleged in the said proceedings were negated by this Court principally on the contention that there was material variance between pleading and proof. That need was need of the landlady herself and that was not found to be proved because there was no sufficient evidence to prove that need. On the basis of available evidence on record in that case, evidence of the landlady was found wanting to prove bona fide need and, therefore, the claim under Clause 13(3)(vi) was negated. The present application filed by the landlady is clearly on different facts on the basis of which she was seeking determination of tenancy under Clause 13(3)(vi). In the present application landlady wanted premises for her three daughters. It is not disputed that all the three daughters are educated. The case set out by the landlady in the application was that her two daughters Usha and Bina are serving as teachers because they have no other income and third daughter Shobha was unemployed and all the three daughters were intending to run cinema talkies and earn substantial income for their better future. Pursuant to their intention, they made efforts for obtaining licence for running cinema talkies by moving appropriate application before the Authority and ultimately State Government rejected application by saying that the

premises for running cinema talkies were not in their occupation. About their financial position, it is also stated that the landlady is having working capital to run 2cinema. The Appellate Authority considered the entire oral and documentary evidence and came to the conclusion that not only that the premises are required by the landlady bona fide but she is in pressing need. Appellate Authority also found that the tenant has failed to make out any case of mala fide intention of the landlady. The landlady has produced on record correspondence made with Photo phone Company, which has informed that they are prepared to supply machinery on installments. The landlady examined one Ramesh, who had deposed that Bank can give advance loan if the possession of the premises are with the landlady. The word "bona fide requirement" occurring under Clause 13(3)(vi) of Rent Control Order does not mean that landlady has to establish pressing need or dire need. A bona fide need has to be examined objectively in contradistinction with the desire of the landlord or landlady to have the premises for her occupation. The expression "bona fide requirement" cannot be artificially extended nor can be over strained to make it impossible for the landlady to have premises vacated. It is true that on mere desire the landlady cannot seek permission under Clause 13(3)(vi) but at the same time landlady is not required to establish dire necessity so as to make it impossible for the landlady to have the premises. The learned Counsel for the tenant could not point out from the evidence on record that Authorities below have misread the evidence or have ignored or over-looked material evidence. The contention of the learned Counsel for petitioner is that the evidence has not been properly appreciated by the authorities below. I am afraid that this Court cannot reappreciate the evidence and on reappreciation of the same evidence, this Court cannot interfere with the pure binding of fact. In Mst. Bega Begum and Others Vs. Abdul Ahad Khan (Dead) by Lrs. and Others, , the Supreme Court held as under:

"Moreover, section 11(1)(h) of the Act uses the words "reasonable requirement" which undoubtedly postulate that there must be an element of need as opposed to a mere desire or wish. The distinction between desire and need should doubtless be kept in mind but not so as to make even the genuine need as nothing but a desire as the High Court has done in this case. It seems to us that the connotation of the term "need" or "requirement" should not be artificially extended nor its language so unduly stretched or strained so as to make it impossible or extremely difficult for the landlord to get a decree for eviction. Such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds. This appears to us to be the general scheme of all the Rent Control Acts, prevalent in other States in the country. This Court has considered the import of the word "requirement" and pointed out that it merely connotes that there should be an element of need".

14. The Apex Court further held as under :

"It was argued that the words "own occupation" clearly postulate that the landlord must require it for his personal residence and not for starting any business in the house. We are, however unable to agree with this argument. The provisions is meant for the benefit of the landlord and, therefore, it must be so construed as to advance the object of the Act. The word "occupation" does not exclude the possibility of the landlord starting a business or running a hotel in the shop which would also amount to personal occupation by the landlord. In our opinion, the section contemplates the actual possession of the landlord, whether for his own residence or for his business. It is manifest that even if the landlord is running a hotel in the house, he is undoubtedly in possession or occupation of the house in the legal sense of the term. Furthermore, the section is wide enough to include the necessity of not only the landlord but also of the person who are living with him as members of the same family".

15. In the abovesaid Bega Begum's case cited supra, the Apex Court also held as under :-

"If the plaintiffs had proved that their necessity was both genuine and reasonable that the present premises which belonged to them were required for augmenting their income as the income so far received by them was not sufficient for them to make the two ends meet, there could be no question of a mere desire but it is a case of real requirement or genuine need. In fact the irresistible inference which could be drawn from the facts is that the plaintiffs had a pressing necessity of occupying the premises for the purposes of conducting hotel business so as to supplement their income and maintain themselves properly. The Act is a piece of social legislation aimed at easing the problem of accommodation, protecting the tenants from evictions inspite by profit hunting motives and providing certain safeguards for the tenants and saving them from great expense, inconvenience and trouble. But the Act does not completely overlook the interest of the landlord and has under certain conditions granted a clear right to the landlord to seek eviction on proof of grounds mentioned in section 11 of the Act. Thus, the Act appears to have struck a just balance between the genuine need of the landlord on the one hand and great inconvenience and trouble of the tenants on the other. It was also not disputed that the defendants had taken the property on lease only for a period of 10 years and now they have been in possession of the same for over 30 years. If the plaintiffs found that their present business has become dull and was not yielding sufficient income to maintain themselves and, therefore, it was necessary to occupy the house so as to run a hotel business, it cannot by any stretch of imagination be said that the plaintiffs had merely a desire rather than a bona fide need for evicting the tenants."

16. Applying the aforesaid principles it would be seen that main ground on which the tenant was seeking to contest the case of the landlady was that her two daughters were already in service and they have been working as teachers for quite few years and therefore need was not bona fide. On the other hand, case of landlady is that in the absence of any other source of income, both the daughters

have joined service. That meant that in the absence of availability of present accommodation, the daughters of the landlady have joined service. It is not the intention of the law nor its requirement that in anticipation of the availability of the premises, the landlady's daughters for whose purpose premises are needed should remain idle and not work till the premises are made available. The fact that the rent control disputes are contested tooth and nail and take number of years in its disposal, the landlord or landlady or the persons for whose needs premises are required cannot remain idle for years together. The facts which have come on record clearly demonstrate that no other premises were available for the daughters of landlady to carry on the business for which premises were sought and, therefore, two daughters of landlady joined teaching service. By this conduct of the landlady or her daughters, it cannot be said that the premises were not required by the landlady or the need was mala fide or was tainted or actuated with ulterior motive. Since the Authorities below have dealt with the evidence available on record at length on question of bona fide requirement and on its proper appreciation have reached finding of fact that premises are required bona fide by the landlady, the same is not required to be gone into by me in detail. Suffice it to Observe that learned Counsel for tenant could not point out any error of law in arriving at the said finding of fact of the authorities below.

17. In *India Pipe Fitting Co. Vs. Fakruddin M.A. Baker and Another*, . The Apex Court has held as under :--

"5. The limitation of the High Court while exercising power under Article 227 of the Constitution is well settled. Power under Article 227 is one judicial superintendence and cannot be exercised to upset conclusions of facts however erroneous those may be. It is well settled and perhaps too late in the day to refer to the decision of the Constitution Bench of this Court in *Waryam Singh and Another Vs. Amarnath and Another*, , where the principles have been clearly laid down as follows :--

"This power of superintendence conferred by Article 227 is - as pointed out by Harries, C.J., in *Dalmia Jain Airways Ltd. v. Sukumar Mukherjee* AIR 1951 Cal. 190 , to be exercised most sparingly and only in appropriate cases in order to keep Subordinate Court within the bounds of their authority and not for correcting mere errors".

The same view was reiterated by another Constitution Bench of this Court in *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, . Even recently in AIR 1975 1297 (SC) , dealing with a litigation between a landlord and tenant under Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, this Court relying on its earlier decisions observed as follows :--

"If an error of fact, even though apparent on the face of the record, cannot be corrected by means of writ of certiorari it should follow a fortiori that it is not subject to correction by the High Court in the exercise of its jurisdiction under

Article 227. The power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a Superior Court can do in exercise of its statutory power as a Court of appeal. The High Court cannot guise of exercising its jurisdiction under Article 227 convert itself into a Court of appeal when the legislature has not conferred a right of appeal and made the decision of the subordinate Court or Tribunal final on facts".

6. Whether the landlord's requirement is bona fide and reasonable has been concurrently found by the two courts below against the landlord by appreciating the entire evidence. After examining the reasons given by both the courts it is not possible to hold that the conclusions are "perverse" or even that these are against the weight of evidence on record. It is a case of reasonably possible factual appreciation of entire evidence and circumstances brought on the record."

18. Applying the aforesaid principles, it cannot be said that the finding of fact recorded by the Rent Controller and confirmed in appeal by the Resident Deputy Collector is perverse or against the weight of evidence on record or vitiated by any error of law. The Rent Controller has dealt with entire evidence and then reached firm finding of fact that the landlady has been able to establish that the premises are required by her bona fide. The Appellate Authority has also confirmed the said finding of fact on the basis of available evidence on record and found that tenant has not been able to show any ulterior motive on the part of the landlady in seeking permission under Clause 13(3)(iv) of Rent Control Order, 1949. The concurrent finding of fact recorded by authorities below holding that the premises are required bona fide by the landlady, therefore, does not call for any interference by this Court in its extra ordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

19. Consequently, there is no force in the writ petition and the same is liable to be dismissed and is accordingly dismissed. Rule is discharged. Parties are directed to bear their own costs.