
(2015) 05 BOM CK 0005

In the Bombay High Court

Case No : Writ Petition No. 4394 of 1999

Sou Jahida Sikandar Ustad

APPELLANT

Vs

Krishnabai Vithal Mudgal and Others

RESPONDENT

Date of Decision : 07-05-2015

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1)(I)

Citation : (2016) 2 MhLj 130

Hon'ble Judges : N.M. Jamdar, J

Bench : Single Bench

Advocate : S.M. Kamble, for the Appellant; Manoj Patil, Advocates for the Respondent

Judgement

N.M. Jamdar, J.—By this petition, the Petitioner challenges Judgment and Decree dated 11 November 1997 passed by the learned Civil Judge, Senior Division, Kolhapur and the Judgment and order by the Additional District Judge, Kolhapur dated 13 July 1999, decreeing the suit and dismissing the appeal. By the impugned orders Petitioners-tenants are directed to be evicted from the suit premises.

2. The father of the Petitioner No. 1 was the original tenant of the suit premises and upon his death, the Petitioner No. 1 who was residing in the premises became the tenant. After her marriage, Petitioner No. 2, her husband also came to reside in the suit premises. The Respondents filed a suit bearing No. 900 of 1986 for recovery of the suit premises from the Petitioners. The suit premises are one room, admeasuring 15 ft. x 10 ft. in C.S. No. 2230/C, Somwar Peth, C Ward, Kolhapur. The possession was sought on the ground of bonafide requirement of the Respondents and the Petitioners being in arrears of rent. The Respondents amended the plaint and pleaded that the Petitioners had acquired suitable alternate accommodation on 5 May 1991, a service quarter provided by State Transport Corporation at Kolhapur. The Petitioners filed their Written statement and denied the contentions. The Petitioners denied that they were

defaulters and that premises were required for personal and bonafide use of the Respondents.

3. The learned Civil Judge heard the suit and application for fixation of standard rent. The learned Civil Judge negated the ground of bonafide requirement, but passed a decree on the ground of default in payment of arrears of rent and acquisition of alternative accommodation. Thereafter the Petitioners filed a Regular Civil Appeal No. 591 of 1997 in the District Court at Kolhapur. The District Court negated the case of the Respondent on the ground of default however, confirmed the decree on the ground of acquisition of alternative accommodation and accordingly dismissed the appeal by order dated 13 July 1991. Thereafter the present petition is filed.

4. I have heard Mr. S.M. Kamble, learned counsel for the Petitioners and Mr. Manoj Patil, learned counsel for the Respondents.

5. It is placed on record by the Petitioners that the Petitioner No. 2 had surrendered accommodation on 18 May 1992 and thereafter services of the Petitioner No. 2 were terminated on 3 March 1999. The position has not been controverted. The tenant of the premises is Petitioner No. 1 and it was Petitioner No. 2-her husband, who was allotted the staff quarters.

6. The issue of alternate accommodation was discussed by the learned District Judge. The learned District Judge noted the contention that the Petitioner No. 2 was removed from services on medical ground being unfit. Thereafter the learned District Judge recorded a finding that the alternative accommodation admittedly was available from 5 January 1991 to 18 May 1992. The learned District Judge found this acquisition as enough to attract the provisions of Section 13(1)(I) of the Bombay Rent Act. The learned District Judge, did not find it necessary to inquire further as to whether, subsequently in view of the cessation of services, the service quarters were available. When the appeal was argued before the learned District Judge, the assertion of the Petitioners that service quarters were no longer available went uncontroverted. The learned District Judge went by the version of the witness examined by the Respondents from the State Transport Department that alternative accommodation in terms of staff quarters was available for a period of one and a half year, and the learned District Judge found that it is enough to sustain the decree of eviction.

7. Thus, the position that emerges is that when the appeal was heard by the learned District Judge, the Petitioners were no longer in possession of the service quarters and the Petitioner No. 2 was discharged from services. Therefore, the question is whether the Appellate Court should have considered this subsequent development when the appeal was being heard or the District Court was right in holding that once for some time service quarters were available, irrespective of subsequent development, decree for eviction must be passed.

8. The similar question arose before learned Single Judge of this Court (D.K. Deshmukh, J.) in the case of Dilip G. Joshi Versus Raman N. Dixit - 1998

Bom.R.C. 61 . In this case, the tenant had challenged the judgment and decree passed by the Appellate Court on the ground of acquisition of alternative accommodation. It was a contention of the landlord in that case that the Appellate Court had rightly found that since the tenant was in government service and was allotted service quarters had acquired suitable accommodation. It was placed on record by the tenant therein that during the pendency of the petition, the tenant had retired from services and also had vacated the quarters. The counsel for the landlord in that case had urged that the subsequent event of vacating the accommodation will not make any difference, which is the very contention raised by Mr. Manoj Patil the learned counsel for the Respondents before me. D.K. Deshmukh, J. followed the earlier decision of learned Single Judge of this Court (A.C. Agarwal, J.) in the case of Radheshyam G. Garg Vs. Safiyabai Ibrahim Lightwalla, AIR 1988 Bom 361 : (1987) 3 BomCR 459 : (1987) MhLj 725 and came to the conclusion that in view of the subsequent event, namely retirement of the tenant and consequent vacation of Government quarters, decree for eviction passed against him on the ground that he had secured alternative accommodation will not survive. Taking note of this subsequent events, the Writ petition was allowed.

9. Thus, there are two decisions of this Court which have taken a view that the subsequent event of vacating the staff quarters will have to be taken into consideration at the time of hearing of the petition and while deciding the validity of the eviction decree based on the ground of acquisition of alternative accommodation. Mr. Patil is not able to show why a different view be taken. In view of these two decisions, such subsequent event will have to be considered. Therefore, the learned District Judge committed an error in holding that the subsequent vacation of staff quarters will not make any difference. Such approach is contrary to the above decisions of this Court.

10. Mr. S.M. Kamble, the learned counsel for the Petitioners has also relied upon the decision of the learned Single Judge (P.V. Kakade, J.) in the case of Surendra M. Wagh and Another Vs. Manohar Krishna Kale and Another, (2006) 4 ALLMR 19 : (2006) 4 BomCR 115 : (2006) 5 MhLj 70 . In this decision learned Single Judge considered the provisions of Section 13(1)(I) and held that acquisition of government quarters and temporary shifting to the Government quarters will not amount to acquisition of suitable residence at all, as the word "acquired" and "allotted" cannot be extended to temporary accommodation for the purpose of employment. Mr. Patil relied upon the decision of this Court (D.K. Deshmukh. J.) in the case of Suryakant Vishwanath Ajinkya v. Kusum Vasudeo Mhatre -LAWS (BOM)-1997-1-146 and on the decision of learned Single Judge of Gujarat High Court in the case of Jayalaxmi Trambaklal Pandya v. Shantilal Chunilal Modi - [1996] 1 GLR 329. It is however not necessary to go into that broader question, as even assuming that allotment of service quarters amounts to acquisition of suitable alternative accommodation, in view of the decisions in the cases of Dilip G. Joshi (supra) and Radheshyam Garg (supra) no decree can now be passed against the Petitioners.

11. There is one more facet of the matter. That is, it is the Petitioner No. 1 who is the tenant. It is upon marriage, Petitioner No. 2 has come to reside with Petitioner No. 1 and it is the Petitioner No. 2 who was allotted the staff quarters. In this context, the decision of the Apex Court in the case of B.R. Mehta Vs. Atma Devi and Others, AIR 1987 SC 2220 : (1987) 3 JT 474 : (1987) 2 SCALE 436 : (1987) 4 SCC 183 : (1987) 3 SCR 1184 : (1988) 1 UJ 23 needs to be noticed. In this case, wife of the tenant had acquired service quarters. It was the case of the landlord therein that therefore, there was acquisition of alternative premises and the landlord was entitled to decree on the ground of acquisition of alternative premises as provided under section 14(1)(h) of the Delhi Rent Control Act, 1958. The Section 14(1)(h) is pari materia with Section 13(1)(l) of the Bombay Rent Act. The Apex Court held that it cannot be laid down as a general proposition of law that acquisition of alternative premises by wife would amount to acquisition of premises by the husband. The Apex Court held that in such acquired premises the tenant must have a legal right to continue. The tenant in that case, legally speaking, would have no right as such and could be turned out from the house at any time. The Apex Court also observed that there is no law according to which husband and wife are deemed to be one person. In the present case also the allotment of the staff quarters is by the Petitioner No. 2-husband and not by Petitioner No. 1-the wife. Even on this ground the Petitioner is entitled to succeed.

12. Mr. Patil however, submitted that the conduct of the Petitioners must be taken note of. He submitted that it was initially denied that he was in possession of alternative premises. He submitted that this aspect was rightly considered by the learned District Judge. However, if in law it did not amount to acquisition of alternative premises it may not amount to suppression of facts. Apart from this position, if the learned District Judge was under obligation to consider the subsequent events.

13. It also needs to be taken note that the ground of bonafide requirement has been negated by both the Courts. Even the ground of default in payment of rent has been negated by the Appellate Court. The only ground is of acquisition of staff quarters by the husband of the tenant. That too for period of one and a half years. It will be of interest to note that the Maharashtra Rent Control Act 1999 which has replaced the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 no longer contains provisions for eviction of a tenant on the ground of acquisition of alternative premises.

14. Considering the above factors, I am of the opinion that the judgments and decrees passed by the learned Civil Judge and the learned District Judge Kolhapur, on the ground of acquisition of alternative premises cannot be sustained and will have to be quashed and set aside.

15. Accordingly, Rule is made absolute in terms of prayer clause (a). No costs.

16. The learned counsel for the Respondents submitted that during the pendency of the petition, the Petitioners have not paid the standard rent. The Petitioners

shall clear the arrears of standard rent within the period of twelve weeks from today.