
(1982) 09 BOM CK 0040
In the Bombay High Court
Case No : Writ Petition No. 2039 of 1980

Suryabhan Patil

APPELLANT

Vs

Ekbal Ahmed Ismail and Others

RESPONDENT

Date of Decision : 14-09-1982

Acts Referred:

Citation : (1982) 2 BomCR 635

Hon'ble Judges : D.B. Deshpande, J

Bench : Single Bench

Advocate : S.C. Bora, for R.M. Agarwal, for the Appellant; K.G. Navandar, for the Respondent

Final Decision : Dismissed

Judgement

D.B. Deshpande, J.—The tenant who feels aggrieved by the order of the District Judge, Aurangabad, allowing the landlords' application for the ejectment of the tenant and directing him to vacate the tenanted premises within one month from the date of his order dated 13th June, 1980 has filed this petition under Article 227 of the Constitution of India, and it arises out of the following facts.

2. The respondents 1 to 3 before me are the landlords and the petitioner is the tenant and in this judgment they will be accordingly referred to as the landlords and the tenant. The landlords started ejectment proceeding against the tenant for evicting him on two grounds (1) that the landlords want to start their business in the suit premises and that their need in this respect is bona fide and genuine and (2) the tenant has secured an alternative accommodation just opposite to the suit premises.

3. The property in question in Municipal House No. 3-8-69 is situated at Shahaganj in Aurangabad. A portion of the same is occupied by the tenant at a monthly rent of Rs. 130/- and the tenancy commences on the 1st of English calendar month. Admittedly the tenant is using the tenanted premises for running a lodging house.

4. The tenant resisted this petition. He denied that the landlords require the suit premises for their business purpose and denied that their need was bona fide and genuine. He asserted that the need of the landlords was mala fide. He contended that the landlords have so many business premises in the city of Aurangabad and, therefore, according to him the need of the landlords is not genuine. According to him the need of the landlords have started this action merely with a view to coerce him to pay some enhanced rent. He contended that the premises opposite to the suit premises are taken on rent by him from the landlord prior in point of time to the tenancy of the suit premises and, therefore, according to him, the claim of the landlords on the ground of securing an alternative accommodation by the tenant is not tenable.

5. The parties led oral evidence and after considering the entire evidence on record the learned Additional Rent Controller at Aurangabad held that the landlords, though served the tenant with a legal and valid notice, failed to prove that they required the suit premises for bona fide personal requirement i.e. for business and he also held that the landlords failed to prove that the tenant secured an alternative accommodation. Consequently he rejected the landlords' petition for ejectment of the tenant.

6. The landlords preferred Rent Appeal No. 69 of 1979 in the Court of the District. Judge at Aurangabad. The appeal was heard by the learned District. Judge, Aurangabad and after hearing the Counsel the learned District Judge disagreed with the findings of the Additional Rent Controller and he held that the landlords proved that they required the suit premises for their personal use. He, therefore, allowed the appeal with costs and set aside the order of the Additional Rent Controller and allowed the ejectment petition filed by the landlords. However, he granted one month's time to the tenant to vacate the suit premises. It appears that the question of securing an alternative accommodation by the tenant was not at all urged before the learned Dist. Judge Feeling aggrieved by this order of the Dist. Judge, the tenant has filed this writ petition under Article 227 of the Constitution of India.

7. In order that this Court should exercise its extraordinary jurisdiction under Article 227 of the Constitution of India, the tenant must show that there is a mistake or error apparent on the face of record or that the finding of the Dist. Judge is based on no evidence or that the finding is perverse. Unless this is shown, this Court will not be entitled to interfere with the finding of the learned District Judge. I shall, therefore, immediately proceed to the facts of this case.

8. Now it is an undisputed fact that the landlords own a house in the area known as Karim colony. Admittedly that is a residential locality and the landlords are staying in that house. It will not, therefore, lie in the mouth of the tenant to say that the landlords should start their business in their residential house. Moreover, there is nothing on record to show that this Karim colony is a business place also. Admittedly the tenanted premises are used by the tenant for the purpose of running a business of lodging in it. Then it is an admitted fact that the landlords

own other property in this very area of Shahaganj and in the locality known as Mansurpura. According to Mr. Bora appearing for the tenant there are two premises on the ground floor of this building and that this portion can be used by the landlords for starting their new business. Admittedly these two rooms are of the area of 8"x10" and it is further not disputed that one of it is rented out to a rickshawala. At one stage Mr. Bora tried to urge that this rickshawala is inducted as a tenant after the filing of this petition. But nothing of this kind appears from the judgment of both the courts below, and therefore, it does not appear to be a statement of fact and hence that cannot be considered. Now, what remains in the possession of the landlords is one room with a shutter and the area of the room is 8"x10". According to the landlords they want to start a business of boarding and lodging and it is futile to say that the landlords should start their business of lodging and boarding in a shutter shop having an area of 8"x10". In para 9 of the judgment the learned District Judge has observed that a question was put to the tenant in his cross-examination whether he would be able to run a boarding and lodging house in such a room and the tenant gave a clear answer that he will not be able to do so. Admittedly the landlords are staying in the remaining portion of the building in Mansurpura. The record shows that there are about 17 to 20 members in the family of the landlords. It is not expected that the landlords should vacate their residential portion and should start lodging and boarding in the residential portion. So now the fact remains that the landlords who own a building in Karim colony cannot start a business there as it is a residential locality. On the ground floor of a building in Mansurpura one shop is let out to a tenant and the other shop cannot be used for starting a business of lodging and boarding and the rest of the portion is being utilised by the landlords for their residence. It is in this background we have to proceed for the appreciation of the claim of the landlords in this the requirement of the landlords is bona fide. Mr. Bora appearing on behalf of the petitioner is conscious of the fact that this finding of the District Judge is a finding of fact. He referred to a decision of the Supreme Court in *Mattulal Vs. Radhe Lal*, head note (A).

"The finding reached by the Additional Dist. Judge, the first Appellate Court, on an appreciation of evidence that the landlord does not bona fide require the premises in question for the purpose of starting business as a dealer in iron and steel materials is a finding of fact and not a finding of mixed law and fact and it cannot be interfered with by the High Court in second appeal unless it is shown that in reaching it a mistake of law is committed by the Additional Dist. Judge or it is based on no evidence or is such as no reasonable man can reach:

Mere assertion on the part of the landlord that he requires the non-residential accommodation in the occupation of the tenant for the purpose of starting or continuing his own business is not decisive. It is for the Court to determine the truth of the assertion and also whether it is bona fide. The test which has to be applied is an objective test not a subjective one. The word "required" signifies that mere desire on the part of the landlord is not enough but there should be an element of need and the landlord must show, the burden being upon him, that

he genuinely required the non-residential accommodation for the purpose of starting or continuing this own business. Where the Additional Dist. Judge did not misdirect himself in regard to these matters, as for example, by misconstruing the word "required" or by erroneously placing the burden of proof on the tenant and no error of law was committed by him in arriving at the finding of fact in regard to the question of bona fide requirement of the landlord, the High Court could not in second appeal interfere with that finding of fact.

Merely because the Additional District Judge was in error in relying upon the circumstances that unless the landlord showed that he had made preparation for starting the new business it could not be said that he bona fide required the premises and that he had asked for possession of the whole of the premises and not merely a portion of it, the High Court could not interfere in second appeal and set aside the finding of fact so long as there was some evidence to support it and it could not be branded as arbitrary, unreasonable or perverse."

Relying upon this decision, Mr. Bora tried to urge that the finding of the Dist. Judge in this case is also perverse. I am not in agreement with this submission. I have already pointed out the factual position in this case and it is, therefore, apparent that there is no accommodation whatsoever with the landlords where they can start their business and, therefore, it cannot be said that the finding of the District Judge is perverse.

9. In this respect Mr. Bora placed reliance upon the wording of section 15 of the Hyderabad House (Rent, Eviction and Lease) Control Act, 1954, (hereinafter referred to as the Rent Control Act). The portion relevant for our purpose runs as follows :

"15(3)(a) A landlord may subject to the provisions of Clause (d) apply to the Controller for an order directing the tenant to put the landlord in possession of the house :

(i)-----

(ii)-----

(iii) in case it is any other non-residential house, if the landlords is not occupying for purpose of a business which he is carrying on a non-residential house in the city, town or village concerned which is his own or to the possession of which he is entitled :

According to Mr. Bora this clause disables the landlord from claiming possession of the tenanted premises. I am not in agreement with Mr. Bora on this point. Now, in this case the property is non-residential house. Now the third sub-clause reads that if the landlord is not occupying a non-residential house in the city for the purpose of a business which he is carrying on which is his own or to the possession of which he is entitled, then the landlord may apply to the Rent Controller for ejectment of the tenant. Now in this case it is an admitted fact that the first landlord is running a small hotel in rented premises. It is also an

admitted fact that the third landlord is also having a small milk shop somewhere also in rented premises. There is nothing on record to show that the second landlord is doing any business or is employed somewhere else and hence in my opinion this clause does not help Mr. Bora in the instant case. I am, therefore, satisfied that the finding of fact of the learned Dist. Judge is not perverse or is not arbitrary and it is based upon reasoning given by him in his judgment. He has considered all the aspects of the case and then passed the order ejecting the tenant from the tenanted premises. I, therefore, do not see any reason in this writ petition to interfere with the order of the learned Dist. Judge.

10. Mr. Navandar appearing on behalf of the landlords contended before me that on account of a subsequent event the landlords are entitled to evict the tenant. For this purpose my attention is invited to the fact of an affidavit filed in this writ petition by the tenant himself wherein it is admitted that the tenant has constructed a big hotel by name Kartiki Hotel near about the State Transport stand at Aurangabad. Relying upon this fact Mr. Navandar urged that the tenant deserves to be evicted. He relied upon a decision of the Supreme Court in *Pasupuleti Venkateswarlu Vs. The Motor and General Traders*, . Mr. Navandar wanted to apply the analogy of this case to the facts of the present case. In that ruling it is held by the Supreme Court that where a subsequent event disables the landlord from seeking eviction of the tenant, the High Court must take this fact into consideration in the revision application before it while disposing of the revision application. I do not think that Mr. Navandar can seek the help of this ruling in this case. In the instant case the position is otherwise and not of the disablement of the landlords. The landlords want to use this portion as a positive ground for evicting the tenant on the ground that he has secured another alternative accommodation. In fact the landlords should have amended their plaint or ejectment application and should have given a chance to the tenant to rebut whatever submissions that could be made by the landlords in the amended petition and for deciding this question, evidence could be required. I, therefore, do not think that the analogy of the case can come to the rescue of the landlords in this writ petition.

11. All the same I have pointed out that there is no reason whatsoever for interfering with the order of the learned District Judge as there is absolutely nothing on record to hold that there is an error or mistake apparent on the face of the record or that the order of the learned District Judge is arbitrary or perverse and, therefore, the writ petition must fail.

12. Before concluding I must make a mention of one more fact that Mr. Bora referred to section 15(3)(c) of the Rent Control Act. I do not think that it has any application to the facts of the instant case.

13. It is an undisputed fact that the tenant is running a lodging house in the tenanted premises, and therefore, it will naturally take some time for the tenant to vacate and, therefore, some reasonable time must be given to the tenant in order to vacate the premises. Looking to the facts of the instant case, I think

that a period of six months will meet the ends of justice.

14. The result is that the writ petition fails and is dismissed. Rule is discharged but tenant is granted six month's time from today to hand over vacant possession of the suit promise to the landlords. In view of the facts and circumstances of the case, there will be no order as to costs of this writ petition.