

(2005) 10 BOM CK 0098

In the Bombay High Court

Case No : Writ Petition No's. 6068 and 6015 of 2004

Swarupchand Lunawat and Another

APPELLANT

Vs

Additional Collector and Another

RESPONDENT

Date of Decision : 18-10-2005

Acts Referred:

Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 — Section 13, 13(3)

Civil Procedure Code, 1908 (CPC) — Section 99

Citation : (2006) 2 MhLj 636

Hon'ble Judges : A.H. Joshi, J

Bench : Single Bench

Advocate : V.R. Chaudhary, in W.P. No. 6068 of 2004 and Rajeev C. Madkholkar and V.R. Chaudhary, in W. P. No. 6015 of 2004, for the Appellant; D.B. Patel, APP for respondent No. 1 and P.D. Meghe, in W.P. No. 6068 of 2004 and N.S. Khubalkar, APP for respondent No. 1 and P.D. Meghe, in W. P. No. 6015 of 2004, for the Respondent

Judgement

A.H. Joshi. J.

1. Rule, Rule returnable forthwith with the consent, of the parties.

2. Heard learned Advocate Shri Rajiv C. Madkholkar for Shri V. R. Choudhary and Shri P. D. Meghe for the respondent No. 2.

3. This is a petition under Article 226 by petitioner No. 1 the tenant and his brother petitioner No. 2 who is residing in suit premises along with petitioner No. 1.

The respondent No. 2 is the landlord.

FACTS IN BRIEF

4. Mahipatrao Sahastrabuddhe was the original landlord. Petitioner No. 1 is the tenant of suit premises through Mahipatrao. Mahipatrao had initiated eviction proceedings which ended in compromise and enhancement of rent. Thereafter, in

1982 present respondent No. 2 purchased suit house from Mahipatrao. Respondent No. 2 and Mahipatrao are related to each other and due to the old age and relation which Mahipatrao had, he has continued to occupy part of suit house,

5. Respondent No. 2 initiated proceedings for permission to terminate tenancy on various ground u/s 13(iv), (vi) and (viii) of C. P. and Berar Rent Control Order, 1949. Claim was based on :-

(i) bona fide personal requirement;

(ii) change in user;

(iii) waste or damage due to illegal construction.

6. The claim was opposed by tenants denying all facts including purchase of property by respondent No. 2.

7. Respondent No. 2 led his own evidence and of Mahipatrao. He has proved purchase and bona fide personal requirement, and also made efforts to prove other grounds, namely waste and damage, change of user etc.

8. The petition for permission to terminate the tenancy was opposed by the present petitioner No. 1 by his own and oral evidence. While he denied everything deposed against him, he specifically averred that the landlord was having own house where he was residing and claimed that he would examine Municipal Corporation's employee to prove this fact, which he did not bring.

9. Trial Court granted application towards bona fide personal requirement and rejected rest of the grounds.

10. The judgment of Rent Controller was challenged by the tenant and his brother to negate ground of bona fide need.

In support of challenge to the Rent Controller's Order the tenant has urged following grounds.

(a) no eviction proceedings were taken against Mahipatrao;

(b) evidence of applicant landlord and his witness are contradictory;

(c) bona fide personal requirement is not proved;

(d) the transaction of purchase of property by present landlord is fake and he is not the landlord at all.

11. The landlord challenged the same order on the ground that the permission should have been granted even on two remaining grounds.

12. Both appeals were heard by Additional Collector the appellate authority who dismissed the tenant's appeal.

The Additional Collector has by separate judgment partly allowed Landlord's

appeal, by accepting the ground of change of user.

13. Both these judgments are challenged by tenant and his brother by two separate petitions. Though two separate petitions are filed, those are based common petitions and evidence and heard together.

14. Submissions of Advocate Madkholkar are summarized as follows:-

(a) The judgment of trial Court and Appellate Court are at variance at least to the extent of point of change of user and the petition needs thread based scrutiny.

(b) Judgment of Additional Collector is not well reasoned order, and on this ground alone, the impugned judgment be set aside.

(c) The claim for bona fide personal requirement is not duly proved, and this claim is vitiated since former landlord Mahipatrao Sahastrabuddhe still resides in same house and his eviction is not sought.

(d) There are contradictions in the evidence of the appellant and his witness Mahipatrao.

(e) The ground of change of user and sale transaction in favour of landlord executed by Mahipatrao being fake are not stretched.

Learned Advocate Mr. Madkholkar placed reliance on various judgments, which are dealt with at appropriate stage.

15. Upon examination of pleadings, it is seen that insofar as the present occupation of house by the landlord is concerned, he pleaded in paragraphs 5 and 6 as follows :-

5. That the applicant presently is staying in a rented house. The applicant does not keep good health so applicant is going to take voluntary retirement on that grounds. Similarly and the son of applicant is major and educated unemployed, so the applicant desires to run a kirana shop in the premises in question for his son.

6. That the applicant needs the said house for his bona fide need. The applicant, therefore, does not want to continue his tenancy. Hence, this application for permission to serve quit notice on the non-applicant.

This has been answered by the tenant with the following averments.

5) As to para 5 :- It is not known that whether the applicant presently resides in a rented house or in any other house. It is not known that who is this applicant. It is also denied that the applicant is going to take voluntary retirement on the grounds of ill health. It is denied that the applicant's son is a major and educated unemployed. The N. As do not know the family details of this applicant. It is denied that there is any bona fide need of this applicant and moreover, the N. As are not his tenant. They are still treated as tenant of Shri Mahipat

Sahasrabudhe and unless he i.e. Mahipat Sahasrabudhe comes forward and say that he has sold this house and asks to pay rent to someone i.e. the new owner, in case of sale of house. These N. As are in an embarrassing position the accept unknown person as the landlords.

Insofar the contents of para 6 of the plaint are concerned those have not been directly denied by the tenant.

16. As regards waste or damage due to the construction of toilet is concerned, both the Courts are concurrent against the landlord. The landlord has not preferred any challenge against it. This point is, therefore, not required to be dealt with.

17. The points which remained to be considered are :-

- (i) bona fide personal requirement, and
- (ii) change of user.

On these points, oral evidence of the landlord is very brief which reads as follows:-

It was originally let out for Kirana shop but he started residing in premises. He has written in his reply that he is running of floor mill in that house while there is not such mill in house. I orally informed him mill times that I am owner of this house.

Presently I resided in Kamgar Nagar in rented house belonging to my younger brother Abalankar monthly rent is Rs. 150/- per month. The non-applicant is made alterations and repairs to suit house without my consent.

I want suit premises for my own bona fide need for my residential purpose. I have filed the certified copy of the sale deed today which is at Ex. A-4.

I have filed municipal tax receipt which is at Ex. A-5 photo state filed original shown today. A rent receipt of nomination is at Ex, A-6 (Original shown). Mutation intimation copy is at Ex. A-7 (Original Shown today).

This witness has answered in cross-examination that the house presently occupied by him is owned by his brother, where he is a tenant and that prior to retirement, he was residing in a Government Quarter. Insofar as the original purpose of lease is concerned, Mahipatrao Sahasrabudhe original owner was examined who deposed that the house was originally let out for the purpose of shop, but now it was being used as residence.

18. To counter the evidence of the landlord, tenant examined himself. He deposed that initially the premises was given for running Oil Mill, thereafter since the Oil Mill was closed, he had started Grocery Shop, He pleaded that repairs/ construction of Bathroom was carried out with the permission of Mahipatrao. He admitted that he was paying rent to landlord Nagorao, acceptance of notice from landlord Nagorao and its reply. He specifically stated in the examination-in-chief

that "Nagorao has his own house. I am going to call witness from the Office of Corporation to prove this." In the cross-examination, he admitted that he does not know any details of the house if any occupied by Nagorao. The tenant did not bring any other witness as pleaded by him.

19. The Rent Controller delivered the Judgment and accepted bona fide personal requirement as a ground for eviction. The finding recorded by him in this regard is as follows :-

The applicant has proved that he has retired from service and living in rented house. The applicant's claim that he wants to start shop in the suit premises with the help of his son. Merely because the applicant has stated that he was not keeping good health it will not mean that he will not start business and on that count his bona fide need stands disproved. I held that the applicant has proved his bona fide need for the suit premises and he is entitled to choose premises for the purpose underlying his bona fide need.

The Rent Controller accepted the said ground and ordered permission for terminating the tenancy u/s 13(3)(vi) of Rent Control Order.

20. The tenant preferred the appeal and agitated the grounds which are summarized in para 7 hereinabove.

21. Being aggrieved by the Judgment, the landlord also preferred appeal. Tenant's appeal was registered as Appeal No. 160-93-94, while landlord's appeal was registered as 6/A-71-72/94-95. Both appeals have been decided by separate judgments. It is in this background, two separate petitions are filed.

22. The Appellate Courts dismissed the tenant's appeal and while doing so, recorded the following findings :-

Upon careful perusal of all the Material on record including the arguments put forth by the parties, the deposition of the witnesses and the lower Court record, it is cleared that earlier, the present respondent/applicant was residing in Government Quarter and retired from service on 19-12-1986 i.e., before the retirement of the respondent from the service. So far the question of the title of the respondent is concerned it is seen that the present respondent had bought the suit premises from the earlier landlord and the sale deed to this effect has been registered as well. There is deposition of the earlier landlord before the trial Court that he sold the premises to the present respondent and he has admitted the sale deed as well. The appellant/non-applicant admitted that at present he has been giving rent to the present respondent/applicant. The house has been mutated in the name of respondent as well. Therefore, I do not see a need to discuss the title of the suit premises any more, more so because this is not the right forum to decide the same. So far the question of bona fide need is there the deposition of the respondent/applicant before the lower Court is enough to prove that the respondent/applicant was earlier residing in Government Quarter and after his retirement he is residing in his brothers house and that he needs

the appellant that the other premises being occupied by Mahipatrao are not being vacated by the landlord is not acceptable. The Clause 13(3)(vi) of Rent Control Order, 1949 speaks about the bona fide need of the landlord and not the tenant.

Thus, both the Courts are concurrent on bona fide personal requirements.

23. The Additional Collector decided landlord's appeal and partly allowed it. The Additional Collector declined to accept landlord's plea on the ground of 13(3)(iv) i.e., causing waste damage or change of user. The finding recorded by the first Appellate Court in this regard are as follows :-

Upon careful perusal of all the material on record including the order of the Rent Controller and the deposition of witnesses before the trial Court it is clear that the respondent has been using the suit premises since 1972. Initially he was running an Oil Mill and also residing therein. Later on the oil mill was closed and he started Kirana shop in 1974. There has been specific admission on the part of the respondent that he had taken the premises for business purpose in which he was running Oil Mill. Presently the shop is in the name Premchand who is residing in the premises as well and no permission for this was obtained from either the earlier landlord Mahipatrao or the present landlord Nagorao to allow Premchand to reside in the said house. Therefore, there has been admission by the respondent himself regarding not only the change of use but also the change of user itself.

Thus, on the point of waste and damage, both the Courts are concurrent. The point on which the Courts at variance is a point of change of user.

24. Upon discreet scrutiny of evidence, what this Court finds is as follows:-

(a) The tenant denied even to identify the applicant landlord, however, strictly proved to be untrue. The landlord has proved the communications and fact of payment of rent by the tenant to him.

(b) The tenant's pleading of "not known" of being unaware of the bona fide personal requirement of the landlord would amount to failure to deny.

25. Nothing precluded the tenant from taking recourse to provisions such as Order 11 of CPC to discover required information and seek summons from the Court at appropriate stage.

26. The pleading of unawareness does not stand on par with denial and the tenant has taken the risk of admitting bona fide personal requirement of the landlord. Leaving apart the aspect of admission, in the pleading, the tenant had one more opportunity of traversing the proof of bona fide personal requirement of the landlord. The landlord has stepped into witness box and though in the pleadings expressed his bona fide personal requirement of two grounds i.e., personal occupation for residence and for shop for his son, he has deposed only as regards bona fide personal requirement for personal occupation for residence.

By such self restraint, the tenants obligation to counter or dispute the landlord's plea was also carrying lesser weight.

27. In the aforesaid situation of pleadings the landlord was required to prove a positive fact that he needs the house for bona fide personal use and occupation, and there did not exist any other burden due to absence of specific plea by the tenant about landlord having alternate arrangement by way of own house etc. or of comparative hardship, however, no such pleading was done by the tenant. In this situation, whatever was brought forward by the landlord in the form of bare statement on oath that he needs premises for residential purpose because he is using his brother's house "ex gratis" was sufficient evidence when considered in isolation, if untrue could have been proved so by the tenant by such evidence as was in existence according to him.

28. The aforesaid evidence of the landlord is sought to be countered by the tenant by deposing in the examination-in-chief that "Nagorao has his own house and summoned as a witness to prove it." However, in the cross-examination, he pleaded total ignorance about his own version that Nagorao has a house as well as what is its house number etc. Apart from the deficiencies in his own oral evidence which were recorded on 23-5-1989, he did not bring any evidence until he submitted written submissions on 9-11-1993. This rendered the landlord's bona fide requirement proved and uncontroverted and rendered the tenant's version as devoid of factual basis, though he had denied landlord's bona fide personal requirement.

29. Insofar as the change of user is concerned on this point also, landlord's evidence has gone uncontroverted, rather admitted by tenant.

30. In the factual background discussed hereinabove which this Court has found, the judgments relied upon by the petitioner will have to be discussed to see how shall these precedents do govern present situation.

31. The Judgments relied upon by the learned Advocate are referred and dealt with hereunder.

(1) MMRDA Officers Association Kedarnath Rao Ghorpade Vs. Mumbai Metropolitan Regional Development Authority and Another,

This judgment is relied upon to persuade the Court on the point that the judgments impugned are not incorporating sufficient reasons. Learned Advocate brought to the notice of the Court following observations.

Reasons substitute subjectivity by objectivity. The emphasis on recording reason is that if the decision reveals the "inscrutable face of the sphinx" it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out

reasons for the order made, in other words, a speaking out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance (Chairman and Managing Director, United Commercial Bank v. P.C. Kakkar).

On perusal of the judgments of the trial Court which have been discussed in details, the mind of the Judge as to why it reached the conclusion can very well be spelt out from the Judgment. When the volume of evidence brought by the parties itself does not run into great length rather ends into few lines, appreciation thereof and reasons cannot be expected to be longer and disproportionate in length and volume. This Court is of the view that the reasons recorded by the Courts below are wide enough to render a viewing window to fathom the reasons. The petitioner cannot make his points stronger by relying upon the above judgment.

(2) Smt. Chandrakantaben Modi and Narendra Jayantilal Modi Vs. Vadilal Sapalal Modi and Others,

(3) Subhash Chandra Vs. Mohammad Sharif and Others,

Though these Judgments are cited and placed on record as a part of paper book, no special emphasis was given by the learned Advocate for the petitioner, while advancing his submissions. It is, therefore, considered not necessary to discuss these Judgments.

(4) 1974 Mh.LJ. 774 , Ganpat v. Rameshwar and Anr. and

(5) ADIL Jamshed Frenchman (D) by LRs. Vs. Sardar Dastur Schools Trust and Others, .

It shall suffice to discuss the latest Supreme Court judgment and discussion on the Judgment of this Court (Ganpat v. Rameshwar and another) can be conveniently skipped.

Their Lordships of Supreme Court held in case of Adil Jamshed supra that the bona fide requirement must be an outcome of a sincere and honest desire in contradistinction with a mere pretext for evicting the tenant on the part of the landlord claiming to occupy the premises for himself or for any member of the family which would entitle the landlord to seek ejectment of the tenant. Their Lordships of Supreme Court expected the genuineness to be tested.

32. On facts, this Court finds that the bona fide personal requirement of the landlord was decided by the Courts below on the basis of evidence the parties had led before the Court and on what conclusions the Court had reached. The said finding of fact is seen upon scrutiny and discussion made hereinbefore to be based on conclusions which are not just permissible, but only available conclusions emerging from the evidence on record.

33. In the present case, the tenant has failed to make any such efforts. When tenant defended the proceedings supinely and did not exert to disprove the

preponderance of facts as to bona fide personal requirement which was brought up by the landlord, it is the tenant who has deprived the trial Court, first Appellate Court and now this Court from measuring by comparative worth and value of proof of facts as on the point of bona fide personal requirements of the landlord.

There are no reasons to disbelieve what the landlord has proved. It is not that every time landlord's intentions are to be doubted. The Court would proceed by the yardsticks of proof or disproof of fact. In the result, this Court finds no reason to interfere in the findings.

34. Last effort that was made by the learned Advocate Shri Madkholkar taking the judgment of the Appellate Court to be devoid of sufficient volume of reasons and otherwise not being very happily worded insofar as the judgment and order of eviction on the ground of change of user is concerned. This Court finds that when the judgment is otherwise correct, referring to Section 99 of Civil Procedure Code, the judgment which is otherwise correct would not be liable to be set aside on any of the technicality in relation to the procedure. Being erroneously persuaded, the first Appellate Court had rendered two separate Judgments. If two judgments are read together, one cannot feel that the Judgments are not well reasoned.

This Court finds support from the following reported Judgments.

(1) AIR 1937 233 (Privy Council) . (2) Kiran Singh and Others Vs. Chaman Paswan and Others, (3) Subhash Vithalrao Gatlwar and Others Vs. Dattatraya Keshavrao Shinde deceased through LRs. Ramesh Dattatraya Shinde and Others, .

to the effect that if the judgment is otherwise correct, by relying upon Section 99 of Civil Procedure Code, the Judgments need not be set aside on account of any technical defect or deficiency.

35. In the result, this Court considered that the present is not a fit case where some interference is called for. Rule discharged. Parties to bear respective costs.