

(1999) 10 BOM CK 0001

In the Bombay High Court

Case No : Writ Petition No. 3025 of 1996

Tukaram Khushaba Chorge Since Deceased by his Lrs.

APPELLANT

Vs

Malam Janardhan Jagtap and Another

RESPONDENT

Date of Decision : 12-10-1999

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13
Constitution of India, 1950 — Article 227

Citation : (2000) 102 BOMLR 461 : (2000) 1 MhLj 349

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.M. Lodha, J.—The legal representatives of tenant-original Defendant have filed the present Writ Petition under Article 227 of the Constitution of India impugning the Judgment and Decree passed by the 8th Additional District Judge, Pune on 30th January, 1996 whereby the said Appeal Court set aside the Judgment and Decree passed by the Trial Court and decreed the landlady's suit for eviction on the ground of reasonable and bona fide need.

2. Mr. S.G. Page, the learned Counsel appearing for the petitioners assailed the findings of fact recorded by the Appeal Court on the questions of reasonable and bona fide necessity and comparative hardship on the ground that the Trial Court upon appreciation of evidence having reached the findings that the landlady has not been able to establish reasonable and bona fide necessity and, that in case the decree for eviction was passed in favour of the landlady greater hardship would be caused to the tenant, there was no justification for the Appeal Court to interfere with the findings recorded by the Trial Court. He accordingly supported the reasons given by the Trial Court in its Judgment and urged that the findings recorded by the Appeal Court deserve to be set aside. He also urged that even if the findings recorded by the Appeal Court on the question of reasonable and bona fide necessity and comparative hardship are maintained, looking to the

facts and circumstances of the case, the Court should only pass decree for eviction in respect of part of premises.

3. There is absolutely no merit in any of the contentions raised by the Learned Counsel for the Petitioners and Writ Petition deserves to be dismissed which I dismiss for the reasons I indicate hereinafter.

4. The premises in question comprise of a room (shop) which is of 2 Khans are situated on the ground floor of House No. 303, Kasba Peth, Pune. On the ground floor of the same building in a portion comprising of one room, kitchen and loft, the landlady-Respondent No. 1 resides with her family. The family of the landlady comprises of herself, her husband, two daughters and two sons. The suit premises were purchased by the landlady and at the time of the purchase the suit premises were in occupation of Tukaram Khushaba Chorge (for short original tenant) since deceased. The original tenant was occupying the suit premises on monthly rent of Rs. 12.50 plus education case. The landlady filed the suit for eviction against the original tenant in the Court of Small Causes on 4th March, 1986 on the grounds of default in payment of rent and that the premises in question were required reasonably and bona fide by the landlady for occupation of herself and her family members. The landlady pleaded that accommodation available with her was inadequate and too small for her family having seven members. She pleaded that her son was of marriageable age but for want of sufficient accommodation, he could not be got married. The landlady pleaded that greater hardship would be caused to her if decree for eviction was refused. The tenant resisted the suit and denied the allegations made in the plaint. He averred that upon receipt of notice demanding arrears of rent, he had tendered rent by money order which was refused by the landlady and, therefore, he cannot be termed defaulter. Contesting the plea of reasonable and bona fide necessity, the tenant averred that he was carrying on business of cycle repairing in the suit premises and that no alternative premises are available with him. He denied the landlady's case that premises in question were required reasonably and bona fide by her for her family as alleged. The tenant also set up the defence that he gets sustenance from the cycle repairs being carried out in the suit premises and if he is evicted from the suit premises, the greater hardship would be caused to him.

5. The Trial Court framed issues and after recording evidence dismissed the plaintiffs Suit by his Judgment and Decree dated 15th March, 1988. The landlady preferred appeal which was allowed by the 8th Additional District Judge, Pune on 30th January, 1996, giving rise to the present Writ Petition.

6. The ground of default was not pressed by the landlady, and, therefore, the only ground on which decree for eviction has been passed is ground of reasonable and bona fide requirement.

7. The Trial Court while considering the question of reasonable and bona fide necessity observed, "the compelling need for securing more accommodation is

neither pleaded nor proved by the Plaintiff in the present case. The element of must is wanting". The approach of the Trial Court was grossly erroneous while considering the question of reasonable and bona fide necessity which has rightly been set aside by the Appeal Court. The Plaintiff- landlady is in occupation of the premises which comprise of one room measuring 10" x 10" and a kitchen admeasuring 10"-8"x 5"-5" and one loft measuring 8"-7" x 14"-4" having height of 4"-7". This is clearly borne out for the Commissioner"s Report Exhibit 20. The landlady has been able to establish by way of her evidence that after marriage of two daughters her husband and two adult sons are living with her. The age of her eldest son on the date of recording her evidence was 25 years. The younger son at that time was about 22 years old. She deposed that the eldest son is unmarried and his marriage could not be arranged for want of accommodation. Obviously for a family, even if the two married daughters are excluded comprising of the landlady, her husband and two sons who are of marriageable age are taken into account, the present accommodation of the landlady is insufficient and inadequate and if she requires the suit premises for the accommodation of herself and her family, it cannot be said that the need is unreasonable or lacks bona fides. The use of expression "reasonably and bona fide required by the landlord" in Section 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 (Rent Control Act) unambiguously reflects the Legislature intention that need should be genuine in contradistinction with a mere desire. At the same time by genuineness of the need, the Legislature did not intend to test the need with the touchstone of dire need. Ultimately whether a landlord or landlady needs the premises reasonably and bona fide has to be considered in the facts and circumstances of each case. In the present case the facts which have come on record clearly indicate that the demand of suit premises by the landlady for her family was clearly bona fide and cannot be construed unreasonable since the present accommodation with the landlady is insufficient. Her two sons have reached the marriageable age and three couples cannot be accommodated in one room of 10 x 10. The Appeal Court, therefore, cannot be said to have erred in any manner whatsoever in reaching conclusion that the premises in question are reasonably and bona fide required by the landlady. The finding recorded by the Appeal Court on the question of reasonable and bona fide necessity is concluded on facts. The finding is neither perverse nor suffers from any error of law. This Court while sitting in writ jurisdiction cannot apprise the evidence as a Court of Appeal. For all these reasons, I do not find any justifiable reason for interfering with the finding recorded by the Appeal Court on the ground of reasonable and bona fide necessity.

8. Adverting to the question of comparative hardship, I am of the view that on this count also the finding recorded by the Appeal Court does not call for an interference. The original tenant set up the defence that he was running a cycle shop in the suit premises which was the source of livelihood for him and his family and if he is ousted from the said premises, he would not have any source

of income and, therefore, greater hardship would be caused to him. From the evidence of the original tenant Tukaram Khushaba Chorge and his son Mahadeo Tukaram Chorge it appears that initially the tenant was carrying on job of cycle repairs in the suit premises but later on the repairs of cycles were stopped in the said shop and the tenant and some of his family members started selling vegetables on handcarts. The tenant in his evidence has admitted that due to dilapidated condition of the cycle shop his work was reduced. He has also admitted that his son Mahadeo deals in vegetables. In cross-examination he admitted that he was not carrying any business in the said shop for the last 7 years because it was in a dilapidated condition. Confronted with the photographs, he admitted that in those photographs he was seen selling vegetables to customers. He admitted that in one photograph his first wife Mathurabai was seen selling vegetable on handcart and in another photograph his son Mahadeo was seen selling vegetables on another handcart. He also admitted that in one photograph two handcarts are seen, one is his and the other is his wife. He also admitted that there are three handcarts in all in his family. It is clearly seen from this piece of evidence that he was mainly dealing in vegetable vending on handcarts along with his other family members and that was his source of livelihood. In this fact situation the tenant's plea that if he is ousted from the suit premises, he would be deprived of his livelihood which he gets from cycle repairs in the suit shop cannot be accepted. The Appeal Court has on facts also reached the finding that in case decree for eviction was not passed in favour of the landlady, greater hardship would be caused to her and I do not find any justifiable reason to hold otherwise by sitting in writ jurisdiction.

9. Moreover, it would be seen that the original tenant has already died during pendency of appeal and he is survived by five legal representatives who are petitioners. His wife Smt. Mathurabai, who is Petitioner No. 1 carries business of vegetable vending which even the original tenant had admitted in his evidence when he was confronted with some photographs. Similarly Petitioner No. 2 Mahadeo is also carrying on vegetable vending on handcart which has been admitted by the tenant in his evidence. On the other hand, if the suit premises are not made available to the landlady, she and her family shall have to squeeze in one room which would definitely cause greater hardship to the landlady than the tenant. In the case of *India Pipe Fitting Co. Vs. Fakruddin M.A. Baker and Another*, the Apex Court highlighted the limitation of the High Court while exercising power under Article 227 of the Constitution of India and observed thus:

10. The limitation of the High Court while exercising power under Article 227 of the Constitution is well settled. Power under Article 227 is one of 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: - (at p. 217 of AIR).

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

The same view was reiterated by another Constitution Bench of the 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 (at pp. 1301, 1302 of AIR):

If an error of fact, even though apparent on the face of the record, cannot be corrected by means of a 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 in 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.

11. I have already held that the findings of fact recorded by the Appeal Court on the question of reasonable and bona fide necessity and comparative hardship are neither perverse nor are against the weight of evidence on record nor suffer from any erroneous consideration and, therefore, the findings do not call for an interference.

12. Before I close I shall deal with the last contention raised by the Learned Counsel for the Petitioners that even if the findings on the question of reasonable and bona fide necessity and comparative hardship are held in favour of the landlady, this Court should only grant decree in respect of part of premises. The argument, in the facts and circumstances of the case, is only misconceived. The suit premises comprise of only one room (shop) though of 2 Khans. There is no material whatsoever on record to indicate that the suit premises are capable of partition. Neither there is any pleading nor any evidence led by the tenant that part of premises shall meet the landlady's need. As it is, looking to the need pleaded and proved by the landlady, it cannot be said that no hardship would be caused to the landlady if a decree is granted for part of the premises. The second part of Sub-section (2) of Section 13, therefore, does not help the Petitioners at all in the facts and circumstances of the case. The judgment relied upon by the Learned Counsel for the Petitioners in the case of *Bhaskar Digambar Choudhary Vs. Bhagwan Vishwanath Fadnis*, has no application in the facts and circumstances of the present case.

13. For all these reasons, I do not find any merit in the Writ Petition and it is dismissed.

No Order as to costs.

Mr. Page, the learned Counsel for the Petitioners prays for stay of this Order but in the facts and circumstances of the case I do not find any justifiable ground to stay the Order as prayed by the Learned Counsel for the Petitioner. The oral prayer is accordingly rejected.

Certified copy expedited.