
(2004) 10 BOM CK 0125
In the Bombay High Court
Case No : Writ Petition No. 466 of 1992

Vasantrao Mukundrao Deshmukh

APPELLANT

Vs

Purushottam Balwantrao Agarkar and Others

RESPONDENT

Date of Decision : 18-10-2004

Acts Referred:

Transfer of Property Act, 1882 — Section 106

Citation : (2005) 3 BomCR 358

Hon'ble Judges : Dharmadhikari B.P., J

Bench : Single Bench

Advocate : A.V. Bhide, for the Appellant; G.E. Moharir and A.G.P. for respondent Nos. 2 and 3, for the Respondent

Judgement

Dharmadhikari B.P., J.—Challenge in this petition is to the order passed by Resident Deputy Collector, Buldana on 24-1-1992. By the said order the Resident Deputy Collector. Appellate Authority under Clause 21 of C.P. & Berar (Letting of Houses) and Rent Control Order, 1949 has rejected the appeal of the petitioner/tenant and has upheld the orders dated 12-6-1989 and 30-6-1989 passed by the Rent Controller, Khamgaon. By the order dated 12-6-1989 the Rent Controller has rejected the application moved by present tenant for setting aside ex parte order and by the order dated 30th June, 1989 the said Authority has granted permission to present respondent landlord to terminate tenancy of the petitioner under Clause 13(3)(i), (ii) and (v) of C.P. and Berar (Letting of Houses) and Rent Control Order, 1949 (for short "Rent Control Order"). Necessary facts in this respect can be briefly summarise thus :

2. The respondent landlord filed proceedings on 12th October, 1988 before the Rent Controller, Khamgaon under Clauses 13(3)(i), (ii) and (v) of Rent Control Order seeking permission to terminate tenancy of the present petitioner. The landlord has pointed out that he has purchased the suit house by sale-deed dated 3rd January, 1981 and after purchase the landlord demanded rent of Rs. 125/- per month from the present petitioner but he failed to pay the rent. The

respondent landlord therefore, filed Regular Civil Suit No. 39 of 1981 for eviction and possession and for recovery of arrears of rent before the Third Joint Civil Judge, Jr. Dn., Khamgaon and in it decree in his favour was passed. The present petitioner/tenant then preferred Regular Civil Appeal No. 49 of 1982 which came to be decided on 24-6-1988. The appeal was allowed in view of the fact that Government Notification making provisions of Rent Control Order, 1949 applicable only to the houses constructed on sites lying vacant before 1-1-1951 was quashed and set aside by this Court in its judgment reported at Prabhakar Tanbaji Rokde v. State of Maharashtra, 1986(Supp.) Bom.C.R. (N.B.) 593 : 1985 Mh.L.J. 548. The Appellate Court found that tenancy of the present petitioner was thus, protected and he could have been evicted after first obtaining permission from the Rent Controller. The respondent landlord in his application pointed out that during pendency of the appeal the landlord filed application under Order 15-A of the CPC and thereafter only the respondent paid an amount of Rs. 1,625/- on 31-12-1987 and thereafter deposited some arrears in subsequent period. The landlord thus, contended that the petitioner is habitual defaulter and he is never paying rent regularly. He also contended that the tenant is residing at Pimpal Doli, Tahsil : Patur, District : Akola. He has given address in his memo of appeal accordingly and as such he has left Khamgaon and does not need the house any more. He further stated that he has sub-let the house to one Mr. Rathi who resided there for 1-1/2 years and thereafter boys in the locality and elsewhere entered the house and used it for playing cards etc. He in short, contended that the respondent/tenant is not residing in the suit house.

3. It appears that notice of this proceedings was served upon the petitioner/tenant at his residence at Pimpal Doli. The petitioner could not file W.S. before the Rent controller and on 17-4-1989 the case was fixed for filing reply. On that date the Rent Controller passed order and proceeded ex parte against the tenant. On 28-4-1989 the tenant/petitioner filed application for setting aside ex parte order and in it pointed out that his father expired in the month of January, 1989 i.e. in the last week of January and he was preoccupied with various religious rites and customs because of the said death. He stated that he is patient of Hyper Tension and received recurrent attacks in the month of March and April and therefore, he could not approached any Advocate and could not arrange to appear in the proceedings before the Rent Controller. He states that he, therefore, could not remain present on 17-4-1989. This application was opposed by the respondent/landlord on the ground that on 11-11-1988 i.e. returnable date on which the proceedings were fixed before the Rent Controller the petitioner/tenant appeared through his son and sought adjournment on next date one Advocate appeared for him and took adjournment. The said Advocate again appeared and took adjournment on 29-11-88, 20-12-88 and 30-12-1988. On 30-12-1988 the tenant was present with his Advocate. On 9-1-1989 again Advocate for tenant prayed for adjournment. On 17-2-1989 the tenant again took adjournment this was repeated to 27-2-1989 and 21-3-1989. Hence, in this

background on 17-4-1989 as no written statement was filed the tenant was proceeded ex parte. On 28-4-1989 ex parte evidence of landlord was recorded and after hearing arguments the case was fixed for 10-5-1989 for passing of orders. It is at that stage an application for setting aside ex parte order came to be filed. The learned Rent controller after considering all this was pleased to reject that application on 12th June, 1989. Against this order it is the contention of the petitioner that he could not proceed to file any appeal as in the mean while i.e. on 30th June, 1989, the Rent Controller passed final order in the proceedings and granted permission to respondent landlord to terminate his tenancy. This order granting permission was challenged by filing appeal under Clause 21 of Rent Control Order before the Resident Deputy Collector, Buldana. In the appeal grounds in relation to the proceedings taken ex parte by the Rent Controller as also grounds for validity of grant of permission on merits are taken. The Appellate Authority heard this appeal on 24th January, 1992 dismissed it. The present petition is directed against this order.

4. I have heard Advocate A.V. Bhide for the petitioner/tenant and Advocate G.E. Moharir for respondent/landlord.

5. Learned Advocate Bhide points out that in so far as grant of permission under Clause 13(3)(i) is concerned, the order is per se illegal in as much as no time for depositing arrears of rent as contemplated by the said provision has been given in his order by the Rent Controller. He thus, points out that order is incomplete and therefore, unsustainable. In relation to grant of permission under Clause 13(3)(ii) he points out that the proceedings in civil suit were instituted after notice issued on next date of becoming his owner by the landlord. He states that his tenancy was terminated and his possession was treated as that of trespasser and as such there was no obligation to pay rent during pendency of this proceedings. He points out that the said obligation revived only after the Appellate Authority allowed his regular civil appeal on 24-6-1988. He states that the schedule on the basis of which he has been held to be habitual defaulter is for the period from February, 1981 to October, 1988 and hence, on the basis of the said schedule it can not be held that he is habitual defaulter. About permission granted under Clause 13(3)(v) he contends that there is absolutely no material to show that he has left area for continuous period of more than 4 months or that he does not reasonably need the premises and he further states that there is also no material on record to show that he has secured any alternative accommodation. He states that only because he has received notice of rent control proceedings at Pimpal Doli address such inference has been drawn.

6. As against this, learned Advocate G.E. Moharir states that though there is no specific time limit prescribed by Rent Controller to deposit arrears under Clause 13(3)(i) till grant of said permission alongwith permission granted under Clause (ii) go to show that the petitioner/tenant is habitual defaulter. He contends that the petitioner tenant ought to have deposited the arrears within reasonable time. He further states that after purchase of the premises he had demanded arrears

of rent and thereafter only he filed suit and therefore, reliance upon the said schedule by Rent Control Authority is just and proper. About alternative accommodation or leaving the area for the period of four months i.e. permission granted under Clause (v), he states that there is material on record before the Rent Controller to arrive at this finding and the conclusion drawn by the Rent Controller are based upon it. The said conclusion cannot be treated as perverse, there is no scope for interference with it in writ jurisdiction.

7. Having heard both the sides it is clear that the provisions of Clause 13(3)(i) of the Rent Control Order require the controller to specify the amount of arrears and also to pass order for its deposit within a particular time. If the quantum of arrears is not worked out or if no time limit for such deposit is prescribed, the ingredients of Clause (i) are not fulfilled and permission granted under said sub-clause therefore, will be illegal. Here perusal of impugned order dated 30th June, 1989 clearly reveals that in one line the Rent Controller has granted permission to issue notice of eviction under Clause 13(3)(i), (ii) and (v). Above ingredients of Sub-clause (i) are totally lost sight of, therefore, grant of permission under Clause 13(3)(ii) is vitiated and deserves to be quashed and set aside.

8. In so far grant of permission under Clause 13(3)(ii) is concerned the respondent landlord has in his application filed before the Rent Controller stated that he has purchased the suit premises by sale-deed dated 2nd January, 1981 and then filed the proceedings vide Regular Civil Suit No. 39 of 1981 for eviction, possession, recovery of arrears of rent. It is thus, apparent that before filing this suit, the respondent landlord terminated the tenancy of the petitioner by issuing notice u/s 106 of Transfer of Property Act and therefore, after service of that notice, relationship of landlord and tenant came to an end and as such the petitioner/tenant was not under any legal obligation to continue to pay rent regularly. On the contrary the respondent landlord would have recovered the mesne profit or damages from the petitioner/tenant for such subsequent wrongful occupation. It is further apparent that Civil Suit was decreed in favour of the respondent landlord and in view of the above referred ruling of this Court appeal preferred by the petitioner/tenant came to be allowed on 24-6-1988. Thus, the schedule filed by respondent/landlord before the Rent Controller to show that the petitioner tenant is habitually in default cannot be relied upon. The said schedule is for the period from February, 1981 and it is up to October, 1988. Most of this time is spent in litigation in civil suit between the parties and schedule itself shows that the amount has been deposited in the Court on different dates and the C.C.D. Number on which the said amount came to be deposited is also mentioned in the schedule. Hence, without fully understanding the import of this schedule the learned Rent Controller has come to the conclusion that the petitioner is habitual defaulter. It is apparent on record that the petitioner cannot be termed as habitual defaulter and grant of permission under that head is therefore, unsustainable and is liable to be quashed and set aside.

9. Coming to the permission granted under Clause 13(3)(v), the landlord has in his application pleaded that when the petitioner/tenant filed his appeal in the year 1982 challenging the judgment and decree for his ejectment passed against him by 3rd Joint Civil Judge, Jr. Dn., Khamgaon, in that regular civil appeal he has mentioned his address of Pimpal Doli only. The landlord states that from this it is apparent that the petitioner/tenant has left Khamgaon. He does not need the suit premises any more. Today Advocate G.E. Moharir has produced before the Court certified copy of the judgment and decree delivered by the Additional District Judge, Khamgaon in Regular Civil Appeal No. 49 of 1982. Perusal of its cause title clearly shows that the petitioner/tenant has mentioned that he is resident of Pimpal Doli Tahsil : Patur, District : Akola. Thus, in the year 1982 itself the petitioner/tenant has shown that he is not residing at Khamgaon but is residing at Pimpal Doli. Coupled with this, there is further assertion of the respondent landlord that for 1-1/2 years one Mr. Rathi was residing in the suit house and thereafter boys in the locality and elsewhere entered the suit house and play cards in it. The landlord has further mentioned that some of these boys use this residence for slipping purpose in the night. The landlord has stated that because of protection given to the petitioner/tenant by Rent Control Order the landlord is in helpless situation and he cannot do anything though the tenant is neither residing there nor paying rent. Mr. Moharir has further pointed out that if this address of Pimpal Doli is incorrect or wrong or after 1982 and before 1988 the petitioner/tenant shifted back to Khamgaon it was obligatory for him to furnish his changed registered address in Regular Civil Appeal proceedings. He points out that there is no such change in this registered address by the petitioner/tenant. He further points out that notice of the Rent Control proceedings was issued by registered post A.D. And the said notice is actually served upon the petitioner/tenant at Pimpal Doli only. Thus, it is clear that there is material available on record before the Rent Controller to come to the conclusion that the petitioner/tenant has left Khamgaon for the period of four months and does not reasonably need the suit house. The material also shows that the petitioner/tenant is residing at Pimpal Doli.

10. It is apparent that the petitioner/tenant did not file any written statement to oppose these assertions by the landlord. The conduct of the petitioner/tenant in taking various adjournments from time to time for filing of written statement, as discussed in opening paragraph of this judgment, clearly shows that the petitioner/tenant was aware of this proceedings and he avoided to file any written statement. In this background, no fault can be found with the Rent Controller if he accepts this uncontroverted pleadings and affidavit in support thereof as furnished by the landlord. In the application filed by the petitioner/tenant for setting aside ex parte order no grievance about service at Pimpal Doli has been made and even in appeal memo nothing has been stated about service of notice upon the petitioner at the said place. There is no explanation as to why registered address was furnished by the petitioner/tenant as resident of Pimpal Doli, Tahsil : Patur, District : Akola in Regular Civil Appeal No. 49 of 1982 filed by

himself. Even in the appeal memo filed before the Appellate Authority these facts have not been explained. Even in writ petition before this Court there is no explanation about these facts. Hence, considering all this material on record, it is apparent that the findings recorded by the Rent Controller cannot be called as perverse or erroneous. The findings are based upon evidence and conclusions drawn are justified. The petitioner/tenant has not pointed out as to how the said conclusion suffers from any error apparent on the face of record or there is any jurisdictional error in the matter. No case is made out for interference in the writ jurisdiction. So far as grant of permission under Clause 13(3)(v) is concerned.

The permission granted to respondent/landlord to terminate tenancy of the petitioner under Clause 13(3)(i) and (ii) is hereby quashed and set aside. However, permission granted to respondent/landlord under Clause 13(3)(v) is maintained. The petition is thus, partly allowed.

Rule made absolute in the above terms with no order as to costs.

Petition partly allowed.