
(1991) 09 BOM CK 0054
In the Bombay High Court
Case No : Writ Petition No. 332 of 1991

Vinayak Poma Tarkar

APPELLANT

Vs

Jacinto Santa Gorgenio and Others

RESPONDENT

Date of Decision : 16-09-1991

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13
Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 — Section 23, 43
Mamlatdars Court Act, 1966 — Section 7, 9

Citation : (1992) 1 BomCR 475

Hon'ble Judges : E.S. Da Silva, J

Bench : Single Bench

Advocate : M.S. Usgaonkar and V.P. Thali, for the Appellant; S.G. Dessai, for the respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

E.S. Da Silva, J.—The petitioner is challenging by this writ filed under Articles 226 and 227 of the Constitution the judgment of the Administrative Tribunal dated 13-6-1991 which has unsettled the judgment of the Addl. Rent Controller dated 26-2-1986 whereby he rejected with costs the respondent No. 1's (hereinafter called the respondent) application seeking for the recovery of possession of the suit house on the ground of bona fide personal requirement.

2. It was the case of the respondent that the property called "Galoum" situated at Mapusa and consisting of a residential house had been rented to the petitioner by his late father sometime in the year 1953. On his death the same was inherited in co-ownership by him and his three brothers who, by Deed dated 26-3-1976 effected the partition of the estate of their father and as a result whereof the suit house was allotted to him and to his brother Leonardo. Subsequently Leonardo gifted his rights to the house in favour of the respondent by Deed dated 31-3-1976 and as such the petitioner became since then the absolute owner of the house.

3. In his application for eviction the respondent expressly set out that he was employed in a gainful occupation in the Arabian Gulf while his wife and children were living in Bombay in a tenanted place at Malad. Whenever he used to come to Goa during holidays at least once a year, the petitioner has no other house of his own to stay either at Mapusa or at any other place in Goa and has to live along with his family at his in-law's place at St.Cruz. The respondent's wife and children desire now to settle in Goa and did not want to reside any more in Bombay. He, therefore, pleaded that genuinely and bona fide required the house not only for his residence whenever he comes to Goa but also for its permanent occupation by his wife and children who wanted to shift from Bombay for good and live in Goa.

4. The petitioner contested this application namely, on the ground that the house was not required bona fide by the respondent or his family members for their occupation because, in fact, the respondent wanted the same to be vacated by him in order to sell it to his close relations. This was allegedly disclosed by the respondent in 1979 when he was in Goa and came to the suit house where he met the petitioner's father on which occasion he requested him to leave the house for the aforesaid reason.

5. It was first contended by Shri Usgaoncar, learned Counsel for the petitioner, that in view of the proviso to section 23 of the Goa Rent Act (Rent Act for short) it was not open to the respondent to avail of the benefit of evicting the petitioner from the suit premises on the ground of personal requirement for its occupation because the period of five years had not elapsed from the date of the Gift made in his favour by his brother Leonardo of his share in the house whereby he became its absolute owner. However, this submission has been rightly discarded by the Administrative Tribunal because obviously the ownership/co-ownership of the house could not be said to have been acquired by the respondent consequent upon any gift made by Leonardo, namely, the Deed dated 31-3-1976 but instead by virtue of the death of his parents, admittedly occurred more than five years ago.

6. It is therefore clear that much before this Deed of 31-3-1976 the respondent was the co-owner of the house and as such its co-landlord in relation to the petitioner. This being the position, there could be no impediment for the respondent to seek for possession of the premises inherited by him in terms of section 23 of the Rent Act. The law in this respect has been settled by the Supreme Court in various pronouncements. In the case of Sri Ram Pasricha Vs. Jagannath and Others, , it was held that a co-owner is as much an owner of the entire property as any sole owner of a property is. Therefore, a suit by such a co-owner or landlord on ground of reasonable requirement by members of the family is maintainable. Similarly in the case of Pal Singh Vs. Sunder Singh (Dead) by Lrs. and Others, , the Court observed that a co-owner can independently institute a petition for possession of the premises against the tenant and that a suit filed by him alone for eviction when the other co-owners did not object to

the claim of eviction is perfectly maintainable.

7. It was further urged by Shri Usgaoncar that having regard to the requirements of sections 23 and 25 of the Rent Act it was not permissible for the Administrative Tribunal to reverse the finding of the Rent Controller and come to a different conclusion on the point that the claim of the respondent was not genuine and bona fide or that he was entitled to get the suit house vacated for his personal occupation. However, I am not least inclined to accept this submission as correct because this would lead to a fresh re-assessment on the part of this Court of the evidence recorded by the Rent Controller which otherwise the learned Appellate Court has elaborately done in the impugned judgment. No case has been made out by the petitioner to enable this Court to interfere now with the findings arrived at by the Administrative Tribunal on the ground of perversity so as to invoke its extraordinary jurisdiction under Articles 226 and 227 of the Constitution for the purpose of getting the said findings quashed.

8. From a bare reading of the impugned judgment, I am satisfied that there is no illegality, impropriety or any jurisdictional error committed by the Administrative Tribunal while reversing the fallacious finding of the Addl. Rent Controller which seems to be entirely based not on facts averred and established by the parties and on the contrary appear to flow from mere and unwarranted surmises and conjectures.

9. Shri Usgaoncar's next submission that the impugned judgment is bad because it has adjudicated on facts which were not at all pleaded by the respondent merits also no consideration. In this respect reliance placed by him in the case of Abdula Samad Makhadum Baksh Sheikh and etc. Vs. Sudha Anant Parakhe, , to the effect that a cause of action in the pleadings shall include all the details and that no decree on the ground of bona fide personal requirement can be sustained when the evidence which was led was at variance with the allegations in the plaint appears to be quite distinguishable on facts and in law.

10. First of all and apart from circumstance that section 13 of the Bombay Rent Act is no pari materia with section 23 of the Rent Act, the fact remains that since the Bombay Act provides for a suit to be filed before the Small Causes Court, differently from the Goa Act which prescribes only a summary inquiry in terms of the Mamlatdar's Court Act, it is obvious that in the Rent proceedings the law does not enjoin the petitioner to present before the Rent Controller any specific pleading within the meaning of the Civil Procedure Code. Therefore, if strictly speaking only the provisions of the Mamlatdar's Court Act are applicable and the provisions of the C.P.C. are not applicable, there is no question of any rule of pleadings to be attracted in the case, so much so there is no such rule which requires that the factual evidence should also be incorporated in the pleadings.

11. Being so, the grievance made by Shri Usgaoncar that the Administrative Tribunal has given undue weight to the evidence of the respondent's wife and his

power of attorney to the effect that she and her children require to stay in Goa on account of the latter's education is totally misconceived and unjustified. But even assuming that there were any need for the respondent to plead in detail all the circumstances which would constitute the cause of action it cannot be said that the facts alleged by him in his petition are not sufficient to enable the petitioner to meet the grounds sought to be established by the respondent so as to obtain the petitioner's eviction on the basis of his and his family's personal requirement and/or for their permanent occupation.

12. Similarly the authorities cited by Shri Usgaoncar, namely Hameedia Hardware Stores, represented by its partner S. Peer Mohammed Vs. B. Mohan Lal Sowcar, , Nattulal v. Radhe Lal 1975 R.C.J., 86, and Kasi Rout v. Mohammad Saleh and others 1973 R.C.J. 197, refer also to cases in which the provisions of C.P.C. are applicable while to the case in question such provisions being not attracted no strict rules of pleadings are required to be complied by the respondent. On the other hand, even if we have to concede that this was not so it is clear that any objection made by the petitioner on this ground should have been raised by him at the earliest opportunity either before the Rent Controller or in the Administrative Tribunal. Hence the belated effort of the petitioner to put up such plea is impermissible and thus to be summarily rejected.

13. Shri Usgaoncar has taken me through certain provisions of the Mamlatdar's Court Act, namely its sections 7 and 9 which are applicable in terms of Rule 9(2) of the Rent Act so as to impress upon that the reference made to the "plaint" automatically implies the necessity to construct Rule 9(2) as leading to the applicability of the provisions of C.P.C. also.

14. Shri Dessai, learned Counsel for the respondent however rightly countered this attempt of the petitioner 's learned Counsel by pointing out that section 43 of the Rent Act provides that the powers to be exercised by the Controller , Rent Tribunal and the Appellate Court , in terms of the C.P.C. are restricted only to the specific cases enumerated in the aforesaid section. Therefore , from section 43 itself it is seen that in all other cases the provisions of C.P.C. are not to be applied and that by virtue of Rule 9(2) the proceedings to be adopted by the Rent Controller are only the ones prescribed in the Mamlatdar's Court Act, 1966.

15. Shri Dessai, has also submitted that in his written statement to the application of the respondent, the petitioner has challenged the respondent's bonafide only on the ground that he wanted him to vacate the suit premises so as to enable the respondent to sell the house. This allegation of the petitioner has been squarely denied by the respondent and being so it was for the tenant to prove the respondent's mala fide, by bringing in evidence consistent material to substantiate this point. The petitioner obviously has miserably failed to discharge this burden because the record shows that the petitioner was unable to produce any evidence with this regard and not even an attempt was made by him in this direction by making available any seller or contractor to this effect. This by itself discloses the petitioner's mala fide in the whole affair and clearly reveals that his

approaching this Court with this petition amounts no doubt to an intolerable effort to abuse the process of law and unnecessarily protract this litigation which is being dragged for more than ten years.

16. In the result I see no merit in this petition which is hereby dismissed at this preliminary stage of admission with costs for the petitioner.