

(2001) 03 BOM CK 0131

Bombay High Court

Case No: Writ Petition No. 5526 of 1988

Claude Pereira and Others

APPELLANT

Vs

Mrs. Mary D'Souza Sequeria

RESPONDENT

Date of Decision: March 22, 2001

Acts Referred:

- Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Section 13(1)
- Constitution of India, 1950 - Article 227

Citation: (2001) 2 ALLMR 530 : (2001) 3 BOMLR 625

Hon'ble Judges: V.C. Daga, J

Bench: Single Bench

Advocate: Shri R.V. Pai and R.S. Dani, for the Appellant; Shri Anand Prabhu Chavre, instructed by Megharaj and Associates, for the Respondent

Final Decision: Dismissed

Judgement

V.C. Daga, J.

The legal representatives of the landlords original plaintiffs have filed the present writ petition under Article 227 of the Constitution of India.

2. The petition is directed against the concurrent findings of fact recorded by both the Courts below. Both the Courts below were pleased to hold that the plaintiffs have failed to prove that the suit premises were required by them for their reasonable and bona fide occupation and further held that no hardship could be caused to the petitioners in the event decree for eviction and possession was refused.

FACTUAL MATRIX

Factual matrix lies in narrow compass and it is this :

3. The petitioners are the owners and landlord of the house situate at 6, Rajan Village, Off Carter Road, Bandra, Bombay. The said house consists of ground and first floor. The respondent is a tenant of the first floor on a monthly rent of Rs. 140/-. The suit for eviction and possession was filed by the original plaintiffs (since deceased) against the defendants on the ground that the premises in possessions of the defendant-tenant were needed for reasonable and bona fide occupation of four sons of original petitioner No. 1 late Shri Benjamin Pereira (since deceased) namely; for the present petitioners as they were of the marriageable ages. Thus, decree of eviction was sought u/s 13(1)(g) of the Bombay Rent, Hotel and Lodging House Rates Control Act. 1947 (hereinafter referred to as "Rent Act" for short).

4. As stated by Shri Pereira (since deceased) along with his sister, petitioner No. 5 (since deceased) had filed R.A.E. Suit No. 113/440 of 1982 and Appeal No. 756 of 1985 therefrom in the Court of Small Cause Court. Bombay. The Trial Court dismissed the said suit on 26th October, 1985. The said order of dismissal was confirmed by the Lower Appellate Court in Civil Appeal No. 756/ 10985 vide its order dated 4th May, 1998.

5. The original petitioner No. 1 Benjamin Pereira has died on 12th May, 1988 i.e. after decision of the appeal and during the pendency of this petition. The petitioner No. 5 also left for heavenly abode in 1993, pending disposal of this petition. That is how the present petitioners in the capacity of legal heirs are before this Court to prosecute this petition.

RIVAL CONTENTIONS

6. The learned Counsel appearing for the petitioners assailed the concurrent findings of fact recorded by both the Courts below on the question of reasonable and bona fide necessity and comparative hardship contending that both the Courts below failed to appreciate their reasonable and bona fide need in its proper perspective and erroneously dismissed their suit for eviction and possession. In order to get over the concurrent findings of fact he has tried to shoot the missile of subsequent events alleged to have taken place during the pendency of this petition. The petitioner No. 1 filed an affidavit and tried to show substantial increase in the requirement of the family and tried to impress upon this Court that the present accommodation available with them is totally insufficient for the family.

7. The learned Counsel appearing for the respondents contended that both the Courts below have appreciated evidence led by the parties in its proper perspective. The findings recorded can very well be supported by evidence available on record. He took me through adverse findings recorded by both the Courts below against the landlords and tried to point out that the landlords are in possession of one additional building at 6A Rajan Village, Off Carter Road, Mumbai, just adjacent to the suit premises and the property is being used for housing tenants from time to time.

8. He further urged that the alleged subsequent events are not of such magnitude which if taken into account would provide any strength to the case of the petitioners. As such it needs no consideration. He sought to place reliance on the judgment of the Apex Court in the case of *Gaya Prasad v. Pradeep Shrivastava*, to contend that events developments occurred *pendente lite* can be considered if it has a effect of over shadowing original case found by the Courts below. He also relied upon three Judges Bench Judgment of the Apex Court *Hasmat Rai v. Raghunath Prasad*, and tried to emphasise that the magnitude of subsequent events or dimensions thereof should be such that it should have the effect of completely changing the colour of the original findings. In his submission, if subsequent events are taken into account, the same cannot have the effect of changing the colour of concurrent findings of fact suffered by the landlords. He, therefore, urged for dismissal of this petition.

CONSIDERATION

8. There is absolutely no merit in any of the contentions raised by the learned Counsel for the petitioners. The instant writ petition deserves to be dismissed which I dismiss, for the reasons recorded hereinafter.

REASONS

9. The suit property consists of a ground and first floor. Both floors are identical. The premises in possession of the petitioners-landlords consists of one hall, 2 bed rooms, a dining room, a kitchen and balcony. The ground floor with similar area has been in possession of the defendant tenant. Both the Courts below on appreciation of evidence came to the conclusion that the plaintiffs have failed to establish that they required the suit premises reasonably and bona fide as contemplated by the provision of section 13(1)(g) of the Bombay Rent Act.

10. On the appreciation of evidence the Courts below found that the extent of accommodation that were available to the landlords was sufficient and adequate to meet their requirement. Both the Courts below further found that adjoining collage bearing house No. 6A in the very compound of the suit property consisting of four rooms was also available to the landlords for their use and occupation. The Courts below thus found that other suitable and reasonable additional accommodation was available to the landlords. Consequently, even on the question of hardship both the Courts below recorded their adverse findings against the landlords and held that they failed to establish their case so as to claim possession of the suit premises.

11. Now, let me examine the strength of the subsequent events in the light of the law laid down by the Apex Court. Turning to the contents of the affidavit filed on record, so as to bring subsequent events on record, it is necessary to dissect the same. In Para 3 thereof it is stated that the petitioner No. 1 is the eldest member in the family. He is in the profession of Interior Decorator. He claims to be without any office accommodation. He is still unmarried. One of the reasons sought to be given

in the affidavit is absence of residential accommodation to accommodate his wife.

12. An affidavit further went on to suggest that the other 3 brothers and their married 1 sister are also in the need of the premises. An affidavit spells out a case that petitioner No. 2 got married in the year 1988. Since then he is residing in the suit premises with his wife. His another brother namely, petitioner No. 3 got married in the year 1990. He has a school going daughter aged about 10 years. The said brother (petitioner No. 3) does not stay in India. He works abroad. He stays in Hungary. However, his wife and daughter both are in India residing in the suit premises. An affidavit further states that another brother namely petitioner No. 4 got married in the year 1996. He and his wife with a child aged about 3 years all are abroad presently residing at Bahrain: where he has a job. Affidavit further states that his brother does not intend to stay abroad and is keen to return back subject to availability of suitable job in India. In the affidavit an attempt is made to impress upon this Court that lack of accommodation has prompted them to accept a job outside the country. The affidavit further states that the mother of the petitioners has left for heavenly abode on 30th September, 2000.

13. The affidavit referred to hereinabove shows that the strength of the family members during pendency of the petition has actually gone down. When suit was filed and this petition was preferred, family consisted of 7 adult members. They were; original plaintiff No. 1, his wife, 4 adult sons with one sister, who was original plaintiff No. 2. During the pendency of the present petition, the original plaintiff No. 1 and 2 both expired; Wife of original petitioner No. 1 also expired on 30th September, 2000. Out of the present 4 petitioners, two of them i.e. petitioner Nos. 3 and 4 both are serving abroad. In addition to two petitioners, viz. petitioner Nos. 1 and 2 there is an addition of two persons in the family due to marriage of petitioner No. 2. His wife along with daughter aged about 10 years have become members of the family. In addition to this, wife of petitioner No. 3 is also occupying the family house with her daughter. Thus, all put together; the strength of the family as on date cannot be more than 4 adult members with two kids. Therefore, the subsequent events have resulted in reducing the strength of the family and consequent need thereof. Though the petitioners tried to exaggerate their need by showing the need of the maid servant viz. Sangita aged 25 years and of the visiting guests, even then with exaggerated need the subsequent events are hardly sufficient to dislodge; much less even to change the colour of the concurrent finding of facts recorded by both the Courts below.

14. The Apex Court in the case of *Gaya prasad v. Pradeep Shrivastav* (supra) ruled that the subsequent events should be of such dimension, that if taken into account, the case propounded by the petitioning party should be completely eclipsed by such subsequent events. In other words, the subsequent events taking place during the post petition period should be of such magnitude that if taken into consideration must either completely establish or demolish the case propounded by the

petitioning party. The aforesaid principle of law laid down by the Apex Court, if applied to the facts of the case on hand and in its proper perspective, then it would be clear that the magnitude of subsequent events or dimension thereof; set up and presented through affidavit are not of such magnitude, or strength so as to nullify or wipe out the effect of concurrent finding of facts suffered by the petitioner. In the circumstances, subsequent events cannot come to the rescue of the petitioners. The same have advanced the case of the respondent-tenant rather than that of the petitioners-landlords.

15. Having considered the effects of subsequent events at length, now let me examine the legality and validity of the findings recorded by the Courts below. The learned Counsel for the petitioner took me through the entire oral as well as documentary evidence on record. He could not point out any perversity in the findings of either of the Courts below. He could not point out which part of the relevant piece of evidence was ignored by the Courts below. Considering his inability to make any dent in the finding of facts, let me conclude having examined the findings recorded by the Trial Court and affirmed by the Lower Appellate Court on the question of reasonable and bona fide need the same are conclusive on facts. The findings in this behalf are neither perverse nor suffer from any error of law. This Court while sitting in writ jurisdiction cannot reappreciate the evidence as a Court of Appeal. For all these reasons, I do not find any justifiable reason to interfere with the findings recorded by both the Courts below.

16. In the case of *M/s. India Pipe Fitting Co. v. Fakruddin M.A. Baker and another*, the Apex Court highlighted the limitation of this Court while exercising power under Article 227 of the Constitution of India and observed thus :

"5. 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 conclusion 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 v. Amarnath*, 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 Hareries C.J. in *Dalmia Jain Airways Ltd. v. Sukumar Mukherjee*, to be exercised most sparingly and only in appropriate cases in order to keep the subordinate Court within the bounds of their authority and not for correcting mere errors."

The same view was reiterated by another Constitution Bench of the Apex Court in *Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals Assam*. Even recently in *Babhutmal Raichand Oswal v. Laxmibai R. Tarte*, dealing with a litigation between a landlord and tenant under Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the Apex Court relying on its earlier decisions observed as follows :-

"If an error of fact, even though apparent on the face of the record, cannot be corrected by means of writ of certiorari it should follow 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 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."

Conclusion

In the facts and circumstances of the case, no case is made out for interference with the impugned order. In the result, petition is dismissed. Rule is discharged with no order as to costs.