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(1983) 11 BOM CK 0046

Bombay High Court (Nagpur Bench)

Case No: Special Civil Application No. 1669 of 1975

Nathulal Gangabaks Khandelwal and Others	APPELLANT
Vs	
Nandubai and Others	RESPONDENT

Date of Decision: Nov. 16, 1983

Citation: AIR 1984 Bom 340 : (1984) MhLj 253

Hon'ble Judges: Ginwala, J; Dhabe, J

Bench: Division Bench

Advocate: N.S. Agarwal, for the Appellant; R.N. and S.R. Deshpande, for the Respondent

Judgement

1. On 25-7-1973 respondent 1 (herinafter referred to as the landlady") purchased a house consisting of three storeys and situated in the town of Amravati. The ground floor was being used for non-residential purpose and the first and second floors which consists of several rooms, had been let out to some tenant for residentail purposes. One room on the first floor and three rooms on the second floor were 13-8-1973 the landlady made an applicaiton to the Rent Controller (respondent 3) under Clause 13(3) of the C.P. and Berar Letting of Houses and Rent control Order, 1949 (herinafter referred to as " the Rent Control Order") for permission to give notice to determine the tenancy of te petitioners on the ground that they were habitual defaulters, that she needed the house for the purposes of her bona fide occupation and that the petitioners were committing acts of waste which were likely to impair the value or utility of the house. In short, permission was sought under Clause 13(23) (ii), (vi) and (viii) of the Rent Control Order. The petitioner resisted this applicaiton by filing written statement. Besides the petitioners the landlady had also made similar applications against other three tenants occupying rest of the first and the second floor. Against them also the she sought permission to give notice to quit on the ground that she needed the whole of the houses for the purposes of bona fide occupation. Both the parties led evidence before the REnt Controller in support of their respective contentions. All the four application were consolidated by the Rent Controller and common evidence was recorded . By his order passed on 7-2-1975 the Rent

Controller amongst other findings held that the one room in which the landlady and members of ber family were residing in a farmhouse at Mhasla was inconvenient and insufficient and unsuitable for the purpose of their residence and hat te landlady needed the house in question for her bona fde residence. The Rent Controller consequently granted permission to the landlady to serve notice on the petitioners and other tenants on this ground amongst others with which we are not concerned in the present writ petition.

2. The petitioners being dissatisfied with the said order passed by the Rent Controller, preferred an appeal to the REsident Deputy Collector who is designated as appellate authority under the REnt control Order. This appeal came up the for hearing on 23-10-1975. On that day Mr. Malani Advocate appeared before the appellate authority and at about 1 p.m. he filed an application for admitting evidence on affidavit purported to have been sworn by petitioners No. 3 to the effect that during the pendency of the appeal one Narbheram had vacated one rom on the first floor and two on the second floor occupated by him as a tenant. This ..... the appeal the landlady had come in possession of part of the first and second floors. It seems that the appeal could not be called out for hearing till 4 p.m. on that day called out for hearing when sometime thereafter it was called out, petitioneer, No.3 made on application for adjournment on the ground that his counsel, namely Mr. N.S. Aggrawal waited up to 4 p.m. but left for his house at 4-05 p.m. as he was not feeling well. It seems that the counsel for the landlady had also field an application on that very day for hearing by the appeal since the premises were needed by the landlady urgently. Considering this application the appellate authority rejected the application made by petitioner No.3 for adjournment and proceeded to hear theappeal. He passed his order on 27-10-1975 confirming the finding of the Rent Controller granting permission of the landlady to give notice to the tenants to determine their tenancies on the ground that she needed the house for her personal occupation. By this writ petition the petitioners are challenge these orders passed by the Rent Controller and the appellate authority.

3. This writ petition came up for hearing before a learned single Judge of this Court on 21-7-1981. One of the submissions advanced by the learned counsel for the petitioners before the learned single Judge was that the REnt Controller should have outright rejected the application of the landlady for permission to determine the tenancy on the ground of her bona fide personal occupation for the simple reason that she had not entered the witness box not be taken into comdideration. For this proposition the learned counsel for the petitioners relied on the decision of a single Judge of this Court in Nanalal Goverdhandas and Co. and Others Vs. Samratbai Lilachand Shah, which was a case u/s 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control ACt, 1947 wherein the learned Judges held that bone fide requirement of a tenement by the landlord for his personal occupation is a state of his mind and that if he does not step into the witness box for proving this requirement, it cannot be said that he reasonable and bona fide requires the premises as stated in that section. The learned single Judge went further to say that on this ground alone the suit can be dismissed. The learned single Judge who

dismissed.,The learned single Judge who was hearing the present writ petition, did not find himself in agreement with the provision dated 21-7-1981 directed the papers to be placed before the learned Chief Justice for referring the case to a larger Bench and this is how this writ petition has come before us for final disposal.

4. Mr. N. S. Agrwal the learned counsel for the petitioners, has advanced manifold argument in support of the challenge to the impugned orders. He firstly contended that ther REsident Deputy Collector ought to have adjoined the appeal as the counsel for the petitioners had to leave the premises of the Court after waiting up to 4 p. m. since the was not feeling well/ Mr. Agrwal submitted that tis was a genuine ground and the appellate authority in the circumstances stated in the application for adjournment by petitioner No. 3 ought not to have proceeded with the hearing of the appeal. He further submitted that the Appellate Authority should also not have considered the application which was filed on behalf of the landlady for proceedings with the hearing of landlady for proceeding with the hearing of the appeal in the absence of the counsel for the petitioners . We do not find much substance in this submission of Mr. Aggrawal . Copy of the order-sheet which has been recorded by the appellate authority on 24-10-1975 has been included in the record of this writ petition at Annexure J. It would appear that Mr. N. S. Aggrawal was not the only counsel who has appearing in the petitioners appeal before the appellate authority. Mr. Malani was also appearing as Advocated for the petitioners. Not only that but the order-sheet would show that Mr. Malani had attended the Court of the appellate authority and had in fact filed the above said application with affidavit at about 1 p.m. It is , therefore, clear that Mr. Malani was very much present in the premises of the Court and had taken steps for hearing of the appeal. Assuming that Mr. Agrwal waited till 4. P.m. and left the premises because of his being unwell there is absolutely no reason why the other counsel, viz. Mr. Malani should not have appeared at the time when the appeal was called out, and made his submission. No reasons have been advanced whatsoever as to why Mr. Malani did not make it convenient to appear before the appellate authority when the matter was called out. If in these circumstances the appellate authority rejected the application for adjournment filed by petitioners No.3 it is not possible to lay blame at its door.

5. Mr. Aggrawal next contended that the appellate authority had not at all taken into its notice through the affidavit of petitioners No.3 filed on 24-10-1975 which event had taken place during the pendency of the appeal. Mr. Aggrawal submitted that the fact that during the pendency of the appeal the landlady had cone into possession of some portion of the house required consideration by the appellate authority with a view to see if the need of the landlady would be met by te portion which had cone in her possession subsequent to the order passed by the REnt Controller. According to Mr. Aggrawal, if the appellate authority to had applied its mind to tis fact it could have come to the conclusion that the portion which had been vacated by one of the tenants would suffice the needs of the landlady. It is true that on behalf of the petitioners an application was filed ofn their counsel on 24-10-1975 for taking this affidavit on record in which it is stated that one of

the tenants had vacated a portion of the house in his occupation. It is also true that the appellate authority has not considered the averments made in this affidavit. However, in our opinion , even it the averments made in this affidavit are true, they would not have turned the scales against the landlady. In this connection itis to be borne in mind that the landlady had moved the Rent Controller against all the tenants occupying the first and the second floors and as seen above the REnt Controller had come to the conclusion that having regard to the extent of the family of the landlady the she needed the whole of the house, viz. The first borne in mind that the tenant who is alleged to have vacated the portion of the first and the second floors, as stated in the affidavits, was also one of the tenants against whom the landlady had moved the Rent Controller and had obtained permission for terminating his tenancy. It is implicit in the order vacated by that tenant would not have been enough for the need of the Rent Controller that was so, he would not have permitted the landlady to terminate the tenancy of the other tenants including the petitioners. In other words, the fact one of the tenants against whom the order of the Rent Controller operated, vacated the rented premises without the landlady having taken recourse to law, would not affect the finding of the Rent Controller with regard to the need of the landlady and for this reason it would not be necessary for the appellate authority ...affidavit.

6. Mr. Aggrawal next contended that during the pendency of the writ petition in this Court the landlady has obtained possession of some other tenements in the said house and that also requires to be considered while determining the need of the landlady. For the reasons which we have stated in the paragraphs aabove, we do not think this submission merits my consideration.

7. Mr. Aggrawal sought to rely before us on certain statements made by one hari, who is said to the be son of the landlady, in a criminal case on 14-9-1975 to the effect that he had been asking the tenants to enhance the rent and since they had not heeded to this request he had filed proceedings against them under the Rent Controller Order. Mr. Aggrawal presses this statement of Harikisan in service to support the case of thee petitioner before the authorities below to the effect that the landlady wanted firstly to enhance the rent and secondly to get the house vacated in order to sell it out which is purported to have been made by Harikisan on 14-9-1975 was not produced before the appellate authority though it heard the appeal on 24-9-1975 and decided it on 27-10-1975. It cannot be said that this statement was not available to the petitioners then as obviously on its own showing it purports to have been recorded on 14-9-1975 i. e. before the appeal was heard. We are not therefore, inclined to take this statement in to consideration while deciding tis writ petition. As a matter of fact, even it if difficult to see how it can be used Against the landlady as it cannot be construed to be an admission on her part but is a statement made by her son in criminal case and one does not know in what circumstances that statement has been made.

8. Mr. Aggrawal further contended that neither the Rent Controller nor the appellate authority Ha bestowed its anxious consideration to the evidence and the circumstances to

hold whether the landlady need the house for the purpose of her bona fide occupation. He submitted that both these authorities have not considered the evidence on record and have recorded their finding without doing so. It is true that both the authorities details separately considering order of the Rent of the Controller as well as that of the appellate authority indicates sufficiently that they have not been oblivious of the material evidence non record. The appellate authority has in fact considered in para 5 of its order the relevant factors namely, the present accommodation occupied by the extent of accommodation which she would need to house her family and the difficulties in her continuing to stay in the present accommodation. If all these relevant factors have been taken into consideration by the appellate authority in confirming the finding of the Rent controller, it is difficult t find fault with its order.

9. Lastly, Mr. Aggrawal submitted that the failure on the part of the landlady to enter the witness box to establish her need and bona fides is fatal to the proceedings before the Rent Controller and for this simple reason to grant permission to the landlady for determining the tenancy on the ground of need on the ground of need on the part of the ground of need on the landlady to occupy the house. As said above, for this proposition Mr. Aggrawal places reliance on the decision of the learned single Judge in Nanalal Goverdhandas and Co. and Others Vs. Samratbai Lilachand Shah, .

10. u/s 13[1][g] of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 landlord is entitled to recover possession of any premises if the Court is satisfied that they are reasonably and bona fide required by the landlord for occupation by himself or by the landlord for occupation by himself or by any premises are held. Clause 13 [3] [vi] of the Rent Control Order lays down that the Rent Controller sha;; grant permission to the landlord to give notice to determine the lease if after hearing the permission to the landlord to give notice to determine the lease if after hearing the parties he the lease if after hearing the parties he determine the house or portion thereof for the purpose of his bona fide occupation. It would, therefor, appear that the provisions contained in Section 13[1][g] of the Bombay Act and clause 13 [3] [vi] in the Rent control Order are in pari materia in the senses that both speak of the entitlement of the landlord to obtain possession of tenement on the ground of personal occupation. Hence any principle which is enunciated with regard to the way in which in which the landlord should establish his requirement under S. 13[1][g] of the Bombay Act would also apply to his need under Clause 13 [3] [vi] of the Rent control order. In other words, the proposition which has been laid down by the learned single Judge in Nanalal''s case would also govern the provisions contained in Clause 13 [3] [v] of the Rent control Order. Hence if what is held by the learned single Judge in the said case would be out of Court since admittedly she has not entered the witness-box in support of her contention that she bona fide needs the house in question of her own occupation. It is for this reason that we have to test the correctness of the proposition which has been laid down by the proposition which has been laid down by the learned single Judge in Nanalal''s case.

11. That was a case where the landlady wanted possession of the tenements for her personal occupation. She did not enter the witness-box in support of her contention but examined her contentions but examined her son for that the purpose. It is in this context that the learned single Judge held as follows in para 22 oft the report [AIR 19

"S. 13. [I] [g] says that the premises must be reasonably and bona fide required by the landlord. The bona fide requirement is in the first place a state of mind though it may be something. more. In must though it may be deposed to by the person who is requiring the premises u/s 13[1][g] namely, the landlord. If the landlord does not step into the witness-box to bring before, the Court legal evidence for proving his requirement, and bona fide requires the premises as mentioned in Section 13[1][g].The landlord can delegate the duty to depose."

Further in para23 of the report the learned single Judge observed as follows:

"The respondent, who is the landlady, has not been examined as a witness on commission. On this ground alone the suit of the respondent ought to have been dismissed because the bona fide requirement which. as I have mentioned above is a state of mind and something more must be proved in this case. Ramanlal. The respondent"s son, is said to be her constituted attorney but that could only be for the purpose of conducting the case but his evidence cannot be substituted for the legal evidence of the landlady herself."

12. With respect we do not find ourselves in agreement with the proposition which has been adumbrated by the learned single Judging possession u/s 13[1][g] 0f the Bombay Act or under Clause 13 [3] [vi] of the Rent control Order for permission to determine the tenancy is to establish that he needs or requires the premises bona fide for his own use and occupation. The question whether the landlord so requires or needs the premises or the house and whether such need or requirement is bona fide or not would be a question of fact which of course the landlord would have to establish for success in the case. Neither the provisions of the Bombay Act nor the Rent control Order make any provision as to how and in what way the landlord has to establish these two facts. u/s 13[3][vi] he has to satisfy the Rent Controller. It would appear that the evidence which the landlord would be sufficient to satisfy the Court or the Rent Controllers as the case may be. In the absence of any specific provision as to be established. These facts could be proved by the landlord by adducing any evidence which satisfies the Court or the Rent Controller. It may be that certain facts which are needed to establish theses requirements are in the personal knowledge of the landlord alone and could not be proved unless he is examined. In such a case it may be necessary for the landlord to step in the witness-box and the authority concerned may not accept any other evidence. But if these two factors can be established by any other evidence, than that of the landlord requires the premises bone fide for his use and occupation, we fail to see why it should be necessary as a matter of law that the landlord must examine himself with fatal consequence if he omits to do so. It may be as has been said by the learned single Judge in Nanalal Goverdhandas and Co.

and Others Vs. Samratbai Lilachand Shah, that bona fide requirement is state of mine though it may be something more. But it what is required to be done only by the should be necessary to be done only by the evidence of the landlord and none else if such requirement can be established to the entire satisfaction of the authorities concerned by any other evidence. In our view, the learned single Judge has laid down the proposition in a very wide, absolute and bona fide requirement of the landlord should or should not be accepted in a given case in the absence of the evidence of the landlord himself, would depend upon the facts and evidence in that particular case and any absolute proposition as has been done by the learned single Judge cannot be laid down in this behalf. It is for these reasons that we, with great respect to the learned single Judge, do not agree with what he has said and in our view Nanalal''s case does not lay down the correct law in this respect.

13. What we have stated above is supported by the view taken by a Division Bench of this of this Court to which one of us [Ginwala J.] was a party, in Dattatraya v. Kamal, [L.P.A.No.24 of 1979 decided on 21-9-1981]. Submission similar to the one which has been advanced by Mr. Aggrawal in this case was urged in that vase and while repelling this submission the Division Bench observed as follows:

"There is also no warrant for the proposition that bona fide need of the landlord cannot be said to be established unless the landlord or the landlady himself or herself steps in the witness-box to depose the need. The need can be established from the circumstances brought on record".

14. All said and done, therefore, we do not find any substance in this writ petition and it stands dismissed. However. In the circumstances of the case there shall be no order as to costs.

15. Petition dismissed.