

(1996) 10 BOM CK 0103

Bombay High Court

Case No: Writ Petition No. 3006 of 1990

Parlhad Gajbhiye

APPELLANT

Vs

The Additional District
Magistrate and another

RESPONDENT

Date of Decision: Oct. 16, 1996

Acts Referred:

- Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 - Clause 13(3)

Citation: (1997) 3 ALLMR 445 : (1998) 2 BomCR 438

Hon'ble Judges: V.S. Sirpurkar, J

Bench: Single Bench

Advocate: S.K. Pardhy, for the Appellant; D.K. Dubey, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

V.S. Sirpurkar, J.

Aggrieved by the two concurrent orders, one by the Rent Controller and another by the Appellate Authority, the tenant Pralhad Anantram Gajbhiye comes before this Court by way of the present writ petition. The dispute is between the landlord and the tenant. The petitioner is a tenant while respondent No. 2 claims to be his landlord.

2. The dispute started with an application by the respondent No. 2 who was then a minor, filed before the Rent Controller contending therein that the present petitioner was his tenant and that he had fallen in arrears of rent for more than three months. He has also become a habitual defaulter and his continuation is proved to be a nuisance because of his engaging himself in quarrels. It was claimed that the tenant had not paid rent since 1-1-1985 till date. It was further contended that a notice was served on 27-1-1986 requesting to vacate the premises and also for making the payment of arrears of rent upto date, but the said notice was replied

wherein the ownership of the applicant/landlord was denied and instead an ownership was asserted by the tenant into himself.

3. This application was replied to and it was claimed by the tenant that the erstwhile owner of these premises was Smt. Sakubai who had entered into an agreement of sale with the tenant for the whole house for a consideration of Rs. 20,000/-, out of which Rs. 10,000/- were already paid as an earnest money and that there was a recital in the said agreement of sale to the effect that from the date of the agreement of sale the tenant would not be required to pay the rent as his possession from that date would be deemed to be that of a prospective purchaser. It was, therefore, claimed that the relationship between the tenant and Sakubai was snapped as back as on 25-3-1982 itself. It was pointed out that thereafter Sakubai died after about a year and that no payment of rent was made to her after the agreement of sale. It was then pointed out that the applicant did not have any right to ask for permission to determine the tenancy.

4. On this basis, the parties went on to lead the evidence. On behalf of the landlord, his mother entered the witness-box. Some documents were also placed on record including a certified copy of the so-called Will which was executed by one Sakubai Drugkar in favour of respondent No. 2 Ram Chakradhar rancour The Rent Controller, not only acted on the basis of this certified copy of the so-called Will dated 17-2-1983 but went on to hold that the Will was properly proved and on that basis the respondent No. 2 had become the landlord. He went on to note that Sakhubai died in the month of February 1983 and that there was mutation in favour of the landlord and he was only paying the taxes etc. On that basis, he went on to record a finding that the applicant had proved his ownership after the death of Sakhubai.

5. The tenant had also filed the agreement on the "basis of which he had staked a claim for ownership. The Rent Controller went on to compare the signature on the agreement, which was got proved by examining the attesting witness with the signature on the xerox copy of the Will which was produced by the landlord and held that since the signatures differed, there was no question of the agreement being a genuine one. As between the proved documents, like agreement of sale and the certified copy of the Will, the Rent Controller accepted the Will, as what was presented was a certified copy of the registered Will. On this basis, he came to the conclusion that the non-applicant had obviously failed to pay the rent for more than three months and he had also not paid the rent since 1-1-1985 and thus had become a habitual defaulter. He, however, held that there was no question of any nuisance being created by the tenant. He, therefore, rejected the permission on that ground. In short, the application was granted under Clause 13(3)(i) & (ii) of the C.P. & Berar Letting of Houses and Rent Control Order, 1949 (for short "the Rent Control Order), in appeal also, the same state of affairs continued and the appellate authority confirmed the order of the Rent Controller. These two orders are now

challenged here in this writ petition.

6. Shri S.K. Pardhy, teamed Counsel appearing on behalf of the petitioner, vehemently submits that right from the beginning, the petitioner has been denying the status of the tenant and also denying the rival's title. He contended further that if the respondent No. 2 wanted to prove his ownership, it was upto him to approach the Civil Court. All that the rent control authorities could have gone into was whether there existed a relationship of landlord and the tenant and for that matter the Rent Controller could have gone into the title only incidentally. Shri Pardhy pointed out that here the Rent Controller first found the title in favour of respondent No. 2 and has, therefore, proceeded on that basis that the present petitioner has become the tenant automatically. Shri Pardhy submits that there was no jurisdiction in the Rent Controller to enquire into the genuineness or otherwise of the agreement of sale and there the Rent Controller has travelled outside the jurisdiction.

7. Shri O.K. Dubey, learned Counsel appearing on behalf of the respondent No. 2, supports the orders and submits that there is ample jurisdiction in the Rent Controller to decide as to whether there existed a relationship between the landlord and the tenant. He, however, further submits that if that question is to be gone into, then the other incidental questions also will have to be gone into, and the Rent Controller is right in deciding upon the genuineness of the Will and also the genuineness of the agreement of sale in between Sakhubai and the present petitioner.

8. The definition of the term "landlord" in the Rent Control Order is as follows :

""Landlord" includes the person who is receiving or is entitled to receive the rent of a premises whether on his own account, or on behalf of himself and others, or as an agent or trustee, or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant."

The definition of the term "tenant" is as follow :--

" Tenant" means any person by whom or on whose account rent is payable for a premises and includes a sub-tenant and a person continuing in possession after the term of his tenancy has expired."

A look at these two definitions of "landlord" and "tenant" would suggest that a person who actually receives rent or is entitled to receive rent becomes a landlord, even if he is doing so on his own account or on-behalf of himself or others. The definition also includes a person who would be so entitled to receive the rent if the house is let out to a tenant. What is of the essence in this Rent Control Order is the existence of a relationship between the landlord and the tenant. Once that relationship is established, the rent control authorities get the jurisdiction to entertain the disputes. The question here is whether there is such relationship of

landlord and tenant in between the parties.

9. If we cast one look at the pleadings, all that the respondent No. 2 says in his pleadings is that he is the owner of the house. He, it will be seen, has not at all traced his ownership in any manner nor has pleaded as to how he has become the owner of the house in question. The whole application has been kept silent and vague in respect of his ownership. An oblique reference is made in para 4 to the fact of denial by the present petitioner of the ownership, but again in spite of that the respondent No. 2 has chosen to keep quite as to how he became the owner of the house in question. Further there is absolutely no assertion in the whole application that the present petitioner, meaning Pralhad, had anytime given the rent or had agreed to give the rent, in any manner. It is only obliquely suggested that the tenant was paying the rent before 1-1-1985. But again that is not an assertion in clear terms. It is only, for the first time, in the evidence that the respondent No. 2 comes out with the documents. As a matter of fact, initially he had merely filed a registered notice dated 27-1-1986, the post receipt therefore and the acknowledgment. No other documents were bothered to be filed. The petitioner, however, has come out with a specific defence in comparison to these vague pleadings and has specifically asserted in the reply of the notice as well as in his pleadings that there was an agreement between him and Sakhubai dated 25-3-1982 by which it was specifically agreed that Sakhubai would sell the suit house for Rs. 20,000/-. out of which Sakhubai had already received Rs. 10,000/-. Not only this, in his pleadings, the petitioner has also referred to the specific recital of agreement of sale that there was no relationship existing in between Sakhubai and the present petitioner, of landlord and tenant, and that the petitioner would not be required to pay the rent upto 25-5-1983 which was the last date agreed between the parties for execution of the sale-deed. Now, therefore, one thing is certain that the petitioner had disclosed his cards right in the earnest. It was only on 17-3-1988 that for the first time a document came to be filed which was described as a Will dated 17-2-1983; and a list of documents signed by the Counsel for the party suggests that a xerox copy was being filed alongwith some other documents. The other documents which are filed by the respondent No. 2 are a communication from the Nagpur Improvement Trust suggesting that Plot No. 70 in Binaki layout, which was leased out in the name of Sakhubai, was permitted to be mutated in the name of the present respondent No. 2. There are some tax payments receipts also filed alongwith the list. Thus, though not a word about the Will was stated in the application, the xerox copy of the Will was produced, for the first time, at the time of the evidence.

10. On behalf of the respondent No. 2, his mother stepped into the witness box, alongwith one more witness, viz., Moreshwar Baliram. The mother simply deposed that there was a Will in favour of her son dated 17-2-1983 and that the original was not available, as it was sent to Pune. She claimed that she had obtained a certified copy, and the xerox copy of the certified copy of the Will was being filed and proved. There is an endorsement in the evidence that the original was seen and returned,

probably meaning that the certified copy of the Will was returned. The other witness Moreshwar Baliram had deposed before the Rent Controller that there was a Will executed by Sakhubai on 17-2-1983 and that he was present at that time with Shri Agarkar, the other witness. He also deposed that he has seen the certified copy of the Will in the Court and the xerox copy which was filed in the Court was the xerox of the said certified copy, and the xerox copy is the copy of the original Will. This witness admitted that Sakhubai was his grand-mother, in the sense that she was a maternal aunt of his mother.

11. The petitioner also examined himself and proved his agreement of sale. He examined one more witness, namely, Proshottam Marotrao Borkar. The petitioner was cross-examined in details. Shri Dubey, learned Counsel appearing on behalf of the respondent No. 2, pointed out that there were two more tenants besides the petitioner and the petitioner was not in a position to state as to who was to recover the rent and he also did not know as to how much was the rent of those tenants. However, it is specifically asserted by the petitioner that after the agreement of sale, he has not paid any rent to Sakhubai. There was a suggestion thrown at this witness to the contrary, that till Sakhubai was alive, this witness gave the rent to Sakhubai and thereafter upto 31-12-1984 the rent was given to the applicant/landlord. However, this suggestion has been very specifically denied. He also contended that Sakhubai continued to stay in the said house after the agreement of sale, for 4 to 5 months. He, however, admitted that the other two tenants were kept by Chakradhar Drugkar. He also admitted the mutation in the name of Ram Chakradhar Drugkar. He, however, asserted that he has objected to the said mutation. Shri Dubey heavily relied on the admission of this witness that signatures on Isar Chitthi and on the Will do not look alike.

12. The other witness, namely, Proshottam Borkar has proved the said agreement of sale. There is nothing in the cross-examination of this witness, which only consists of the suggestions.

13. On this back-drop, it has to be seen as to whether the Rent Controller was right in discarding the agreement of sale and accepting the Will. In the first place, as has already been pointed out, there is absolutely nothing stated in the application regarding the ownership of respondent No. 2 Ram. The whole application is silent and there is only a bald claim that Ram had become the owner. The story of Will was not disclosed in the application at all. Secondly, what is filed is not the original Will but xerox copy of the certified copy. Now, admittedly, the certified copy would not have the signature of Sakhubai at all. Merely because it was a certified copy, it was not expected to bear the signature of Sakhubai. The copy, which is filed on record and which is compared to the original certified copy, does not seem to have the signature of Sakhubai or even the witnesses. One then fails to understand as to how, firstly, the so-called Will was allowed to be filed, muchless proved by the Rent Controller. From the record and evidence, it is certain that the Rent Controller has

compared the copy which is on record with the document which was returned to the respondent No. 2. That is clear from the evidence of Baliram. If we see this document, we do not see any signature of Sakhubai. One fails to understand as to how the said xerox copy of the certified copy of Will was permitted to be filed and proved. The things do not stop here. The Rent Controller has also compared the signature of Sakhubai which was duly proved by the evidence of the attesting witnesses of the agreement of sale with the so called signature on this document which is exhibited as Exhibit A-1. Not only this, even the tenant was asked a question and he admitted that this so-called signature on Exhibit A-1 was not similar to that which was on the agreement of sale. The Rent Controller then further went on to hold that Exhibit A-1 was a copy of the certified copy and that certified copy was of a registered Will, therefore, it was more authentic. All this reasoning is absolutely baseless. Copy of a certified copy could never have been exhibited and the said copy could never have been compared with the agreement of sale. It will be seen that the agreement of sale was duly proved. A witness was examined for that purpose, who was an attesting witness. There is absolutely nothing in the cross-examination of either the present petitioner or his witness, to suggest that the agreement of sale was a fictitious document. The only basis used by the Rent Controller to reject that document is the existence of the so-called Will. It is already pointed out that document Exhibit-A-1, or even for that matter, the original certified copy of the Will could never have had the signature of Sakhubai. The Rent Controller as also the appellate authority missed this simple point and proceeded to accept the Will as against the proved document like the agreement of sale. All this was absolutely illegal. If this main stand of the original applicant/respondent No. 2 herein falls, then there remains hardly anything in his case. He has nowhere proved that he was treated as a landlord by the present petitioner. He has nowhere proved any single payment of rent at the behest of the present petitioner. Further, there is no document on record, at all. It is also really a matter to be noted that it is an admitted position that there has been no notice given to the original tenant demanding the rent from him. A roundabout plea instead had been taken that it was from 1-12-1985 that the rent was not paid. The surreptitious plea raised by the landlord/respondent No. 2 and the apathy on his part to state as to how he became the owner, should have been noted by the authorities below. It is really unfortunate that both the authorities below allowed themselves to be swept away by a document which never had the signature of Sakhubai. The whole basis of the claim therefore falls down.

14. There is then no evidence on record to show that there ever existed any relationship between the present respondent No. 2 and the petitioner, much less of landlord and tenant. It must be noted that as per the agreement of sale, the relationship between the landlord and tenant, i.e., between Sakhubai and the present petitioner, had also ceased. There is a clear cut recital to that effect. If this was so, the question falls for consideration, as to at what point of time has this

relationship revived. Even if it is accepted for the arguments' sake that the respondent No. 2 became owner by way of a Will, it is difficult to accept that there ever was any relationship of landlord and tenant between him and the present petitioner. The whole evidence in that behalf is wanting, probably deliberately. Under these circumstances, it can never be said that there was any relationship between the petitioner and the respondent No. 2 of landlord and tenant. There was only a relationship of landlord and tenant between the petitioner and Sakhubai. The said relationship was snapped because of the agreement of sale. The said agreement of sale is duly proved and there is no document on record to prove that the said agreement of sale was a fake document.

15. Shri Dubey, learned Counsel for the respondent No. 2, at this stage submits that a fresh opportunity should be given to the respondent No. 2, by remanding the matter. It will not be possible to remand the matter at this stage, for the simple reason that the respondent No. 2 has never been able to prove that there ever existed any relationship between him and the petitioner, of landlord and tenant. In that view of the matter, even if the Will is held to be proved, that would be of no consequence.

16. Shri Dubey then submits that the question of validity of Will should be kept open. That would always be open, for the simple reason that the original Will has never seen the light of the day before the Rent Controller. The signatures of Sakhubai on the agreement of sale were compared with the signatures on certified copy on which admittedly no signatures were there. Therefore, it would always be open to the respondent No. 2 to prove his ownership. However, whether that ownership and title would obliterate the agreement of sale or not, would be a question outside the domain of the rent control authorities. That would be for the Civil Courts to decide, if and when such occasion arises.

17. In the result, the petitioner will have to be allowed. It will have to be held that the respondent No. 2 has not been able to prove the relationship of landlord and tenant in between himself and the present petitioner. If that is so, then there would be no occasion for entertaining his application. In that view, the whole proceedings will have to be dubbed as illegal, will have to be set aside and they are accordingly set aside. The petition is, therefore, allowed. Both the impugned orders are set aside. The proceedings are also set aside. In the circumstances of the case, however, there will be no order as to the costs.

18. Petition allowed.