(1974) 04 BOM CK 0014

Bombay High Court (Nagpur Bench)

Case No: Spl. C. Application No. 73 of 1972

Ganpat		APPELLANT
	Vs	
Rameshwar and another		RESPONDENT

Date of Decision: April 24, 1974

Citation: (1974) MhLj 774

Hon'ble Judges: D.B. Padhye, J

Bench: Single Bench

Advocate: H.N. Vaidya, for the Appellant; M.V. Oke for Respondent No. 1 and Respondent No. 2 Not represented, for the Respondent

Final Decision: Dismissed

Judgement

D.B. Padhye, J.

The petitioner as a landlord filed before the Rent Controller, Akot, an application under clause 13 (3) (ii), (v) and (vi) of the C. P. and Berar Letting of Houses and Rent Control Order, 1949 for permission to give notice to the respondent No. 1 determining his lease, i.e. on the grounds of habitual default, tenant securing an alternative accommodation and the landlord needing the house for his bona fide occupation. The Rent Controller allowed the application of the landlord on all the three grounds. In appeal, the order of the Rent Controller was reversed and the application of the landlord was rejected on all grounds. The landlord has, therefore, filed this petition.

2. Along with the application a Schedule was filed by the landlord showing the dates on which amounts were paid. In this Schedule it is not shown as to for which month the particular amount of rent was paid. This is Exhibit-A-1 in the record. The respondent No. 1 tenant had stated that he has been paying the rent every month and thus he was not habitual defaulter. The schedule also shows that the rents are paid almost every month except on a few occasions. The last amount of Rs. 120 was sent by money order. That cannot be considered to be a default as the landlord was refusing to accept the amount. The Schedule which has been filed by the landlord

itself shows that the respondent No. 1 tenant was not in the habit of not paying the rent regularly every month. From this Schedule it cannot be gathered for what particular month the particular rent is being paid. It, however, appeals that at a later stage and much after the written statement was filed by the respondent No. 1 the petitioner filed another Schedule, which is Exhibit-A-2 showing the months for which the particular rent was paid. This Schedule was filed on 3-5-1970 when the case had already been posted for evidence and adjourned from time to time. There was, therefore, no opportunity for the respondent No. 1 to meet this Schedule Exh. A-2. The appellate Court has found that on the basis of these payments which have been made by the tenant, he could not be termed to be a habitual defaulter. I do not see any illegality in the view taken by the appellate authority on the facts found in this case. The appellate authority, therefore, was not in error in setting aside the order of the Rent Controller and rejecting the application of the landlord on that count.

3. As regards the ground under clause 13 (3) (v) of the Rent Control Order, it is urged that the tenant has got two houses in the town and, therefore, he must be taken to have secured alternative accommodation within the meaning of clause 13 (3) (v) and, therefore, the landlord was entitled to permission. It has not been brought out as to when the houses were let out by the tenant. Securing an alternative accommodation gives a cause of action to the landlord to claim permission to give notice. Evidently, therefore, it must mean that after the tenancy in question was created, another accommodation must have become available to the tenant which he can occupy. For that purpose, therefore, it must be shown that on the date of the application, there was a house which was available for the tenant as an alternative accommodation. No material has been placed in this case in that respect. It is not the case of the petitioner that either on the date the lease was created in favour of the respondent No. 1 these houses owned by the respondent No. 1 were vacant or that they became vacant any time thereafter or that they were vacant on the date of the application so that they were available for his occupation. In the absence of any such material, the petitioner-landlord cannot claim permission under clause 13 (3) (v) of the Rent Control Order. It was contended on behalf of the petitioner that the tenant who owns his own houses, though occupied by his tenants, could make an application to evict those tenants and make that accommodation available for him. That, however, is not the scope of clause 13 (3) (v). The explanation to clause 13 (3) also is not applicable because the premises owned by the respondent No. 1 are not constructed on a vacant plot after 1-1-1951. It is not disputed that the premises are constructed much prior to 1951. Further it is also stated that those premises are let out for business purposes and are not suitable for residence. It cannot, therefore, be said that the tenant has secured an alternative accommodation for which permission could be granted against him. In this respect also, the older of the appellate authority was quite legal and justified.

4. The last ground was that the petitioner needed these premises for his bona fide occupation. In the application for permission a vague ground was given that it is

required for his bona fide occupation. No details have been given in the application as to whether it was required for his residence or for his business or for godown or for any other purpose. It has also not been stated as to what kind of business he wants to do or the kind of business he has been doing and if he wants the premises for residence, how many members he has got in his family and how he requires this accommodation for his purpose. It has also not been brought out in the evidence that the petitioner owns besides this house a number of other houses in the same town. No details have been given as to why his need cannot be satisfied by those other houses, whether they are all occupied, or some of them are vacant and if so why they are not available. Unless these details were given the tenant could not be expected to properly meet the case of the landlord. It is the landlord who has to make out a case for his need for bona fide occupation. For this purpose he must put before the Court all the necessary details which are required for granting him relief. On such vague allegation as made in the present application, the petitioner cannot expect to get relief on the ground of his bona fide occupation. Not only this, but the petitioner has taken different stands at different times as observed by the appellate authority. In the application he takes one stand, a vague stand, without giving any details. In the examination-in-chief at the time of evidence he takes second stand whereas in the cross-examination he takes third stand. That itself shows that the application is lacking in bona fides and it cannot be said that the petitioner has established his bona fide need for occupation. A mere ipse dixit of the petitioner that he requires the accommodation for his personal occupation is not enough. It must be supported by valid reasons as to how his need is genuine. That is lacking in the present case. The appellate authority, therefore, could not be said to be in error in rejecting his application on this ground also.

5. In the result, the appeal was rightly allowed by the Resident Deputy Collector. This petition, therefore, must fail and is dismissed with costs.