Abdul Latif Jusabhai Vs D.R. Jaodekar

Court: Bombay High Court

Date of Decision: Feb. 2, 1960

Acts Referred: Constitution of India, 1950 â€" Article 226, 227

Citation: (1960) 62 BOMLR 490 : (1960) NLJ 30

Hon'ble Judges: Tambe, J; S.T. Desai, J

Bench: Division Bench

Judgement

Tambe, J.
By this petition under Articles 226 and 227 of the Constitution of India the petitioner prays for issuance of an appropriate writ

or order quashing the appellate order dated June 23, 1959, made by the Deputy Collector, respondent No. 1 hereto, and prohibiting respondent

No. 3 from terminating his (petitioner''s) tenancy. The matter arises out of proceedings taken under the C.P. and Berar Letting of Houses and Rent

Control Order, 1949, hereinafter called the Order or the Rent Control Order.

2. Respondent No. 3 claimed to be the owner of the house in question. He stated that it had fallen to his share in a partition among the members of

his family. The petitioner is occupying those premises as a tenant. Respondent No. 3 applied to the Rent Controller under cl. 13(3)(vi) of the

Order for permission to serve a quit notice on the petitioner on the ground that he (respondent No. 3) needed the house for the purposes of his

bona fide residence. The petitioner opposed this application on various grounds. One of the contentions raised by him, and which is material for the

purpose of this case, was that respondent No. 3 was not entitled to claim the relief and apply under Clause 13(3)(vi) of the Order inasmuch as he

was in occupation of another residential house of his own in the same town.

3. The Rent Controller found that as a result of the partition two houses, inclusive of the house in question, fell to the share of respondent No. 3; on

the date of the application he was occupying one of them and the tenant was in occupation of the other; the house which was occupied by

respondent No. 3 at that time was a double storeyed paccka house but was only 15 cubits by 8 to 10 cubits in dimension. He was also in

occupation of a tin shed (saiwan) which he was using as his kitchen. The tin shed was 15X10 cubits in dimension. There was no separate bath

room or latrine attached to the house in occupation of respondent No. 3. As compared with the house in occupation of the petitioner, the house in

occupation of the petitioner was definitely more spacious; it has an upper storey on the middle room, the area being 65 X50 feet, it has a latrine,

kitchen and a temporary bath room attached to it. On these findings the Rent Controller reached the conclusion that respondent No. 3 needed the

house in occupation of the petitioner for the purpose of his bona fide residence, but in view of the fact that respondent No. 3 was already in

occupation of another house of his own, the proviso to Clause 13(3)(vi) debarred him from claiming the relief. In this view of the matter, he

rejected the application of respondent No. 3.

4. Feeling aggrieved by this order respondent No. 3 preferred an appeal before respondent No. 1. Respondent No. 1 did not concur with the

view taken by the Rent Controller. He, therefore, allowed the appeal, but curiously enough he has made no operative order granting respondent

No. 3 permission to terminate the tenancy of the petitioner. It is against this order of respondent No. 1 that the petitioner has approached this

Court under Articles 226 and 227 of the Constitution praying for the aforesaid relief,

5. Mr. B.R. Mandlekar, learned Counsel for the petitioner, contends that respondent No. 1 was in error in allowing the appeal. The facts found

are that respondent No. 3 was in occupation of another house of his own in the town and was on the date of the application residing therein. The

proviso to Clause 13(3)(vi), therefore, debarred him from terminating the tenancy of the petitioner. Whether the premises in occupation of

respondent No. 3 are suitable for residential purposes or whether the accommodation therein is sufficient for the needs of respondent No. 3 are

questions wholly irrelevant. The fact of occupation of the other house by respondent No. 3 in the same town prevents him from terminating the

tenancy of his tenant who is occupying a different house. Reliance is placed by Mr. Mandlekar on certain observations in Kisanlal Radhakisan v.

Liladhar Daulatram (1959) Special Civil Application No. 406 of 1958, decided on July 3, 1959, by Tambe and Baju JJ. (Unrep.) : 1959 N.L.J.

Note 99. We find considerable difficulty in accepting the contention raised by Mr. Mandlekar.

6. Clause 13(3)(vi) of the Order is in the following term:

(3) If after hearing the parties the Controller is satisfied-...

(vi) that the landlord needs the house or a portion thereof for the purpose of his bona fide residence, provided he is not occupying any other

residential house of his own in the city or town concerned,

he shall grant the landlord permission to give notice to determine the lease as required by Sub-clause (1).

7. Now, on the language of this Sub-clause it is clear that the mere occupation of another house of his own in the city or town by a landlord does

not debar him from claiming premises in occupation of his tenant for the purpose of his bona fide residence. What debars him from getting the relief

is the occupation of other residential house of his own. In framing the Order the State Government has advisedly used the expression ""Residential

house"". The emphasis must be on the word ""Residence"". Thus, in each and every case it has to be determined by the authorities concerned

whether the house in the occupation of the landlord is a residential house. The question thus that arises for consideration is the true import of the

expression ""residential house"".

In Stroud"s Judicial Dictionary (3rd edn.) it is observed (p. 2569) :

The words "residence" and "place of abode" are flexible, and must be construed according to the object and intent of the particular legislation

where they may be found. Primarily, they mean the dwelling and home where a man is supposed usually to live and sleep.

8. In the Oxford English Dictionary, one oÃ¯Â¿Â½ the meanings of the word "residence" is given as, "to have one"s usual dwelling place or abode to

establish oneself. The word "residence" thus carries with it the idea of a place which is suitable for being used as an abode or a dwelling place. In

other words, a place having the necessary amenities which a dwelling place or abode usually has, such as living rooms, kitchen, bathroom, latrine

etc. When used in relation to any particular person, it also necessarily carries with it the idea that the place affords sufficient accommodation to

meet the needs of that person and the members of his family, of course, not according to the standard of a fastidious person but according to a

reasonable standard having regard to the status of the person occupying it.

9. In our opinion, in the Kent Control Order the expression ""residential house"" is not used in any different sense than stated above. The Bent

Control Order is made by the State Government in exercise of the powers conferred on it by Section 2 of the Central Provinces and Berar

Regulation of Letting of Accommodation Act. This section empowers the State Government to make an order to provide for regulating the letting

and sub-letting of any accommodation or class of accommodation whether residential or non-residential, whether furnished or unfurnished and

whether with or without board and in particular for controlling the rents for such accommodation, for preventing the eviction of tenants or sub-

tenants in specified circumstances, for requiring such accommodation to be let either generally, or to specified persons or class of persona and for

collecting any information or statistics with a view to regulating any of the aforesaid matters.

10. Now, when the Order is read as a whole it becomes clear that it aims at ensuring to the tenant the occupation of the premises let out to him by

the landlord at a fair rent to be fixed by the Rent Control authorities and the premises in his possession being maintained in good repairs by the

landlord. It prevents the landlord from determining the tenancy at his choice and specifies the grounds on which he could obtain the permission of

the Rent Control authorities to determine it. Lastly, it provides for making available the premises vacated by the tenant first to certain specified

class of persons such as a person holding an office of profit under the Union or State Government, or to any person holding a post under the

Madhya Pradesh Electricity Board, or to a displaced person or to an evicted person, provided that the landlord does not need the premises for his

own occupation. The grounds on which a landlord can obtain permission of the Rent Control authorities to terminate the tenancy are contained in

Clause 13 of the Order. Generally speaking, tenancy of a tenant cannot be terminated as long as the tenant is properly using the premises for the

purpose for which they were let out and has been paying the rent regularly, save and except where the landlord requires the premises for his bona

fide residence or where he requires them to effect essential repairs or alterations which cannot be made without the tenant vacating the premises. It

thus appears that the intention of the framers of the Act is that bona fide need of the landlord to occupy his own house for his residence should

prevail over the need of the tenant.

11. The relevant provisions relating to this topic are contained in Clauses 13(3)(vi) and 13(8) of the Order. Clause 13(8) of the Order provides

that when a landlord applies to the Controller under item (vi) of Sub-clause (3), the Controller shall enquire into the needs of the landlord, and if on

enquiry the Controller is satisfied that the needs of the landlord will be met by the occupation of a portion of the house, he shall give permission in

respect of such portion only. Looking to the main provision of Clause 13(3)(vi) read together with Clause 13(8) it is clear that securing such

accommodation for the landlord for his residence which his reasonable need demands is aimed at. In other words, they aim at securing a dwelling

place or house for a landlord. To these main provisions there is a proviso that the landlord would not get permission to terminate the tenancy if he

is already in possession of any other ""residential"" house of his own. It is a fundamental rule of construction that the proviso must be considered with

relation to the principal matter to which it stands as a proviso. It is, therefore, difficult to assume that it is intended that the mere fact that the

landlord is occupying his own house would debar him from seeking to terminate the tenancy of his tenant even if the house in his occupation has no

amenities of a dwelling place or it does not afford sufficient accommodation to meet his needs. In our judgment, therefore, the expression

residential house"" occurring in the proviso to Clause 13(3)(vi) means a house suitable for being used as a dwelling place having the necessary

amenities and affording sufficient accommodation to meet the reasonable needs of the landlord and the members of his family, having regard to his

status in life.

12. A similar view appears to have been taken by a Division Bench of the Nagpur High Court in Nanhu Sakharam v. D.C. Chhindwara (1953)

Miscellaneous Petition No. 291 of 1952, decided on February 27, 1053, by Sinha C.J. and Mudholkar J. (Unrep.). In that case the landlord

owned two houses in the town of Seoni. One was a kaccha house which the landlord had occupied for his residence. Attached to this house was

an annexe which was used by him for storing his wares. The other house was a pacca house and was let out by him to a tenant. The kaccha house

fell down. The landlord along with his family then shifted to occupy the annexe for purposes of their residence and thereafter made an application

under Clause 13(3)(vi) for permission to give quit notice to the tenant. The Rent Controller found that the landlord''s family consisted of five

members and they could not be accommodated in that annexe. He, therefore, granted permission to the landlord to serve necessary notice on the

tenant. On appeal the Deputy Commissioner reversed the order of the Rent Controller. In allowing the appeal the Deputy Commissioner observed

that the fact that the members of the family of the landlord have increased or that the house occupied by the landlord was insufficient for his needs

was of no consequence. The landlord then moved the High Court under Article 226 of the Constitution. In allowing the petition the Division Bench

observed:

The Deputy Commissioner could have refused permission, to the landlord if he found that the landlord was in occupation of his own residential

house in the town. He has not set aside the finding of the Rent Controller that the landlord was at present occupying the annexe meant for storing

his wares. That certainly cannot be said to be a residential house; the landlord has to be content for the present with that much of accommodation

because of circumstances beyond his control....If the Deputy Commissioner had set aside the findings recorded by the Rent Controller to the effect

that the landlord''s family has outgrown the present very inadequate accommodation afforded by the annexe aforesaid, he would have been right in

refusing the permission sought. But the finding being what it is, it is almost impossible to hold that a family of 5 persons could with due regard to

privacy be accommodated in one cottage.

The ratio of this decision appears to us to be that both the considerations viz. whether the premises in the occupation of the landlord are suitable

for being used as a residential house as well as the adequacy of the accommodation afforded must enter into the judicial verdict in ascertaining

whether the landlord is in occupation of a residential house within the meaning of the proviso to Clause 13(3)(vi).

13. The observations in Kisanlal Radhaltisan v. Liladhar Baulatram on which reliance was placed by Mr. Mandlekar in support of his contention

are:

Firstly, the authority concerned has to find out whether the landlord is in occupation of his own house for purposes of his residence. If it is so

established then he need not proceed to further inquire into the matter. If the landlord is not in possession of any such house then the Rent

Controller has to consider whether the premises in respect of which the application is made are bona fide required by the landlord for the purpose

of his residence. Whether the house is fit enough for residence at the time the application is made is absolutely of no relevance in deciding the issue.

These observations when read in the context of the facts of that case are of no assistance to the petitioner in this case. In that case, the landlord

who had applied to the Rent Controller was not in occupation of any house of his own for the purpose of his residence. In opposing the landlord''s

application the tenant had raised a plea that the premises in his occupation were not suitable for residential purposes at all. The landlord, therefore,

was not entitled to terminate the tenancy of the tenant. The landlord''s case was that even though the premises in the occupation of the tenant may

not on that date be suitable for being used for residential purposes on getting possession thereof he would make suitable alterations and would use

it for his residential purposes. The contention of the tenant had prevailed before the Rent Controller. The view taken by the Rent Controller was

that Clause 13(5)(vi) is applicable only to such premises which are being used or which can be used for residential purposes and cannot be applied

to such premises which could be converted by the landlord into residential premises. The observations on which Mr. Mandlekar has placed

reliance were made in dealing with the view taken by the Rent Controller. The following observations which immediately follow those relied on by

Mr. Mandlekar, make the position clear:

It may be that the landlord may get necessary changes made according to his requirements by expending money or may even choose to reside in

the house even as it is, suffering all the inconveniences. It is his choice. The second respondent was in error in holding that clause 13(3)(vi) has no

application to premises not suitable in praesenti for residential use.

This decision, therefore, has no application to the facts of the present case.

14. The conclusions to which we have reached, however, are not sufficient to dispose of the case finally. The appellate authority, as already stated,

has not made any operative order nor does it appear to have considered the question as regards the suitability of the premises in occupation of the

landlord for being used as a residential house or the adequacy or inadequacy of the accommodation afforded by it to meet the reasonable needs of

the landlord and his family members. The case, therefore, will have to go back to respondent No. 1 for deciding the appeal afresh.

15. In the result, the rule is made absolute. The order of respondent No. 1 dated June 23, 1959, is quashed and the case is sent back to

respondent No. 1 for a fresh decision in the light of the observations herein made. Costs of this petition will abide the result.