

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 326/2014**

Shri Ulhas Khemu Chodankar alias
Shri Chandramohan Chodankar,
Major of age, Resident Of
Sonarbhat, Verem, Reis Magos,
Bardez, Goa.

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Petitioner

Versus

Smt. Muktabai Vasant Kamat,
(Since deceased) through legal
representatives, Major of age,
resident of Sonarbhat, Verem, Reis
Magos, Bardez, Goa.

- a) Shripad Vasant Kamat, son of
Muktabai Kamat, major in age,
married and his wife.
- b) Deepa Shripad Kamat, wife of
Shripad Vasant Kamat, major in
age, resident of near Desai Saw
Mill, Sonarbhat Reis Magos,
Bardez, Goa.
- c) Vallabh Vasant Kamat, son of
Muktabai Kamat, major in age,
married and his wife.
- d) Vibha Vallabh Kamat, wife of
Vallabh Vasant Kamat, married,
major in age, both residents of
near Desai Saw Mill, Sonarbhat
Reis Magos, Bardez, Goa.
- e) Narayan Vasant Kamat
(expired) son of Muktabai
Kamat, major in age, married
and his wife.
- f) Shobhana Narayan Kamat, wife
of Narayan Vasant Kamat,

major in age,

- g) Dattaraj Narayan Kamat, son of Narayan Vasant Kamat, major in age,

All three residents of near Desai Saw Mill, Sonarbhat Reis Magos, Bardez, Goa.

- h) Pallavi Prakash Nadkarni, daughter of Muktabai Kamat, major in age, married and her husband

- i) Prakash Nadkarni, major in age, both residents of Nerul Goa.

- j) Gurudas Vasant Kamat, son of Muktabai Kamat, major in age, married and his wife.

- k) Lata Kamat, wife of Gurudas Vasant Kamat, major in age, married both residents of near Desai Saw Mill, Sonarbhat Reis Magos, Bardez, Goa.

- l) Umesh Vasant Kamat(expired) bachelor, near Desai Saw Mill, Sonarbhat Reis Magos, Bardez, Goa.

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Respondents.

Shri J.P. Mulgaonkar, Advocate for the petitioners.

Shri Somnath Karpe, Advocate for the respondents No.1(c), 1(g), 1(h) and 1(i).

CORAM :- F.M. REIS, J.

Date : - 4th July, 2015.

ORAL ORDER :

Heard Shri J.P. Mulgaonkar, learned Counsel appearing for the petitioner and Shri S. Karpe, learned Counsel appearing for the respondents No.1(c), 1(g), 1(h) and 1(i).

2. The above writ petition, *inter alia*, prays for quashing and setting aside of orders passed by the Courts below, whereby the petitioner has been directed to be evicted from the suit premises belonging to the respondent.

3. Briefly, the facts of the case are that an application for eviction came to be filed on 25th April, 1988 by the respondent, against the petitioner before the Rent Controller, Mapusa for eviction of the respondent on the grounds of arrears of rent under Section 22(2)(a) and bonafide requirement in terms of Section 23(a)(ii) of the Goa Rent Control Act. The petitioner disputed the contentions and, in fact, upon being served with the summons, paid/deposited all the arrears of rent. Consequently, the proceedings for eviction proceeded on the

ground of bonafide requirement. After recording the evidence and hearing the parties, the learned Rent Controller, by an order dated 25/4/2003 allowed the said eviction application filed by the respondent and directed the petitioner to hand over vacant possession of the suit premises. Being aggrieved by the said order, the petitioner preferred an appeal before the Administrative Tribunal, Goa which was, thereafter, transferred to the learned District Judge, Panaji in view of the amendment to the Rent Controller Act and by a Judgment dated 24th January, 2014, passed by the District Judge-2, Panaji, in Rent Appeal No.23/2013, the appeal preferred by the petitioner came to be dismissed. Being aggrieved by the Judgments passed by the Courts below, the petitioner has filed the present writ petition.

4. Shri Mulgaonkar, learned Counsel appearing for the petitioner has pointed out that both the Courts below have misconstrued the provisions of Section 23(a)(ii) of the Rent Control Act, as according to him, the fact as to whether the respondent-landlord requires additional premises has not been examined in the context of comparative hardship. The learned Counsel further submits that it is not the case of the respondent that the additional accommodation is for his personal occupation, but for the personal occupation of his family

members. The learned Counsel, as such, submits that this aspect is not covered under the provisions of Section 23(a)(ii) of the Rent Control Act and, as such, there is a jurisdictional error committed by the Courts below while disposing of the eviction proceedings. The learned Counsel has, thereafter, taken me through the provisions of Section 23(a)(ii) to point out that on a plain reading thereof, the word used is ***“instead”*** which would mean that the additional area for bonafide occupation is for the landlord himself and not to the family members. The learned Counsel has pointed out that there is a great significance in the user of the word ***“instead”*** and, as such, it would mean that the landlord himself requires additional accommodation and consequently, comparative hardships in terms of Section 23(3) of the Rent Control Act would have to be examined. The learned Counsel has, thereafter, taken me through the orders passed by the Courts below and pointed out that not considering the said crucial aspect has caused grave injustice to the petitioner which calls for interference of this Court under Article 227 of the Constitution.

5. On the other hand, Shri S. Karpe, learned Counsel appearing for the respondents has supported the impugned orders. The learned Counsel has pointed out that the suit premises are located

across the road of the residential house occupied by the respondents and the bonafide requirement of the respondent was to accommodate a son of the respondent. The learned Counsel further submits that it is well settled that the word “*instead*” has to be read in the context of the additional accommodation and not in the manner sought to be interpreted by Shri J.P. Mulgaonkar, learned Counsel appearing for the petitioner. The learned Counsel, in support of his submissions, has relied upon a Judgment of the Andhra Pradesh High Court reported in 1998(3) ALD 273 in the case of ***Penugonda Rajeswari vs. Jaladi Anasuyamma***, wherein, according to him, the provisions of the Goa Rent Control Act are in *pari materia* with the provisions of the Rent Control Act as in force in the Andhra Pradesh. The learned Counsel has, thereafter, taken me through the said Judgment and the conclusion arrived at para 21, to point out that the word “instead” has been interpreted to mean to be in addition to and, as such, the contention of Shri Mulgaonkar, should not be accepted. The learned Counsel has further pointed out that both the Courts below, upon perusing the evidence on record, have come to the conclusion that the bonafide requirements of the respondents have been established and this Court, in the present writ petition, cannot interfere or reappreciate the findings of fact arrived at by the Courts below. Learned Counsel

further submits that the proceedings for eviction on the ground of bonafide requirement are going on since 1988 and, as such, according to him, there is no jurisdictional error committed by the Courts below which would call for interference of this Court under Article 227 of the Constitution.

6. I have duly considered the submissions of the learned Counsel and I have also gone through the impugned orders. Before I examine the contention of Shri Mulgaonkar, learned Counsel appearing for the petitioner, it would be appropriate to note that both the Courts below, upon perusing the evidence on record, have come to the conclusion that the respondents have established that an additional accommodation is required for the bonafide occupation of the respondent and his family members. The Rent Controller has minutely examined the material produced on record by the respondent, as well as the petitioner, to come to the conclusion that bonafide requirement in terms of the provisions of Section 23(a)(ii) of the Rent Control Act has been duly satisfied. The learned District Judge, while examining the appeal preferred by the petitioner, has also reappreciated the evidence on record and found that the learned Rent Controller has rightly come to the conclusion that the requirements of Section 23(a)(ii)

of the Rent Control Act have been duly satisfied and, as such, the respondent was entitled for the eviction of the petitioner from the suit premises. Hence, the concurrent findings of fact arrived at by the Courts below are that the disputed premises were required for bonafide occupation, has been accepted by both the Courts below. In such circumstances, I cannot lose sight of the fact that these concurrent findings of fact cannot be interfered with by this Court, unless such findings of fact are perverse, or if there is a jurisdictional error committed by the Courts below while coming to such conclusions.

7. In the present case, as already pointed out hereinabove, both the Courts below have come to the conclusion that the bonafide requirement of the respondents has been clearly spelt out and established and, as such, I find that in these findings of fact there is no perversity which would call for interference of this Court in the present writ petition, as there is no misreading of evidence or/and any material overlooked by the Courts below whilst coming to such findings.

8. The only aspect which would remain to be examined is, whether in view of the contention of Shri Mulgaonkar, learned Counsel appearing for the petitioner based on the word “instead” found

in the provisions of Section 23(a)(ii) of the Rent Control Act, the findings of fact would call for any interference by this Court. It is not in dispute that this ground was not raised by the petitioner before the Courts below. In such circumstances, the Courts below did not get any opportunity to examine such a contention of the petitioner.

9. Be that as it may, I would proceed to examine the correctness of the contention of Shri Mulgaonkar, learned Counsel appearing for the petitioner. The fact that the provision under the Rent Control Act prevailing in Andhra Pradesh is in *pari materia* with the provisions of the Goa Rent Control Act, is not in dispute. In this context, the Andhra Pradesh High Court, in the Judgment in the case of ***Penugonda Rajeswari vs. Jaladi Anasuyamma*** (supra), has observed at paras 18, 19, 20 and 21, thus :

“18. The Supreme Court interpreting the words 'right to possession of which he is entitled to under this Act, or otherwise' pointed out that the right of the statutory tenant to remain in possession is a right to stay in possession and as such, the same cannot be equated with right to possession. Thus, even though the landlord is in possession of a non-residential building as a tenant, he is still entitled to recover possession of a non-residential building

since he is not entitled to possession of the building in which he is carrying on business as a tenant. This interpretation was given in order to advance the aims and objects of the Act. After all Section 10 curtails the landlord's right to terminate the tenancy which is available to him under Transfer of Property Act. The right is restricted on certain specified grounds upon which alone eviction can be granted by the Rent Controller. Therefore, Court cannot "adopt a narrow or pedantic approach and further restrict the right of the landlord to recover possession when the landlord is not in a position to accommodate all the members of his family in one building, and to say even then he has no right to recover another building can never be the intention of the Legislature as it would not be the intention of the Legislature to encroach upon the liberty of the landlord to take possession of his own building for his requirement or need. Legislature may not and would not impose restrictions on anybody in securing sufficient accommodation for residential purpose muchless the landlord. To have sufficient accommodation for his family is a matter of public interest, otherwise it would be creating unhealthy atmosphere if people are compelled to reside in insufficient accommodation. Therefore, the Legislature would not have intended this.

19. Referring to the decision of the Supreme Court in Padmanabha Setty v. Papiiah Setty, AIR 1966 SC 1824, a Full Bench of our Court in Vijayalakshmi Printing Press v. N. Shanker, 1991 (1) AW.R. 198 observed thus:

"The possession of a statutory tenant is treated as a mere right to remain in possession till one or more of the conditions for eviction prescribed by the Act are satisfied. The decision in Padmanabha Setty was rendered as far back as 1966. The Mysore, Madras, and Andhra Acts employ identical language in this behalf. Yet, the A.P. Legislature has not thought it fit to clarify that the said word mean something different than what the Supreme Court has said though the interpretation placed by the Supreme Court practically makes both the expressions occurring in the said sub-clause mean the same thing thus doing away the distinction between residential and non-residential buildings, made by the Act in this behalf."

20. So, the Full Bench has also noticed the liberal interpretation placed by the Supreme Court on Section 10(3). Therefore, the Legislature would not have intended that when the landlord who has more than one building and if he is in occupation of one of them, he shall not be allowed to occupy another building, unless he vacates the premises in his possession, even though the requirement of the landlord for additional accommodation is bona fide.

21. From the above discussion, we are of the considered view that the word used 'instead' in Section 10(3)(a)(i)(b) of the A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960 is to be interpreted as 'in addition to'. Thus, we answer the reference accordingly.”

Taking note of the said observations, I find that the word “instead” has to be interpreted to be “in addition to” as held by the Division Bench of the Andhra Pradesh High Court. Mr. Mulgaonkar, learned Counsel appearing for the petitioner, however, submits that the word “instead” has to be considered as an alternative accommodation. I am afraid, such a contention cannot be accepted as, it was not accepted by the Division Bench of Andhra Pradesh High Court in ***Penugonda Rajeswari vs. Jaladi Anasuyamma (supra)***. Apart from that, it cannot be disputed that the requirement of the landlord would include the requirement of his family members. In such circumstances, the contention of Shri Mulgaonkar that the requirement of the son, cannot be included while examining the ground for eviction under Section 23(a)(ii) of the Rent Control Act, cannot be accepted. In such circumstances, the contention of Shri Mulgaonkar to that effect cannot be accepted and, consequently, I find that there is no jurisdictional

error committed by the Courts below while coming to the conclusion that the respondent has made out the case for eviction in terms of Section 23(a)(ii) of the Rent Control Act.

10. Taking note of the findings of the Authorities below, I find that both the Authorities have concurrently come to the conclusion that the respondents require the disputed premises for their bonafide occupation and have satisfied the requirements of Section 23(a)(ii) of the Rent Control Act. Taking note of the findings in the impugned orders, I find that the need to occupy the disputed premises by the respondents can be said to be natural, real, sincere and earnest. In this connection, this Court in a Judgment reported in 2014 (2) Mh.L.J. 46 in the case of *Michael Anthony William Gareth and another vs. Maria do Rosario da Fatima and another* has observed at para 15 thus :

“ 15. So also the contention of Shri S. D. Lotlikar, learned Senior Counsel, that the respondent No. 1 has failed to establish that her bona fide need to occupy the disputed premises is not genuine, honest and conceived in good faith, cannot be accepted in view of the findings of the Authorities below referred to herein above. A bona fide requirement of the landlord is a concept which requires a practical

approach and manifested by the actual need of the landlord and not a mere fanciful or whimsical desire. As noted herein above, the fact finding Authorities have come to the conclusion that the respondent No. 1 has established her bona fide need and her claim cannot be said to be whimsical. Rent Control Legislature generally leans in favour of a tenant but it is only in cases in which the eviction is sought of the tenant on account of bona fide requirement of the landlord for its own occupation or its use of the tenanted premises when it treats the landlord with some sympathy. In such circumstances, if one examines the findings of the Authorities below, on given facts proved by the evidence on record, the need to occupy the tenanted premises by the respondent No. 1 can be said to be natural, real, sincere and honest. If a landlady wishes to reside with comfort in a house of her own, the law does not command or compel her to squeeze herself and dwell in a lesser premises so as to protect the continued occupation of the tenanted premises. Hence, considering the concurrent findings of facts arrived at by the Authorities below as elaborated above, there is no reason for any interference of this Court under Article 227 of the Constitution of India. The Apex Court in the case of Julieta Antonieta Tarcato Vs. Suleman Ismail (2008(2) Mh.L.J. (S.C.)

486) has held at paras 11 and 12 thus :

"11. Having noticed the evidence on record and the findings recorded by the courts below we have come to the conclusion that this appeal must be allowed. The finding of bona fide personal need recorded by the Appellate Court is a finding of fact based on the evidence on record. We have considered the evidence on record and we find that the finding recorded by the Appellate Court did not deserve to be set aside. In fact, the High Court also was of the same view, but in the changed circumstances having regard to the events that took place during the pendency of the writ petition, the High Court interfered with the order of the Appellate Court. We hold that the High Court was not justified in doing so. It cannot be lost sight of that the premises which the appellant required for her personal bona fide need belonged to her. She was residing in those premises with other family members for many years. Unfortunately, she suffered an accident and in the absence of any other grown up male member in the family she was persuaded by her brother Lawrence to come and reside in his apartment which was one of the flats in Ashoka Apartments and which was owned by him and his brother Tito. After residing there for several years, the appellant

felt that she should not burden her brother any more and, therefore, wanted to shift to her own accommodation which was then in occupation of the respondent. The trial court made much of the fact that the appellant had also pleaded her bona fide need of providing accommodation to other members of the family. While doing so the trial Court completely lost sight of the fact that apart from the requirement of other members of the family, the appellant also required the premises for her own accommodation. Thus, even if the other members of the family no longer required the premises, the requirement of the appellant survived. She had every right to occupy her own premises and she could not be told that she should share accommodation with her brother in another apartment."

"12. The High Court was in error in holding that since the appellant became a co-owner of the premises upon the death of her brother Lawrence, she had a right to reside in those premises and, therefore, her need for the premises owned by her exclusively did not subsist. The appellant has brought to our notice the fact that in September 2003, the appellant and her sister gave their consent for the transfer of the flat in Ashoka Apartments in the name of

Tito, their brother, who was a co-owner of the flat along with her late brother Lawrence. Even if we ignore this fact, one cannot compel the owner of the premises which exclusively belongs to her to share accommodation with a co-owner of hers in another premises. The appellant being the owner of the suit premises, her need being bona fide and reasonable, it would be unfair to compel her to share the accommodation in another premises with its co-owner. We must therefore hold that the High Court was in error in coming to the conclusion that the bona fide personal need of the appellant did not subsist."

Taking note of the said observations, I find that there is no case made out by the petitioner for interference in the orders passed by the Authorities below, holding that the respondents are entitled to occupy the disputed premises for their bonafide occupation in terms of Section 23(a)(ii) of the Rent Control Act.

11. The next contention of Shri Mulgaonkar, learned Counsel appearing for the petitioner that comparative hardship will have to be examined in terms of Section 23(3) of the Rent Control Act, also cannot be accepted on a plain reading of the said provision. The said

provision applies in cases where the landlord seeks eviction for additional premises of the same building, which is not the case in the present case. Hence, the said contention of Mr. Mulgaonkar does not call for any consideration.

12. In view of the above, I find no merit in the above writ petition, which is stands accordingly rejected.

F.M. REIS, J.

ssm.