

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.1059 OF 1998

Keshav Ramchandra Gobare (Since Deceased)]
 through his legal heirs -]
 Mangala Keshav Gobare and Ors.] ... Petitioners

Versus

Sukharaj Pratapchand Jain.] ... Respondent

Ms. Teja Katdare for Petitioners.

CORAM :- M. S. SONAK, J.

Judgment Reserved on :- JUNE 24, 2015
Judgment Pronounced on :- JULY 07, 2015

JUDGMENT :-

1. This petition challenges Judgment and Order dated 10/10/1997 made by the II Additional District Judge, Raigad, at Alibaug in Civil Appeal No.153 of 1993 setting aside decree of eviction made in Petitioners' Regular Civil Suit No.21 of 1998 and consequently declining the eviction of the Respondent from the suit premises.

2. The Petitioners are the owners of a two storeyed house situated at Ward No.12 in Murud Nagarpalika Parishad. The first floor of the house is numbered as 97 and the ground floor as 98. The

Respondent is a tenant in respect of 3 rooms and 3 store-rooms on the ground floor ('suit premises) against payment of of monthly rent of Rs.85/- (Rupees Eighty Five Only). The suit premises were let out for residence as well as business purpose.

3. The Petitioners instituted Regular Civil Suit No.21 of 1998 in the Court of Civil Judge Junior Division at Murud ('trial Court') seeking eviction on the following three grounds :-

- (a) That the Respondent has been guilty of conduct which is a nuisance or annoyance to both, the Petitioners as well as neighbouring occupiers of the suit premises;
- (b) That the Respondent has acquired vacant possession of suitable residence;
- (c) That the suit premises were reasonably and bonafide required by the Petitioners for the purposes of residence as well as business.

4. The trial Court did not accept the ground of nuisance or annoyance but on 30/09/1993, decreed the Petitioners' suit accepting that bonafide requirement ground and also because the Respondent had acquired suitable residence elsewhere.

5. The Respondent appealed to the Court of II Additional District Judge, Raigad, at Alibaug (Appeal Court) and the Appeal Court, by Order dated 10/10/1997 (impugned Order), has reversed the trial Court. Hence the present petition.

6. Ms. Teja Katdare, learned Counsel for Petitioners, submitted that the documentary as well as oral evidence on record very clearly establish that the Respondent had acquired alternate premises and therefore the ground for eviction under Section 13 (1) (l) of The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ('said Act') was made out. That apart, there was ample material on record to establish that the Petitioners reasonably and bonafide require the suit premises and that the hardship resulting from making an order of eviction would be much lesser as compared to the hardship resulting out of denial of such decree of eviction. Ms.Katdare submitted that the Appeal Court has not considered the issue of reasonable and bonafide requirement in its proper legal perspective and consequently, the impugned Judgment and Order warrants interference.

7. The Respondent, though served, has not chosen to put any appearance in the matter. Records and proceedings were called for and perused.

8. Section 13 (1) (l) of the said Act provides that the landlord shall be entitled to recover possession of any premises if the Court is satisfied that the tenant, after the coming into operation of the said Act, has built, acquired vacant possession of or been allotted a '*suitable residence*'. In the plaint, the Petitioners have pleaded that the Respondent has purchased House No.86/1 in the same vicinity in the name of his brother Nayanmal as a '*Benami Transaction*'. The said

house is a one storey building, in which the Respondent operates a video centre under the name and style 'Sainath Video Centre'. There is no categorical pleading in the plaint that House No.86/1 constitutes '*suitable residence*'. The allegation is that the House No.86/1 is being used by Respondent to run a video centre.

9. The Petitioners, in respect of the aforesaid, have examined Dilip Gobare (PW 1) and Pramod Upadhye, a Bank Manager (PW 2). By way of documentary evidence, the Petitioners have produced application made by the Respondent seeking loan from a cooperative bank (Exh.72) and charge-sheet in Criminal Case No.45 of 2984 (Exh.73) and panchanama to indicate that the video centre at House No.86/1 was indeed being operated by the Respondent. The Respondent examined himself by way of defence.

10. From the oral and documentary evidence produced on record, it cannot be established that the Respondent has acquired '*suitable residence*'. The loan application and documents connected therewith, at the highest indicate that the Respondent had a stake in the business of Sainath Video Centre. Similarly, the charge-sheet and the panchanama, at the highest, indicate that the Respondent was involved in the conduct of business at Sainath Video Centre. This evidence, falls short of making out a case as contemplated by Section 13 (1) (l) of the said Act. There is no evidence to the effect that House No.86/1 was in fact owned by the Respondent or that the same was '*suitable residence*'. There is no dispute that the suit premises are

presently occupied by the Respondent for both residential as well as commercial purpose. In such circumstances, it was for the Petitioners to have made out a case that the alternate premises in House No.86/1 have been acquired by Respondent and further, the same constitute '*suitable residence*'. The pleadings as well as the evidence on this count fall short of the requirement under Section 13 (1) (l) of the said Act.

11. That apart, the Appeal Court, upon analysis of the oral as well as documentary evidence on record, has recorded a finding that the alternate premises were owned by the brother of the Respondent. To this effect, there are admissions from PW 1 Dilip. DW 1 Sukharaj (Respondent) in his deposition has stated that the alternate premises belong to his brother and part of alternate premises is used as a cloth shop by his brother and the remaining part as residence for the family members of his brother. DW 1 Sukharaj has, however, admitted that in the alternate premises belonging to his brother, the Respondent and his sons carry on business of a video centre. This is on basis of permission from Respondent's brother. The Appeal Court, in such circumstances, has rightly held that such user cannot be termed as acquisition of premises by the Respondent and in any case, the same is not acquisition or allotment for the purposes of a '*suitable residence*'. The charge-sheet and panchanama, upon which the Petitioners placed reliance, at the highest, establish that the Respondent was operating a video centre from the alternate premises. There is really no warrant to interfere with the findings of facts in the exercise of writ jurisdiction.

12. On the aspect of reasonable and bonafide requirement, the view taken by the trial Court was rightly interfered with by the Appeal Court. The trial Court, in para 6 of its Judgment and Order dated 30/09/1993 (this is the only para devoted to the issue of reasonable and bonafide requirement) has observed that Murud has been declared as a tourist place and it is therefore essential to make available at Murud sufficient and adequate lodging houses. This is the business, the Petitioners are already carrying on and intend to expand. There is a line that the Petitioners are carrying on the hotel business through tenanted premises and the Petitioners' landlord is, at any time, likely to demand such premises back from the Petitioners. On this sole consideration, the trial Court held that the requirement of reasonable and bonafide requirement of the Petitioners has been proved. The trial Court did not even advert to the provisions contained in Section 13 (2) of the said Act which state that no decree for eviction shall be passed on the grounds specified in Section 13 (1) (l) of the said Act if the Court is satisfied that, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, greater hardship would be caused by passing the decree of eviction than by refusing to pass it. A single line that '*more than loss will be caused to the Petitioners due to want of premises*', does not amount to any consideration on the aspect of comparative hardship.

13. On the other hand, the Appeal Court has examined the issue of reasonable and bonafide requirement as also comparative

hardship in the proper perspective. The Appeal Court has rightly observed that there are no proceedings filed by the Petitioners' landlord, one Dattatraya Gupte, seeking eviction of the Petitioners from the tenanted premises. The Appeal Court had taken cognizance of the oral evidence of PW 1 Dilip, wherein it is admitted in the course of cross-examination that the landlord Gupte was present in the Court-hall at the time of record of evidence, thereby indicating that the landlord Gupte was very much available to adduce evidence in the matter. The Petitioners, however, have chosen not to examine the said landlord nor produced on record any notice from the said landlord seeking eviction of the Petitioners from the tenanted premises. In such circumstances, the Appeal Court rightly discredited the Petitioners' case that the Petitioners might be required to surrender the premises through which the Petitioners carries on business of hotel and lodging to landlord Gupte.

14. The Appeal Court also rightly taken note of the pleadings, or rather the absence of them, in the context of the case for expansion of business of hotel and lodging by the Petitioners. There are no pleadings to this effect in the plaint. The only plea set out by the Petitioners was that the business of hotel and lodging was carried out by the Petitioners through tenanted premises and the landlord Gupte had demanded the possession of the tenanted premises from the Petitioners, which the Petitioners might have to therefore surrender to the landlord. On the aspect of reasonable and bonafide requirement, PW 1 Dilip has admitted in the course of cross-examination that there

are 9 rooms in House No.97 (in possession of the Petitioners) and further, the Petitioners operate another lodge by name 'Lokmanya Lodge' at Azad Chowk, near old ST Bus Stand, which belongs to them. Significantly, this fact was not stated in the plaint. Upon cumulative consideration of such circumstances, the Appeal Court has rightly held that the Petitioners failed to make out the ground of reasonable and bonafide requirement.

15. In view of the aforesaid, although it was not necessary for the Appeal Court to have adverted to the issue of comparative hardship, the Appeal Court has nevertheless done so in para 24 of the impugned Judgment and Order. In this regard, the Appeal Court has taken cognizance of the circumstance that the Petitioners not only have a substantially large house for the purposes of residence and business but further, the Petitioners also carry on business at Lokmanya Lodge, near ST Bus stand which is owned by the Petitioners. The Petitioners also have other premises, but which are let out to some other tenant. As against this, the Respondent, who resides and carries on business through the suit premises, has 5 sons, 3 of which were major and two minor, on the date when the deposition of the Respondent came to be recorded. In such circumstance, even if allowance is made for the video centre operated by the Respondent and his sons through his brother's premises, it cannot be said that the finding of comparative hardship recorded by the Appeal Court in favour of the Respondent is vitiated by perversity or non-consideration of relevant material on record.

16. The findings of fact recorded by the Appeal Court cannot be said to be perverse or contrary to the weight of material on record. There is no error of approach or illegality in application of legal principles and in the appreciation of evidence on record. In exercise of writ jurisdiction, this Court does not exercise appellate powers. As long as the findings on facts and the appreciation of material on record are not vitiated by perversity or non-application of mind, there is no scope for interference.

17. Accordingly, there is no warrant to interfere with the impugned Order. This petition is dismissed. Rule is discharged. There shall be no order as to costs.

(M. S. SONAK, J.)