

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9260 OF 2014

Ashish Subhash Bumb .. Petitioner
VS.
Madhukar Mhaskuji Galande & Ors. .. Respondents

Mr. R. N. Sanghavi with Ms Anjali Bhujbal for Petitioner.
Mr. D. Sutar for Respondent.

CORAM : M. S. SONAK, J.
DATE : 10 AUGUST 2015

P.C. :-

1] This petition challenges the judgments and decrees dated 6 April 2011 and 5 September 2014 made by the Trial Court and the Appeal Court directing eviction of the petitioner on grounds contained in Section 16(1)(b) and 16(1)(g) of the Maharashtra Rent Control Act, 1999 ("Rent Act").

2] Mr. Sanghavi, the learned counsel for the petitioner has submitted that there is perversity in the record of findings by the two Courts and further, aspect of comparative hardship, the consideration of which is mandated by Section 16(2) of the Rent Act, has not even been adverted to by the Trial Court. Mr. Sanghavi submitted that the ground under Section 16(1)(b) of the Rent Act was not at all made out, in as much as the so-called construction

was not permanent and in fact the same was for the beneficial enjoyment of the suit premises. Mr. Sanghavi pointed out that time and again FIRs had been lodged by the petitioner to the effect that there were thefts from the suit premises on account of its dilapidated condition. Further, before effecting repairs, necessary permission from the Municipal Authorities had also been obtained. The repairs were carried out in the presence of the landlord and therefore, there was deemed consent. For all these reasons, Mr. Sanghavi submitted that the eviction order made by the two Courts under Section 16(1)(b) of the Rent Act was in excess of jurisdiction. Mr. Sanghavi placed reliance upon the decisions in the cases of :

(I) *Shri Kishandas Gulabchand Kataria vs. Smt. Rukmini Kisan & Ors.*¹;

(II) *Dnyanoba Shankar Shinde vs. Mohanraj Pukhraj Kering & Ors.*²;

(III) *Suka vs Ranchhoddas*³;

(IV) *Dharsibhai Panachand Shah vs. Smt. Samaratbai Lilachand Shah*⁴;

(V) *M/s. Chhotalal Maganlal Bachkaniwala & Ors. vs. M/s. Mayur Silk Mills, Surat & Ors.*⁵;

(VI) *Pitambardas Kalyanji Bakotiya vs. Dattaji Krishnaji*⁶ ;

1 1993 Mah. RCJ 246

2 1991 Mah. R.C.J. 434

3 1972 Mh. L. J. 477

4 1975 B.L.R. Vol. LXXX 587

5 1978(1) All India Rent Control Journal 71

6 1981 Mh.L.J. 290

(VII) *Gopaldas Kishanchand Talreja vs. Vijaysingh Bhimsingh Patil & Ors.*⁷;

(VIII) *Ratanlal Ramgopal Agarwal & Ors. vs. M/s. Kurban Hussain Gulamali Lahri & Anr.*⁸;

(IX) *Ramchandra Dattatraya Gandhi vs. Sou. Pushabai Manohar Sheth*⁹, and

(X) *Somnath Krishnaji Gangal vs. Moreshwar Krishnaji Kale & Ors.*¹⁰

3] On the aspect of reasonable and bonafide requirement, Mr. Sanghavi submitted that the requirement pleaded was of the landlord's son Sanjay. The said Sanjay was however never examined and further, the material on record suggests that Sanjay had alternate premises from where he was operating a floor mill. Besides, Mr. Sanghavi submitted that the issue of comparative hardship has not been adverted to at all by the two Courts. Reliance was placed upon several judgments, including in particular the judgment in the case of *Ashok Babanrao Viskhande & Anr. vs. Murlidhar Ramratan Bhandari & Anr.*¹¹, *Chandulal Narayandas Gohil vs. Bechanram Mahadeo Halwai & Anr.*¹², *Messrs United General*

7 AIR 1982 Bombay 305

8 1986 Mah. R.C.J. 402

9 AIR 1990 Bombay 182

10 1995 (1) Mh. L. J. 675

11 2003 (Supp.) Bom C.R. 392

12 1988 Mah. R.C.J. 28

*Finance & Anr. vs. H. H. Maharani Smt. Ramakunvarba Saheb of Vankaner*¹³, *Sumati Appa Mestri vs. Manohar Krishnaji Patankar*¹⁴, *Deena Nath vs. Pooran Lal*¹⁵ and *Suresh D. Zamakade vs. Narayandas V. Shah & Ors.*¹⁶

4] In this case, both, Trial Court as well as the Appeal Court have concurrently recorded findings of fact that the petitioner has carried out a permanent construction on the suit premises without the prior written consent of the respondent and further that the suit premises are required reasonably and bonafide by the respondent. In exercise of jurisdiction under Article 227 of the Constitution of India, this Court does not exercise any appellate jurisdiction. Therefore, there is no question of re-appreciation of evidence, with a view to determine whether some other view is possible or plausible. In exercise of the limited jurisdiction under Article 227, interference with findings of fact is warranted only where it is demonstrated that such findings are vitiated by perversity or are contrary to the weight of evidence on record.

5] In the case of *M/s. India Pipe Fittings Co. vs. Fakruddin M. A. Baker & Anr.*¹⁷, the Apex Court in the context of exercise of

13 1989 Mah. R.C. J. 632

14 1991 Mah. R.C.J. 471

15 (2001) 5 SCC 705

16 2003 Bom. R.C. 294

17 AIR 1978 SC 45

supervisory jurisdiction, observed thus:

“The limitation of the High Court while exercising power under Article 227 of the Constitution of India is well settled. Power under Article 227 is one of judicial superintendence and cannot be exercised to upset conclusions of facts howsoever erroneous those may be. It is well settled and perhaps to late in the day to refer to the decision of the Constitution Bench of this Court in (Waryam Singh v. Amaranath), 1954 S.C.R. 565 : A.I.R. 1954 S.C. 215 where the principles have been clearly laid down as follows:

“This power of superintendence conferred by Article 227 is, as pointed out by Harries, C. J., (in Dalmia Jain Airways Ltd. v. Sukumar Mukherjee), A.I.R. 1951 Cal. 193 (SB) to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not in correcting mere errors.”

6] In the case of *Bahutmal Raichand Oswal vs. V. R. Tarte*¹⁸, in the context of proceedings between landlord and tenant under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the Apex Court, relying upon its previous decision on the same subject, observed thus:

“If error of fact, even though apparent on the face of the record, cannot be corrected by means of a writ of Certiorari it should follow a fortiori that is not subject to correction by the High Court in exercise of its jurisdiction under Article 227. The power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a Superior

18 AIR 1975 S.C. 1297

Court can do in exercise of its statutory power as Court of appeal. The High Court cannot in guise of exercising its jurisdiction under Article 227 convert itself into a Court of Appeal when the Legislature has not conferred a right of appeal and made the Subordinate Court or tribunate final on fact.”

7] In the case of *Ashok Kumar & Ors. vs. Sita Ram*¹⁹, the Apex Court in the context of scope of interference with the findings of fact recorded by the authorities under the Rent Act has observed thus:-

“The question that remains to be considered is whether the High Court in exercise of writ jurisdiction was justified in setting aside the order of the Appellate Authority. The order passed by the Appellate Authority did not suffer from any serious illegality, nor can it be said to have taken a view of the matter which no reasonable person was likely to take. In that view of the matter there was no justification for the High Court to interfere with the order in exercise of its writ jurisdiction. In a matter like the present case where order passed by the statutory authority vested with power to act quasi judicially is challenged before the High Court, the role of the Court is supervisory and corrective. In exercise of such jurisdiction the High Court is not expected to interfere with the final order passed by the Statutory Authority unless the order suffers from manifest error and if it is allowed to stand it would amount to perpetuation of grave injustice. The Court should bear in mind that it is not acting as yet another appellate court in the matter. We are constrained to observe that in the present case the High Court has failed to keep the salutary principles in mind while deciding the case.”

19 (2001) 4 SCC 478

8] In case of *N. Eswari w/o. Adinarayana vs. K. Swarajya Lakshmi, w/o Late K.V.L.N.A. Sastry*²⁰, the Apex Court has held that it is not open to the High Court, in exercise of its revisional jurisdiction, to interfere with concurrent findings of fact of rent controller and appellate authority unless of course the findings of fact are perverse or arbitrary.

9] In the context of the ground contemplated by Section 16(1)(b) of the Rent Act, the petitioner is not quite clear about his stance. At one stage, the petitioner contends that necessary permission was obtained from the landlord. At another stage, the petitioner contends that since the activity complained, was undertaken in the presence of the landlord, there was some sort of deemed consent or in any case waiver. Ultimately however, the petitioner has failed to bring-forth material in support of either of the two circumstances. Section 16(1)(b) of the Rent Act contemplates prior written consent. The same is admittedly not on record. There is on record permission granted by Municipal Authority to carry out certain repairs. The permission indicates that the same was granted subject to certain conditions including *inter alia* in the context of restraint upon increase in the height. There is however material on record that the Municipal Authority issued notices to the petitioner to stop the

²⁰ (2009) 9 SCC 678

illegal construction work. The two notices have therefore to be construed in the light of other evidence on record. The landlord has examined himself and one Kiran Nile, who is a photographer. The landlord has deposed that the petitioner under the guise of effecting repairs, has pulled down almost half the portion of the suit premises and in its place erected a new construction with substantially increased height, so as to virtually avail himself of an additional floor. The photographer, who has taken photographs has also deposed in the matter. The two Courts, after appreciation of the material on record have concluded that the petitioner has carried out construction of permanent nature. The trial Court, by adverting to cross-examination of the petitioner has recorded finding that the premises which were constructed with mud and had a tin roof, consequent upon erection of the permanent construction, presently constitute a structure with cement, bricks, iron angles and tiles. The petitioner has in fact admitted the difference between the structure on the eastern side and the structure on the western side which is newly constructed. The two Courts have adverted to the material on record both documentary as well as oral. The Appeal Court, upon analysis of the material on record has recorded a finding that the petitioner has constructed one storeyed building on the western portion, which fact is virtually admitted by the petitioner in the course of deposition. This is despite the fact that the permission

from Municipal Authorities was only for repairs and with a specific restraint on increase in height or area of the suit premises. Ultimately, all these are pure findings of fact. The findings of fact are substantially borne by the material on record. There is accordingly no perversity in the record of findings of fact so as to warrant any interference in the exercise of extra ordinary jurisdiction under Article 227 of the Constitution of India.

10] The decisions upon which reliance was placed by Mr. Sanghavi mainly take the view that activity undertaken for the beneficial enjoyment of the suit premises cannot be regarded as some permanent construction warranting eviction under Section 16(1)(b) of the Rent Act. Further, in the context of determining whether construction is of a permanent nature, the mode, degree of annexation and intention of the party putting up construction should be considered. Minor repairs for better enjoyment and use of the said premises cannot be regarded as construction of permanent nature. In some of the decisions upon which reliance was placed, window frame was replaced for the safety of inmates, some shutter was removed from its existing location and installed at another, kitchen platform was erected, old wooden shutters in front of the shops were replaced with iron shutters and so on. In such circumstances, upon appreciation of the material on record, in most

of the cases, the finding recorded by the Court that such structures were not permanent in nature were not interfered with by this Court. In the present case, the material on record does not establish that the nature of activity undertaken by the petitioner was not permanent but for the beneficial use of the suit premises. Accordingly, the decisions relied upon by Mr. Sanghavi are distinguishable.

11] On the aspect of reasonable and bonafide requirement, again, the two Courts after consideration of the entire material on record and having regard to all the relevant circumstances have recorded a finding in favour of the landlord. The Trial Court, though not in so many words, has adverted to the aspect of comparative hardship. In any case, the Appeal Court has substantially adverted to the aspect of comparative hardship. Both the Courts have relied upon the admission of the petitioner that he has a shop at Vishrantwadi from which he carries out the business in the name of 'Yash Opticals' which is the same or substantially the same business which is undertaken through the suit premises. Mr. Sanghavi, without there being any material on record however submitted that the business through the said shop is carried on by the petitioner's brother. Mr. Sanghavi further submitted that the landlord's son Sanjay has alternate premises through which he

operates a floor mill. The two Courts have considered the aspect of the landlord's son having alternate premises through which he operates a floor mill. Even after consideration of this aspect, the two Courts have held that the suit premises are required reasonably and bonafide to set up a hardware business. In any case, it is really not for the petitioner to dictate any terms to the landlord. The petitioner cannot contend that he has two premises, out of which one is being used by his brother and that the landlord's son should be satisfied that the only premises through which he operates a floor mill. The two Courts have also held that the petitioner has placed no material whatsoever on record that the petitioner did search for some alternate premises in the locality after receipt of notice from the respondent landlord. There is really no perversity in the findings of fact recorded by two Courts. The two Courts have not excluded any evidence from consideration nor they have adverted to any irrelevant or extraneous material. The findings of fact are substantially borne out from the material on record. No case therefore is made out to interfere with concurrent findings of fact.

12] The decisions on the aspect of reasonable and bonafide requirement relied upon by Mr. Sanghavi, hardly afford any assistance to the petitioner, in the context of findings of fact recorded by the two Courts. True, in the present case, the landlord

did not examine his son Sanjay. However, the landlord has examined himself and has clearly deposed to the facts pleaded in the plaint in the context of ground for reasonable and bonafide requirement. The non examination of Sanjay, can therefore be not regarded as fatal in the present case. Decisions do lay down that the decree of eviction cannot be made merely on ground of reasonable and bonafide requirement without adverting to the aspect of comparative hardship. In this case, as noted earlier, both the Courts have adverted to the aspect of comparative hardship.

13] Therefore, on cumulative consideration of the aforesaid facts and circumstances and bearing in mind the limits of jurisdiction under Article 227 of the Constitution of India when it comes to interference with concurrent findings of fact, there is no case made out to warrant interference. This petition is therefore dismissed. There shall be no order as to costs.

14] At this stage, the learned counsel for the petitioner seeks for a restraint upon execution of the eviction decrees as the petitioner desires to take recourse against this judgment and order before the Hon'ble Apex Court. The request is reasonable and therefore, subject to the petitioner filing the usual undertaking in this Court within a period of two weeks from today, the eviction decrees shall

not be executed for a period of eight weeks from today. The petitioner to furnish copy of undertaking to the learned counsel for the respondents before the same is filed in the Registry.

(M. S. SONAK, J.)

Chandka