

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NOS. 256, 257 AND 258 OF 2015

WRIT PETITION NO. 256 OF 2015

Smt. Rosa Moraes,
daughter of late Shri Deodata Moraes,
aged about 54 years, Indian National,
house lady, resident of House no. 23/31,
Velsao Pale, Cansaulim, Goa.

..... Petitioner

V e r s u s

1. Mr. Pundalik Sutara
of major age, resident of
Room no. 2, 'GOMES CHAWL',
House no. 205, P.O. Dabolim,
Alto – Dabolim, Goa.
2. Mrs. Joana Andre Gomes,
wife of Inacio Francisco D' Costa,
major of age, resident of House
no. 538, Dongrim, Navelim,
Salcete, Goa.

..... Respondents

WRIT PETITION NO. 257 OF 2015

Smt. Rosa Moraes,
daughter of late Shri Deodata Moraes,
aged about 54 years, Indian National,
house lady, resident of House no. 23/31,
Velsao Pale, Cansaulim, Goa.

..... Petitioner

V e r s u s

1. Smt. Rukhma Chandragiri,
of major age, resident of
Room no. 4, 'GOMES CHAWL',
House no. 205, P.O. Dabolim,
Alto – Dabolim, Goa.
2. Mrs. Joana Andre Gomes,
wife of Inacio Francisco D' Costa,
major of age, resident of House
no. 538, Dongrim, Navelim,
Salcete, Goa.

A N D

WRIT PETITION NO. 258 OF 2015

Smt. Rosa Moraes,
daughter of late Shri Deodata Moraes,
aged about 54 years, Indian National,
house lady, resident of House no. 23/31,
Velsao Pale, Cansaulim, Goa.

..... Petitioner

V e r s u s

1. Mr. Shivanand Lamani,
of major age, resident of
Room no. 3, 'GOMES CHAWL',
House no. 205, P.O. Dabolim,
Alto – Dabolim, Goa.
2. Mrs. Joana Andre Gomes,
wife of Inacio Francisco D' Costa,
major of age, resident of House
no. 538, Dongrim, Navelim,
Salcete, Goa.

Mr. Rohit Bras De Sa, Advocate for the Petitioners.
Mr. Suresh Raikar, Advocate for the Respondent no. 1.

Coram:- K. L. WADANE, J.

Date of reserving Order :- 23.11.2015

Date of pronouncement of Order :- 15.01.2016

ORDER

The above three Writ Petitions are regarding the same subject matter in reference to the eviction of the tenant and the proceedings initiated by the Petitioner under the provisions of Section 22(2)(a)(c)(d) and (g) of the Goa Daman and Diu Building (Lease, Rent and Eviction) Control Act, 1968, (hereinafter referred to as the '*Rent Act*' for short). The parties shall be referred in the manner as they so appear in the cause title of the Orders passed in the Rent Cases/Appeals.

2. The Petitioner filed the Rent Applications against the Respondents bearing Rent Case no. 41/RC/2014/C, Rent Case no. 40/RC/2014/C and Rent Case no.

39/RC/2014/C in the Court of Civil Judge, Junior Division at Vasco, against the Respondents. All these Rent cases were allowed. Hence, the Respondents had preferred an Appeal before the District Judge, bearing Rent Appeal nos. 14 of 2014, 15 of 2014 and 16 of 2014 and by Order dated 31.01.2015, all the Appeals preferred by the Respondents have been allowed and the Orders passed by the learned Trial Court are set aside. Therefore, the Petitioner preferred the above mentioned three Writ Petitions.

3. I have heard the arguments of Mr. Rohit Bras De Sa, learned Counsel appearing for the Petitioners and Mr. Suresh Raikar, learned Counsel appearing for the Respondent no. 1.

4. The brief facts of the above Eviction Proceedings/Rent Case no., 41 of 2014 are that the Petitioner filed an application against the Respondents under Section 22(2)(a) (c)(d) and (g) of the Rent Act contending, inter alia, that she is the co-owner of the -plot identified under letter 'B' consisting of nineteen plots under no. B-1 to B-19 forming part of a larger property known as "Aframento" situated at Village Dabolim measuring an area of 8199 square metres. These nineteen plots have been independently surveyed under no. 56/1-AA to 56/1AG (7 plots), 56/1-AT to 56/1-AY (6 plots) and 56/1-BH to 56/1-BM (6 plots) of Dabolim Village. These plots have been referred to as the suit property.

5. The suit property is purchased by the mother of the Petitioner namely Mrs. Basilia Magna Gomes along with structures existing therein as per the Sale Deed dated 08.11.2002. That this Deed of Sale has been further confirmed by Order passed in Special Civil Suit no. 1/04/A by the Court of Civil Judge, Senior Division at Vasco.

6. It is further contended by the Petitioner that the suit property was earlier

allotted to one Mr. Paulo Santan Gomes in Regular Civil Suit no. 63/1989 along with the structures therein which includes the house known as “Gomes Chawl” bearing house no. 205 situated at Alto Dabolim of which house tax was standing in the name of the Respondent no. 1 vide Decree dated 18.02.1992, wherein the Respondent no. 2 was one of the Defendant.

7. Mr. Paulo Gomes and his wife Ms. Natalina Martina Correia, sold the suit property to Mrs. Basilia Gomes, was owner of the property. Mrs. Basilia Gomes expired on 07.08.2009 leaving behind the Petitioner and her three daughters with their respective spouses as the sole and universal heirs.

8. In plot no. B-19 surveyed under no, 56/1-AT of Dabolim Village, there exists a house structure known as “Gomes Chawl” bearing House no. 205 consisting of five rooms which includes room no. 2 which is occupied by the Respondent no. 1 as a statutory tenant on monthly rent of Rs.200/-. The Petitioner's mother became the owner of the suit property since the date of Sale Deed i.e. 08.11.2002 and it was conveyed to the Respondent no. 1 from time to time with a request to tender the suit premises directly to the Petitioner or any of the heirs of Mrs. Basilia Gomes. The Respondent no. 1 promised to pay the rent directly to the mother of the Petitioner or the Petitioner and failed to do so till the date of the application and on this ground, the Petitioner claimed that the Respondent no. 1 was entitled to be evicted from the suit premises. That, realising that the Respondent no. 1 would not tender/pay the rent, the mother of the Petitioner wrote a letter dated 12.04.2008 for failure to pay the rent and to evict or handover the suit property to her. Such letter was sent by registered AD and was returned with remarks “intimated” and “unclaimed return to sender”. The Respondent no. 1 handed over that letter to the Respondent no. 2 who is in no way connected or having any right to the suit property. The Respondent no. 2 through her Advocate, sent reply dated 06.06.2008.

9. The Respondent no. 1 filed written statement and thereby contended that the Eviction Proceedings are filed on the basis of the notice dated 12.04.2008 purportedly issued by Ms. Basilia Magna Gomes and no Eviction Application was filed by the said Basilia Gomes during her lifetime. Hence, on the date of death of Basilia Gomes, the cause of action to file the suit came to an end. The Petitioner did not issue any notice under demand which is a condition precedent under the provisions of Section 22(a) of the Rent Act. Furthermore, there was no Lease Agreement as contemplated under Section 34 of the Rent Act therefore, the Court has no jurisdiction to entertain and try the Eviction Application.

10. It is further the case of the Respondent no. 1 that he is residing in room no. 2 for 34 years on payment of monthly rent of Rs.200/- to the Respondent no.2 and the Petitioner was aware that the rent was received by the Respondent no. 2 even prior to the filing of the application for eviction and it was precisely for this reason that the Respondent no. 2 has been impleaded in the present application.

11. In Rent Case no. 40 of 2014, the Respondent no. 1 denied the title of the Petitioner. The Respondent no. 1 is tenant in room no. 4 of the suit property. On receipt of the letter dated 12.04.2008, the Respondent no. 1 handed it over to the Respondent no. 3. The Respondent no. 3 replied the same on 06.06.2008 and it is further contended that the Respondent no. 3 is the owner of house no.205 as a Mundkar of the original Landlord Mr. Paulo Gomes. He has filed a Petition for declaration of mundkarial rights which is still pending. Hence, the Respondent no. 1 denied the title of the Petitioner and it is further contended that the Respondent no. 1 is a tenant of the Respondent no. 3 since last seven year. Therefore, the Respondent prayed to dismiss the Petition.

12. In the Rent case no. 39 of 2014, the pleadings of the Petitioner as well as the Respondent no. 1 more or less are similar to the pleadings of the parties in Rent Case no. 41 of 2014. The only difference is with regards to the description of the lease hold premises i.e. room no. 3.

13. Considering the oral as well as documentary evidence on record, the learned Trial Court has held that the respective Respondents have failed to pay the rent amount and the First Appellate Court has held basically the relation between the Petitioner and the Respondent no. 1 as the Landlord and a tenant have not been established. Therefore, all the Appeals are allowed.

14. I have heard the arguments of Mr. Rohit Bras De Sa, learned Counsel appearing for the Petitioner and Mr. Raikar, learned Counsel appearing for the Respondents. During the course of arguments, Mr. Rohit Bras De Sa has argued that the relation between the Petitioner and the Respondent no. 1 can be established by the documentary evidence i.e. the rent receipt. He further argued that the Lease Agreement can be proved by producing rent receipts and here in the present case.

15. As against this, Mr. Raikar, learned Counsel appearing for the Respondents has argued that the Respondents are not defaulters in the payment of rent. Furthermore, the Petitioner has not given a statutory notice but it is issued by her mother. It is further argued by Mr. Raikar, learned Counsel, that in the notice dated 12.04.2008, it is contended by the mother of the Petitioner that the Respondent no. 1 is a trespasser. Therefore, the provisions of Rent Act have no application to the facts of the present case.

16. Considering the arguments advanced by both the sides, the following points arise for my determination :

<u>POINTS FOR DETERMINATION</u>	<u>FINDINGS</u>
(1) Whether there exists a relation between the Petitioner and the Respondent as a Landlord and tenant ?	No.
(2) Whether the Petition for eviction is maintainable ?	No.
(3) What Order ?	Writ Petitions are dismissed.

FINDINGS

17. To claim relief under the Rent Act, initially the party has to establish their relation as a Landlord and tenant otherwise the party to the litigation shall not be entitled to any relief under the Rent Act.

18. It is the contention of the Petitioner in all the Petitions, that the Petitioner is a Landlord and the Respondent no. 1 is statutory tenant on a monthly rent and the Respondent no. 1 failed to pay the rent to the mother of the Petitioner/Petitioner, therefore, the Respondent no. 1 in all the Petitions are liable to be evicted.

19. The Respondent no. 1 in all the Petitions have denied that they are tenant of either the Petitioner or the mother of the Petitioner. All of them have contended that they are the tenants of either Respondent no. 2/3. So, ultimately, they have denied the title of the Petitioner over the suit property. Admittedly, there is no Lease Deed between the Petitioner and the Respondents regarding the statutory tenancy as required under Section 34 of the Rent Act. This is one of the aspect which says that there were no relations between the Petitioner and the Respondent no. 1 as Landlord and tenant. Secondly, the

mother of the Petitioner issued a letter cum notice to Respondent no. 1 in all the Petitions. However, during her lifetime, she has not instituted any proceedings/petition for eviction of Respondent no.1. Thirdly, the present Petitioner has not issued notice to the Respondent no. 1 as required under Section 22(a) of the Rent Act. Assumed for the sake of argument, the letter/notice dated 12.04.2008 is the notice issued to the Respondent for termination of their tenancy and their eviction from the respective suit properties. On careful perusal of the contents of the letter/notice dated 12.04.2008, it appears that the mother of the Petitioner namely Basilia Gomes has contended that the Respondent no. 1 in all the Petitions are trespassers over the suit premises. The relevant portion of the notice reads as follows :

“You have criminally trespassed into the above room and are illegally without our consent, permission have been residing therein and further has not been paying the monthly rent of which I am the owner, atleast since 08.11.2002, from the time I had purchased the entire property.”

20. From the plain language used in the said letter, it appears that the Respondent no. 1 in all the Petitions are termed as tress-passers. In subsequent sentences, it has been contended that the Respondents are not paying the rent but in the notice/letter, no where it is mentioned that the Respondent no.1 is tenant and what was the rent payable to the Petitioner when the Respondent no. 1 in all the Petitions were inducted in the suit premises as a tenant. This is a basic document on the basis of which Respondent no. 1 in all the Petitions are sought to be evicted under the provisions of Section 22(2)(a)(c)(d) and (g) of the Rent Act. When there is no relation between the Petitioner and the Respondent no. 1 as a Landlord and tenant, an application of any of the provisions of the Rent Act does not arise. This is a basic element which has to be pleaded and proved by the Petitioner and then to establish the grounds on which the eviction of the

tenant is sought. But here, in the present case, the Petitioner has failed to established the relation between the Petitioner and the Respondent as a Landlord and tenant.

21. Admittedly, the present Petitioner has not issued notice to the respective Respondents under the provisions of Section 22(a) of the Rent Act. On the contrary, it is the say of the Respondent no. 1 in all the Petitions, that they are the tenants of the Respondent nos. 2/3 and they are paying rent to their Landlord Respondent nos. 2/3. The rent receipts of such payment of rent are produced on record. However, this aspect is not material to be taken into consideration in this Petition.

22. I think, the learned Trial Court has misdirected due to the language in the letter dated 12.04.2008 that the Respondents are not paying the monthly rent. However, the learned Trial Court has not taken into consideration the earlier words of the letter starting from "*you have criminally trespassed into the above room.....*". Therefore, the Trial Court has lost sight of the fact that the mother of the Petitioner has specifically contended that the Respondent no. 1 in all the matters have trespassed into the respective rooms in their occupation.

23. Looking to the over all circumstances appearing from the record, it appears that there is no relation that exists between the Petitioner and the Respondent no. 1 as a Landlord and tenant. Therefore, the Petitioner is not entitled to file proceedings under Section 22(2)(a)(c)(d) and (g) of the Rent Act for the eviction of the Respondent nos. 1/2. Therefore, the Petitions for the eviction of the Respondents were not maintainable. The learned District Judge has rightly considered all these aspects and legal position and, therefore, has rightly allowed the Appeal. Therefore, there is no reason to disturb the findings recorded by the first Appellate Court in all the Rent Appeals.

24. Consequently, there is no substance in the above Writ Petitions and, accordingly, they are dismissed with no Orders as to costs.

K. L. WADANE, J.

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