

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.180 of 2011**

Shri Yeshwant Raia Lad,
son Raia Dattu Lad,
residing at Savordem,
Sanguem, Goa. .. Petitioner

V/s.

1. M/s U. K. Printers and
Stationers, a partnership firm
with office at Curchorem,
by its partners
(a) Smt. Anandiben Gaurihar Kakodkar,
major
(b) Shri Sunil Gaurihar Kakodkar,
major,
both residing at Curchorem,
Quepem, Goa
2. Shri Shamsunder Raoji Sinai
Kakodkar,
residing at Madegal, Kakora,
Quepem, Goa.
(Deleted in terms of Order
dated 29/4/11 r/w order dt.
18/1/12 and 22/2/12) ... Respondents

Smt. Agni, Senior Advocate with Ms. A. Kamat, Advocate
for the petitioner.

Mr. C. A. Coutinho, Advocate for the respondents.

CORAM :- C. V. BHADANG, J.

Reserved on :- 2nd AUGUST, 2016

Pronounced on :-10th AUGUST, 2016

JUDGMENT :

The challenge in this petition is to the judgment and order dated 26/11/2010 passed by the Administrative Tribunal in Eviction Appeal No.30/2009, by which the Administrative Tribunal has set aside the order of eviction, passed by the learned Rent Controller and has remanded the matter, for deciding it afresh.

2. The brief facts, necessary for the disposal of the petition, may be stated thus :

That Shop No.13 in a building 'Birzamola Bebquegal' situated at Curchorem is the subject matter of dispute. The petitioner is the owner/ landlord of the suit shop, which was let out to the respondent no.2 Shamsundar Kakodkar (since deleted) on a monthly rent of Rs.60/- for a period of five years from the date of the commencement of the agreement dated 05/03/1963. According to the petitioner, by mutual understanding, the rent was increased to Rs.90/- per month.

3. The petitioner filed an application under Section 22(2)(b) of the Goa, Daman and Diu Buildings (Lease Rent & Eviction) Control Act, 1968 (the Act, for short) against Shyamsundar for eviction on the ground of subletting. The case made out in the application before the Rent Controller was that the petitioner had received a letter dated 16/01/1990 from the first respondent M/s. U. K. Printers and Stationers, Churchorem, stating that they have been paying the rent in respect of the suit shop in the name of Shamsundar Kakodkar since 1971. In the said letter, the respondent no.1 claimed that the petitioner has refused to accept the rent for the month of December, 1989, on the ground that the first respondent has no concern with the suit shop. It was claimed by the respondent, that the petitioner has already accepted the first respondent as a monthly tenant in respect of the suit shop. Along with the said letter, a draft in the sum of Rs.90/- purporting to be rent for December, 1989, was sent along with a writing dated 26/04/1971 executed by the respondent nos.1 and 2, in which it was alleged that the suit shop was given to the respondent, with the consent of

the petitioner. The petitioner refuted the contents of the said letter by his reply dated 11/02/1990 and 12/02/1990 and returned the draft. By the letter dated 11/02/1990, the petitioner made it clear to the respondent that he cannot accept the rent, as at no point of time, the tenancy was created in favour of the respondent no.1 and there is no privity of contract, between the petitioner and respondent no.1.

4. By a letter dated 19/02/1990, the respondent no.1 again asserted that they are tenants in respect of the suit shop and that the petitioner has accepted the rent from April, 1971 to November, 1989 and they shall continue to remit the rent by money order. According to the petitioner, the respondent no.2- Shamsundar Kakodkar has sublet the suit shop to the respondent no.1 without their consent and accordingly, the petitioner sought his eviction.

5. Before the Rent Controller, Shamsundar Kakodkar was the sole respondent. He remained absent, before the Rent Controller. The Rent Controller recorded the

evidence of the petitioner and by his order dated 07/01/1994, allowed the application, directing the respondent Shamsundar Kakodakar to put the petitioner in vacant possession of the suit premises.

6. The respondent no.1 sought leave of the Administrative Tribunal to file an appeal, challenging the said order (as the respondent no.1 was not party before the Rent Controller). The Administrative Tribunal granted leave and entertained the appeal. The Administrative Tribunal found that the Rent Controller had "merely done the exercise of copying down the submissions of the petitioner and not giving any findings analysing the ingredients." Thus, the Administrative Tribunal found that the order was "absolutely cryptic" and in that view of the matter, held that it would be appropriate to remand the matter to the Rent Controller, "for giving hearing to the respondent no.1" (appellant before the Administrative Tribunal) and making them party thereto. The Administrative Tribunal allowed the appeal in the following terms :

"The Appeal is partly allowed. The impugned Judgment and order is set aside. The matter is remanded to the Rent Controller, Quepem with a direction to join the Appellants herein as the Respondents, the Respondent No.1 to amend the cause title before the Trial Court accordingly. Parties to appear before the Rent Controller, Margao, who holds charge of Rent Controller, Quepem, on 12.1.2011 at 10.30 a.m. It is specifically mentioned that the proceedings are to be held at Margao, till the arrangement is made for regular hearings at Quepem, Goa. The Rent Controller is further directed to expedite proceedings and complete the same by 31/12/2011 and pass a speaking order thereto."

7. It is this order, which is subject matter of challenge in this petition.

8. I have heard Mrs. Agni, the learned Senior Counsel for the petitioner and Shri Coutinho, the learned Counsel appearing for the first respondent. With the assistance of the learned Counsel for the

parties, I have perused the impugned orders.

9. It is submitted on behalf of the petitioner that there was enough evidence on record to show that Shamsundar Kakodkar, had sublet the suit shop in favour of the respondent No.1. It is submitted that Shamsundar Kakodkar remained absent before the Rent Controller and as such, there was no contest. The learned Senior Counsel submits that in such circumstances, the Rent Controller was justified in placing reliance on the uncontroverted evidence of the petitioner and allowing the application, directing eviction. The learned Senior Counsel submits that the Administrative Tribunal was in error in interfering with the said order.

10. The learned Senior Counsel has pointed out that the respondent no.1 had filed Special Civil Suit No.16/1995/A before the Senior Civil Judge at Quepem, for a declaration that the order passed by the Rent Controller, directing eviction of Shamsundar Kakodkar was not binding on the petitioner, as the said order

was obtained by fraud and collusion. It is pointed out that the said suit was dismissed by the Trial Court and the said judgment and decree was confirmed in appeal. The petitioner had challenged the same before this Court in Second Appeal No.89/2008, which was dismissed by this Court on 05/03/2009. The learned Senior Counsel has pointed out that this Court had confirmed the concurrent findings of fact recorded by the Trial Court and First Appellate Court and has held that there was no evidence about the petitioner being the tenant of the suit shop premises or of any collusion between the petitioner and Shamsundar Kakodkar. It is, thus, submitted that the first respondent, having failed, in obtaining declaration before the Civil Court, the Administrative Tribunal was not justified in reversing the order passed by the Rent Controller. The learned Senior Counsel has placed reliance on the decision of the Supreme Court in the case of **Vinay Kishore Punamchand Mundhada and Another Vs. Shri Bhumi Kalpataru and others;** (2010)9 SCC 129, in order to submit that it is impossible for a landlord to prove by direct evidence, the arrangement between the tenant and subtenant, as all

such arrangements are always clandestine and are entered into behind the back of the landlord. It is submitted that in such a case, the Court is required to draw its own inference upon the facts of the case.

11. On the contrary, it is submitted by Shri Coutinho, the learned Counsel for the respondent no.1 that the order of the Rent Controller was absolutely cryptic and unreasoned. It is submitted that the order of the Rent Controller lacks in recording the basic finding about the subtenancy being created, which requires parting of exclusive possession, coupled with evidence of a monetary consideration being received by the tenant from the subtenant. It is submitted that in the absence of any evidence on this aspect, the learned Rent Controller could not have relied upon the evidence of the petitioner in directing eviction. He, therefore, submits that the Administrative Tribunal was justified in reversing the order of the Rent Controller and sending the matter back, with a direction to add the petitioner as a party and decide the matter afresh. The learned Counsel has pointed out that the order of remand is

passed on concession on behalf of the petitioner. Thus, the petitioner cannot now challenge the said order.

12. The learned Counsel has placed reliance on the decision of the Supreme Court in the case of **Jogindar Singh Sodhi Vs. Amar Kaur**; (2005)1 SCC 31 and the decisions of this Court in the case of **Laxminarayan Gupta Vs. Motilal Gupta**; 2005(3)MhLJ 646 and **CC Yi Vs. Jankidevi Anantlal Gupta and others**; 2001(3) ALL MR 324. He submits that no case for interference in the order passed by the Administrative Tribunal is made out, as the impugned order, does not lead to any manifest injustice, as the petitioner would get an opportunity to establish the case of subtenancy as made out.

13. In reply, the learned Senior Counsel for the petitioner submits that there is no concession as such on behalf of the petitioner before the Administrative Tribunal, for remanding the matter back. The learned Senior Counsel has pointed out the reply filed by the

respondents to the application for interim relief in this petition, to submit that no such case is set up in the said reply.

14. I have given my anxious consideration to the rival circumstances and the submissions made.

15. At the outset, it is necessary to mention that what the Administrative Tribunal has recorded is that the Advocate for the petitioner (respondent before the Administrative Tribunal) informs that the Rent Controller from Margao holding sitting at Quepem, only on one day in a week and in such circumstances, the learned Counsel had requested for passing of appropriate orders for expediting the matter. Thus, considered as a whole, this cannot be treated as a concession for remand. At the highest, it would suggest that on behalf of the petitioner, a direction for expediting the matter was sought as the Rent Controller at Margao was holding sitting at Quepem only on one day in a week. In such circumstances, the submission that there was concession on behalf of the

petitioner for remand, which would disentitle the petitioner from challenging the order of the Administrative Tribunal, to my mind, cannot be accepted.

16. Now coming to the merits, in the matter before the Rent Controller, Shamsunder Kakodkar was the sole respondent. He was proceeded ex-parte and there was no contest. In such circumstances, the learned Rent Controller, after setting out the evidence of the petitioner, has found that the ground of eviction under Section 22(2)(b)(i) of the Act is proved. It is true that there are no elaborate reasons recorded. However, it is necessary to state that in a matter, which is not contested, the scope for discussion would be essentially limited and in such a case, it is not expected that the Court would embark on exercise of recording elaborate reasons. This is not to suggest that in cases where there is no contest, the Court can act without scrutiny of any nature. The only thing, which can be said, is that the scope of consideration and discussion is essentially limited in such a case. The perusal of the judgment of the Administrative

Tribunal would show that the Administrative Tribunal has not gone into the merits of the dispute. In fact, the Administrative Tribunal has observed that there is no need to hear the matter on merits (para 4 of the impugned order). The Administrative Tribunal has, thereafter, said that "at the backdrop of the claim of the substantive rights by the appellant (the respondent herein) to whom the leave is granted, it would be appropriate to remand the matter to the Trial Court for giving hearing and making them party thereto." Thus, it is clear that the Administrative Tribunal has not adverted to the merits of the controversy nor has examined the claim of the respondents, about they being tenants of the suit premises. It was not disputed during the course of arguments at bar, that the judgment passed by this Court in Second Appeal No.89/2008 was brought to the notice of the Administrative Tribunal. However, there is no discussion on the same, presumably because the Administrative Tribunal had decided not to go into the merits and has primarily based the order of remand on two aspects, namely (i) that the order of the Rent Controller is cryptic and (ii) that leave has been

granted to the respondent no.1 to file appeal. This, in my considered opinion, cannot be countenanced. As noticed earlier, there was no much scope for the Rent Controller to record elaborate reasons and secondly, merely because leave is granted to the first respondent to challenge the order of the Rent Controller, would not be sufficient to justify the order of remand.

17. In my considered view, it was necessary for the Administrative Tribunal to consider the case set up by the first respondent, before directing an order of remand. This is because the Administrative Tribunal has not only remanded the matter to Rent Controller for deciding it afresh, but there is further direction to add the first respondent as party thereto. It is evident that before a party is directed to be added in Rent Controller Proceedings, it has to be prima facie found that there is relationship of landlord and tenant between the parties. Thus, it was necessary for the Administrative Tribunal to examine the case set up by the first respondent at least in a prima facie manner to ascertain whether the case of existence of landlord and tenant relationship between the parties

is made out or not. The Administrative Tribunal was also required to look into the effect of the judgment of this Court in Second Appeal No.89/2008. It would be significant to note that the petitioner approached the Rent Controller with a case that the suit premises were tenanted to Shamsunder Kakodkar, which were sublet to the first respondent. Section 51 of the Act provides that the order of eviction of a tenant passed under the Act shall be binding on subtenant/s, whether they were parties to the proceedings or not, provided that such order was not obtained by fraud or collusion. The proviso appended to Section 51 of the Act says that where such subtenancy is created with written consent of the landlord, the subtenant shall be necessary party. Prima facie, in this case, the petitioner is not a party to the document dated 26/04/1971, which is executed between the respondent no.1 and Shamsunder Kakodkar. The first respondent had taken recourse to filing of suit challenging the order passed by the Rent Controller, on the ground that it is obtained by fraud or collusion, in which there was concurrent finding against the first respondent.

18. A brief reference to the application seeking leave to appeal, filed by the first respondent, may be made at this stage. The first respondent had claimed that originally the suit premises were leased to the second respondent, Shamsunder Kakodkar (since deleted) who is the brother-in-law of respondent no.1(a). It was contended that the second respondent was running a Printing Press in the suit premises under the name and style as Sham Printers, which business was discontinued and the premises were closed in the year 1970. It is further claimed that around April, 1971, the second respondent had suggested that the respondent no.1(a) along with another brother-in-law of the respondent no.1(a), by name Ulhas would form a partnership by name M/s. U. K. Printers, which was constituted on 01/04/1971. Thereafter, the said writing dated 26/04/1971 was effected. The case made out in the application seeking leave is that the respondent no.1 became the monthly tenant of the petitioner from April, 1971. It is the further case that the said Partnership was dissolved and a new Partnership was formed on 01/04/1980 by admitting respondent no.1(b) to the Partnership. In the light of

such a case being made out, it was necessary for the Administrative Tribunal to record, *prima facie*, a finding as to the existence of landlord and tenant relationship between the petitioner and the first respondent. I find that there is no consideration on this aspect and in the absence of such a finding, the Administrative Tribunal could not have ordered the remand, with a further direction to add the first respondent as a party to the proceedings before the Rent Controller.

19. The parties had advanced elaborate arguments on the basis of various decisions as cited above, in support of their rival contentions. It was urged on behalf of the petitioner that this court may itself consider the case set out by the first respondent and the decision in the Second Appeal No.89/2008, in order to decide whether the order of remand can be sustained or whether the order of the Rent Controller needs to be restored.

20. On the other hand, it was submitted on behalf

of the first respondent that in that event, the matter will have to be sent back to the Administrative Tribunal. I have given my anxious consideration to the rival submissions in this regard and I find that in as much as the Administrative Tribunal has not gone into the merits of the matter, it would be appropriate to send the matter back for deciding the appeal filed by the first respondent afresh in accordance with law. As I am inclined to send this matter back, I do not propose to make a detailed reference to the cases cited on behalf of the parties.

21. At this stage, it is necessary to notice the amendment to the Rent Control Act with effect from 24/05/2013. In view of the said amendment, the appeal will have to be sent back to the Appellate Board (see Section 45 and Section 45A of the Act), as the appellate jurisdiction has been since transferred from the Administrative Tribunal to the Appellate Board.

22. In the result, the following order is passed :

(i) The petition is partly allowed.

(ii) The impugned order dated 26/11/2010

passed by the Administrative Tribunal is hereby set aside.

(iii) Eviction Appeal No.30/2009 stands restored to the file of Administrative Tribunal. The Administrative Tribunal shall transfer the said appeal to the competent Appellate Board for disposal, in accordance with law.

(iv) Parties to appear before the Administrative Tribunal on 26/08/2016.

(v) The Appellate Board shall decide the appeal within a period of three months from the date of appearance of the parties.

(vi) Parties to co-operate for time bound disposal of the appeal.

(vii) Rival contentions of the parties are left open.

(viii) Rule is partly made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

SMA