

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 286 OF 2016

Shri Venkatesh P. Kamat, Resident
of H. No. 410, Rafael Pereira Road,
Margao, Goa.

(since deceased) through legal
representatives:

1.a. Mrs. Sandhya V. Kamat, widow
of late Venkatesh Kamat.

1.b. Mr. Aashish V. Kamat, son of
late Venkatesh Kamat, Both
residents of House No. 410, Rafael
Pereira Road, Margao, Goa.

.... Petitioners

Versus

1. Shri Agostinho Joaquim Santan
Medeira (deceased) through his LR's

1.a. Mr. Constance Medeira

1.b. Mrs. Anita Medeira

1.c. Mrs. Arlene Medeira e Naik

1.d. Mr. Kishore Naik

1.e. Mr. Raymond Medeira

1.f. Mrs. Aruna Medeira

All residents of Mumbai, All major
of age.

.... Respondents

Shri Sudin Usgaonkar, Senior Advocate with Ms.
Vinita Palyekar, Advocate for the Petitioners.

Shri V.A. Lawande with Ms. Gauri Pai and Ms. P.
Kaur, Advocates for the Respondents.

CORAM:- C. V. BHADANG, J.

RESERVED ON:- 29th AUGUST, 2016

PRONOUNCED ON:- 21st NOVEMBER, 2016

JUDGMENT:

The challenge in this petition under Article 227 of the Constitution of India, is to the judgment and order dated 04.12.2015 passed by the Appellate Board at Margao in Rent Appeal No. 8/2013 dismissing the appeal, thereby confirming the order dated 21.01.2003 passed by the learned Rent Controller directing eviction of the appellants, from the suit house.

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

A residential house bearing no. 410 situated at Margao (suit house) is the subject matter of dispute. The suit house was tenanted to now deceased Venkatesh Kamat, the predecessor of the petitioners, by the mother of late Agostinho Medeira (predecessor of the respondents) on a monthly rent of Rs.250/-

under a lease deed dated 05.04.1972. Now deceased, Agostinho Medeira was an employee of Air India and was posted at Mumbai. After his retirement in the year 1980, being a native of Goa, he had decided to settle down in Goa. He also claimed that the wife of the petitioner-Venkatesh Kamat (respondent before the Rent Controller) was engaged in the business of transport and was carrying on repairs of the vehicles in the suit house, which was also causing nuisance on account of banging and splashing of oil all over the premises. Thus, Agostinho Medeira sought eviction of the petitioner on the ground of personal occupation, change of user and nuisance under Sections 22 and 23 of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (the Act, for short).

3. The respondents resisted the claim on various grounds. It was contented that the suit house was allotted to Agostinho Medeira by virtue of

a partition deed dated 04.01.1982. Thus, the applicant cannot seek eviction under Section 23 of the Act, as he became landlord of the suit house after the commencement of the tenancy and five years had not elapsed. It was next contented that the applicant was a permanent resident of Mumbai and he has no bonafide intention of settling in Goa. The petitioner however, did not dispute that his wife is in transport business, however claimed that the said business is operated from her office premises at Isidorio Baptista Road. He also denied that there are any repairs of the vehicles carried out in the suit house. He thus denied that there is any change of user or nuisance or damage caused. He claimed that the suit premises are being used for residential purposes only.

4. The learned Rent Controller framed following points for determination:-

1. Whether the applicant proves that

the suit premises are required by him for his bonafide personal occupation.

2. Whether the applicant proves that the respondent has changed the premises from residential to business premises.

3. Whether the applicant proves that he is carrying out certain acts which are nuisance to the neighbours and also causes damage to the suit premises.

4. Whether the respondent proves that the applicant is not entitled to file the eviction proceedings since five years have not lapsed from the date of which the instrument "Intervivos" has been registered.

5. What orders ? What reliefs ?

5. The issue no. 4 was taken up as a preliminary issue, which was decided on 09.07.1984

holding that five years not having elapsed after the applicant became a landlord by virtue of the instrument of deed of partition intervivos, the applicant cannot seek eviction under Section 23 of the Act. However, the claim under Section 22 of the Act, could continue. This was challenged by the applicant in a revision petition before the Administrative Tribunal. The Administrative Tribunal vide judgment and order dated 29.01.1987 allowed the revision and directed the Rent Controller to hear and decide the application, both under Sections 22 and 23 of the Act.

6. The parties led oral and documentary evidence. The applicant, Agostinho Medeira (AW-1) examined himself alongwith Peter Medeira (AW-2) and Smt. Belly Braganza (AW-3). The petitioner examined himself as RW-1 alongwith Gajanan Rivonkar (RW-2) and Phillip Valadares (RW-3). In the meantime, the original applicant Agostinho Medeira expired on

07.12.1996 and the present respondents were brought on record. The respondents amended the application claiming that the respondent no. 1(a)-Constance Medeira, son of late Agostinho Medeira does not own any house in Goa and required the house for his bonafide personal occupation. It was specifically claimed that he was residing with the family of his sister-in-law. After the amendment, respondents examined Constance Medeira and one Smt. Genesis D'Silva. The petitioner did not lead any additional evidence after the amendment.

7. The learned Rent Controller noticed that after the death of Agostinho Medeira, the ground of his personal occupation does not survive. However the ground of personal occupation of Constance Medeira was upheld. However, the ground of change of user and nuisance were held to be not proved. Thus, the learned Rent Controller directed eviction on the ground of bonafide personal occupation.

8. This was challenged by the tenant Venkatesh Kamat before the Administrative Tribunal (which was then the Appellate Authority) in an appeal. The respondents filed cross objection to the extent of refusal, on the ground of change of user and nuisance. The Administrative Tribunal by judgment and order dated 23.03.2010 allowed the appeal without considering the cross objection of the respondents. This was in turn challenged by the respondents before this Court in Writ Petition No. 492/2010. This Court by judgment and order dated 04.01.2013, remanded the matter for deciding it afresh in accordance with law, holding that the cross objection was maintainable. In the meantime, the appeal and the cross objection came to be transferred to the learned District Judge (Appellate Board) in view of the amendment to the Rent Control Act.

9. The learned Appellate Board framed following points:-

1. Whether the landlords could have amended the original application for eviction to plead the bonafide requirement of the son of the original landlord ?

2. Whether the tenants were liable to be evicted on the ground of bonafide requirement of the landlord 1(a) ?

3. Whether it is proved that the tenant had changed the user of the leased premises without the written consent of the landlord ?

4. Whether the tenant had committed acts which were a nuisance to the neighbours and had caused damage which was likely to impair materially the value or utility of the building ?

5. Whether the impugned judgment is required to be interfered in appeal ?

10. The Appellate Board answered point nos. 1 to 3 in the affirmative and point no. 4 in the negative. It was thus held that the respondents have made out a case for eviction on the ground of bonafide personal occupation of Constance Medeira and change of user. The Appellate Board however held that no case of nuisance is made out as it was vague. In the face of the findings as above, the appeal came to be dismissed, while the cross objection was partly allowed directing eviction within three months. Feeling aggrieved the petitioners are before this Court.

11. I have heard Shri Usgaonkar, the learned Senior Counsel for the petitioners and Shri Lawande, the learned Counsel for the respondents. With the assistance of the learned Counsel for the parties, I have perused record and have gone through the impugned judgment and order.

12. It is submitted by the learned Senior Counsel for the petitioners that the need of the landlord/s being bonafide has not been gone into by the learned District Judge. It is submitted that a conjoint reading of Sections 23 and 25 of the Act, would make it clear that requirement being a "bonafide requirement" and not merely a fanciful wish is the very basis for directing eviction, which has not been satisfied in this case. It is submitted that the requirement on account of the computer business of the son is vague and not established on record. It is submitted that the amendment in this regard is casual and not acceptable. Reference in this regard is made to para 48 of the impugned judgment. It is submitted that the ground of bonafide personal occupation is not proved in this case.

13. It is submitted that the ground of nuisance has already been negated by the learned District

Judge and thus, the only other ground which remains is the ground of change of user. It is submitted that the said ground is not made out on the facts of this case. Reliance is placed on the decision of the Supreme Court in the case of **Gurdial Batra Vs. Raj Kumar Jain, AIR 1989 SC 1841** and **Jagdish Lal Vs. Parma Nand, (2000) 5 SCC 44** and the decision of this Court in the case of **Shri Hanumanta Vissu Arsekar Vs. Shri Upendra Narayan Katkar, 2014(6) ALL MR 165** and **Dr. Mulla Malhandas Khemani Vs. Shri Avelino Gregoria D'Souza, 2000(1) Goa L.T. 154** and **Shri Kashinath Babli Parab Vs. Shri Antonio Mariano Antao** (Writ Petition No. 38/2007 decided on 10.04.2008).

14. On the contrary, it is submitted by Shri Lawande, the learned Counsel for the respondents that under Section 23(1)(a)(i) of the Act, there is no requirement to establish a need for "bonafide" personal occupation, unlike the ground under Section 23(1)(a)(ii) of the Act. The learned Counsel has

pointed out the difference in the phraseology used in these two sections in order to submit that the word "bonafide" is conspicuously absent in Section 23(1)(a)(i) of the Act. It is thus submitted that there is no specific requirement to establish "bonafide" requirement in a ground under Section 23(1)(a)(i) of the Act. That apart, it is submitted that bonafide requirement has indeed been established in this case. The learned Counsel has pointed out that there was a specific issue framed by the learned Rent Controller on the aspect of bonafide requirement of the respondents. Insofar as the judgment of the learned District Judge is concerned, it is submitted that the same has to be read as a whole, which would make out that the learned District Judge has considered the case of the respondents on the aspect of bonafide personal occupation and has rightly accepted the same. It is submitted that the respondent-Constance Medeira has no other house in Goa and he is presently residing

with the sister of his sister-in-law. It is submitted that she has been examined as witness and nothing has been brought on record to displace her evidence. Even so far as the contention on behalf of the petitioners that there are no sufficient pleadings, on the aspect of the requirement of the suit house for bonafide personal occupation, is concerned, it is submitted that there are sufficient pleadings and evidence on record. The learned Counsel has referred to the judgment of this Court in Writ Petition No. 492/2010 in order to submit that this Court had remanded the matter on the premise that there are sufficient pleadings. The learned Counsel pointed out that the respondent-Constance Medeira has stated that he is doing business dealing with computers and supplying the same at Goa and the fact that he has no other house in Goa has rightly been accepted, as bonafide and the requirement cannot be said to be fanciful or unreasonable or mere desire or *ipse dixit*. It is

submitted that in view of the provisions of Section 25 of the Act, there is no need to examine the aspect of comparative hardship, in as much as that issue has to be examined only where eviction is sought under Section 23(2) of the Act, which is not the ground on the basis of which eviction is sought in the present case. He however pointed out that the learned District Judge has examined this aspect also and has ruled in favour of the petitioners. He therefore submitted that the ground of bonafide personal occupation is sufficiently proved.

15. Insofar as the ground of change of user is concerned, the learned Counsel has pointed out that it is an admitted position that at the relevant time, the original tenant-Venkatesh Kamat was in Government service and was working as the Assistant Director of Transport. It is also an admitted position that his wife was doing transport business under the name and style as "Unique Transport" and

was having 2-3 Trucks of Leyland make. It is submitted that in view of the nature of controversy involved, it was necessary for the petitioners to have examined the wife of Venkatesh Kamat and in her absence, denial of repairs to the Trucks being carried out in the suit house and the adjoining open space, could not be acted upon. It is submitted that the respondents have brought enough evidence on record to substantiate the ground of change of user. It is next submitted that the scope of interference under Article 227 of the Constitution of India is limited.

16. Reliance in this regard is placed on the decision of the Supreme Court in the case of **Shamshad Ahmad and Others Vs. Tilak Raj Bajaj and Others, (2008) 9 SCC 1** and **Celina Coelho Pereira and Others Vs. Ulhas M. Kholkar and Others, (2010) 1 SCC 217**. It is submitted that this Court does not sit as a Court of appeal, while exercising the

supervisory jurisdiction under Article 227 of the Constitution of India. He therefore submits that the petition be dismissed.

17. I have carefully considered the rival circumstances and the submission made. At the outset, it is necessary to mention that the eviction application was filed under Section 22(2)(b)(ii), 22(2)(c), 22(2)(d) and 23(a)(i) of the Act i.e. on the ground of personal occupation, change of user and the tenant having indulged into the acts of damage and nuisance. At the outset, it is necessary to mention that none of the Courts below have upheld the ground of nuisance. The learned Counsel for the respondents also does not press the ground of nuisance, which is a distinct ground available under Section 22(2)(d) of the Act. If we look to the points framed by the learned District Judge as reproduced above, the point no. 2 is on the ground of bonafide requirement under Section 23(1)(a)(i),

while point no. 3 is about the tenanted premises being put to use, other than for what they were let out i.e. under Section 22(2)(b)(ii) of the Act. It would appear that point no. 4 is a composite point, both on nuisance as well as the tenant having caused damage to the tenanted premises, which are likely to materially impair the building value. The learned District Judge has not accepted the ground of nuisance and it is also now given up by the respondents. The learned District Judge has not accepted the ground of nuisance (under Section 22(2)(d) of the Act) and of having caused damage to the tenanted premises (under Section 22(2)(c) of the Act). Thus, the only grounds, which survive for determination are the ones under Sections 23(1)(a)(i) and 22(2)(b)(ii) of the Act. Let us now consider the grounds ad seriatim.

I. GROUND OF BONAFIDE PERSONAL OCCUPATION

18. In order to appreciate the rival

contentions, it would be worthwhile to reproduce Sections 23 and 25 of the Act (to the extent relevant), which read thus:

"23. Landlord's right to obtain

possession.— (1) A landlord may, subject to the provisions of section 24, apply to the Controller for an order directing the tenant to put him in possession of the building—

(a) in case it is a residential building,—

(i) if the landlord is not occupying a residential building of his own in the city, town or village concerned and he requires it for his own occupation or for the occupation of any member of his family; or

(ii)"

"25. Controller to decide right to

possession.— The Controller shall, if he is satisfied that the claim of the landlord under section 23 is bonafide, make an order directing the tenant to put the landlord in possession of the building on such date as may be specified by the

Controller and if the Controller is not satisfied, he shall make an order rejecting the application:

Provided that in the case of an application under sub-section (3) of section 23, the Controller shall reject the application, if he is satisfied that the hardship which may be caused to the tenant by granting it will outweigh the advantage to the landlord:

Provided further that the Controller may give to a tenant a reasonable time of not less than three months and not exceeding six months for putting the landlord in possession of the building and may extend such time so as not to exceed six months in the aggregate from the date of the order."

19. The contention on behalf of the respondents is that "bonafide" requirement of the landlord for his personal occupation or for the occupation of any member of his family, is not the requirement under Section 23(1)(a)(i) unlike Section 23(1)(a)(ii) of

the Act. The contention in my considered view cannot be accepted. Section 23(1)(a)(i) and Section 23(1)(a)(ii), both concern with the ground of landlord requiring the tenanted premises for his occupation (which includes the occupation of the members of his family). The only distinction under Section 23(1)(a)(ii) is that the landlord has more than one building in the city, town or village where the tenanted premises are situated. In such a case, Section 23(1)(a)(ii) speaks about the landlord establishing that such a building is 'bonafide' required for his own occupation. However, that cannot exclude such requirement under Section 23(1)(a)(i) of the Act.

20. Section 25 of the Act in no uncertain terms declares that the Rent Controller can direct eviction of the tenant if, he is satisfied that the claim of the landlord under Section 23 is bonafide. In other words, Section 25 does not make out any

distinction between Sections 23(1)(a)(i) and 23(1)(a)(ii) of the Act, but speaks about Section 23 as a whole. Even otherwise, on first principle, it would be atrocious to assume that even if, the requirement is not bonafide, the Rent Controller can direct eviction under Section 23(1)(a)(i) of the Act. Enough case law has developed on the term "bonafide", which means it is genuine and a real requirement and not a mere desire or wish or *ipse dixit* of the landlord. This Court in the case of **Kashinath Babli Parab** (supra) has held that the need of the landlord must be bonafide and indeed, that is the requirement of Section 25 of the Act. Thus, the contention on behalf of the respondents to my mind cannot be accepted.

I would hasten to add, that whether or not, there are sufficient pleadings about the ground to establish personal occupation, would essentially depend on the facts and circumstances of each case and the evidence led. In the present case,

initially, eviction was sought on the ground of need for personal occupation of now deceased-Agostinho Medeira, who was serving at Mumbai and had retired in the year 1980. After the death of Agostinho Medeira, that ground did not survive. The application came to be amended before the learned Rent Controller setting out the ground of personal occupation of Constance Medeira, who is the son of Agostinho Medeira. The point no. 1 framed by the learned District Judge was on the permissibility of such amendment and that point has been answered in the affirmative and to my mind rightly so. Even otherwise, Section 23(1)(a)(i) of the Act speaks about the bonafide personal occupation and need of the landlord or any of his family members.

21. The learned District Judge has then went upon considering the ground of bonafide occupation and has answered point no. 2 in the affirmative. It was contended on behalf of the petitioners that the

case made out by virtue of the amendment as to the need of Constance Medeira was vague and was not established. By virtue of the amendment, the respondents had proposed to add the following, to para 8 of the application:

"The applicant no. 1(a), Mr. Constance Medeira, son of late Agostinho Medeira also does not own any house in Goa which he could occupy and as such requires the suit premises for his own bonafide personal occupation."

22. The learned District Judge has considered this aspect and has held in para 59 that the pleadings and the evidence bring out that the requirement set up by the landlord is not fanciful or unreasonable and it has been proved that the landlord (respondent no. 1(a)) did not have a residence in Margao and required the suit premises for his personal occupation. In this regard, it is significant to note that Rule-9 of the Goa, Daman

and Diu Buildings (Lease, Rent and Eviction) Control Rules, 1969 (the Rules, for short) prescribes that the Rent Controller shall follow the procedure as followed under the Mamlatdar's Court Act, in an enquiry under the Rent Act. In the case of **Vinayak Poma Tarkar Vs. Jacinto Santa Gorgenio and Others, (1992) 1 Bom. C.R. 475**, this Court has held that the provisions of the Code of Civil Procedure are not applicable to the rent proceedings and therefore strict rule of pleadings, would not be attracted. That apart, the points framed by the learned Rent Controller would show that bonafide requirement of the respondent no. 1(a) was a specific issue framed by the learned Rent Controller and thus, the petitioners were all along aware of the nature of the case, which they were required to meet. The learned District Judge in such circumstances, has refused to accept the argument that the pleadings of the respondents on the point of need of the house for personal occupation was vague. I do not find

any reason to take a different view.

23. Let us now come to the proof of the ground. The respondent-Constance Medeira has stated in his evidence that he is residing in Margao for last eight years at the house of his sister-in-law's sister at Borda, Margao. He stated that he has business dealing with computers at Margao and that he has no other house at Goa and as such, he is compelled to reside in the house of one Genesis D'Silva, who is the sister of the wife of Raymond Medeira, the brother of Constance Medeira. This witness has been extensively cross examined, in which, except the fact that the witness is not having any ration card or entry in the voters list, nothing significant has come on record. Genesis D'Silva in her examination states that she is residing at 'C' Building, F-2, Aurora Estate, St. Joaquim Road, Borda, Margao, Goa, since last twelve years. She states that Constance Medeira is also

residing with her for last about eight years. She states that she does not know the exact business of Constance Medeira, but it might be, with management connected with computers. She states that Constance Medeira is staying with her because he has no other place to reside. She states that Constance Medeira was accommodated at the say of her sister. In the cross examination, this witness has stated that Constance Medeira works for her cousin, who is based in Mumbai. Except this, nothing significant has come on record.

24. It is true that the learned District Judge in para 51 of the judgment has held that Section 23(1)(a)(i) of the Act neither uses the word 'bonafide' nor the word 'reasonable', though the word 'bonafide' is used in sub-clause (a)(ii) of Section 23(1) and therefore, when considered in the context of the observations of the Hon'ble Apex Court, would mean that "it would be something

closure to a desire or wish to reside in his own house". The said observations cannot be read in isolation. The learned Counsel for the respondents, in my considered view is right in contending that the judgment has to be read as a whole. As noticed earlier, in para 59 of the impugned judgment, the learned District Judge has categorically held that the requirement set up by the respondent no. 1(a) is not fanciful or unreasonable and that the landlords have proved that the premises are required for personal occupation of the respondent no. 1(a). Thus, in my considered view the impugned judgment would not stand vitiated on account of some observations in para 51 of the judgment, as referred above.

25. It would be significant to note that after the amendment introducing the ground of personal occupation of the respondent no. 1(a)-Constance Medeira, the petitioners did not lead any evidence

to counter the case, as whatever evidence was led on behalf of the petitioners was prior to the amendment. The learned Rent Controller, as well as the learned District Judge has concurrently held that the ground of bonafide personal occupation of the respondent no. 1(a) is proved and I do not find that the said finding suffers from any infirmity.

II. GROUND OF CHANGE OF USER

26. This takes me to the ground of change of user. The learned Senior Counsel for the petitioners has strenuously urged that there is no change of user proved on record and even otherwise, the alleged change of user is not sufficient to direct eviction. The learned Senior Counsel tried to drive the point home by citing an illustration namely, a house being let out to a writer, who writes a book sitting in one room of the house, which is not change of user, much less for commercial or business purpose or a case where a

Chartered Accountant writes Accounts of his clients sitting at home. It is submitted that assuming that some spares of the Trucks are kept in the house, it cannot amount to change of user as it is nobody's case that the petitioners have stopped the use of the premises for residential purposes.

27. The law on the point, of change of user as is available under various Rent laws, is no longer *res integra*, as it is the subject matter of decisions of several High Courts and the Hon'ble Supreme Court.

In the case of **Gurdial Batra Vs. Raj Kumar Jain, AIR 1989 SC 1841**, it has been held that letting of the premises can broadly be for commercial or residential purpose. That case arose out of the East Punjab Urban Rent Restriction Act. In that case, the shop premises were taken on lease for running a repair shop of cycles and rickshaws and the tenant side by side started commercial

business of selling televisions, in view of the slump in the 'cycle and rickshaw repairs' business and this was without the consent of the landlord. It was found that this change of user was for a temporary period and in the facts of that case, this would not constitute the change of user, within the meaning of Section 13(2)(ii)(b) of the East Punjab Urban Rent Restriction Act, to seek eviction. It can thus be seen that the case turned on its own facts.

28. In the case of **Jagdish Lal** (supra) again, the premises were let for running 'maniyari business' (general merchant, readymade and cloth merchant) and the tenant had later switched to restaurant and cold drinks business. During the pendency of the case before the Rent Controller, the tenant reverted to his original business and it was held that such change of business for a temporary period, would not amount to change of user.

29. It can thus be seen that these cases namely, **Gurdial Batra** (supra) and **Jagdish Lal** (supra), were in the matter of tenancy for commercial purposes. The case of **Hanumanta Vissu Arsekar** (supra) was in respect of a tenancy for commercial purpose namely, for running the paint business, where the user was changed to a toy shop. This Court found that there was no specific mandate in the lease deed that the premises could be used for any other business. It was held that unless there was an express negative covenant, a change in business by tenant, cannot grant the landlord a right to injunction. It can thus be seen that the said case arose out of a civil suit seeking injunction and not out of a claim for eviction. Be that as it may, even the said case which was in respect of tenancy for commercial purpose, can be seen to have turned on its own facts.

30. In the case of **Dr. Mulla Khemani** (supra), there were two premises. This Court in para 23 inter-alia held that where, the landlord seeks eviction on the ground of need of the premises for personal occupation, it is primarily for the landlord to establish that such need is genuine, honest and conceived in good faith and mere desire of the landlord, will not be sufficient for justifying the order of eviction. It has been held that in order to transform "desire" into "requirement", in the eyes of law, it must be genuine need of the landlord and the same can be decided only by taking into consideration all the relevant facts and circumstances of a particular case.

31. In the case of **Goa Urban Cooperative Bank Ltd. Vs. Noor Mohd. Sheikh Mussa and Another, (2004) 6 SCC 166**, which arose out of the Goa Rent Control Act, it has been held that if, the lease deed

specifies that the premises be used for a particular purpose, then any change of user of the premises would fall within the four corners of Section 22(2) (b) (ii) of the Act. In that case, the premises were let out for the use, as an office and the user was changed, as the premises were used as a godown.

In the case of **Siddalingamma and Another Vs. Mamtha Shenoy, (2001) 8 SCC 561**, the Hon'ble Apex Court held thus, in para 9 of the judgment:

"Rent Control Legislation generally leans in favour of tenant; it is only the provision for seeking eviction of the tenant on the ground of bonafide requirement of landlord for his own occupation or use of the tenanted accommodation which treats the landlord with some sympathy. In Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta, [1999] 6 SCC 222, this Court has held that a bonafide requirement must be an outcome of a sincere, honest desire in contradistinction with a mere pretext for evicting the tenant on the part of

the landlord claiming to occupy the premises for himself or for any member of the family which would entitle the landlord to seek ejectment of the tenant. The question to be asked by a judge of facts, by placing himself in the place of the landlord, is, whether in the given facts proved by material on record the need to occupy the premises can be said to be natural, real, sincere, honest? If the answer be in the positive the need is bonafide. The concept of bonafide need or genuine requirement needs a practical approach instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against. If the landlord wishes to live with comfort in a house of his own, the law does not command or compel him to squeeze himself and dwell into lesser premises so as to protect the tenant's continued occupation in tenancy premises. In Deena Nath Vs.

Pooran Lal, [2001] 5 SCC 705, this Court has held that bonafide requirement has to be distinguished from a mere whim or fanciful desire. The bonafide requirement is in praesenti and must be manifested in actual need so as to convince the court that it is not a mere fanciful or whimsical desire."

32. In the case of **Ram Sarup Gupta Vs. Bishun Narain Inter College and Others, (1987) 2 SCC 555**, it has been held thus:

"All necessary and material facts should be pleaded by the party in support of the case set up by it. In the absence of pleadings, evidence, if any, produced by the parties cannot be considered. No party should be permitted to travel beyond its pleading. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the

essential material facts so that other party may not be taken by surprise. The pleadings, however, should receive a liberal construction, no pedantic approach should be adopted to defeat justice on hair splitting technicalities. Sometimes pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law. In such a case, it is the duty of the Court to ascertain the substance of the pleadings and not the form to determine the case and the issues upon which they went to trial. Once it is found that inspite of deficiency in the pleadings parties knew the case and they proceeded to trial on those issues by producing evidence, it would not be open to a party to raise the question of absence of pleadings in appeal. The substance of the pleadings in the present case was clear. The plaintiff went to trial knowing

fully well that defendant's claim was that the licence was irrevocable."

33. Reverting back to the present case, it is claimed on behalf of the respondents that the wife of now deceased-Venkatesh Kamat, is running a transport business and used to park and repair Trucks in the suit house and the adjoining open space in the same compound. In this regard, I have carefully gone through the evidence led and the reasoning articulated by the learned District Judge from para 66 onwards. The learned Senior Counsel for the petitioners urged that Constance Medeira, not having spoken about the change of user, the finding in this regard, would not be sustainable. I would tend to disagree. This is because Constance Medeira and Gajanan Rivankar, who were examined after the amendment, were primarily on the ground of bonafide personal occupation of respondent no.1(a). The original applicant-Agostinho Medeira and other

witnesses, have deposed about the change of user. Although there was some discrepancy tried to be pointed out as to whether the gate, to the compound wall, was sufficient to allow the entry of the Truck in the open adjoining space of the suit house, what is significant is that the petitioners have admitted that the earlier gate which was there, was changed to an iron gate and this was without the consent of the landlord. Be that as it may, the learned District Judge after considering the evidence has come to the finding about there being a change of user and I do not see any reason to take a different view. The cases relied upon as noticed earlier, relate to tenancy for commercial purpose and the question essentially was, whether the change from one commercial purpose to another commercial purpose, would be actionable. That apart, in the case of **Jagdish Lal** (supra), the change was for a temporary period and it was reverted back to its original use. It is now well settled that under

Article 227 of the Constitution of India, this Court does not sit as a Court of appeal. The supervisory jurisdiction envisaged under Article 227 of the Constitution of India, is essentially to ensure that the Courts and the Tribunals remain within the bounds of their authority and to avoid any manifest injustice. It is not necessary to multiply authorities on that point.

34. In the case of **Shamshad Ahmad** (supra), the Hon'ble Apex Court has referred to its earlier decision in the case of **Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram, (1986) 4 SCC 447** and it is held thus:

"39. In Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram, this Court stated:

"16. Unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention it was not for the High Court under Articles 226 and 227 of the Constitution to

interfere. If there is evidence on record on which a finding can be arrived at and if the court has not misdirected itself either on law or on fact, then in exercise of the power under Article 226 or Article 227 of the Constitution, the High Court should refrain from interfering with such findings made by the appropriate authorities.""

35. The Hon'ble Apex Court has then referred to its earlier decisions in the case of **Bathutmal Raichand Oswal Vs. Laxmibai R. Tarta, (1975) 1 SCC 858** and it is held thus:

"40. Even prior to Chandavarkar, in Bathutmal Raichand Oswal Vs. Laxmibai R. Tarta, (1975) 1 SCC 858, dealing with supervisory power of a High Court under Article 227 of the Constitution, Bhagwati, J. (as His Lordship then was) stated:

"If an 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 it is not subject to correction by the High Court in the 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 court can do in exercise of its statutory power as a 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 decision of the subordinate court or tribunal final on facts.""

36. In the case of **Joginder Pal Vs. Naval Kishore Behal, (2002) 5 SCC 397**, the Hon'ble Apex Court has held thus in para 9 of the judgment:

"The Rent Control Legislations are heavily loaded in favour of the tenants treating them as weaker sections of the society requiring legislative protection against exploitation and unscrupulous devices

of greedy landlords. The Legislative intent has to be respected by the Courts while interpreting the laws. But it is being uncharitable to Legislatures if they are attributed with an intention that they lean only in favour of the tenants and while being fair to the tenants go to the extent of being unfair to the landlords. The Legislature is fair to the tenants and to the landlords both. The Courts have to adopt a reasonable and balanced approach while interpreting Rent Control Legislations starting with an assumption that an equal treatment has been meted out to both the sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as take care of the interest of landlord the Court should not hesitate in leaning in favour of the landlords. Such provisions are engrafted in rent control legislations to take care of those situations where the landlord

*too are weak and feeble and feel
humble."*

37. A useful reference in this regard may be made to the recent decision of the Hon'ble Supreme Court in the case of **Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil** reported in (2010) 8 SCC 329 and in the case of **Radhey Shyam Vs. Chhabi Nath and Others, AIR 2015 SC 329**. If the parameters within which interference is permissible, are kept in mind, I do not find that any case is made out for interference. The petition is without any merit. It is accordingly dismissed. Rule is discharged with no order as to costs. The petitioners are granted time till 31st March, 2017, to surrender the possession of the house to the respondents.

C. V. BHADANG, J.

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