

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.501 OF 2013**

SHRI VASANT RAGHU QUEULEKAR

REP. BY P.O.A.

SHRI NARENDRA V. QUEULEKAR

...PETITIONER

V/S

SHRI MAHADEV S. KAKODKAR.

(since dec.) through LR's

....RESPONDENT

Shri A.D. Bhobe, Advocate for the Petitioner.

Shri R.G. Ramani, Advocate for the Respondent.

CORAM : C.V. BHADANG, J.**DATE : 21st JULY, 2016****ORDER :**

The challenge in this petition is to the order dated 8/06/2012 passed by the Administrative Tribunal by which the judgment and order dated 15/06/2006 passed by the learned Rent Controller directing the eviction of the original tenant Vasant Queulekar (since deceased) is confirmed. The respondents are the legal representatives of the landlord Mahadev Kakodkar. The parties are herein after referred to as landlord and tenant for the sake of

convenience.

2. The brief facts are that the landlord filed an application against the tenant before the learned Rent Controller on 27/10/1988 seeking eviction of the said tenant from the suit shop premises under Section 22(2)(a) and (g) of the Goa, Daman and Diu (Lease, Rent and Eviction) Control Act, 1968 (Act, for short). The case made out in the application was that the tenancy was in respect of a portion of the building by name Baroda Birzamola Bebequegali at Curchorim at a monthly rate of Rs.95/- where the tenant was running a hair cutting saloon. It was contended that the tenant was in arrears of rent of Rs.1425/- from July 1987 to September, 1988. It appears that Dr. Antonio Gomes and his wife were the erstwhile owners and landlords of the said property in which Mahadev Kakodkar was also a tenant in respect of some portion. Mahadev Kakodkar had purchased the entire premises by a Sale Deed dated 7/04/1988. It appears that Dr.

Antonio Gomes and his wife by letter dated 14/04/1988 had informed the tenant about the Sale instructing him to pay the rent to the landlord Mahadev Kakodkar, who also wrote a similar letter on 28/04/1988 informing the tenant about the purchase of the premises and requesting him to pay the rent and to enter into a fresh Lease Agreement. The tenant by his letter dated 20/05/1988 denied that Mahadev Kakodkar was the owner of the suit premises. However, by a letter dated 4/05/1988 he sent a cheque for Rs.190/- to the earlier landlord which was returned. Mahadev Kakodkar sent a notice on 20/09/1988 demanding the arrears of rent which was not complied with after which the proceedings before the Rent Controller were initiated.

3. It appears from the perusal of the record that the tenant Vasant Quelcar filed his written statement on 9/12/1988 claiming that he is the tenant of Dr. Antonio and his wife Maria Gomes

since the year 1954. He claimed ignorance about the sale of the suit shop and maintained that the question of paying rent to the applicant Mahadev Kakodkar does not arise, as he is not the owner of the shop.

4. On the basis of the rival pleadings the learned Rent Controller framed as many as nine issues. The landlord Mahadev examined himself and produced the Sale Deed and other documents while the tenant Vasant examined himself. The learned Rent Controller by his order dated 15/06/2006 allowed the application directing the tenant to vacate the premises.

5. It is necessary to mention at this stage that this was preceded by an inquiry under Section 21 of the Act, in which by an order dated 3/04/2003, the learned Rent Controller came to the conclusion that the denial of the title of the landlord was not bonafide, however, he found that there was no malafide intention on

the part of the tenant nor he has claimed a permanent tenancy. As such, the main application for eviction was directed to proceed. Indisputably, this order was not challenged by any of the parties.

6. The tenant challenged the eviction order dated 15/06/2006 before the Administrative Tribunal in Eviction Appeal No.19/2006. The Administrative Tribunal dismissed the appeal on 8/06/2012 which is subject matter of challenge in this petition.

7. I have heard Shri A.D. Bhobe, the learned Counsel for the petitioner and Shri R.G. Ramani, the learned Counsel for the respondents. With the assistance of the learned Counsel for the parties, I have perused the impugned orders and have gone through the records.

8. It is submitted by Shri Bhobe, the learned Counsel for the petitioner that once the learned

Rent Controller by his order dated 3/04/2003 had held that the denial of title was not with malafide intention, the same issue could not have been decided again in the impugned order. He submits that admittedly, the applicant Mahadev and tenant Vasant were both tenants in respect of the separate portions of the building owned by Antonio Gomes and his wife Maria Gomes. He submits that there was a proposal for sale of the shop by the landlords to the tenant Mahadev. However, subsequently, the entire building was sold by them to Mahadev Kakodkar. It is submitted that the denial of the title cannot be said to be lacking in bonafides in such a case. He, therefore, submits that the eviction could not have been ordered under Section 22(2)(g) of the Act. In so far as the permission granted under Section 22(2)(a) of the Act is concerned, it is submitted that the arrears of rent were deposited before the Rent Controller and the petitioner continued to deposit the monthly rent before the Rent Controller during the pendency

of the proceedings and, as such, the permission granted under this ground is also illegal.

9. On the contrary, it is submitted by Shri Ramani the learned Counsel for the respondent that the learned Rent Controller had held that the denial of the title by the tenant was not bonafide and that was the reason why the proceedings continued and the tenant subjected to the jurisdiction of the Rent Controller. He submits that under the provisions of Section 21(2), as they stood prior to their amendment in the year 2013, it was necessary for the Rent Controller to decide the question about bonafides of the denial of the title by the tenant. The learned Counsel has pointed out that under the proviso to Section 21 (prior to its amendment) it is only where the denial is found to be bonafide that the parties are relegated to the remedy before the Civil Court. He points out that the Rent Controller can entertain an application for eviction only where

there is existence of a relationship of a landlord and tenant. He submits that it is only where the Rent Controller comes to a conclusion that the denial of title is not bonafide that the proceedings before the Rent Controller can continue. He points out that the tenant had not challenged the order of the Rent controller passed under Section 21 of the Act by which the denial of the title of the landlord was held to be not bonafide. He submits that the tenant also subjected himself to the jurisdiction of the Rent Controller. The application was contested on both the grounds and, therefore, now the tenant cannot turn around and claim that the issue about the denial being bonafide or otherwise stood already concluded. He submits that both the Courts have rightly found that the denial of the title was not bonafide and that the tenant was in arrears for more than three months. The learned Counsel has pointed out that the tenant had instituted a suit challenging the Sale Deed dated 7/04/1988 which

has been dismissed. He, therefore, submits that no case for interference in the concurrent finding recorded has been made out.

10. I have carefully considered the rival circumstances and the submissions made. The eviction of the tenant is sought on two grounds i.e. under Section 22(2)(a) and 22(2)(g) of the Act. Let us first consider the ground based on Section 21(2)(g) of the Act under which the Rent Controller can direct eviction where the tenant has denied the title of the landlord or claims a right of permanent tenancy and/or such denial is not bonafide. Section 21 of the Act (as it stood prior to its amendment in the year 2013) and which would be applicable to the present case reads thus:

21. Bar on eviction of tenants.—

Notwithstanding anything to the contrary contained in any other law or contract, a tenant shall not be evicted, whether in execution of a decree or otherwise, except in accordance with the provisions of this Chapter:

Provided that where the tenant

denies the title of the landlord or claims a right of permanent tenancy, the Controller shall decide whether the denial or claim is bonafide and if he records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in a civil court and the court may pass a decree for eviction on any of the grounds mentioned in this Chapter even though the court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded.

It can thus be seen that Section 21 primarily creates a bar on eviction of the tenants whether in execution of a decree or in any other manner, except in accordance with the provisions of chapter V of the Act. A perusal of the proviso as it stood prior to its amendment shows that where the tenant denies the title of the landlord or claims a right to permanent tenancy and the controller comes to the conclusion that such denial is bonafide, the landlord will have to be relegated to an action before the Civil Court and in such a case the Civil Court may pass a decree for eviction on any of the grounds mentioned in the said

chapter, although the Court finds that such denial does not involve forfeiture. It can thus be seen that the proviso to Section 21 as it then stood presupposes that the Rent Controller can entertain an application only where there is a relationship of landlord and tenant between the parties. In other words, it is only when the denial of the title of the landlord is found to be not bonafide that the matter before the Rent Controller can proceed further. It is evident that Section 22(2)(g) of the Act is a distinct provision and the finding recorded under the proviso to Section 21 of the Act cannot govern the decision under Section 22(2)(g) of the Act. In the present case, the Rent Controller had vide order dated 3/04/2003 that the denial of the title of the landlord was not bonafide. It is true that the Rent Controller had also held that the tenant had no malafide intention. However, at the same time the Rent Controller has ordered that the application for eviction shall proceed on its merits. Thus,

primarily we have to go by the finding of the Rent Controller that the denial of the title of the landlord of the tenant was not bonafide. The tenant had not only failed to challenge the said order but had also subjected to the jurisdiction of the Rent Controller and the matter had proceeded further. The Administrative Tribunal has relied upon the decision of this Court in ***Sumati Naik V/s. Dilip Fatarpekar*** in ***2002 (1) Goa L.T. 38*** in order to hold that it is necessary for the Rent Controller in order to assume jurisdiction to entertain the application for eviction that there exists a relationship of landlord and tenant between the parties. The Administrative Tribunal has held and to my mind rightly so that by order dated 3/04/2003 the Rent Controller has assumed jurisdiction on the basis of the existence of such relationship and had further made his intention clear to proceed with the main matter. The Rent Controller has noticed the evidence of the tenant in cross-examination in which the tenant has admitted

about he being informed by the erstwhile landlord Dr. Gomes and his wife as also Mahdev Kakodkar about the purchase of the suit premises on 7/04/1988. He also admits that he was instructed to pay the rent including the arrears to Mahadev Kakodkar and by letter dated 28/04/1988 was asked to enter into a fresh agreement of tenancy. He further states that by letter dated 20/05/1988 sent by him to the landlord, he denied the title and refused to pay rent. As noticed earlier, the tenant went to the extent of challenging the Sale Deed in Civil Suit which has been dismissed. In such circumstances, no exception can be taken to the finding that the the denial of the title by the tenant was not bonafide.

11. Coming to the ground under Section 22(2)(a), the Rent Controller as well as the Administrative Tribunal has considered that there was non payment of the arrears of rent as the tenant even refused to acknowledge the

status of the landlord Mahadev. The Administrative Tribunal has also considered the contentions based on Section 22(3) and 22(4) of the Act and has rightly found that the application dated 9/12/1988 was one under Section 32(1) and not under Section 22(3) or Section 22(4) of the Act.

12. I have carefully gone through the order of the learned Rent Controller and the Administrative Tribunal and I do not find any reason to interfere with the concurrent findings recorded therein. The petition is without any merit and is accordingly dismissed, with no order as to costs.

C.V. BHADANG, J.

NH/-