

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4312 OF 1991
ALONG WITH
CIVIL APPLICATION NO.1120 OF 2016

- | | | |
|-----|---|---|
| 1] | Dadabhai Godrej Wadia |] |
| | since deceased through his legal heirs |] |
| | and representatives :- |] |
| | |] |
| 1A] | Mrs. Hanita w/o Dadabhoy Wadia |] |
| 1B] | Firdooz Dadabhoy Wadia, (minor) |] |
| 1C] | Aashtad Dadabhoy Wadia, (Minor) |] |
| | |] |
| | Nos.1(B) and 1(C) through their guardian] | |
| | mother No.1(A). Mrs.Hanita D Wadia |] |
| | |] |
| | All R/at Kathiria, Nani Daman |] |
| | |] |
| 2] | Perin Godrej Wadia |] |
| | since deceased through legal heirs |] |
| | |] |
| | Mrs. Tehmi Minoo Sassoori |] |
| | Married daughter of Original Petitioner |] |
| | No.2 Perin Godrej Wadia |] |
| | R/at Casablanca, Cuffe Parade |] |
| | Mumbai - 400 005 |] |
| | |] |
| 3] | Roda Godrej Wadia |] |
| | Now known as Roda Viraf Laugrava |] |
| | R/at Procter House, Grant Road, |] |
| | Bombay 400 007 |] |
| | |] |
| 4] | Navroj Godrej Wadia |] |
| | residing at Nani Daman |] |
| | |] |
| | Petitioner Nos.2, 3 and 4 |] |
| | through their Constituted |] |
| | Attorney – Petitioner No.1. |] |
| | |] |

.... Petitioners
(Original Applicants)

versus

1]	Shri Kantilal N Dalal	]
	since deceased through legal heirs	]
1A]	Smt. Sohini Kantilal Dalal (Widow)	]
1B]	Sanjay Kantilal Dalal (son)	]
1C]	Tushar Kantilal Dalal (son)	]
		]
	All 3 residing at : House No.9/403	]
	Naviori, Nani Daman – 396 210	]
		]
1D]	Smt. Vandana Sunil Gandhi	]
	(Married Daughter)	]
	Residing at : 31, Macklin Road	]
	Salisbury, Wiltshire, SP 2, 7 HB,	]..... Respondent
	United Kingdom.	] (Original Opponent)

Mr. P N Joshi for the Petitioners.

Mr. Y S Jahagirdar, Senior Advocate i/by Mr. M S Lagu for the Respondent Nos.1A to 1D.

CORAM : R. M. SAVANT, J.

DATE : 21st APRIL 2017

ORAL JUDGMENT :-

1 The writ jurisdiction of this Court under Article 227 of the Constitution of India is invoked against the judgment and order dated 25/02/1991 passed by the Administrative Tribunal, Goa, Daman, Diu at Panaji in Eviction Appeal No.16 of 1988 filed by the Respondent No.1 by which order the Appeal came to be allowed and resultantly the judgment and order dated 29/04/1988 of the Additional Rent Controller, Daman came to be set aside.

2 The facts giving rise to the above Petition, in a nutshell, can be stated thus :-

The Petitioners herein are the owners of house property bearing Nos.1026 and 1927 situated at Nani Daman in Daman. The said suit property is a bungalow type structure which was under the management of one Sam Dadabhai Wadia. The said Sam was managing the property on behalf of the Petitioners till his demise. The said Sam Wadia had leased out the ground floor of the said house to the Respondent herein on a monthly tenancy for the rent of Rs.251/- for residence as well as business purposes in the year 1968. It is since then that the Respondent is in occupation of the suit premises as a tenant. It seems that the Respondent was called upon to pay rent by both the Petitioners and the said Sam as also informed about the ownership of the Petitioners. The Petitioners on 07/05/1979 issued a notice to the Respondent calling upon him to vacate the suit premises on the grounds mentioned in the said notice. Since the Respondent did not comply with the said notice that the Petitioners filed an application before the Additional Rent Controller, Daman at Daman seeking eviction of the Respondent inter-alia on the ground that the Respondent committed trespass on the loft of the first floor of the house by keeping his goods therein without permission of the Petitioners and that the Petitioners require the suit premises for their personal and bonafide use. To the said application filed by the Petitioners before the Additional Rent Controller, Daman, the original Opponent i.e. the Respondent No.1 filed his reply and denied the case of the Petitioners as set out in the application. It seems that the said application for eviction was amended so as to add further

grounds of eviction in respect of the ground of cause of action which arose during the pendency of the application for eviction and which grounds inter-alia were sub-letting and illegal business allegedly carried out by the Respondent. The said grounds were countered by the Respondent by filing his reply and denied the same.

3 It is on the basis of the aforesaid pleadings of the parties that the Additional Rent Controller, Daman framed the issues revolving around whether the Respondent has trespassed into the first floor of the house by storing his goods on the first floor, whether the Applicants/Petitioners prove that they require the suit house for their bonafide personal use, whether the Applicants/Petitioners prove that the Opponent/Respondent is doing illegal business in the suit premises, whether the Opponent/Respondent has sub-let the suit premises without the consent of the Applicants/Petitioners., and whether the application as filed is barred by the provisions of the Goa, Daman & Diu Buildings (L.R.E.) Control Act, 1968 (for short “the said Act”)

4 Before the Additional Rent Controller, Daman, the parties led evidence. On behalf of the Applicants/Petitioners the evidence of Applicant No.1 was led for himself and as the Power of Attorney of the other Applicants, whereas the Opponent/Respondent examined himself. It seems that the parties also filed written submissions. The Additional Rent Controller, Daman

on the basis of the material on record recorded a finding that the Opponent/Respondent has committed trespass on the first floor i.e. loft and by storing his goods and thereby contravened the terms of the lease. The Additional Rent Controller, Daman returned a finding that since the landlords are staying in a rented property, they are entitled to evict the Respondent – tenant as they require the suit property for their personal use and occupation. The Additional Rent Controller, Daman further observed that since the suit property was let out for residence-cum-business the Applicants were entitled to ask for eviction of the Respondent. The Additional Rent Controller also concluded that greater hardship would be caused to the Applicants if the order of eviction is not passed, then to the Respondent if the order of eviction is passed. The Additional Rent Controller therefore concluded that the Applicants require the suit premises for their bonafide and personal use.

5 In so far as the issue of the Opponent/Respondent carrying out the business illegally is concerned, the said issue was not pressed by the Applicants/Petitioners. In so far as the issue of sub-letting is concerned, the Additional Rent Controller held that on account of the advertisement board put by the Opponent/Respondent out of which he earns, the ground of sub-letting is proved. In so far as the issue as to whether the Suit/Application as filed was maintainable is concerned, the Additional Rent Controller held that except the plea in the written statement, the Respondent has not led any evidence that the

Application is not maintainable. The Additional Rent Controller concluded that the Application filed by the Applicants was not barred by the law of limitation. The Additional Rent Controller accordingly by the judgment and order dated 29/04/1988 allowed the Application filed by the Applicants/Petitioners and directed the Opponent/Respondent to hand over the vacant and peaceful possession of the suit property to the Petitioners herein.

6 The Respondent aggrieved by the said judgment and order dated 29/04/1988 passed by the Additional Rent Controller challenged the same by way of an Appeal before the Administrative Tribunal, Goa, Daman & Diu at Panaji. The said Appeal was numbered as Eviction Appeal No.16/88. Suffice it would be to state that the Administrative Tribunal by the judgment and order dated 25/02/1991 has allowed the Appeal and thereby has set aside the order of eviction dated 29/04/1988 passed by the Additional Rent Controller, Daman. The Administrative Tribunal ventured to consider the findings recorded by the Additional Rent Controller on the issues framed by him. In so far as the issue as to whether the Application was barred under the provisions of the said Act. The Administrative Tribunal held that though such an issue was framed by the Additional Rent Controller being Issue No.5, the Additional Rent Controller misconstrued the said issue as being that of limitation and accordingly answered the same. The Administrative Tribunal ventured to consider whether the Application filed by the Applicants/Petitioners was

maintainable before the Additional Rent Controller. Since for determining the said issue the provisions of Section 23 of the said Act were material, the Administrative Tribunal referred to the said provision. The Administrative Tribunal observed that from a reading of the said provision, it is clear that the landlord's right to obtain possession is restricted only if the building let out is a residential one, and if it is not-residential building then if it is used for keeping a vehicle or adapted for such use. The Administrative Tribunal held that in the instant case, Section 23(1)(b) of the said Act is admittedly not attracted as the said premises were let out for a composite purpose of residential as well as commercial and therefore held that the Application filed before the Additional Rent Controller by the Applicants/Petitioners was not maintainable. The Administrative Tribunal has relied upon the judgment of the Delhi High Court reported in 1983-I RC 35 in the matter of Smt. Jasbir Kaur v/s. Shri Girdharilal Mehtra. The Administrative Tribunal observed that the Delhi High Court had held that once it is found that the letting purpose was for residential-cum-commercial then recovery of possession for bonafide need under Section 14(c) cannot be allowed. The Administrative Tribunal held that since the provisions Section 14(c) and Section 23 are paramateria, the said judgment was clearly attracted and therefore concluded that the ground for recovery of possession was not covered under Section 23 of the said Act. As indicated above the Administrative Tribunal has by the impugned judgment and order dated 25/02/1991 has allowed the Appeal and set aside the eviction

order dated 29/04/1988 passed by the Additional Rent Controller. It is the said judgment and order dated 25/02/1991 passed by the Administrative Tribunal which is taken exception to by way of the above Writ Petition.

7 The learned counsel appearing on behalf of the Petitioners i.e. the original Applicants Shri P N Joshi would contend that the instant case was covered by Section 23(1)(a) of the said Act. It was the submission of Shri P N Joshi that for the purpose of Section 23(1)(a) of the said Act what is required to be seen is the user for which the building is constructed which in the instant case was residential. The learned counsel for the Petitioners would contend that the judgment in Jasbir Kaur's case relied upon by the Administrative Tribunal was misplaced as the said judgment has been set aside by the Apex Court. The learned counsel would contend that there is evidence on record to indicate that the building was meant for residential user. The learned counsel would seek to place reliance on the judgment of the Apex Court reported in (1993) Supp (1) SCC 454 in the matter of Jasbir Kaur (Smt) v/s. Girdhari Lal Mehra (Dead) by Lrs, judgments of this Court reported in 1993 (2) Bom. CR 261 (Panaji Bench) in the matter of Shri Krishna P Rivonkar v/s. The Chairman V K S C Society and ors as also the judgment reported in 2014 (1) Bom C R 300 (Panaji Bench) in the matter of Michael Anthony William Gareth & Anr v/s. Maria do Rosario Da Fatima (Mrs) and Anr in support of his contention that the user of the building is material not the purpose for

which the premises have been let out.

8 Per contra, the learned Senior Counsel appearing on behalf of the Respondents Shri Y S Jahagirdar would contend that in the light of the admitted fact that the premises were let out for both residence-cum-commercial purpose, it is Section 23 (1)(b) which would be applicable and not Section 23(1)(a) of the said Act. It was the submission of the learned Senior Counsel for the Respondents that the determinative factor is the purpose for which the premises were let out and not the user for which the building was constructed. In support of the said contention the learned Senior Counsel sought to place reliance on the judgments of the Apex Court reported in AIR. 1968 SC 438 in the matter of S Sanyal v/s. Gian Chand and reported in (1992) 2 SCC 80 in the matter of Smt. A N Kapoor v/s. Smt. Pushpa Talwar. It was the submission of the learned Senior Counsel that the user for which the building has been constructed is not the determinative factor as otherwise the rights of the tenant would be put in jeopardy as the tenant then would have to investigate into as to the purpose for which the building was constructed.

9 In Rejoinder the learned counsel for the Petitioners Shri P N Joshi would also contend that the case of bonafide requirement of the Petitioners is supported by the evidence which has come on record on their behalf in the Application. The said evidence according to him discloses that the Petitioners

do not have their own premises and therefore they require the suit premises for their bonafide use and occupation and would therefore be a case covered by Section 23(1)(a) of the said Act.

10 In the above Petition additional affidavit has been filed on behalf of the Petitioners to indicate that two of the Applicants before the Additional Rent Controller have become senior citizens and one of the Applicants is now a widow. The Petitioners have also filed Civil Application for being permitted to lead additional evidence in support of their case that the building is a residential building and has been constructed for the said purpose.

11 Having heard the learned counsel for the parties, I have considered the rival contentions. The issue that arises for consideration is whether the Petitioners i.e. the original Applicants could have been non-suited under Section 23(1)(b) of the said Act for not fulfilling the requirements of the said Act. It would be apposite to reproduce the relevant excerpt of Section 23 which for the sake of ready reference is reproduced hereinunder :-

“(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) if the landlord who has more buildings than one in the city, town or village concerned is in occupation of one such building and he bonafide requires another building instead, for his own occupation;

(b) in case it is a non-residential building which is used for the purpose of keeping a vehicle or adapted for such use, if the landlord requires it for his own or to the possession of which he is entitled in the city, town or village concerned which is his own or to the possession of which he is entitled whether under this Act or otherwise”.

12 In so far as the Additional Rent Controller, Daman is concerned, the order passed by the Additional Rent Controller ex-facie discloses that though the maintainability of the Application was questioned on the touchstone of the provisions of the said Act. It seems that the Additional Rent Controller misconstrued the objection as regards the maintainability being one based on limitation and accordingly adjudicated upon the Application on the said basis and held it to be maintainable. Hence in so far as the Additional Rent Controller is concerned, the objection was not considered on the touchstone of the provisions of Section 23 of the said Act. Hence in so far as the said part of the order passed by the Additional Rent Controller is concerned, there is no escape from the fact that the Additional Rent Controller did not adjudicate the issue of maintainability from the said angle. On the matter reaching before the Administrative Tribunal it seems that the Petitioners gave up the other grounds save and except the ground of bonafide requirement. In so far as the Administrative Tribunal is concerned, as indicated

above the Administrative Tribunal found fault with the adjudication of the Additional Rent Controller in so far as the issue of maintainability of the Application is concerned. The Administrative Tribunal has observed that the Additional Rent Controller has misconstrued the objection as regards the maintainability of the Application to be based on the point of limitation when the maintainability was questioned by the Respondents on the basis of the provisions of Section 23 of the said Act. The Administrative Tribunal thereafter considering the purposes for which the premises were let out viz residence-cum-commercial has thereafter held that the case of the Petitioners would be covered by Section 23(1)(b) of the said Act and since the requisites of the said provisions were not fulfilled by the Petitioners, the Administrative Tribunal held that the Application was barred under the said provisions. However, the fact remains that the Additional Rent Controller as well as the Administrative Tribunal ought to have considered as to whether the purpose of letting out is the determinative factor or whether the user for which the building is constructed is a determinative factor in so far as the application of the provisions of Section 23(1)(a) or 23(1)(b) are concerned. Since opposite positions have been taken by the learned counsel appearing for the parties in the above Petition viz. Shri P N Joshi for the Petitioners that it is the user for which the building has been constructed which is the determinative factor and Shri Y S Jahagirdar contended that it is the purpose for which the building is let out is the determinative factor, that the matter would have to be remanded

back to the Additional Rent Controller, Damand for a de-novo consideration of the Application. Such a remand is also necessary in view of the fact that the Additional Rent Controller had proceeded to adjudicate the Application on the grounds urged by the Applicants without deciding the issue of maintainability of the Application under Section 23 of the said Act. It is only after the maintainability of the Application is decided on the touchstone of Section 23 of the said Act that the grounds could have been considered and especially now when the only ground that remains is the bonafide requirement of the Petitioners. In so far as the judgments (supra) cited on either side are concerned, it is not necessary for this Court to dvelve into the said aspect having regard to the directions that this Court is inclined to issue. Hence both the judgments and orders passed by the Additional Rent Controller and the Administrative Tribunal are quashed and set aside and the matter is remanded back to the Additional Rent Controller for a de-novo consideration of the Application filed by the Petitioners. Since a period of more than 30 years have now elapsed, an order of expediting the proceedings would not be out of place. Hence the following directions :-

- A] Both the judgments and orders i.e. the judgment and order dated 29/04/1988 passed by the Additional Rent Controller, Daman and the judgment and order dated 25/02/1991 passed by the Administrative Tribunal, Goa, Daman, Diu at Panaji are quashed

and set aside and the Application is remanded back to the Additional Rent Controller, Daman for a de-novo consideration restricted to the ground of bonafide requirement.

- B] The Petitioners would be entitled to file additional affidavit of evidence in respect of the user for which the building is constructed as also the ground of bonafide requirement.
- C] The Respondent would also be entitled to file affidavit of evidence to controvert the case of the Petitioners of bonafide requirement. Since that is the only ground that was pressed by the Petitioners before the Courts below.
- D] The Additional Rent Controller would consider the Application in terms of the observations made herein above in the instant order, more especially the issue as to whether the user for which the building is constructed is a determinative factor or the purpose for which the premises is let out is a determinative factor for attraction of the provisions of Section 23 of the said Act.
- E] On remand the parties to appear before the Additional Rent Controller on 08/05/2017. The Additional Rent Controller may

thereafter grant appropriate time for the Applicants/Petitioners to file additional affidavit of evidence and to the Respondents to file their additional affidavit of evidence.

- F] If the Application is amended then the Respondents would be entitled to file additional reply to the amended Application.
- G] The Additional Rent Controller, Daman is directed to hear and decide the Application latest by 31/10/2017 by giving proper opportunity to the parties.
- H] Needless to state that the contentions of the parties are kept open for being urged before the Additional Rent Controller.
- I] If the matter is carried in Appeal before the Administrative Tribunal, the Administrative Tribunal also to dispose of the Appeal expeditiously.
- J] The Writ Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs.

K] In view of the disposal of the Writ Petition, Civil Application No.1120 of 2016 does not survive and the same to accordingly stand disposed of as such. However the Applicants would be at liberty to bring the facts which are pleaded in the Civil Application on record in the Application which has now been remanded back to the Additional Rent Controller.

[R.M.SAVANT, J]