

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.453 OF 1995

Shri.Bhagwandas B. Rajput

(Since Deceased) through Legal Heirs

1-a) Shri.Mahendrakumar B. Rajpur & Ors.

..Petitioners

V/s.

Maniben Gvoindji Rajput & Ors.

..Respondents

Mr.H.T. Pawar for the Petitioners.

None present for the Respondents.

CORAM : M. S. SONAK, J.

DATE : 24th AUGUST 2017

P.C.

1. Heard Mr.H.T. Pawar for the petitioners.
2. Neither the respondents nor their advocates are present.
3. Since this petition relates to the year 1995 and was duly notified on the final hearing cause list, it is not possible to defer the hearing any further.
4. The challenge in this petition is to the judgments and decrees dated 22nd December 1981 and 08th December 1994 made

by the Small Causes Court and the Appellate Bench of the Small Causes Court respectively ordering the eviction of the petitioners from the suit premises i.e. Room No.2, 2nd Floor, House No.47, 03rd Marine Street, Mumbai-400002.

5. Mr.Pawar, the learned counsel for the petitioners submits that the findings recorded in the impugned judgments and decrees are perverse. This is because the two courts have failed to take into consideration vital and relevant material on record, including in particular, the admissions flowing from the deposition of Rukmini Govindji Makhanji, the wife of the applicant who had sought for the eviction of the petitioners. Mr.Pawar submits that two Courts have also failed to take into consideration the provisions of the Sections 15 and 15A of the Bombay Rents, Hotel and Lodging House Rents Control Act, 1947, (for short 'The Bombay Rent Act) in terms of which, any subtenancy or even license created by the original tenant on or before 01st February 1973 has been statutorily protected. Mr.Pawar submits that a party, who approaches the Court seeking eviction has to stand or fall on the basis of his or her case and there is no question of such party drawing any sustenance from the weakness, if any, from the case of the opponent. Mr.Pawar, submits since these principles have not been followed by the two

Courts, there is error of jurisdiction which warrants interference under Article 227 of the Constitution of India.

6. Mr.Pawar, the learned counsel for the petitioners submits that there is a clear admission in the deposition of Rukmini that the petitioners' mother was permitted to occupy the suit premises some time in the early 1940's. He submits that in the Ejectment Application No.769/1969, the applicant i.e. Rukmini's husband though himself pleaded that the annual rent of the premises was Rs.15.20/-. Mr.Pawar submits that even otherwise, there is evidence on record which suggests that the petitioners were paying rent of Rs.15/- to the applicant and, in that sense, the petitioners or rather, petitioners mother, was the sub-tenant in respect of the suit premises. Mr.Pawar submits that the petitioners were therefore entitled to the protection of Sections 15 and 15A of the said Act. In as much as this aspect has been ignored by the two Courts, there is clear failure to apply the correct legal principles as also failure to exercise jurisdiction in accordance with law. Mr.Pawar submits that on these grounds the impugned orders are liable to be interfered with.

7. In this case, there is no dispute that the original

applicant Mr.Govind who instituted Ejectment Application No.769/1969 was himself a tenant in respect of three rooms, which includes the suit premises. On 01st September 1969 Govind issued a notice to the petitioners alleging therein that the petitioners were mere licensees in respect of the suit premises and not joint tenants as alleged by them. In the application, there is statement that annual rent of the premises is Rs.15.20/-. The statement is not clear as to what Mr.Govind actually meant. This is because the statement appears in the context of valuation of the Ejectment Application for the purposes of the Court Fees and jurisdiction. In the Ejectment Application however, there is a statement that the license of the petitioners was terminated by notice dated 01st September 1969.

8. The petitioners, in their points of defence filed on 03rd March 1970 took up the defence that they were either the joint tenants or in the alternative sub-tenants in respect of the suit premises. They submitted that the rent receipt issued by the landlord in the name of the applicant-Govind was on account of the consent or sufferance of the petitioners. They specifically claimed protection under the Bombay Rent Act and broadly on these grounds urged for the dismissal of the Ejectment Application.

9. At the stage of evidence, Mr.Govind had already expired and the matter was pursued by his widow Rukmini. Rukmini deposed in the matter, and admitted that her husband was the tenant of the suit premises paying rent of Rs.25/- per month to one Mehtaji or Daruwala Sethaji. She also stated that they had allowed the respondents mother to occupy a portion of one of the rooms since, the petitioners mother belonged to the same caste and hailed from their native place. She has stated that such permission was granted out of sympathy for the petitioner's mother. This was when the petitioner i.e. Bhagwandas was of 15 years of age. Rukmini denied the suggestion that any rent was being paid by the petitioners mother in respect of the suit premises or that the petitioners mother was the sub-tenant in respect of the suit premises.

10. Rukmini, in her cross-examination initially denied that she had permitted the petitioners mother to occupy the suit premises. However, thereafter, she accepted that the suit premises were indeed given to the petitioners mother Premabai. Rukmini, significantly, accepted that in the notice dated 01st September 1969 which was served upon the petitioner's, demand was made for compensation at the rate of Rs.15/- per month for the period

between 01-10-1966 to 31-08-1969, she explained that such a demand was made because the petitioners were occupying/staying in the suit premises. Rukmini also admitted that after Bhagwandas (Petitioner), he started paying to Rukmini Rs.15/- per month and that he paid such amount for 4 to 5 years but then stopped.

11. Rukmini, in her cross-examination further went on to state as follows :-

“6. I am now shown one Rent Receipt for Feb.1966, part of Exh.D-Colly. The rent as mentioned therein of Rs.30.25 per month was for the suit premises in that year. Respondent was paying Rs.15/- to me at that time but not specifically as rent. No amount was payable to us from Bhagwanji and his mother. I do not know whether respondent has deposited certain amounts in the Court after the filing of this proceeding.”

12. Rukmini thereafter proceeded to state that she had permitted to petitioner's mother Premabai to stay in the suit premises and that she had not permitted to the petitioners to stay in the suit premises. Further, Rukmini has deposed that Premabai was

alive when the Ejectment Application was filed. But she stated that the Ejectment Application was filed against the present petitioner, since, he was an earning person.

13. In the course of further cross-examination, Rukmini stated that since some place in the suit premises were given to the petitioners for their use she and her husband used to collect the amount given by the petitioners. She explained that the demand of Rs.15/- per month in the notice issued to the petitioners was towards compensation as mentioned therein. After all these, Rukmini denied that the petitioners or their mother was ever the sub-tenant in respect of the suit premises.

14. Mr.Bhagwandas, the petitioner, in his deposition did try to say that he and his mother were the actual tenants in respect of the entire suit premises or in any case, they were the co-tenants in respect of the suit premises. However, there is some evidence consistent with the questions posted to Rukmini in the course of her cross-examination which suggests that the petitioners were paying Rs.15/- per month in respect of the use of the suit premises.

15. In the petition under Article 227 of the Constitution of

India although there is no scope to re-appreciate or re-assess the evidence on record particularly in a situation where there are a concurrent findings of fact, interference is warranted where such findings of facts are vitiated by perversity. Interference is also warranted where the Courts ignore vital and relevant piece of evidence or the legal provisions which are attracted to the facts and circumstances on record. Perversity in the record of findings of facts arises not merely and there is no evidence/material on record in support of the findings written but also, where, the finding written is totally against the weight of the evidence on record. Keeping in mind such jurisdictional parameters of judicial review, the case of the petitioners is required to be analyzed and examined.

16. In the Ejectment Application itself there is reference to annual rent of premises being Rs.15.20/-. Even if this pleading is ignored on account of ambiguity therein, it is necessary to note that the original applicant has itself referred to the amount as rent. Even if this aspect is completely ignored, from the deposition of Rukmini it is very clear that the petitioners mother was permitted to occupy the suit premises in the early 1940's. There is also evidence on record, mostly in the form of admissions by Rukmini that the petitioners mother and the petitioners were paying amount of

Rs.15/- per month to Govindji/Rukmini for the use/occupation of the suit premises. In the notice dated 01st September 1969 addressed by Govindji/Rukmini there was a demand made for compensation at the rate of Rs.15/- per month. All this material has virtually been ignored by the two Courts. The two Courts, have held that there is no evidence to establish that such payments were by way of rent towards the use and occupation of the suit premises. Applying the test of preponderance of probability, this was a fit case where the admitted payments for such length of time could have been regarded as rents payable by the petitioners mother and after the demise of the petitioners mother towards the sub-tenancy of the suit premises. Admittedly, sub-tenancy is created prior to 01-02-1973 had been statutorily protected by the Bombay Rent Act.

17. Even if the reasoning of the two Courts or the conclusion that the amounts paid by the petitioner's mother and thereafter the petitioners was not proved as amounts towards "rent", there is really, no reason whatsoever to hold that such amounts were not paid towards license fees or compensation. Initially, Rukmini, did try to make out cause that the petitioners mother was only a gratuitous licensee, however, such case, was abandoned, in any case, such case is demolished in the course of the cross-

examination. There is accordingly, overwhelming evidence on record to establish that the petitioners mother and thereafter, petitioners were at least licensees in respect of the suit premises paying compensation of Rs.15/- per month. Since, such license was created prior to 01-02-1973, very clearly, the petitioners were entitled to the protection under the Bombay Rent Act.

18. Section 15(1) of the Bombay Rent Act *inter-alia* provides that notwithstanding anything contained in any law but subject to any contract to the contrary, it shall not be lawful after coming into operation of the Bombay Rent Control Act for any tenant to sub-let the whole or any part of the premises let to him or assign or transfer in any other manner his interest therein and after the date of the commencement of Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1973, for any tenant to give on license the whole or part of such premises. Sub-Section 2 of Section 15 however, provides that the prohibition against sub-letting, assignment or transfer shall not apply in respect of the sub-lessee assignment or transfer prior to 01st February 1973.

19. Similarly, Section 15(A)(i) of the Bombay Rent Control Act provides that notwithstanding anything contained elsewhere in

this Act or anything contrary in other law for the time being in force, or any contract where in person is on the 01st day of 1973 in occupation of any premises, or any part thereof which is not less than a room, as a licensee he shall on that date be deemed to have become, for the purpose of this Act, the tenant of the landlord, in respect of the premises or part thereof, in his occupation.

20. Applying the aforesaid legal provisions to the facts as have emerged from the evidence on record, there was no justification in ordering the eviction of the petitioners from the suit premises. The impugned judgments and orders are therefore vitiated by the jurisdictional errors and the findings recording therein are vitiated by perversity.

21. Rukmini, in her, deposition, has clearly stated that the petitioners mother was very much alive on the date when the Ejectment Application was filed. She has also deposed that the suit premises were in fact given to the petitioners mother. In such circumstances, there was no justification in instituting the Ejectment Application only against the petitioners in the first instance. The explanation that the petitioners were the earning members and therefore the Ejectment Application was instituted against them is

clearly not acceptable.

22. For the aforesaid reasons, the impugned judgments and decrees are hereby set aside. The Rule is made absolute in terms of prayer clause (a) of this petition.

23. In the facts and circumstances of the present case, there shall be no order as to costs.

(M. S. SONAK, J.)