

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.201 OF 2011**

Shri Josephat Alex Gomes,
Major, married,
r/o Leonisia Gomes Mansion,
Pajifond, Margao, Goa.
(Registered address)

.... Petitioners

V e r s u s

Shri Mahendra Jayantilal Tanna (deceased)

1. Smt. Hema Mahendra Tanna,
Widow, aged 55 years,
r/o H. No.156, Comba, Margao.
2. Shri Kalpesh Mahendra Tanna
Aged 34 years, married and his wife;
3. Smt. Rupal Kalpesh Tanna,
Aged 30 years,
Both r/o H. NO.156,
Margao-Goa.
4. Miss Bijal Mahendra Tanna,
d/o late Mahendra Tanna,
aged 28 years,
r/o H No.156, Margao, Goa.
5. Smt. Madhavi Darmesh Morjaria,
d/o late Mahendra Tanna,
aged 30 years, married and her husband,
6. Shri Darmesh Morjaria,
Both r/o. 389-A, Mahendra Mansion,
2nd, J.S.S. Road, Mumbai 400 002,
(Registered Address)

.... Respondents

Shri C. A. Coutinho, Advocate for the Petitioner.

Shri Sudesh Usgaonkar and Ms. R. Pereira, Advocates for the Respondents
no.1 to 6.

CORAM: C. V. BHADANG, J.
DATE: 4th October, 2018.

Oral Judgment:

By this petition under Article 227 of the Constitution of India the petitioner/landlord is challenging the judgment and order dated 28/6/2010 passed by the Administrative Tribunal in Eviction Appeal No.85/2003. By the impugned judgment, the Administrative Tribunal, while allowing the appeal filed by the respondents, has set aside the order of eviction passed in favour of the petitioner in respect of the suit premises.

2. The brief facts are that, the entire house (of which the suit premises are a part) was gifted to the petitioner by his parents in the year 1971. That now deceased, Mahendra Jayantilal Tanna was inducted as a tenant in respect of the suit premises by the petitioner under a Lease Deed dated 1/6/1974. The father of the petitioner expired in the year 1983, while his mother expired on 17/8/1988. It appears that the parents of the petitioner were staying in the

remaining portion of the said house. It is undisputed that the petitioner is presently staying in a flat at Pajifond, Margao which is belonging to his brother. The case made out by the petitioner was that after the death of his father, he approached the deceased tenant requesting him to vacate the suit premises as the petitioner was in need of the tenanted premises for his bonafide personal occupation. The tenant did not vacate and therefore the petitioner was required to shift his mother to his residence at Pajifond, Margao. It appears that an offer of alternate premises was also given to the deceased tenant which he refused to accept. The petitioner issued two notices i.e 1/5/1985 and 14/12/1987 inter alia alleging that the original tenant had changed the user and also constructed a ramp near the staircase and claiming that he was in need of the suit premises for his bonafide personal occupation. It appears that in the notice dated 1/5/1985 the petitioner stipulated that in the event the tenant did not vacate by May 1986, the rent would be increased to Rs.500/- per month. Be that as it may, the tenant gave a reply to the notice dated 6/1/1985 and as he failed to vacate the suit premises, the petitioner filed an application for eviction before the Rent Controller on 12/2/1988 on two grounds namely, under section 23(1)(a)(i) and section 22 (2) (c) of the Goa Buildings (Lease, Rent and Eviction) Control Act, 1968 (Act, for short).

3. Before the Rent Controller, the petitioner examined himself along with

one Peter Gomes, (AW2) and Santosh Kale (AW3). The son of the original tenant examined himself along with one Manish Mulraj Tanna. The learned Rent Controller refused to accept the case of the petitioner that there was any construction of any slope/ramp done by the tenant in the middle of the steps and thus the ground as based on section 22 (2)(c) of the Act was negated. However, in so far as the ground of bonafide requirement is concerned, the Rent Controller came to the conclusion that the petitioner had established that his need was bonafide and genuine, inasmuch as the petitioner was required to stay at Pajifond, Margao in a flat which was belonging to his brother. The Rent Controller has noticed a submission purportedly made on behalf of the tenant to the effect that one Mr. Mascarnehas was inducted by the petitioner as a tenant in a part of building, much after the induction of the deceased tenant and if at all there was to be an eviction, Mascarenhas has to go first on the basis of the principles of last come, first go. The Rent Controller has refused to accept the said submission which was purportedly advanced on behalf of the respondents. In the result the Rent Controller allowed the application by an order dated 19/3/2003, directing the tenant to vacate the suit premises within a period of three months. Feeling aggrieved the original tenant approached the Administrative Tribunal in Eviction Appeal No.85/2003.

4. The Tribunal has not interfered with the order refusing to grant an order of eviction under section 22(2) (c) on the ground that it was not challenged by the landlord. However, in so far as the ground based on section 23(1)(a)(i) is concerned, the Tribunal came to the conclusion that the case of the petitioner came within the ambit of section 23(3) and not section 23(1)(a) (i). In short, the Tribunal came to the conclusion that Mr. Mascarenhas was inducted by the petitioner (in part of the remaining house) after issuance of the notice seeking eviction of the original tenant. The Tribunal also noticed that during the pendency of the application, Mr. Mascarnhas had already vacated the portion and apart from the portion which was let out to Mascarenhas, the petitioner was in possession of two rooms out of the remaining portion of the house. The Tribunal relied upon the decision of the Hon'ble Supreme Court in the case of **Dattatraya Laxman Kamble Vs. Abdul Rasul Moulali Kotkunde and anr. reported in 1999 (4) S.C.C.1**, in order to hold that the petitioner ought to have made out a case as required under section 23(3) of the Act. The Tribunal in the result allowed the appeal setting aside the order of eviction. Hence this petition.

5. I have heard Shri Coutinho, the learned counsel for the petitioner and Shri Usgaonkar, the learned counsel for the respondents no.1 to 6. With the assistance of the learned counsel for the parties, I have gone through the

record.

6. It is submitted by Shri Coutinho, the learned counsel for the petitioner that the Tribunal was in error in holding that the case of the petitioner fell under sub section 3 of section 23 of the Act. In the submission of the learned counsel for the petitioner, the case made out by the petitioner, squarely came within the ambit of section 23(1)(a)(i) of the Act. The learned counsel was at pains to point out that it is the settled position that the landlord is the best Judge of his requirement and the tenant is not in a position to dictate what should be the requirement of the landlord. It is submitted that the Tribunal was in error in interfering with the order of eviction on the ground that the case of the petitioner fell under section 23(3) of the Act. It is submitted that the petitioner was not actually occupying the remaining portion of the house and was residing at Pajifond, Margao in the flat owned by his brother. In the submission of the learned counsel for the petitioner, unless the landlord is actually occupying a part of the residential building, (not a case where the part of the residential house is mere in his possession) that sub section 3 of section 23 would apply and not otherwise.

7. Shri Usgaonkar, the learned counsel for the respondents no.1 to 6 has supported the impugned order. It is submitted that the tribunal is right in

holding that the case of the petitioner, squarely came within the ambit of sub section (3) of section 23 and not section 23(1)(a)(i) of the Act. It is submitted that the petitioner was thus required to make out a case that the portion which is in his occupation out of the said house, is not sufficient for his bonafide personal occupation. It is submitted that no such case having been made out, the tenant cannot be taken by surprise.

8. I have carefully considered the submissions made and I do not find that any case for interference is made out.

9. It is undisputed that after the petitioner sought eviction of the tenant, the petitioner inducted Mr. Mascarenhas as a tenant in part of the said residential house. It is further not disputed that two rooms out of the remaining house continued to be in possession of the petitioner all along. It is further undisputed that during the pendency of the application before the Rent Controller itself, Mr. Mascarenhas had vacated the tented premises, which are also in possession of the petitioner.

10. Section 23(1)(a)(i) and section 23 (3) of the Act, which are relevant for the purpose, may be reproduced as under:

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) -

(b) -

(3) A landlord who is occupying only a part of a residential building, may notwithstanding anything in sub-section (1), apply to the Controller for an order directing any tenant occupying the whole or any portion of the remaining part of the building to put the landlord in possession thereof, if he requires additional accommodation for his own use or for the use of any member of his family.

[Explanation:— For the purpose of this section, a landlord means a person, on account of or on behalf of or for the benefit of whom the rent of a building is received but does not include an agent, trustees, guardian or receiver.]

It can thus clearly be seen that section 23(1)(a)(i) and section 23 of the Act cater to two different contingencies and situations. Under sub section (1) (a)(i) of section 23, the landlord if he 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 of his family members, can

apply to the Rent Controller for eviction of the tenant, while under sub section 3 of section 23 of the Act, a landlord who is occupying only a part of the residential building may notwithstanding anything contained in sub section (1) apply to the Controller for an order of eviction if the landlord requires the “additional accommodation” for his own use or for the use of any member of his family. In the present case as noticed earlier, the petitioner is occupying a part of the residential building. During the course of the arguments, it transpired that the portion which is lying vacant out of the residential building, (and which is in possession of the petitioner) is by and large equal to the portion which is in possession of the respondents. It can thus be seen that the Tribunal was justified in holding that the case of the landlord fell under section 23(3) of the Act. The contention on behalf of the petitioner that for sub section 3 of section 23 of the Act to apply, the landlord should actually be occupying the part of the residential building, to my mind cannot be accepted. If the landlord is in possession of a vacant portion of the residential building, (even where he is not actually occupying the same), there is no reason why sub section 3 of section 23 of the Act would not apply. In such a case the landlord is obliged to make out a case of requirement of “additional accommodation” as envisaged by sub section 3 of section 23. There is no case made out by the petitioner in the application about requirement of 'additional accommodation'.

11. It is submitted by Shri Coutinho, the learned counsel for the petitioner that it has come in the evidence of the petitioner that he is in occupying two flats consisting of four bedrooms, two living rooms, two kitchens and two bathrooms which are owned by his brothers who are staying abroad in U.S.A where they are employed. To a specific question whether the brothers of the petitioner have decided to come down and settle permanently in Goa, the petitioner replied that he cannot say. Even so far as the portion out of the house part of which are the suit tenanted premises, and which are owned by the petitioner, he states that the premises which are in his occupation of the respondents (the tenanted premises) are “half of mine”.

12. The Hon'ble Supreme Court in the case of **Dattatraya Kamble (supra)** has held thus :

“When a landlord says that he needs the building for his own occupation there is no doubt that he has to prove it. But there is no warrant for presuming that his need is not bona fide. The statute enjoins that the court should be satisfied of his requirement. So the court would look into the broad aspects and if the court feels any doubt about the bona fides of the requirement it is for the landlord to clear such doubts. Even in case where the tenant does not contest or dispute the claim of the landlord the court has to look into the claim independently albeit the landlord's burden gets lessened by such non-

disputes. In appropriate cases it is open to the court to presume that the landlord's requirement is bona fide and put the contesting tenant to the burden to show how the requirement it is not bona fide .”(emphasis supplied).

There cannot be any dispute with the proposition that the landlord is the best judge to decide as to what is his need and requirement. However in a case where the landlord is in possession of a part of the residential premises, the landlord would be required to make out a case of 'additional accommodation' and in the absence thereof, the tenant cannot be taken by surprise. The tenant should be clear about the case which he is required to meet a case and that is precisely what is held by this Court in the case of **Dr. Mullal Malhandas Khemani, (since deceased) represented by his legal representative Vs. Shri Avelino Gregorio D'Souza (since deceased, represented by his legal representatives) and others 2000 (1) Goa L.T. 154**. I have carefully gone through the impugned order and I find that the view taken by the Tribunal is a plausible view. It is now well settled that the jurisdiction exercised by this Court under Article 227 of the Constitution of India is neither appellate nor revisional in nature, but is essentially supervisory and this Court would not re-appreciate the evidence in order to come to its own conclusion, unless and until the finding recorded by the Courts/Tribunal is perverse or is an impossible view. Considering the overall circumstances, I do not find that the view taken by the Tribunal can be said to

be perverse so as to require interference in the exercise of the supervisory jurisdiction of this Court. In the result the petition is dismissed with no order as to costs.

C. V. BHADANG, J.

Ap/