

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.442 OF 2015**

The Goa Co-operative Marketing
and Supply Federation,
Through its Chairman having
office at Sahakar Bhavan,
Near Municipal Market,
Panaji-Goa 403001.

... Petitioners

versus

1. Shri Mario Lobo,
R/o. Feira Baixa, Mapusa,
Bardez-Goa.

2. Shri Fernando Lobo,
R/o. Feira Baixa, Mapusa,
Bardez-Goa.

... Respondents

Shri Raviraj Chodankar, Advocate for the Petitioners.
Shri V.P. Thali, Advocate for the Respondents.

Coram:- NUTAN D. SARDESSAI, J.

Reserved on :- 20th July, 2018

Pronounced on :- 26th July, 2018

JUDGMENT :

This petition takes exception to the judgment dated 01/09/2014 passed by the Appellate Board, North Goa, Panaji pursuant to which the Appellate Board passed an order directing the petitioners to hand over the suit premises to the respondents and by invoking the jurisdiction of this Court under Article 227 of the Constitution of India. It was briefly

their case that the suit premises belonging to the respondents was let out to them in the year 1974 and since then they have been in possession thereof utilising the same for storing the goods such as sacks of wheat, sugar and also other goods including tins of oil, etc. They were in peaceful possession of the suit premises since the time the possession was taken over from the respondent no.2. An eviction notice was issued to them in 1987 to which they had replied stating that the suit premises were required as a godown in order to supply the controlled commodities to the public and in case they wanted vacant possession the respondents had to provide alternate godown to the petitioners in the market area.

2. The respondents had filed an application for their eviction from the suit premises before the Additional Deputy Collector and Rent Controller which was dismissed by the judgment dated 19/01/2006. One of the tenants had filed the Civil Suit against the petitioners and the respondents alleging that the petitioners were occupying the entire ground floor as a godown and that in recent times it was used for unloading and storing several goods and supplying to the retail fair price shops. The District Judge, Panaji in appeal had allowed the

petitioners and the said tenant to carry out the repairs of the suit premises and the respondents were restrained from interfering with the repair works.

3. It was further the case of the petitioners that they had not made any changes in the use of the suit premises which was housed in an old building which was more than 120 years old. They had never changed the use of the suit premises and took extra precautions in storing the goods. There were cracks in the wall even prior to the suit premises being taken over by the petitioners and therefore the Trial Court had rightly rejected the application for eviction. The Appellate Board however set aside the judgment of the Trial Court and directed their eviction from the suit premises and to hand over the possession to the respondents within ninety days. The impugned judgment was therefore liable to be interfered with on the premise that the findings rendered by the Appellate Board suffered from perversity and an erroneous approach to the applicable law. The impugned judgment was contrary to law and the matter on record.

4. The Appellate Board failed to appreciate the matter from

a proper perspective and ought to have held that the respondents had not proved that the petitioners had changed the user of the suit premises. The Appellate Board failed to appreciate that the respondents' witnesses had confirmed that the petitioners were using the suit premises as a godown right from the inception and ought to have held against the respondents. The impugned judgment of the Appellate Board therefore justified interference in this petition and therefore a writ of certiorari had to be issued and the judgment and order under challenge ought to be quashed and set aside.

5. Heard Shri R. Chodankar, learned Advocate on behalf of the petitioners who reiterated his case as pleaded and submitted that despite the lack of evidence on the points formulated for determination, the learned Appellate Board had held against them. They had consistently taken a plea that the suit premises were used for supplying essential commodities. There was no basis in the case set up by the respondents and therefore an interference was called for with the judgment under challenge.

6. Shri V.P. Thali, learned Advocate for the respondents

came to be heard on their behalf who adverted to the notice dated 18/12/2007 issued to the petitioners and submitted that the suit premises had been let out for the purpose of a shop and not as a godown. Although the petitioners had filed their reply, they had not met this case of the respondents and had instead set out that the godown was required by them to supply the controlled commodities to the general public. He adverted to the order of injunction passed by the Civil Court in the proceedings filed by another tenant Advocate Gaitonde and otherwise adverted to the statements in defence. A reference was also made to another notice issued to the petitioners dated 18/06/1991 but to which the petitioners had not replied despite due opportunity. He next invited attention to the eviction application and the reply filed on behalf of the petitioners to show that there was no denial of their case and then adverted to the judgment under challenge to buttress a plea that there was no error committed by the Appellate Board. He placed reliance in **Goa Urban Cooperative Bank Ltd. V/s. Noor Mohd. Sheikh Mussa & Anr. [(2004) 6 SCC 166]** and **Mohd. Yunus V/s. Mohd. Mustaqim & Ors. [(1983) 4 SCC 566]** and pressed for the dismissal of the petition. i would consider their submissions, the judgments

relied upon, the impugned judgment and in the light thereof proceed to decide the petition.

7. The respondents had filed an application for the eviction of the petitioners by setting out a ground that the suit premises were leased out to the petitioners for the purpose of a fair price shop and the sale of the controlled goods from the year 1974. However, gradually over the years the petitioners had stopped the business of the fair price shop and sale of the controlled goods and without their consent in writing had started using the premises for a purpose other than that for which it was leased by converting the suit premises into a godown for the storage of the bulk goods in which the opponent was trading. On account of the unloading of the truckloads of merchandise and dumping it in the suit premises including against its walls, cracks had developed both horizontally and vertically stretching upto the first floor of the building making its condition precarious and otherwise dangerous to the occupiers of the other portions on the first floor. On that premise, the respondents sought for their eviction and vacant possession of the suit premises.

8. The petitioners herein took a plea that they had started their commercial activities soon after taking over of the suit premises, broadly denying the case of the respondents but not carving out any specific plea on the user of the suit premises as a godown unlike its demise to be used as a shop. Even on the cracks to the building, there was no rebuttal at their instance but a plea was set up that these cracks were on account of the age of the building and due to its neglect in maintenance by the respondents themselves. The parties had no doubt gone to trial and on the basis of the material, the Rent Controller had held against the respondents. It is another matter that the respondents took up the matter in appeal before the Appellate Board which considered the matter in its proper perspective and held against the petitioners.

9. Even in the proceedings filed at the instance of the tenant Gaitonde the learned Judge by his order dated 30/06/1989 held that the said tenant Gaitonde was entitled to the relief of partial injunction and directed the petitioners herein not to dump or store any sacks in the suit premises and which arrangement was to continue till the decision of the

suit on merits. Apparently, this order of the Civil Court had attained finality and the petitioners were not able to show from any material that there was a reversal of these findings by any Court of appeal and which therefore stands against the petitioners. Rather this order reinforces the case of the respondents that the petitioners were unloading loads of materials and storing in the suit premises which was used as a godown unlike the purpose for which the premises were let being to use it as a shop for the sale of its commodities. The tenant appellant had preferred an appeal before the District Court which by its judgment dated 04/05/1991 partly allowed the appeal permitting the tenant appellant to carry out the repairs alongwith the petitioners herein without making any alterations or additions to the existing structure and restraining the respondents herein from causing any interference to the repairs being carried out to the suit premises by the tenant appellant and the petitioners herein.

10. In **Goa Urban Cooperative Bank Ltd.** (supra), the Apex Court held at paragraphs 23 and 28 as below:

"23. Letting out the premises for commercial purpose can have different colours and hues depending upon the purpose for which they are let

out. For example, a non-residential premises can be let out for commercial purpose for running a shop, office, restaurant, hotel, cinema and godown for storing of the goods, etc. If it is specified in the lease deed that the premises be used for a particular commercial purpose then the change of use of the premises falling in another category of purpose would amount to change of user of the building falling within the four corners of Section 22(2)(b)(ii) of the Act and the landlord would be entitled to seek eviction of the tenant for having changed the use of the suit premises for a purpose other than for which it was let out. When the use of the building is identified in the lease deed as an "office", it would be taken that the parties had used the expression "office" in the sense in which the "office" is understood in common parlance or as indicated by its dictionary meaning. The appellants have admitted that they have started using the building as a godown and the High Court has concluded that the suit premises were used as a godown after the shifting of banking activities of the appellant to Navelkar Building in the year 1982 and continued to be so used till the date of filing the eviction petition in the year 1992. Considering that the suit premises were let out for office use, mere storage of the books of accounts would not amount to use of premises for office purposes especially when the appellant has admitted that it has shifted its business of banking to Navelkar Building. When the building is let out as an "office" then the same can be used only as an office and not as a godown where the goods are stored and that would tantamount to change of user."

"28. The appellant had taken the demised premises on rent for the opening of its branch or branch office. The branch office has been defined to mean a place at which deposits are received, cheques cashed or monies lent and includes any place of business where any other form of business referred to in sub-section (1) of Section 6 is transacted. A banking company cannot open a new place of business in India without obtaining the prior permission of

Reserve Bank of India. Similarly, it cannot change its existing place of business situated in India otherwise than within the same city, town or village. Presuming that the appellant had changed its existing place of business within the same city, the question arises "did they have the permission to continue with the banking activities at the suit premises which were taken by it for the opening of its branch office"? The appellant has not produced any evidence on this aspect. The respondents in their counter affidavit in the special leave petition have categorically stated in para 7 that "the Bank does not even have the required permission from Reserve Bank of India to carry on any banking activity in the suit premises." This assertion has not been controverted by the appellant in its rejoinder. The building was taken on rent for use as an "office" in which the appellant started transacting its banking activities and continued to do so till it shifted its banking activities in the new building at Navelkar Building. The suit premises ceased to be occupied as an office and were being used as a godown, which was a different purpose than the one identified in the lease deed."

In **Mohd. Yunus** (supra), the Hon'ble Apex Court held at paragraph 7 as below:

"7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority", and not to correct an error apparent on the face of the record, much less an error of law. In this case there was, in our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Article 227, the High Court does not act as an Appellate Court or Tribunal. It will not review or

re-weigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision.”

11. The Appellate Board on a construction of the case filed by the respondents herein formulated points for determination whether they had established that the petitioners had changed the user of the premise, whether they committed acts of damage as were likely to materially impair the value or utility of the building, whether they had committed acts of nuisance to the occupiers of the other portions of the same building and whether the impugned judgment and order before it was arbitrary and perverse and held in favour of the respondents by answering these points in the affirmative. The learned Appellate Board had duly considered the case of the respondents that it had leased out the suit premises to the petitioners for running a fair price shop and sale of the controlled goods in the suit premises, that it was converted into a godown for storage of the bulk goods and the process of storage including transportation of goods in sacks of grains, cement, oil tins and other goods which were off loaded and dumped in the suit premises against the walls of the suit premises causing cracks to develop in the walls and had

considered the evidence brought on record on behalf of the respondents in support of their case.

12. The learned Judge had duly considered the evidence on record including that of the expert witness, considered the judgment in **Goa Urban Cooperative Bank Ltd.** (supra), and held in favour of the respondents that the petitioners had caused a change in the user of the suit premises, that cracks had developed in the suit building on account of the acts of dumping the truck loads of sacks in the suit premises including the testimony of one of the occupants in the building and held that they had caused damage to the suit premises. The learned Judge on an appreciation of the material on record had clearly held that the petitioners by their acts had caused nuisance to the occupants of their building including in the nature of damages and ultimately held that the judgment of the Trial Court could not be sustained as there was no proper appreciation by the Trial Judge. This judgment of the Appellate Board does not call for any interference considering also the law laid down by the Apex Court in **Mohd. Yunus** (supra). There is no justification why this Court should exercise its supervisory power under Article 227 of the

Constitution of India and therefore i pass the following

ORDER

- (i) The Writ Petition is dismissed with no order as to costs.
- (ii) It goes without saying that the petitioners shall vacate and hand over the possession of the suit premises to the respondents as directed by the Appellate Board.
- (iii) Rule stands discharged.

NUTAN D. SARDESSAI, J.

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