

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.536 OF 2017**

1. Amira Abdul Razaq,
Daughter of late Shri Abdul Razaq,
Major, unmarried, advocate.
2. Farha Abdul Razaq,
Daughter of late Shri Abdul Razaq,
major, married, housewife.
3. Sadia A. Razaq,
Daughter of late Shri Abdul Razaq,
Major, married, housewife.
All three with address at
"Mubarak Manzil", Opp. Electricity
Quarters, Aquem, Margao-Goa. Petitioners

V/s.

1. Smt. Lila S. Mahtani,
Widow of late Shri Satyanand V. Mahtani,
House No.E-330, 1st Floor,
Yasin Manzil, Next to Hotel Samrat,
St. Inez, Panaji-Goa.
2. Shri Umesh S. Mahtani,
Son of late S.V. Mahtani,
Flat No.2205 Goa Institute of
Management Housing Complex,
Poriem, Sattari-Goa. Respondents

Shri J.E. Coelho Pereira, Senior Advocate with Shri S. Karpe,
Advocate for the Petitioners.

Shri P.A. Kholkar, Advocate for the Respondents.

Coram:- NUTAN D. SARDESSAI, J.

Reserved on : 23rd January, 2019

Pronounced on :29th January, 2019

JUDGMENT :

The petitioners have invoked the jurisdiction of this Court under Article 227 of the Constitution of India in the matter of interpretation of the expression "tenant" in terms of Section 2(o) of the Goa Buildings (Lease, Rent and Eviction) Control Act, 1908 and Rules 1969 framed thereunder, the Act and Rules for short hereinafter and challenged the order dated 02/05/2017 passed by the Rent Controller.

2. Heard Shri J.E. Coelho Pereira, learned Senior Counsel with Shri Somnath Karpe, learned Advocate on behalf of the petitioners, who first invited attention to the definition of a "tenant" in terms of Section 2(o) of the Act and otherwise dealt with the relevant provisions of the Act namely 21 and 22 thereof being the relevant provisions as per the scheme of the Act for the eviction of the tenants. It was his contention that the petitioners had moved an application before the Court of the Rent Controller to conduct an inquiry whether the two sons of the late statutory tenant had inherited any tenancy rights in the suit premises in terms of Section 2(o) of the Act read with Rule 12(4) upon the death of the statutory tenant. It was his contention that upon the death of the original statutory tenant, he was

survived by his widow i.e. the respondent, the three married daughters and the two sons. The three daughters were married and settled prior to his death while both the sons were working and living separately for many years prior to his death and which position was admitted by the respondent in the written statement filed in defence. The married daughters being excluded from the definition of a "tenant" and the two sons not residing with the tenant at the time of the death, there was no person succeeding as a tenant to the suit premises and therefore the petitioners were entitled to a finding in that regard and an order for quiet and vacant possession of the suit premises in their favour.

3. Shri J.E. Coelho Pereira, learned Senior Counsel for the petitioners adverted to the electoral rolls produced on record which clearly showed that both the sons were residing at places other than the rented premises and therefore could not assume the character of a tenant within the meaning of Section 2(o) of the Act. He placed reliance in **Durga Prasad V/s. Narayan Ramchandaani [(2017) 5 SCC 69]**, **Shri Kishori Lal (deceased) V/s. Shri Siri Krishan [ILR (1996) I Delhi 731]**, the judgment of the Delhi High Court, that in

Commodore B.Y. Wad V/s. Rallis India Limited [2002 (9) Scale 205] apart from adverting to the relevant provisions of the Act and the Rules relating to the bringing on record of the legal representatives of the deceased tenant and finally in **Nagindas Ramdas V/s. Dalpatram Ichharam alias Brijram & Ors. [(1974) 1 SCC 242]** in the matter of the effect of admissions and pressed for the grant of his petition and appropriate consequential reliefs.

4. Shri P. A. Kholkar, learned Advocate for the respondent contended at the outset that upon being informed of the death of the tenant, it was the duty of the landlord petitioners to bring the legal representatives on record which was the mandate of Section 52 and Rule 12 sub-rule 4 of the Rules. However, there was no compliance therewith and quite on the contrary the application was moved on behalf of the petitioners to hold an inquiry and seek consequential relief of eviction. The learned Rent Controller by the impugned order had clearly held that the two sons of the deceased tenant respondent were the legal representatives and dismissed the application of the petitioners. In his contention, Section 2(o) dealing with the definition of a "tenant" did not apply to a son who was not living with the

tenant so as to disqualify him from the definition of a tenant. The son in his contention automatically became a tenant and therefore the interpretation sought to be given by Shri J.E. Coelho Pereira, learned Senior Counsel for the petitioners was not appropriate.

5. Shri P.A. Kholkar, learned Advocate for the respondent otherwise adverted to the reply and submitted that the petitioners had been subjecting the respondents to all sorts of harassment including this application and therefore the petition had to be dismissed. It was further his contention that there was no provision in the Rent Act to hold an inquiry as sought for by the petitioners and which application was rightly rejected by the learned Rent Controller. It was his contention that the judgment in **Durga Prasad** (supra) and **Shri Kishori Lal** (supra), related to the interpretation of the provisions of the UP Building Act and the Delhi Rent Control Act and were clearly distinguishable on facts. It was his contention that the legal representatives had to be given an opportunity to put up their written statement in defence and contest the proceedings and therefore the petition seeking to quash the impugned order and to seek their eviction straightaway was untenable and liable for dismissal.

6. Shri J.E. Coelho Pereira, learned Senior Counsel for the petitioners in further reply submitted that the interpretation given by Shri P.A. Kholkar, learned Advocate for the respondents in respect of the definition of a "tenant" contained in Section 2(o) qua the son was incorrect. There was a clear admission on behalf of the respondents that they were not residing with the deceased. Even otherwise, the Death Certificate showed the address of the deceased at Sanquelim. In so far as Rule 12 was concerned, it was his contention that there was a clear admission in the written statement that both the sons were away, one in Spain and the second in Sanquelim and the daughters were married. In view of this clear admission in terms of Section 17 and 18 of the Evidence Act, the effect of such admissions had to be properly construed in terms of Section 58 of the Evidence Act. He concluded his arguments that the petition had to be allowed and an order for eviction had to follow.

7. i would consider their submissions, the relevant provisions of the Act and the Rules framed thereunder, the judgments relied upon supra and in view thereof decide the petition accordingly.

8. Section 2(o) in terms of the Act defines a “tenant” and means any person by whom or on whose account or behalf the rent of any building is, or but for special contract would be, payable and includes [in the event of his death the surviving spouse, or any son, or unmarried daughter or father or mother who had been living with him as a member of his family upto the date of his death and] a sub-tenant and also any person continuing in possession after the termination of his tenancy, but shall not include any person against whom any order, or decree for eviction has been made.

9. Section 21 contained in Chapter V contemplates a bar on the eviction of tenants and reads thus:

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 may pass a decree for eviction on any of the grounds mentioned in this Chapter even though it is found that such denial does not

involve forfeiture of the lease or that the claim is unfounded. Section 22 thereof deals with the various grounds of eviction which are available to a landlord to seek the eviction of his tenant and to apply to the Controller for a direction in that behalf. Section 23 deals with the landlord's right to obtain possession. In other words, these provisions categorically envisage the right of a landlord to recover the possession of the suit premises on the grounds provided under the Act.

10. Section 52 deals with the proceedings by or against legal representatives. Subsection (1) provides that any application made, appeal preferred or proceedings taken under this Act by or against any person, may, in the event of his death, be continued by or against his legal representatives. Sub-section 2 reads as where any application, appeal or other proceedings could have been made, preferred or taken, under this Act, by or against any person, such application, appeal or other proceedings may, in the event of his death, be made, preferred or taken by or against his legal representatives. In other words, Section 52 envisages the continuation of the proceedings by the legal representatives whenever any person dies in the course of the proceedings including the appeal taken under the Act.

11. Rule 12 deals with the procedure for bringing on record the legal representatives of the deceased persons. Sub-rule 4 contemplates that where a **question arises** as to whether any person is or is not the legal representative of a deceased applicant or a deceased respondent such question shall be determined by the Rent Tribunal or the Appellate Board or the Controller or the Administrative Tribunal as the case may be. Therefore, a bare reading of this Rule coupled with Section 52 of the Act would meet the contention of Shri P.A. Kholkar, learned Advocate for the respondent that no inquiry is contemplated in the matter of bringing the legal heirs on record. The very wording of sub-rule 4 indicates so in clear terms that where a question arises as to whether any person is or is not the legal representative of a deceased applicant or a deceased respondent such question would be determined by the Rent Tribunal or the Appellate Board or the Controller or the Administrative Tribunal as the case may be. In the backdrop of these provisions of the Act and the Rules framed thereunder, i would now advert to the factual matrix before embarking on an assessment of the judgments relied upon by the learned Senior Counsel in particular to substantiate his case.

12. The petitioners had filed an application for eviction of the respondent (since deceased) under Section 22(2)(a)(f) and 23(1)(a)(i) of the Act claiming to be the co-owners in possession of the house in question. It was their case in the application seeking the eviction of the original tenant that he was survived by his widow Lila i.e. the respondent who also had five children, all married and living separately on their own for several years prior to the death of the original tenant. The three daughters were married much prior to his death and residing in their marital homes while the widow alone was residing in the tenanted premises and his two sons were living out of Goa since several years prior to the death of the original tenant and were also not residing with the tenant at the time of the death, one son Umesh being employed in Bangalore and the other Suresh being gainfully employed in Spain. On the grounds set out in the application, the petitioners sought for the eviction of the tenant under the relevant provisions of the Act and such other and further orders as deemed fit in the facts and circumstances of the case.

13. The respondent widow Lila had filed her statement in

defence in which there was a clear admission that the original tenant on his death was survived by her i.e. his widow and five children being three married daughters and two sons who were residing in Spain and Bangalore respectively for the purpose of their occupation. This is besides asserting that their stay out of Goa was for the purpose of their service while their permanent residence was in Goa in the suit premises. In other words, as rightly submitted by Shri J.E. Coelho Pereira, learned Senior Counsel for the petitioners, there was a clear admission at the instance of the widow that she alone was residing in the suit premises, her three daughters being married and residing in their maternal homes while the two sons were gainfully employed outside Goa and India.

14. The petitioners moved an application before the Rent Controller spelling out in clear terms that the original tenant had expired on 29/04/2005 and at the time of his death only his widow was residing in the suit premises as the member of his family unlike the two sons who were gainfully employed and residing out of Goa and India and the three daughters being married and settled in their marital homes. On the basis of the clear admission in the written statement on this aspect, it was

the petitioners' case that neither the married daughters nor the two sons inherited any tenancy rights in terms of Section 2(o) of the Act and that as the proceedings could not be continued against the deceased person, an inquiry was required to be made if the two sons could be considered as the legal heirs of the tenant within the meaning of Section 2(o) of the Act and for such other and further orders as deemed fit in the circumstances of the matter. The respondent had not categorically denied the contents of the written statement in which there were clear admissions that the widow alone was staying in the suit premises but pressed for the dismissal of the application on the premise that the issue of jurisdiction and abatement had to be decided first while pressing for the dismissal of the application. The electoral rolls referred to by Shri J.E. Coelho Pereira, learned Senior Counsel for the petitioners clearly show that the two sons, the son Umesh residing at Bangalore unlike the other son Suresh being a resident of Spain as per the admitted position of the respondent. A reading of the definition of a "tenant" in terms of Section 2(o) on its proper reading and construction would mean that a son who had not been living with the tenant as a member of his family upto the date of his death would not be included in the definition of a tenant in terms of Section 2(o) of the Act. Any

other interpretation would do violence to the definition of the expression.

15. In **Durga Prasad** (supra), the brief facts of the case are that the respondent landlord filed an eviction petition before the competent authority, Civil Judge Senior Division under Section 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 being the "U.P. Act" for short, for release of the property from the tenant late Lalita Devi on the ground of his bonafide need. The father-in-law of the deceased Lalita had taken the suit property on rent and after his death his son Baldev i.e. the husband of Lalita became the tenant of the suit property and after the death of Baldev, Lalita became the tenant of the suit property. The appellant is the brother of the deceased Lalita, who was the tenant of the respondent. The application was dismissed by the prescribed authority and thereupon the landlord preferred an appeal before the Appellate Court which was transferred to the Additional District Judge VII, Dehradun. During the pendency of the appeal, the tenant Lalita passed away and thereupon the respondent landlord moved a substitution application before the Appellate Court with a prayer that the appellant who is the real brother of the deceased be

substituted in her place. The said application was allowed and the appellant was impleaded as a respondent-defendant in the said appeal which came to be allowed by the Appellate Court holding that during the pendency of the appeal the sole tenant Lalita passed away and Durga Prasad, who had been substituted is not a member of the "family" and that he was not able to prove that he was previously residing with his sister Lalita in the said premises. On those findings the appellate Court set aside the order of the prescribed authority and allowed the appeal giving rise to a Writ Petition before the High Court at the instance of the appellant tenant and dismissed the same holding that the appellant does not come within the definition of a "family" as per Section 3(g) of the U.P. Act.

16. In **Durga Prasad** (supra), it was contended on his behalf that the High Court had erred in holding that he was not a legal heir or representative of the deceased tenant and the finding was perverse and contrary to the materials on record. Upon the death of the tenant Lalita, the respondent landlord had himself filed an application for substitution of the appellant as her legal heir and his address too was shown as the same disputed property and which by itself established that the appellant had

been residing in the said property at the time of the death of the tenant Lalita. However, it was contended on behalf of the respondent that the High Court had rightly held that the appellant being the brother of the tenant Lalita was not a member of the "family" as defined under Section 3(g) of the U.P. Act and being an unauthorised occupant, the High Court had rightly ordered his eviction. The tenant of the suit premises was Lalita and being a female Hindu and on her death, the devolution of tenancy would be determined as per Section 15(2)(b) and as the appellant did not fall under the category of "heir" of the husband of Lalita, the High Court had rightly dismissed the petition as well as the review petition and the impugned orders did not warrant interference.

17. In **Durga Prasad** (supra), the question before the Hon'ble Apex Court for consideration was whether the appellant brother of the deceased tenant Lalita was included in the definition of a "family" under Section 3(g) or an heir under Section 3(a) of the U.P. Act. In that context, Section 3(a) and 3(g) were considered as also 3(1)(f) defining an "heir". In the present case, the suit property was taken on rent by the father-in-law of the deceased tenant Lalita and after his death her husband Baldev became the

tenant of the suit property and upon his death Lalita became the tenant. Upon her death and in terms of Section 15(2)(b) of the Hindu Succession Act, in the absence of any son or daughter of the deceased Lalita, the tenancy would devolve upon the heirs of her husband. Since the appellant did not fall under the category of "heir" of Lalita's husband, the tenancy of the suit property would not devolve on him nor could he be called as an "heir" under Section 3(a) of the U.P. Act. In that view of the matter, the Apex Court held that the High Court had rightly held that the appellant was neither an "heir" as visualised under Section 3(a) nor "family" within the meaning of Section 3(g) of the Act and that he was in an unauthorised occupation of the suit premises and liable to be evicted and dismissed the appeals with a direction to the appellant to hand over the vacant possession of the suit premises of the respondent landlord within a defined time.

18. In **Shri Kishori Lal** (supra), the respondent filed eviction proceedings under Section 14(1)(a) of the Delhi Rent Control Act for eviction of the appellants of the rooms in his occupation forming a part of the tenancy premises on the premise that he had neither paid nor tendered the arrears of rent within two

months from the date of service of notice. The appellant resisted the eviction proceedings on the ground that the same was not maintainable without the permission under the Slum Areas (Improvement and Clearance) Act. The respondent did not accept the rent and refused to issue receipt and therefore the rent had been deposited in the Court of the Additional Rent Controller in the eviction proceedings. The learned Additional Rent Controller held that the notice of termination had been served on the appellant by which the contractual tenancy was terminated and that the deposit made by the appellant was not valid and it was not a case of the second default thereby passing an order directing the appellant to deposit the entire arrears of rent holding that if the order was complied with, the eviction petition would be deemed to have been dismissed in view of Section 14(2) of the Act. In case he failed to comply with the order, an eviction in favour of the respondent shall be deemed to have been passed in respect of the premises. The appellant and the respondent felt aggrieved by the order of the Additional Rent Controller and filed their appeals which were heard by the Rent Control Tribunal who disposed off the same by a common judgment.

19. **Shri Kishori Lal** (supra), died during the pendency of the appeal and an application was filed alleging that he had left behind his widow, three sons and three daughters. It was claimed that except the daughter Upma all others were with the deceased tenant at the time of his death and financially dependent on him with the surviving spouse Smt. Chando Devi who was living with the deceased and financially dependent on him and therefore she would be a tenant in the suit premises in the first instance. The respondent in his reply alleged that the same was time barred and the application was not signed and verified properly and the earlier application for bringing the legal representatives on record had been dismissed and the present application was not maintainable apart from the fact that the heirs of the appellant were not financially dependent on him. The learned Judge held that since the protection afforded by the Act was only personal and the heirs did not inherit the tenancy rights and more than one year had passed when Kishori Lal died, such heirs were, therefore, not entitled to any protection of the Act and the eviction was granted on the said ground and the appellants' appeal was dismissed while that filed by the respondent was allowed.

20. In the connected appeal, between **Mukat Behari Lal Mathur V/s. Shri S. N. Nigam [SAO No.13/1990]**, an eviction petition was filed by Nigam under Section 14(1)(a) of the Act alleging that R.S. Mohan Behari Lal Mathur, since deceased, was the tenant under the respondent in respect of one flat on the upper floor of Jagat Niwas, New Delhi. The rate of rent was ₹170/- per month. He had not paid or tendered the arrears of rent despite the service of the notice of demand. The petition was contested by said Mohan Behari Lal wherein it was alleged that there was no relationship of landlord and tenant between the parties and that the real tenant was Mukat Behari Lal i.e. the appellant. Although non payment of rent was the only ground, the learned Additional Rent Controller deferred the passing of the order under Section 15(1) of the Act because the relationship of landlord and tenant was disputed. The parties then led their respective evidence in support of their version. In the meantime, the original tenant R.S. Mohan Behari Lal died and an application under Order XXII Rule 4 of the Code of Civil Procedure was filed to bring the legal representatives on record being the two sons, Mukat Behari Lal and Mahesh Behari Lal.

21. In **Mukat Behari Lal** (supra), the respondent took a plea

that both were not dependent on their father and as such they had not inherited any tenancy rights because the original tenant R.S. Mohan Behari Lal died as a statutory tenant, his tenancy having been terminated vide notice dated 04/11/1981 duly served on him. The sons of the deceased tenant did not specifically deny the averments that they were not dependent on their father and as such did not inherit any tenancy rights. One of them did not even appear to contest the said application and therefore the learned Additional Rent Controller allowed the application with the observation that the appellant Mukat Behari Lala and his brother Mahesh Behari Lal alone were living with the deceased at the time of his death and directing the legal representatives of the deceased tenant to deposit the arrears of rent failing which an eviction order shall be deemed to have been passed against them.

22. In **Mukat Behari Lal** (supra), the Rent Controller Tribunal examined the matter as well as considered the contentions of the parties and the evidence on record. It was noticed that the respondent/landlord had filed an application under Order XXII Rule 4 CPC wherein it was clearly pleaded that they were residing with the deceased at the time of his death and both of them

were financially not dependent and therefore acquired a limited right of occupancy for one year. In that background, the Tribunal held that the Additional Rent Controller could not have rejected the plea of the respondent/landlord just because in the eviction petition he did not claim any relief in view of the changed situation. The question then was considered as to whether the respondent/landlord was entitled to an order of eviction straight away against the legal heirs of the deceased statutory tenant and in that context various judgments were referred to by the Tribunal. On a consideration thereof, the Rent Controller Tribunal passed the necessary orders for eviction giving rise to the appeal impugning the said judgment. The High Court held while dismissing the appeals that the legal representatives who have been brought on record have no defence whatsoever to claim their rights except as the legal representatives to represent the estate and put forward such contentions as are appropriate to their representative character but not the contentions which were personal to the deceased tenant. In that case, it will not be necessary for the landlords to file a Regular Suit to recover the possession after the litigation had dragged in the Court of Rent Controller and the Rent Control Tribunal for such a long period and if the tenant leaves behind a widow who was ordinarily

residing with him at the time of his death, she alone will get a right to inherit the statutory tenancy to the exclusion of all other heirs or legal representatives of the deceased tenant and that too for her own life time only. This right does not pass on to any other or legal representative of the deceased tenant.

23. In **Nagindas** (supra), the Hon'ble Apex Court held that admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable, are by themselves, not conclusive. They can be shown to be wrong.

24. Coming back to the case at hand, the petitioners had shown from the material on record that the original tenant was survived by his widow who alone was staying with him at the time of his death, the three daughters being married much prior and the two

sons residing away from the tenanted premises, one in Spain and the other in Bangalore before coming down to Goa to reside at Sanquelim in the course of his avocation. The petitioners therefore were within their right to move the application seeking an inquiry whether the two sons could be considered as the legal heirs/tenants within the meaning of Section 2(o) of the Act and for other consequential reliefs. The two sons no doubt qualify as the heirs of the deceased tenant but looking to the definition of the expression "tenant" contained in Section 2(o) of the Act, do not qualify as tenants and as they were not living with the tenant at the time of his death. Therefore, the contention of Shri P.A. Kholkar, learned Advocate for the respondent that it was obligatory on the part of the petitioners to bring the legal heirs on record after the death of the tenant cannot stand the test of scrutiny. Rather, considering the judgment of the Hon'ble Apex Court in **Durga Prasad** (supra) in particular, the petitioners cannot be driven to file separate proceedings or suit for the eviction of the sons from the suit premises and would straight away be entitled to seek their eviction in the nature of a direction to hand over the vacant possession of the suit premises to the petitioners. Further, considering the judgment in **Shri Kishori Lal** (supra), and having come to a conclusive finding that the two

sons were not residing with the tenant at the time of his death in the suit premises, the petitioners would be entitled to an order of eviction straight away against the legal representatives of the deceased statutory tenant. In view thereof, i pass the following

O R D E R

- (i) The petition is allowed.
- (ii) Rule is made absolute and the legal heirs of the deceased respondents are directed to hand over the vacant and peaceful possession of the tenanted premises to the petitioners within six weeks from today.

NUTAN D. SARDESSAI, J.

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