

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

WRIT PETITION NO. 3270 OF 2004

Shrinivas Hariram Rathi & Ors. ...Petitioners

Versus

Ashok Rajaram Bajpayee & Ors. ...Respondents

M. M. Sathaye - Advocate for the petitioner.

P. M. Arjunwadkar – Advocate for the respondent-1.

Ms. S. Sinhasane i/b Umesh Mankapure – Advocate for the respondent – 2.

CORAM : DAMA SESHADRI NAIDU, J.

DATE : 29th AUGUST 2019.

P.C. :

This Writ Petition assails the concurrent findings on eviction. All the four petitioners are tenants. Initially, there were two respondents, the mother and the son, being the owners. Pending these proceedings, the mother died; now, only the first respondent remains.

2. To begin with, the leased property belonged to one Rajaram Ramnarayan Bajpayee. He “allotted” the property to one Raghunath on rent. The tenant started a kirana shop in that property. With the original owner’s death, his son succeeded. He

was a government servant. He retired in October 1999. He has been residing in the residential portion attached to the leased property. On the other hand, the original tenant, too, died. Now his legal representatives, that is the petitioners here, have been in possession of the leased property.

3. On his retirement, Ashok Rajaram Bajpayee felt that the residential portion in his possession was insufficient for his residence. So he filed Case No. CAN/2000(26)2000 against the petitioners-tenants for eviction. He claimed the property for *bona fide* requirement. As Ashok was a retired government servant, he filed the case under Section 23 of the Maharashtra Rent Control Act (MRC Act). The Competent Authority allowed the case, through its judgment, dated 25.09.2003.

4. Aggrieved, the tenants filed Rent Control Case No.4 of 2003 before the Additional Commissioner, under Section 44 of the MRC Act. It was filed against both Ashok and his mother, Smt. Narmadabai Rajaram Bajpayee, who was not a party to the original proceedings. Through its judgment, dt.23.03.2004, the Revisional Authority refused to stay the Competent Authority's Order. Then, the tenants filed Writ Petition No. 9492 of 2003. This Court stayed the operation of the decree until the revision proceedings could conclude. Eventually, through order dt. 23.3.2004, the Revisional Authority dismissed the Revision. Then the tenants filed this Writ Petition.

5. In the above factual backdrop, Shri M. M. Sathaye, the learned counsel for the petitioners, has contended that the

revisional order is cryptic and devoid of any reason. On that ground alone, according to him, the order should perish. Shri Sathaye has frontally attacked it on the grounds that none of the issues the Competent Authority considered were revisited by the Revisional Authority despite its taking note of them.

6. About the *bona fide* requirement, Shri Sathaye submits that the owner has miserably failed to place any evidence on record. Even on comparative hardship, the revisional order has been silent. According to him, the Competent Authority has simply presumed the relative hardship in the owner's favour, and the revisional Authority has simply ignored that issue.

7. Shri Sathaye has contended that the Competent Authority and the Revisional Authority have gravely erred in not ruling on whether the suit was hit by the principle of *res judicata*. According to him, the mother, that is the deceased second respondent in the Revision, first filed a suit in a Civil Court but did not prosecute it. So it was dismissed for non-prosecution. In the face of it, Ashok, her son, ought not to have instituted the eviction proceedings on the same grounds before the Competent Authority.

8. After placing on record, with the respondent's consent, what seem to be the later developments, Shri Sathaye submits that the suit was initiated in 1985 and by now many developments have taken place. According to him, the very need of *bona fide* requirement has disappeared. To elaborate, Shri

Sathaye submits that, first, Ashok's mother, who was the second respondent here, died. Later, Ashok's wife, too, died, and died issueless, at that. And all the sisters have been married and living away. Now, as a widower, Ashok alone lives in the residential portion, which is sufficient for him. In this context, Shri Sathaye has also drawn my attention to the deposition of one of Ashok's sisters. In that context, Shri Sathaye submits that viewed from any perspective, the *bona fide* requirement has not survived.

9. Shri Sathaye has submitted that the tenants' family has expanded and all of them have had their individual businesses at various places. Only one of them, that is the first petitioner, has been carrying on the business in the leased property. Therefore, the tenants' family allegedly owning other properties does not help Ashok's case.

10. After taking me through the record, Shri Sathaye has also contended that the revisional Court has not examined all the aspects that have been pointed out by the tenants. Therefore, the order suffers from the incurable vice of non-application of mind. In the end, he has urged this Court to set aside the Revisional Order and hold that the tenants have a right to continue in the property.

11. Shri Arjunwadkar, the learned counsel for the respondent, has submitted that the Competent Authority has rendered an elaborate judgment, but that has not deterred the tenants from challenging it. An elaborate revisional order would

not have made any difference, for the tenants are bent on protracting the litigation. Nevertheless, Shri Arjunwadkar has submitted that the Revisional Authority has adjudicated the issue under Section 44 of the MRC Act. According to him, the legislature has advisedly not conferred any appellate power on that authority. Therefore, the Revisional Authority has rightly not entered in to the factual dispute; instead, it has only examined whether the order impugned is lawful or suffers from any incurable legal infirmities. According to him, the Revisional Authority's jurisdiction does not entail him to reexamine the facts.

12. Shri Arjunwadkar has submitted that the solitary ground of eviction is *bona fide* requirement. Only the owner's need and the relative hardship matter, nothing else. To support his contentions, Shri Arjunwadkar has relied on *Ragavendra Kumar v. Firm Prem Machinery & Co.*¹ and *Mohanlal Bhikchand Rathi v. Ashok Trimbak Joshi*².

13. About the principle of *res judicata*, Shri Arjunwadkar submits that the earlier suit was by the second respondent, that is Ashok's mother. She filed that without Ashok's knowledge. Besides that, there was no adjudication, he stresses, on the merits to attract Section 11 of CPC.

14. Shri Arjunwadkar has taken me through the entire Competent Authority's judgment as well as the Revisional Order,

1 (2000) 1 SCC 679

2 2016 (4) Mh. LJ 626

besides the oral evidence the parties have adduced in the case. According to him, the tenants have admitted that they have other properties, whereas Ashok has only this piece of property. When the learned Competent Authority himself has examined the property, he has found out that the landlord has been living in a constricted structure and that it is clearly insufficient for him.

15. Drawing my attention to Section 23 of the MRC Act, Shri Arjunwadkar contends that the landlord secured a certificate about his being a public servant and about his not possessing any other piece of property than the leased property. According to him, it is conclusive proof. In the face of that proof, the tenants cannot be heard saying that the landlord could as well do without the property under the lease. Eventually, Shri Arjunwadkar has submitted that the impugned order does not suffer from any legal infirmities and this Court may not interfere with it.

16. Heard Shri M. M. Sathaye, the learned counsel for the petitioners, and Shri Arjunwadkar, the learned counsel for the respondent.

Discussion:

17. First, I will address the issue of *res judicata*. Ashok's mother, the second respondent here, first filed a suit in 1980. She did not prosecute it. Then, the suit was dismissed for non-prosecution. So it was not on merits. Thus, the essential element of disposal on merits for the tenants is missing to bring the later

case under the doctrine of *res judicata*. Besides, Ashok's mother was not a party to the Case No.CAN/2000/(26)/2000. Ashok alone filed it. Later, in revision, the tenants brought Ashok's mother as the second respondent.

Bona fide Requirement:

18. Indeed, the tenants have come to this Court invoking Article 227 of the Constitution of India. To begin with the landlord invoked Section 23 of the MRC Act. Chapter V contains special provisions for recovery of possession in certain cases. One of those particular instances for invoking the special provisions is the owner's being a public servant. Once the employee retires, he may, in one year, secure a certificate from his employer and apply for eviction of the tenant on his property. Here, Ashok retired in 1999 and, soon, secured the certificate. True, Ashok's counsel stresses that the certificate is conclusive proof of the owner's requirement. But it is not.

19. The Certificate under Section 23, indeed, conclusively proves two aspects: that the landlord is or was a public servant; that he owns no other property. About vital aspects such as *bona fide* requirement, the certificate remains silent.

20. That said, I must acknowledge that Ashok has pleaded *bona fide* requirement—eons ago. First, his mother attempted eviction 30 years ago; she abandoned it. Later, she too passed away into eternity. Ashok, the son, took the mantle on him. He field the case 20 years ago. In all these years, no

wonder, the families on either side have not remained statistic. If every changed circumstance, pending litigation, were to defeat a suitor's right, such a course of action puts premium on prolonging the proceedings. Subsequent events will not nonsuit a person unless they take away the very substratum of the suitor's claim or the entire cause that founded the litigation.

21. *Gaya Prasad v. Pradeep Shrivastava*³ begins with an exhortation: "This case presents a sample scenario of the tormenting plight of an average litigant who approaches the court with all expectations of getting relief for his urgent need. But the snail-paced litigation creeping through all the tiers of the hierarchical judicial forums would have frustrated all his expectations, though others could admire the tenacity with which he persisted with the cause."

22. Then, *Gaya Prasad* traces the origin of the case: twenty-three years ago, the landlord wanted accommodation for his son, who then became a medical graduate. It was for his son's starting a clinic. Although he won the battle at all tiers, the urgently needed eviction still eluded him like a mirage. The appellant-tenant lost in the trial court, filed an appeal, and there too he failed. The appeal took three years. But the tenant had the longest leap, as *Gaya Prasad* puts it, in the High Court. He secured a stay and that lasted for 15 years. The High Court eventually found the tenant's objection meritless. It nevertheless granted him six months' time to vacate.

3 AIR 2001 SC 803

23. The appellant lately discovered that the respondent's son, for whom the eviction was sought, joined the Government Service. It was 12 years after the suit was filed. On that premise, the appellant wanted the High Court to review its order. The High Court, however, refused. Then, the appellant went to the Supreme Court.

24. In the above factual backdrop, *Gaya Prasad* has held that "the crucial date for deciding as to the *bona fides* of the requirement of the landlord is the date of his application for eviction." Then it has observed:

If every subsequent development during the post-petition period is to be taken into account for judging the *bona fides* of the requirement pleaded by the landlord, there would perhaps be no end so long as the unfortunate situation in our litigative slow process system subsists. During 23 years after the landlord moved for eviction on the ground that his son needed the building, *neither the landlord nor his son is expected to remain idle without doing any work, lest, joining any new assignment or starting any new work would be at the peril of forfeiting his requirement to occupy the building. It is a stark reality that the longer is the life of the litigation the more would be the number of developments sprouting up during the long interregnum.* If a young entrepreneur decides to launch a new enterprise and on that ground he or his father seeks eviction of a tenant from the building, the proposed enterprise would not get faded out by subsequent developments during the traditional lengthy longevity of the litigation. His need may get dusted, patina might stick on its surface, nonetheless the need would remain intact. All that is needed is to erase the patina and see the gloss. *It is pernicious, and we may say, unjust to shut the door before an applicant just on the eve of his reaching the finale, after*

passing through all the previous levels of the litigation, merely on the ground that certain developments occurred pendente lite, because the opposite party succeeded in prolonging the matter for such unduly long period.
(italics supplied)

25. *Gaya Prasad* has held that, to overshadow the genuineness of the need, the subsequent events must be of such nature and of such a dimension that the petitioning party's need should have been completely eclipsed by such subsequent events. It has eventually held that :

“[T]he judicial tardiness, for which unfortunately our system has acquired notoriety, causes the *lis* to creep through the line for long, long years from the start to the ultimate termini, is a malady afflicting the system. During this long interval many, many events are bound to take place which might happen in relation to the parties as well as the subject matter of the *lis*. If the cause of action is to be submerged in such subsequent events on account of the malady of the system it shatters the confidence of the litigant, despite the impairment already caused.”

26. In *Rena Drego (Mrs.) v. Lalchand Soni*^[4], the Supreme Court has observed, in the factual context, "where the [landlady] says that she needs more accommodation for her family, there is no scope for doubting the reasonableness of the requirement." It was held that the circumstances of the case raised a presumption that the requirement was *bona fide* and that the "tenant has failed to show that the demand for eviction was made with any oblique motive". It was held that in the absence of such evidence

4 [1998] 2 SCR 197

by the tenant, the presumption of the *bona fide* need stood un rebutted.

27. Courts have repeatedly held that once there is a cause of action for *bona fide* requirement, the subsequent developments ought to be of such nature as to render the owner's requirement inconsequential. Besides, the Courts have to examine the relative hardship as well. Here the tenants have pleaded that their family has expanded and only one of its members has been occupying the leased property. About their having other properties, the tenants contend that those properties have also been occupied by the other members of family.

28. But the person who has claimed to have been carrying on the business in the leased property has never examined himself as a witness. Instead, he got his brother examined as the solitary witness. That shows all the members of the family have been joint and have had their businesses collectively at various places, including the leased property.

29. Chapter V of the Act has a salutary legislative purpose: ensuring that the retired public servants, with their increased needs, in the autumn of their lives, do not suffer from want of accommodation or struggle with inadequate accommodation. That is why the Legislature has not provided for any appeal. But that legislative intention, salutary as it is, seems to have been defeated here. Despite two decades, still the landlord struggles. Now he is almost 80 years. His mother has died, his wife, too,

died. And he is alone. He has sisters and those sisters have their families. They visit him frequently; his sisters and their children are the antidote for his loneliness, perhaps. In fact, he has deposed that he wants more roomy residence to facilitate his sisters' visit to his house. Further, the Competent Authority himself has visited the property and found that Ashok's house is cramped and he does need more room.

30. In *Raghavendra Kumar*, the Supreme Court has considered the question of *bona fide* requirement in the context of a second appeal. It has held that the landlord's *bona fide* requirement does not give rise to any substantial question of law. In that context, it has consistently noted that concurrent findings of fact should be allowed to rest. So we may gather from *Raghavendra Kumar* that the question of *bona fide* requirement is a question of fact.

31. In *Mohanlal Bhikchand Rathi*, this Court has observed, in the factual context of that case, that the decision of the first appellate Court cannot be said to be perverse. It has observed that "the tenant is a businessman. It was his duty to start making search for alternate accommodation. He did not make such attempt. It is clear that on meagre amount of rent the premises was given to the father of the tenant and only due to that circumstance he wants to continue his possession. This Court holds that it is not possible to interfere in the decision given by the first Appellate Court."

32. The Competent Authority has gone into every aspect in detail. Granted, the tenants contend that the Revisional Authority has not revisited the issues the Competent Authority has framed. According to them, the order is cryptic. I am afraid the revision under Section 44 is not a first appeal in disguise. The statute mandates that there can be no appeal against the order of recovery of possession, for example, in proceedings under Section 23 of the Act.

33. First, Ashok invoked Section 23 of the MRC Act and approached the Competent Authority, who passed an order of eviction on 25.09.2003. Then, the tenants invoked Section 44 of the same Act. First, the Competent Authority's order is non-appealable. Second, what the Divisional Authority exercises under Section 44 of the MRC Act is revisional power. Once the licence expires, the landlord or the landlady, say, under Section 23, can recover possession of premises given on licence.

34. Section 44 of MRC Act is under Chapter VIII. That chapter concerns "Summary Disposal of Certain Applications." To begin with, Section 39 declares that the provisions of Chapter VIII, which include both Sections 43 and 44, have an overriding effect. They shall have an effect "notwithstanding anything inconsistent therewith contained elsewhere in the Act or in any other law for the time being in force."

35. Under Section 44, the Additional Commissioner of a Revenue Division, may, at any time, *suo motto* or on an aggrieved person's application, can exercise its revisional

power. It is only for “satisfying itself that an order made in any case by the Competent Authority under section 43 is according to law.” To ascertain that the Competent Authority has acted under the law, the Revisional Authority can “call for the record of that case and pass such order in respect thereto as it or he thinks fit.”

36. Thus, in the first place, the primary adjudication under Section 24 of MRC Act itself is summary. And over that summary adjudication, Section 44 of the Act provides for revisional powers to the Additional Commissioner.

37. In *Malini Ayyappa Naicker v. Seth Menghraj Ud-havadas*^[5], a three-Judge Bench of the Supreme Court has examined a similarly worded provision—Section 75 of the Provincial Insolvency Act. *Malini Ayyappa Naicker* has held that the Legislature did not confer on the High Court under Section 75(1) of the Act an appellate power, nor did it confer on it jurisdiction to re-appreciate the evidence on record. While exercising that power, the High Court is by and large bound by the findings of fact reached by the District Court. If the legislature intended to confer power on the High Court to re-examine both the questions of law and fact, it would have conveyed its intention by appropriate words, as has been done under various other statutes.

38. In this context, *Malini Ayyappa Naicker* has held that “a wrong decision on facts by a competent court is also a decision according to law.” A decision being “contrary to law” as pro-

⁵ ^{II} (1969) 1 SCC 688

vided in Section 100(1)(a) of the Code of Civil Procedure, it has further held, is not the same thing as a decision being not “according to law” as prescribed in Section 75(1) of the Act. Though *Malini Ayyappa Naicker* has not defined the expression “according to law”, it has quoted with approval from *Bell & Co. Ltd. v. Wamen Hemrai*^[6] a catalogue of instances : If the court or tribunal had no jurisdiction, or it has based its decision on evidence which should not have been admitted, or it has not given the unsuccessful party a proper opportunity of being heard, or it has cast the burden of proof on the wrong shoulders.

39. Here, I see none of the instances pointed out in *Malini Ayyappa Naicker*. The concurrent findings of both the Competent Authority under Section 24 of the MRC Act and of the Revision Authority under Section 44 of the same Act suffer from no legal infirmities to be interfered with by this Court under Article 227 of the Constitution of India.

40. Though the learned counsel on either side has advanced arguments on the facts, I do not intend to consider them. Instead, I only hold that the order impugned does not suffer from any jurisdictional error to be corrected by this Court, by exercising its supervisory jurisdiction. I therefore dismiss the Writ petition with a cost of Rs. 25,000/-.

[DAMA SESHADRI NAIDU, J.]