

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.832 OF 2019

Mrs. Susheela U. Karn
Shop No.3, Amina Apartments,
Opp. Hotel Manoshanti,
Dr. Dada Vaidya Road,
Panaji Goa.

... Petitioner

Versus

1. Mrs. Familia Barboza
3rd Floor, Manoshanti Complex,
Panaji Goa.

2. Mr. Napoliao Gracias
H.No.146, Chaudi,
Canacona Goa.

... Respondents

Mr. S. D. Lotlikar, *Senior Advocate with Ms. S. Kenny, Advocate for the Petitioner.*

Mr. G. Agni, *Advocate for Respondent No. 1.*

Mr. B. Fernandes, *Advocate for Respondent No.2.*

CORAM: M. S. SONAK, J

DATED: 27th July 2021

ORAL JUDGMENT

1. Heard Mr. S. D. Lotlikar, learned Senior Advocate who appears along with Ms. S. Kenny, Mr. G. Agni, learned counsel for Respondent No.1 and Mr. B. Fernandes learned counsel for Respondent No.2.

2. Rule. The rule is made returnable forthwith at the request and with the consent of the learned counsel for the parties.

3. In the present case, the Petitioner had applied under Section 35 of the Goa, Daman, and Diu Buildings (Lease, Rent, and Eviction) Control Act, 1968 (the said Act) before the Rent Controller seeking restoration of the electricity connection against the landlord i.e. Mr. Napoliao Gracias.

4. The Rent Controller made an *ex-parte* order dated 27.10.2009 directing the restoration and thereafter issued notice to Mr. Napoliao Gracias to show cause as to why the *ex-parte* should not be confirmed.

5. Before the Rent Controller could proceed further in the matter, Respondent No.1 Ms. Familia Barboza instituted a Rent Revision No.21/2013 before the Appellate Board questioning *ex-parte* order dated 27.10.2009 *inter alia* on the ground that she is the owner of the suit premises.

6. The Appellate Board by the impugned order dated 12.07.2019 has set aside the *ex-parte* order dated 27.10.2009. Though, the effect of the impugned order might have been to recall the order of re-connection, as of today, the suit premises continue to enjoy electricity supply.

7. Mr. Lotlikar learned Senior Advocate for the Petitioner submits that having regard to the provisions of Section 46 of the said Act, Respondent No.1 was not entitled to institute a revision since Respondent No.1 was never a party before the Rent Controller. He submits that no leave was applied for by Respondent No.1 and therefore, the Appellate Board should not have entertained the revision. He submits that in any case the revision can be entertained only in exceptional circumstances and this was certainly not an exceptional circumstance.

8. Mr. Agni learned counsel for Respondent No.1 defends the impugned order based on the reasoning reflected therein. He submits that Respondent No.1 is the actual owner of the suit premises and therefore, is not some stranger to the suit premises particularly when the order of re-connection of the electricity supply was sought for. He submits that the proceedings under Section 35 of the said Act are not even maintainable when the allegation is not against any alleged landlord.

9. Mr. B. Fernandes, learned counsel for Respondent No.2 leaves the matter for determination of this Court.

10. Section 46 of the said Act reads as follows:-

“46. Revision.— (1) The Appellate Board may, in exceptional circumstances, on the application of any party, call for and examine the records relating to any order passed under

this Act by the Authorised Officer, the Controller, or the Rent Tribunal, for the purpose of satisfying itself as to the correctness, legality, or propriety of such order and may pass such order thereon as it thinks fit:

Provided that no such record shall be called for after the expiry of ninety days from the date of the order.

(2) The cost of such proceedings shall be in the discretion of the Appellate Board.”

11. The learned counsel for the parties have pointed out that there are proceedings in the Civil Court concerning the suit premises involving the parties. Possibly it is in these proceedings the issue of ownership of the suit premises will be decided one way or the other. According to me, such an issue is not *prima facie* relevant to the issues in the present petition.

12. There is also no necessity to go into the issue as to whether the revision was maintainable at the behest of Respondent No.1 or whether any formal leave ought to have been applied for by Respondent No.1 before instituting the revision application. But, I agree with Mr. Lotlikar that at least this was not an exceptional circumstance that the Appellate Board should have entertained the revision application and interfered with the *ex-parte* order for restoration of electricity connection to the suit premises. The Rent Controller had already issued notice to Respondent No.2 to show cause as to why *the ex-parte* order should not be made absolute. The consequence of the *ex-parte* order was also only to restore the

electricity connection to the suit premises. The order had not decided any momentous issues determining the rights of the parties or seriously affecting the interests of the parties. Therefore, this was not a case of some exceptional circumstances to warrant the exercise of revisional jurisdiction.

13. Be that as it may, the interests of justice will now be served if the impugned order is set aside and directions are issued to the Rent Controller to dispose of the Petitioner's application under Section 35 of the said Act as expeditiously as possible and in any case within three months from today.

14. Mr. Agni learned counsel for Respondent No.1 states that Respondent No.1 will apply to the Rent Controller for leave to be impleaded as a Respondent. Mr. Lotlikar learned Senior Advocate for the Petitioner submits that Respondent No.1 is neither a necessary nor a proper party to the proceedings before the Rent Controller. However, without prejudice to this basic contention, the Petitioner will issue no objection to the impleadment of Respondent No.1 as a party to the proceedings before the Rent Controller. He however clarifies that such no objection should not be construed as conceding any rights of whatsoever nature in favor of Respondent No.1. These statements as well as the qualifications are accepted.

15. Therefore, if Respondent No.1 indeed makes an application before the Rent Controller, the Rent Controller will have to permit

the impleadment of Respondent No.1. However, such impleadment will be entirely without prejudice to the rights and contentions of the Petitioner and Respondent No. 2 herein and the Petitioner will be permitted to make such an endorsement on such application.

16. The Petitioner's application under Section 35 of the said Act will have to be disposed of on its own merits and in accord with the law as expeditiously as possible and within three months from today.

17. All contentions of all parties on merits are kept expressly open.

18. The rule is made absolute to the aforesaid extent. There shall be no order as to costs.

19. Parties to appear before the Rent Controller on 6th August 2021 at 11.00 a.m. and file authenticated copy of this order.

20. All concerned to act on the authenticated copy of this order.

M. S. SONAK, J.

TARI AMRUT NAGESH Digitally signed by TARI AMRUT NAGESH
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