

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 675 OF 2009

SMT. MARIA MARTINHA MENEZES (Expired)

1a) Bewinda Marilia Menezes
Indian National, Unmarried,
64 years

1(b) Adv Mark Anthony Menezes,
62 years, Indian National

1(c) Mrs Precela Menezes
W/O Mark Menezes, 61 years,
Indian National

1(d) Dr Maria Queenie Menezes
Aged 55 Years, Unmarried,
Indian National

All Residents of
C/O Mark Anthony Menezes
Pelican Building 2nd Floor
Flat No 1, Opp Lohia Maidan
PB No 393, Above La-Maria Restaurant
Margao Salcete Goa

... Petitioners

V e r s u s

SHRI SONNY CORREIA (deceased)

Through his legal heirs,

1. SMT. HILDA CORREIA, (DELETED)

2. SMT. JOYCE VAZ (DECEASED)

2(a) : Shri Kevin Vaz,
Major of age, and his wife

2(b): Smt. Loretta Vaz,
Major of age,

- 2(c): Smt. Samantha Vaz,
Major of age, and her husband
- 2(d): Smt. Karishma Vaz Almeida
Major of age, and her husband,
- 2(e): Shri. Mauricio Almeida
Major of age,
All are resident of Mahanagar, Mandel,
Margao, Goa

3. SMT. DORRIS RODRIGUES
4. SHRI VENITO RODRIGUES (DELETED)
5. SHRI SADAR CORREIA
6. SMT. MELODY CORREIA
7. MISS MARIA MANUEL CORREIA
8. MR. CHRISTOPHER CORREIA

All major, r/o F-1, 1st Floor,
Correia Building,
Near Woodlands Hotel,
Margao, Goa.

... Respondents

Mr. Nitin Sardesai, Senior Advocate with Mr. K. Sabnis, Advocate
for the Petitioner.

Mr. S. S. Kakodkar, Advocate for the Respondents No.3 and 8.

CORAM: M. S. SONAK, J.

DATE: 18th February 2021

ORAL JUDGMENT:

Heard Mr. Nitin Sardesai, learned Senior Advocate with Mr.
K. Sabnis for the Petitioner and Mr. S. S. Kakodkar learned counsel
for the Respondents No.3 and 8.

2. The challenge in this petition is to the judgment and order dated 30.04.2009 made by the Administrative Tribunal, Goa in Eviction Appeal No.44/1998 setting aside the judgment and order dated 09.01.1998 made by the Additional Rent Controller-IV, Margao in case No.BLDG/13/ARC-I/95.

3. The matter has a checkered history. However, it would suffice to refer to the following:

(a) The petitioners claim to be the tenants in respect of premises in the building bearing No.E-82 at Margao (suit premises) owned by the respondents paying a monthly rent of ₹200/-;

(b) Apprehending that the respondents or their predecessors in title might demolish the building in which the suit premises were located, the petitioners vide application dated 03.05.1980 filed before the Rent Controller applied for restraint on demolition and also urged that the penalties in terms of Section 54 of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (Rent Act) be imposed upon the respondents;

(c) On 24.10.1980 the Rent Controller injuncted the respondents from proceeding with the demolition or reconstruction. The Rent Controller observed that such a restraint is necessary until the respondents give an undertaking that they would, in the reconstructed premises, continue the tenancy of the petitioners to the proportionate extent;

(d) The matter was carried by the respondents before the Judicial Commissioner. By order dated 31.10.1980, the Judicial Commissioner declined a stay on the order dated 24.10.1980 but liberty was granted to the respondents to move the Rent Controller for vacating the injunction upon furnishing the necessary undertaking;

(e) The respondents filed an application cum undertaking on 01.11.1980 before the Rent Controller, undertaking therein to hand over the possession of the premises in the reconstructed building, should the petitioners succeed in establishing that they are indeed the tenants in respect of the suit premises;

(f) The Rent Controller, even without notice to the petitioners, suspended/ vacated the injunction order upon taking on record the undertaking of the respondents;

(g) The Petitioners instituted a Revision Application No.23/1980 against the Rent Controller's order vacating the injunction ex-parte. By order dated 15.05.1981, the Administrative Tribunal allowed the petitioners' revision petition but dismissed two revision applications instituted by the respondents challenging some aspects of the Rent Controller's order that benefitted the petitioners;

(h) The respondents petitioned this Court vide Special Civil Application (Writ Petition) No.90/B/81 challenging the common

order dated 15.05.1981 made by the Administrative Tribunal;

(i) By judgment and order dated 04.08.1983, this Court, allowed the respondents' writ petition and set aside the Tribunal's judgment and order dated 15.05.1981, by taking cognizance of the undertaking given by the respondents that in the event the petitioners establish that they are the tenants in respect of the suit premises, possession of the proportionate area in the reconstructed building will be restored to them. A detailed reference will be made to this order dated 04.08.1983 in the course of this judgment and order;

(j) The Rent Controller on 05.08.1986 dismissed the preliminary objections raised on behalf of the respondents. The respondents appealed to the Tribunal once again. The Tribunal, this time, vide order dated 06.06.1989, set aside the Rent Controller's order dated 05.08.1986 and remanded the matter to the Rent Controller with the direction to hold an inquiry into the existence of a landlord-tenant relationship between the parties. This order was not carried further by either the petitioners or the respondents and therefore attained finality;

(k) Ultimately, after inquiry, the Rent Controller concluded that the petitioners were indeed the tenants of the suit premises and were entitled to the possession of the proportionate area in the newly constructed building because of the undertaking given by and

on behalf of the respondents;

(l) The respondents instituted Eviction Appeal No.44/1998 before the Administrative Tribunal and by impugned judgment and order dated 30.04.2009 the Tribunal has allowed this appeal and held that the proceedings before the Rent Controller were not the proceedings under Section 30 of the Rent Act and therefore, no directions could have been issued for restoration of possession in the newly constructed building;

(m) The petitioners have challenged the aforesaid judgment and order dated 30.04.2009 in the present petition.

4. This petition was admitted on 10.03.2011 and limited interim reliefs were granted by noting that respondents no.2, 3 and 5 to 8 shall deliver to the petitioners the possession of the suit premises, in the event, the petitioners succeed in this writ petition.

5. Mr. Sardesai, the learned Senior Advocate for the petitioners submits that the Administrative Tribunal has traveled at a tangent and upset the well-reasoned order of the Rent Controller on grounds which are in any case untenable. He submits that the solemn undertakings were furnished by and on behalf of the respondents that if the petitioners succeed in establishing that they were indeed the tenants in respect of the suit premises, then, the possession of alternate premises in the newly constructed building

will be restored to them. Based on such undertakings given before the Rent Controller and reiterated before this Court, the respondents succeeded in having the injunction order restraining demolition and reconstruction vacated and proceeded to demolish the old building and reconstruct the new building in its place. He submits that consequent upon the Rent Controller holding that the petitioners were indeed the tenants of the suit premises, the respondents were not entitled to renege on the solemn commitments made by them before the Rent Controller and this Court. He submits that the Tribunal has adopted not only a hyper-technical but an incorrect approach to hold that the proceedings initially instituted by the petitioners were not the proceedings under Section 30 of the Rent Act and therefore, no direction could have been issued by the Rent Controller ordering restoration of possession. Mr. Sardesai submits that from how the proceedings developed, it is apparent that the proceedings were akin to proceedings under Section 30 of the Rent Act. In any case, even assuming that the proceedings may not have been under Section 30 of the Rent Act, the respondents were bound by the undertaking given by them before the Rent Controller and reiterated before this Court and the Tribunal exceeded its jurisdiction in virtually letting the respondents wriggle out from such solemn undertakings after having secured the advantage of the vacation of the restraint orders.

6. Mr. Sardesai also pointed out that the Tribunal completely

erred in holding that there were no pleadings or no formal prayer for the restoration of possession. He submits that the Tribunal failed to appreciate that the stage at which the original application was filed, the old building had not been demolished and the petitioners had succeeded in securing an injunction restraining the respondents from demolishing the old building. He, therefore, submitted that this petition be allowed and the Rent Controller's order dated 09.01.1998 be restored.

7. Mr. Kakodkar, the learned counsel for the respondents defends the Tribunal's impugned judgment and order dated 30.04.2009 based on the reasoning reflected therein. He pointed out that the petitioners had already instituted a civil suit for recovery of the premises but the same was allowed to be dismissed for default. He submits that such dismissal will operate in *res judicata*. He points out that the petitioners' original application did not fulfill the requirements of Section 30 of the Rent Act and therefore, the Rent Controller, lacked jurisdiction to order the restoration of possession. He pointed out that there were no pleadings in the original application and there was no relief seeking recovery of possession. He submits that there is no legal infirmity whatsoever in the view taken by the Tribunal and therefore, this petition may be dismissed.

8. Mr. Kakodkar, in the alternate submitted that the Tribunal, in

the impugned judgment and order, has not examined the contention of the respondents on merits that the petitioners had failed to establish that they were indeed the tenants in respect of the suit premises. He submits that the Tribunal has only and perhaps correctly gone on the premise that the Rent Controller has no jurisdiction to order the restoration of possession since the original proceedings were not instituted under Section 30 of the Rent Act. He, therefore, submits that it would be quite harsh if the Tribunal's impugned judgment and order dated 30.04.2009 is reversed without affording of opportunity to the respondents to establish on merits that the petitioners were indeed not the tenants in respect of the suit premises.

9. On the issue of undertaking given before the Rent Controller and reiterated before this Court, Mr. Kakodkar pointed out that such undertaking was given by the predecessors in title of the respondents and not the respondents themselves. He submits that there is no legal infirmity whatsoever in the view taken by the Tribunal and therefore, this petition may be dismissed.

10. The rival contentions now fall for my determination.

11. At least *prima facie*, this appears to be a case wherein the respondents having secured the benefit of the undertaking given by their predecessors in title and proceeded with the demolition of the

old building and construction of the new building in its place, are attempting to wriggle out of the commitments made by them to allot alternate premises in the newly constructed building to the petitioners, by raising some hyper-technical issues, which in the facts of the present case do not even arise. The contentions raised by the respondents and incorrectly accepted by the Tribunal were far from bonafide and aimed solely at attempting to wriggle out of the solemn undertakings given before the rent controller and reiterated before this Court.

12. At the stage when the petitioners instituted Building Case No.57/1980 on 03.05.1980, the petitioners had pleaded that there was an apprehension that the old building in which they occupied premises as tenants paying a monthly rent of ₹200/- was likely to be demolished by their landlords i.e. the predecessors in the title of the respondents. At that stage, therefore, they sought a permanent injunction restraining the landlords and also imposing of penalty for contravention of the provisions of Section 54 of the Rent Act.

13. The relief as prayed for was substantially granted by the Rent Controller and even confirmed by the Administrative Tribunal. This is evident from the order dated 15.05.1981 made by the Tribunal in Eviction Appeal No.33/1980. The respondents then instituted Special Civil Application (Writ Petition) No.90/B/1981 before this Court seeking *inter alia* for the vacation of the injunction

order that had disabled the predecessors in title of the respondents from demolishing the old building and proceeding with the construction of the new building in its place. The controversy that the predecessors in the title of the respondents had already demolished the old building before the injunction was granted is quite beside the point. Because even assuming this was so, there was no question of proceeding with the construction any further without the dissolution of the injunction secured by the petitioners.

14. By judgment and order dated 04.08.2983, this Court, granted relief to the predecessors in title of the respondents, once again, relying upon their solemn undertaking that in case the petitioners succeed in establishing that they were indeed the tenants n respect of the suit premises then, the petitioners would be allotted alternate premises/accommodation in the newly constructed building as tenants. It is based on this undertaking that the injunction order which had restrained the predecessors in title of the respondents from demolishing the old building and/or proceeding to construct a new building in its place, was vacated.

15. The relevant observations from the judgment and order dated 04.08.1983 are transcribed below for the convenience of reference:

“4. Mr. J. Dias, learned counsel appearing for the petitioners, has invited my attention to the facts of the case and submitted that as a result of the Order dated 31st October, 1980, passed by the Court of the Judicial

Commissioner, the petitioner had approached the Addl. Rent Controller with an application praying that the Order dated 24.10.80 be vacated and in addition, the petitioners had given an undertaking in the terms suggested or ordered by the Judicial Commissioner's Court. **Pursuant to this order, the learned Addl. Rent Controller had suspended the injunction order dated 24.10.80 and had permitted the petitioners to proceed with the construction works of the new building. The petitioners had, therefore, started the construction work of the new building and had decided to keep one room for accommodation of the respondent no.1 in terms of the undertaking so as she would be able to occupy it after the building is reconstructed, of course, if she succeeds in proving before the Rent Controller that she was a tenant in the old building which was demolished.** In spite of this and though the application of the respondent no.1 was only to the effect that she should be given an accommodation in the new building since she was a tenant of the old building, the same respondent filed an Appeal to the respondent no.2 and the said appeal was allowed and the order of the Rent Controller dated 1.11.80 was suspended. It happens, however, that after the filing of the present Writ Petition, the operation of the impugned order was stayed by the learned Acting Judicial Commissioner by his Order dated 19.6.81 and therefore, the restraint put on the petitioners to reconstruct the said building was no more after the said order. **As a result, the petitioners completed the Construction of the building and, at the present, one room is kept vacant and may be occupied by the respondent no.1, if she ultimately succeeds in the proceedings filed by her before the Addl. Rent Controller, Margao. Hence, the learned counsel contended, the impugned order cannot stand.**

5. As I already observed, no return has been filed by the respondents and none of them appears today before me. In these circumstances, all the allegations made in the petition

stand un rebutted and are to be accepted at its face value. Thus, it is to be assumed that, actually, pursuant to the Order of the Judicial Commissioner dated 31st October, 1980, the petitioners gave an undertaking before the Addl. Rent Controller to the effect that, in case the respondent no.1 succeeds in proving that she was tenant in the old building, she would be given, accommodation in the new building and that, on such basis, the learned Additional Rent Controller was pleased to vacate his injunction order dated 24.10.80 by his Order dated 1.11.80. Further, it may be observed that the learned Acting Judicial Commissioner by his Order dated 19.6.81 has ex-parte stayed the operation of the impugned Order dated 15th May, 1981 passed by the Administrative Tribunal and by Order dated 6.7.81 has made absolute the aforesaid Order of stay. In these circumstances, the submission of Mr. Dias that since the impugned order was not operative, the petitioners had completed the building is to be accepted and the result thereof is that, for all practical purposes, the impugned order of the Administrative Tribunal has become infructuous and does not survive. In any event, it may be pointed out also that the grievance of the respondent no.1 was only that she had not been provided with accommodation in the new building as she is entitled since she was a tenant in the Old building. Proceedings therefor had been filed before the Addl. Rent Controller, Margao and are still pending and, as such, whatever rights had been accrued to her as a tenant in the old building will be duly determined in the aforesaid proceedings and consequently, no prejudice can be suffered by her.

6. In view of the above, it is clear and manifest that this petition succeeds and therefore, the rule is made absolute in terms of prayer (a). There will be no order as to costs."

(emphasis supplied)

16. The reading as well as the construction of the judgment and order dated 04.08.1983 made by this Court in Special Civil Application (Writ Petition) No.90/B/1981 makes it clear that the petitioners were entitled to alternate premises in the newly constructed building as tenants subject to they satisfying the Rent Controller by leading evidence that they were indeed the tenants in respect of the suit premises. This is clear from the judgment and order dated 04.08.1983 and based on this very premise, the parties proceeded before the Rent Controller in seeking a determination whether any landlord-tenant relationship existed between the parties.

17. The Rent Controller upon evaluating and assessing the material on record, by judgment and order dated 09.01.1998 recorded the finding that the petitioners were indeed the tenants in respect of the suit premises and consistent with the undertaking given by the predecessors in title of the respondents made a consequential order that the petitioners be allotted alternate premises in the newly constructed building.

18. The Administrative Tribunal vide the impugned judgment and order dated 30.04.2009 has now reversed the Rent Controller on the specious plea that the proceedings instituted by the petitioners before the Rent Controller were not the proceedings under Section 30 of the Rent Act and therefore, the Rent Controller

lacked jurisdiction to order the restoration of possession and further, there were no pleadings or there was no relief applied for by the petitioners for the restoration of possession in the application made in the year 1980.

19. In my judgment, both the reasons cited by the Tribunal are untenable in the facts and circumstances of the present case. Firstly, in the facts of this case, the Tribunal was not even required to go into the issue as to whether the original application made by the petitioners was an application under Section 30 of the Rent Act. This is because the predecessors in title of the respondents, in the proceedings before the Rent Controller had given a solemn undertaking that in the event it were to be established in *those proceedings* that the petitioners were indeed the tenants in respect of the suit premises, they would restore possession of the alternate premises in the newly constructed building. This undertaking was reiterated before this court as is reflected in the judgment and order dated 04.08.1983 referred to earlier. Secondly, it is almost entirely based on this solemn undertaking that the predecessors in title of the respondents or the respondents themselves were able to construct the new building after demolishing the old. The predecessors in title of the respondents or the respondents themselves, having secured the fullest advantage from their solemn undertaking, ought not to have been permitted to renege upon their commitments made before the Rent Controller and this court. This

most relevant and vital aspect has been missed by the Administrative Tribunal, which, chose to non-suit the petitioners based on a technicality that did not even arise in this matter.

20. The pleadings before the Rent Controller are required to be construed liberally. The Tribunal was duty-bound to appreciate that in the year 1980 when the application was filed, the petitioners' only apprehension was that the old building in which the suit premises were located might be demolished and in its place, a new building would be put up to the detriment of the petitioners' tenancy rights. Therefore, the tribunal, ought not to have non-suited the petitioners on the ground of any deficiency in the pleadings.

21. The main purpose of the pleadings is to afford the opposite party an opportunity of responding to the case set out. In this case, the fullest opportunity was afforded to the respondents or the predecessors in title of the respondents. There was never any complaint about any deficiency in the pleadings or any prejudice on account of such deficiency. There was no doubt in the minds of either of the parties that should the petitioners establish that they were indeed the tenants in respect of the suit premises, they would be allotted alternate premises in the newly constructed building. Even the issue of jurisdiction of the rent controller had attained finality vide Tribunal's earlier order dated 05.08.1986 which was

never challenged by the respondents. The Tribunal, by completely overlooking all these aspects has virtually nullified the effect of the solemn undertaking given by the predecessors in title of the respondents not only before the Rent Controller but also before this court.

22. For all the aforesaid reasons the impugned judgment and order made by the Tribunal on 30.04.2009 is required to be set aside and the order of the Rent Controller made on 09.01.1998 is required to be restored. However, Mr. Kakodkar pointed out that the Tribunal has not adverted to or decided the respondents' objections to the petitioners' being adjudged as tenants of the suit premises on merits. He submitted that if the judgment and order dated 09.01.1998 made by the Rent Controller is now restored, then, the respondents will be practically deprived of their right of appeal since, the Tribunal, failed to consider the case of the respondents on merits.

23. From the perusal of the impugned judgment and order dated 30.04.2009, it will have to be said that there is merit in the submissions of Mr. Kakodkar. The Tribunal, based on some hyper-technical issues, which in any case lacked merit, reversed the Rent Controller's judgment and order dated 09.01.1998 but failed to adjudicate upon respondents' objection on the merits of the petitioners being declared as tenants in respect of the suit premises.

Therefore, Mr. Kakodkar is right in submitting that the matter ought to be remanded to the appellate authority to decide Eviction Appeal No. 44/1998 and determine whether the declaration of the petitioners as tenants of the suit premises is proper or not.

24. Mr. Kakodkar submits that all contentions of the respondents may be left open for determination by the appeal court on remand. According to me, such a blanket order will once again unjustifiably enable the respondents to delay the matter by raising the issues which are by now concluded. As it is, these proceedings have gone on for over 40 years and if the petitioners are indeed the tenants as has been held by the Rent Controller, then the petitioners can be said to have been denied their entitlement for the last 40 years. Therefore, it is clarified that the appeal court shall only go into the issue as to whether the Rent controller, based on the evidence on record, was justified in holding that the petitioners are indeed the tenants in respect of the suit premises or not. The issue of jurisdiction of the rent controller or the power of the rent Controller to order restoration is no longer *Res Integra*. So also, it is clarified that the dismissal of the suit instituted by the petitioners for default is of no consequence and cannot amount to *res judicata*. This is a case where the respondents had furnished a solemn undertaking before the Rent Controller and thereafter reiterated the same before this court. The attempts on the part of the respondents to wriggle out of this solemn undertaking based on such hyper-

technical pleas can be countenanced no longer. The remand is only because Mr. Kakodkar succeeded in pointing out that the respondents' case that the petitioners ought not to be held as tenants based on the evidence on the record was not considered by the appellate court. The appeal court should therefore restrict itself to examining this aspect only and not to advert to any other aspects.

25. Mr. Kakodkar's contention that the undertaking furnished by their predecessors in title, concerning the suit premises is neither here nor there. Certainly, the respondents, cannot, at this stage even suggest that a solemn undertaking furnished by their predecessors in title before the Judicial and Quasi-Judicial authorities is not binding on them or that they are not obliged to comply with the same. Therefore, if the appeal court, on remand, holds that the petitioners are indeed the tenants in respect of the suit premises, then, consistent with the undertaking given by the predecessors in title of the respondents, the respondents, will be bound to restore or allot alternate premises in the newly constructed building to the petitioners. This will again be consistent with the order dated 10.03.2011 made in this petition, in which, there is a specific direction that the respondents will have to deliver to the petitioners the possession of the suit premises in the event the petitioners succeed in this writ petition.

26. The learned counsel for the parties, together point out that

the jurisdiction which earlier vested in the Rent Controller and the Administrative Tribunal is now vested in the Civil Courts i.e. the Civil Judge, Junior Division (Rent Controller), and the concerned District Court (Appellate Authority). This is on account of a legislative amendment that entered into force on 24.05.2013. They submit that the appeal will now have to be remanded to the District Court, South Goa.

27. Therefore, upon setting aside the impugned judgment and order dated 30.04.2009, the Eviction Appeal No.44/1998 will have to be restored to the file of the District Judge, South Goa for disposal on merits i.e. to go into the issue as to whether the declaration of tenancy made in favour of the petitioners is based on the evidence on record or otherwise legal and proper.

28. Mr. Kakodkar now states on instructions that alternate premises are available in the new building and petitioners will be allotted the same if the finding that they are tenants of suit premises is upheld in appeal.

29. This petition is therefore partly allowed. The Rule is made partly absolute by making the following order:

(a) The impugned judgment and order dated 30.04.2009 made by the Administrative Tribunal, Goa in Eviction Appeal No.44/1998 is hereby quashed and set aside;

(b) The Eviction Appeal No.44/1998, given the change in the legal position, is now restored to the file of the Principal District and Sessions Judge, South Goa at Margao, who shall hear and dispose of such appeal on its own merits and in accordance with law keeping in mind the observations made in this judgment and order;

(c) The Principal District Judge, South Goa at Margao shall dispose of the Eviction Appeal No.44/1998 as expeditiously as possible and in any case within four months from the date of the parties producing the authenticated copy of this judgment and order;

(d) The respondents will have to ensure that the alternate premises in the newly constructed building are kept vacant and ready for allotment to the petitioners should the Eviction Appeal No.44/1998 be dismissed and the findings of the Rent Controller that the petitioners are indeed the tenants in respect of the suit premises is upheld.

(e) The undertaking furnished by the predecessors in title of the respondents that the alternate premises in the newly constructed building would be allotted to the petitioners as tenants should the petitioners succeed in establishing that they are indeed the tenants in respect of the suit premises stands and will bind the present respondents for all legal purposes and intents;

(f) Parties to appear before the Principal District and Sessions Judge, South Goa at Margao on 01.03.2021 at 10.00 a.m. and file authenticated copy of this judgment and order;

(g) If the Principal District Judge desires any records from the Rent Controller or the Administrative Tribunal then both these authorities to ensure that such record is dispatched urgently;

(h) There shall be no order as to costs.

M. S. SONAK, J.