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IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION No.915 OF 2015.

HERMANDO DE SOUZA(DECEASED)

BY LRS.

...Petitioner.

Vs.

AGOSTINHO JUAS TADEU DE

MENEZES AND ANR.

...Respondents.

Mr. J. P.Mulgaonkar Senior Advocate with Ms. R. Banaulikar,
Advocate for the petitioner.

Mr. C. A. Coutinho, Advocate for the respondents.

CORAM: MANISH PITALE, J.
Reserved on : 7th December, 2021.
Pronounced on: 21st December 2021

ORDER: -

1. The original tenant is before this Court challenging concurrent orders passed by the Rent Controller and the District Court, whereby eviction of the tenant is directed on the ground specified in Section 22(2)(c) of the Goa Buildings (Lease, Rent & Eviction) Control Act.

2. The case of the respondents was that the petitioner/tenant had constructed a toilet (WC) in the veranda of the First floor of the premises let out by the respondents and that the tenant had further changed the internal plastering and flooring of the shop on the ground floor and that tiles were put in the open veranda, without the

consent of the respondents. It was claimed that the filthy water from the WC accumulated and spread on the walls and windows of the building, giving a foul smell, thereby causing nuisance to the other occupants of the building and people in the neighbourhood.

3. According to the respondents, by indulging in such an act, the petitioner/tenant had invited order of eviction under Section 22(2)(c) of the aforesaid Act.

4. The aforesaid claims of the respondents were disputed by the petitioner. In fact, the petitioner denied that the respondents were his landlords and further pleaded that no new construction was undertaken and that repairs were carried out, which did not in any manner impair the value or utility of the building, thereby showing that the ground for eviction was not made out.

5. The rival parties led oral and documentary evidence in support of their respective claims. The Rent Controller took into consideration the material on record and held that ground for eviction was made out and accordingly passed the order of eviction against the petitioner.

6. Aggrieved by the said order of the Rent Controller, the petitioner filed appeal before the District Court. In the appeal,

as many as eight points for determination were framed by the District Court. Findings were rendered in favour of the respondents and the appeal stood dismissed. Being aggrieved by the same, the petitioner filed the present Writ Petition. The petitioner/tenant is represented before this Court through legal representatives.

7. Mr. J. P. Mulgaonkar, learned Senior Counsel appearing for the petitioner submitted that the Courts below failed to appreciate that the respondents could not be said to be the landlords as the property in question was not shown to be part of the partnership property. There was deficiency of pleadings in that regard. It was further submitted that the Courts below failed to appreciate that the evidence and material on record fell short of demonstrating that ground for eviction was made out under Section 22(2)(c) of the aforesaid Act. It was further submitted that the petitioner had specifically prayed for remanding the matter to the Rent Controller because of the fact that proper opportunity of advancing oral arguments was not granted to the petitioner. It was further submitted that the written notes of arguments filed before the Rent Controller were also not taken into consideration and that the District Court completely failed to

appreciate that the parameters for seeking remand were clearly made out. The learned Senior Counsel appearing for the petitioner placed heavy reliance upon the judgments of the Hon'ble Supreme Court in the case of ***Waryam Singh Vs. Baldev Singh, (2003)1 SCC 59; G. Reghunathan VS K. V. Varghese, (2005) 7 SCC 317; Vipin Kumar Vs Roshan Lal Anand 1993) 2 SCC 614 and judgment of this Court in the case of Rama Ben V. Zaveri and others Vs Meharoonisa Farooqui and others (Judgment and order dated 19.5.2017 passed in Writ Petition No. 218 and 552 of 2015).***

8. On the other hand, Mr. C. A. Coutinho, learned Counsel appearing for the respondents submitted that there was no substance in the contentions raised on behalf of the petitioner. The material on record demonstrated that the cheques towards payment of rent and the other material on record clearly demonstrated that the petitioner himself had recognized the respondents as "Landlord", as defined under Section 2(i) of the aforesaid Act. On this basis, it was submitted that there was no substance in the first contention raised on behalf of the petitioner. As regards the absence of opportunity to the petitioner to make oral arguments and the

direction of remand sought on behalf of the petitioner, attention of this Court was invited to the roznama of the Rent Controller. It was demonstrated that ample opportunities were granted to the petitioner. The Learned Advocate representing the petitioner before the Rent Controller had sought time repeatedly to file written arguments. Eventually written arguments were taken on record and hence, there was no question of the petitioner being denied opportunity to present his case before the Rent Controller.

9. As regards ground for eviction under Section 22(2)(c) of the aforesaid Act, the learned counsel for the respondents submitted that a perusal of the said provision would indicate that once the aspect of the tenant causing material alterations to the tenanted premises stands established, the Court has to analyze the evidence from the point of view of the landlord to reach the inferential conclusion as regards such alterations being likely to impair the value or utility of the tenanted premises. It was submitted that in the present case the evidence and material on record was properly appreciated concurrently by the Rent Controller as well as the District Court to hold against the petitioner and that no case for interference in Writ jurisdiction was made out. The

learned counsel for the respondents relied upon the judgments of the Hon'ble Supreme Court in the case of ***Vipin Kumar Vs Roshan Lal Anand***(supra), ***Gurbachan Singh and ors. Vs. Shivalak Rubber Industries and ors., 1996(2) SCC 626***, and the judgments of this Court in the case of ***Uma Thumma Vs Indirabai Prabhakar Mahatme (Judgment an order dated 26.3.2010 passed in Writ Petition No. 746 of 2008; Gokuldas J. Shet Talaulikar Vs Narayan and ors,(Judgment and order dated 2.5.2018 passed in Writ Petition No. 537 of 2017)***.

10. The contentions raised on behalf of the rival parties need to be appreciated on the basis of the material on record, in order to analyze as to whether the concurrent findings rendered against the petitioners can be said to be erroneous. The scope of interference while exercising jurisdiction under Article 227 of the Constitution of India is limited. It will have to be analyzed as to whether the position of law laid down in various judgments in the context of the said provision of the aforesaid Act has been applied in the correct perspective in the present case.

11. As regards the contention raised on behalf of the petitioner that the Rent Controller and the District Court erred in holding against the petitioner on the question as to whether the respondents could be said to be the landlord, the material on record clearly shows that findings rendered in this regard do not deserve any interference. It is an admitted position that the petitioner did pay rent to the respondents and that therefore, they were clearly covered under the definition of “Landlord” under Section 2(i) of the aforesaid Act. The Rent Controller as well as the District Court correctly held in favour of the respondents in this regard and the point was not seriously pursued on behalf of the petitioner.

12. On the question of necessity to remand the matter to the Rent Controller and the alleged error committed by the District Court, an analysis of the impugned judgment and order passed by the District Court would show that the contention raised on behalf of the petitioner has been considered in detail. It has been vehemently contended before this Court also that oral arguments are crucial and that the Rent Controller erred in failing to grant such an opportunity to the Counsel representing the petitioner. It was

submitted that the written arguments submitted before the Rent Controller were not taken into consideration. In this regard, when the roznama of the Rent Controller is perused, it becomes clear that repeated opportunities were given to both parties to submit oral arguments on the merits of the case. The record of the proceedings from 30.7.2012 till pronouncement of the order by the Rent Controller shows that the counsel representing the petitioner sought opportunities repeatedly and later sought permission of the Rent Controller to file written arguments. Even on this count, the Counsel representing the petitioner sought time on various occasions and finally placed on record the written notes of arguments.

13. In this situation, the contention raised on behalf of the petitioners that sufficient opportunity of hearing was not granted before the Rent Controller, is not borne out from the record. It was also contended that the District Court ought to have considered the plea of remanding the matter, for the reason that written notes of arguments filed in the year 2012 were not considered and appreciated by the Rent Controller. In this regard, a perusal of the impugned judgment and order passed by the District Court would show that there is

elaborate discussion on the question of remanding the matter to the Rent Controller. The District Court has found that the written notes of the arguments filed in the year 2012 on behalf of the petitioner could be considered by the District Court itself. The learned counsel for the petitioner before the District Court had in fact argued only for remand, refusing to make submissions on the merits of the matter. In this backdrop, the District Court considered the material on record and refused to remand the matter to the Rent Controller.

14. This Court is of the opinion that no error can be attributed to the District Court in having refused to remand the matter to the Rent Controller. The petitioner failed to demonstrate any prejudice cause to him in order to justify the prayer for remanding the matter to the Rent Controller. Therefore, there is no substance in the said contention raised on behalf of the petitioner.

15. On the merits of the matter, before examining as to whether the Rent Controller and the District Court were justified in concurrently holding against the petitioner, it would be appropriate to refer to the relevant provision. Section 22(2)(c) of the aforesaid Act reads as follows: -

22. *Grounds of eviction.* —

(1)

(2) If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application is satisfied

—

(a)

(b)

(c) that the tenant has committed such acts of damage as are likely to impair materially the value or utility of the building; or

(d).....

16. A bare perusal of the above quoted provision indicates that the landlord needs to establish on facts that the tenant had committed acts of damage that were likely to impair materially the value or utility of the rented premises. In the present case, the District Court specifically framed as many as eight points for determination. Point nos.3, 4 and 5 pertained to inquiry on facts regarding construction of WC by the petitioner on the first floor of the premises, without the consent of the respondents and other acts of construction and plastering as alleged by the respondents and further

regarding nuisance caused by such acts to the occupants and neighbours.

17. On the said points concerning inquiry into facts, the District Court analyzed the material on record to confirm the findings rendered by the Rent Controller against the petitioner. In this Context, the District Court took into consideration the oral and documentary evidence on record, including the deposition of the witnesses, to hold that the WC was indeed constructed by the petitioner on the first floor of the premises without seeking permission of the respondents. The dirt accumulating from the WC giving rise to filthy smell and spreading of dirt on the walls and pipes of the building was also found to be established on facts. It was also found on facts that such accumulation of the dirt gave rise to foul smell, thereby causing nuisance and inconvenience to the other people in the same building. These are findings on facts concurrently rendered by the Rent Controller, as well as the District Court. Such findings are based on appreciation of the evidence and material on record. This Court while exercising jurisdiction under Article 227 of the Constitution of India, finds no reason to interfere with such findings concurrently rendered against the petitioner.

18. Therefore, the fact that the petitioner did commit material alterations and acts of damage to the tenanted premises has been established and what remains for application of Section 22(2)(c) of the aforesaid Act is the aspect as to whether such acts were likely to impair materially the value or utility of the tenanted premises. In order to consider the aforesaid aspect of the matter, it would be necessary to refer to the judgments upon which the learned counsel appearing for the parties have placed reliance.

19. In the case of ***Vipin Kumar Vs Roshan Lal Anand***(supra), the Hon'ble Supreme Court was concerned with Section 13(2) (iii) of the East Punjab Urban Rent Restriction Act, 1949. The aforesaid provision is *pari materia* with Section 22(2)(c) of the aforesaid Act. While considering the manner in which the aspect of likelihood of impairment of the value or utility of the building is to be analyzed, the Hon'ble Supreme Court held that the Court must examine as to whether the act of the tenant in carrying out the construction materially impairs the value or utility of the tenanted premises and in doing so the Court must arrive at a conclusion as an inferential fact to be deduced from the proved facts.

20. In the case of **Waryam Singh Vs Baldev Singh**(supra), upon which the learned Senior Counsel appearing for the petitioner placed much reliance, the Hon'ble Supreme Court after applying the test laid down in the case of **Vipin Kumar Vs Roshan Lal Anand**(supra), on facts arrived at a conclusion against the landlord and held that the ground for eviction was not made out.

21. In the case of **Gurbachan Singh and ors Vs Shivalak Rubber Industries and ors**(supra), again in the context of the *pari materia* provision of East Punjab Urban Rent Restriction Act, 1949, the Hon'ble Supreme Court held that the use of words "value" in the said provision meant intrinsic worth of a thing and that the ground for eviction under the said provision would be available to the landlord if it is established that the act of the tenant was likely to diminish the quality, strength and value of the building or rented premises to such an extent that the intrinsic worth or fitness of the building was considerably affected. It was held that the nature of the construction was a relevant consideration while arriving at a conclusion in this regard and that impairment of the tenanted premises had to be appreciated from the point of view of the landlord.

22. In the case ***G. Reghunathan Vs K. V. Varghese***(supra), the Hon'ble Supreme Court was considering a similar provision in the Kerala Buildings (Lease and Rent Control) Act, 1965. In this context, Hon'ble Supreme Court held that it had to be seen whether the construction in question was substantial in nature and whether it altered the form, front and structure of the accommodation. It was laid down that the determination of the question as to whether such a ground for eviction was made out would depend upon the facts of each case and that no exhaustive list of constructions could be given.

23. In this context the judgments of this Court in the case ***Uma Thumma Vs Indirabai Prabhakar Mahatme*** (supra) and ***Gokuldas J. Shet Talaulikar Vs Narayan and ors*** (supra) followed the dictum laid down by the Hon'ble Supreme Court in the aforesaid judgments and held on facts that the ground for eviction was made out. In the case of ***Rama Ben V. Zaveri and others Vs Meharoonisa Farooqui and others*** (supra), this Court held that any and every alteration carried out by the tenant would not expose him to eviction under Section 22(2) (c) of

the said Act and that in the facts of the said case, the decree of eviction against the tenant was set aside.

24. Applying the ratio of the judgments of the Hon'ble Supreme Court and this Court in the context of eviction of tenant under Section 22(2)(c) of the said Act and *pari materia* provisions in other legislations, it becomes clear that each case would have to be decided on its own facts, depending upon the evidence and material placed on record. In the present case, this Court has already found hereinabove that the findings on facts were concurrently given by the Rent Controller and the District Court about the construction/alteration in the tenanted premises carried out by the petitioner without the consent of the respondents. It was found that sufficient evidence was led on behalf of the respondents to demonstrate that the WC was constructed in the veranda on the first floor without the consent of the respondents and further alterations were carried out without consent. The only area of examination that remains is, as to whether such acts of the petitioner were likely to impair materially the value or utility of the building.

25. Applying the test laid down by the Hon'ble Supreme Court and this Court in the aforementioned judgments, it

becomes clear that in the present case, the form, front and structure of the tenanted premises was altered by the acts of construction undertaken by the petitioner. WC was constructed in the veranda on the first floor, which according to the evidence on record led to accumulation of dirt on the walls and pipes of the tenanted premises, causing foul smell to emanate leading to nuisance to other occupants of the premises. The other alterations undertaken by the petitioner as the tenant also resulted in material alterations. These acts certainly impaired materially the value or utility of the premises in question.

26. The District Court in the impugned judgment and order has extensively referred to the evidence on record, particularly that of one Liberao Rebello about the extent to which the construction carried out by the petitioner without consent of the respondents led to the value of the premises being diminished from the point of view of the respondents/ landlord. These factors were taken into consideration and after applying the position of law as laid down by the Hon'ble Supreme Court in the aforementioned judgments, the District Court came to a considered conclusion that the construction of the WC on the first floor of the veranda was an alteration of

substantial nature, which had materially impaired the value and utility of the premises. It was also found that fixing of a rolling shutter by removing wooden door altered the form and front of the premises and in the facts of the present case when there were wooden doors on all other points of entry and exit of the premises, the value was certainly diminished. In this context the contention raised on behalf of the petitioner that putting a shutter enhanced the value of the premises cannot be accepted because alterations have to be analyzed in the facts and circumstances of each case.

27. This Court finds that the District Court properly analyzed the material on record and adopted the correct approach by arriving at the inferential finding of material impairment of value or utility of the premises by deduction from proved facts.

28. Findings rendered by the Rent Controller were therefore, correctly confirmed by the District Court in this regard.

29. This Court has also taken into consideration the pleadings in the application filed on behalf of the respondents before the Rent Controller, the documentary and oral evidence on record and it is found that no case for

interference is made out by the petitioner under Article 227 of the Constitution of India.

30. Hence, it is found that present Petition is without any merits. Accordingly, Writ Petition is dismissed. Pending applications, if any also stand disposed of.

MANISH PITALE,J.

VINITA VIKAS NAIK Digitally signed by VINITA VIKAS
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