

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.119 OF 2023

1. Ramkrishna Senu Chaudhari,
Since deceased through L.Rs.
 - 1-A. Suman Ramkrishna Chaudhari,
Age 76 years, Occup. Accounting,
R/o Minakshi Niketan, 13,
Visanji Nagar, Jalgaon.
 - 1-B. Meenakshi Sunil Mahajan,
Age 55 years, Occup. Household,
R/o C/o. Sunil P. Mahajan,
Opposite Palladium, Near Marshal
Shop, Warali, Mumbai.
 - 1-C. Kalpana Avinash Chaudhari,
Age 50 years, Occup. Household,
R/o Kruturang, C/608,
Near Yashwant Natyagruha,
Kothrud, Pune.
 - 1-D. Dipak Ramkrishna Chaudhari,
Age 45 years, Occup. Business,
R/o Minakshi Niketan, 13,
Visanji Nagar, Jalgaon.
- ...Applicants**
(Orig.Defendants)

VERSUS

1. Pandurang Laxman Chaudhari,
Age 76 years, occup.Household,
R/o T. P. Scheme No.II,
Final Plot No.67,
Municipal House No.181/1
Jilha Peth, Gujrati Lane,
In front of Bal Gandharva Khule
Natyagruha, Jalgaon.

1-B. Dr. Kedar Pandurang Chaudhari,
Age 49 years, occup.Service,
R/o As above.

1-C. Girija Kishor Narkhede,
Age Major, Occup.Household,
R/o Thane, Dist. Thane.

...Respondents
(Orig.Plaintiffs)

.....
Advocate for Applicants : Mr. S. S. Bora
Advocate for Respondent No.1-A : Mr. S. H. Tripathi
.....

CORAM : ARUN R. PEDNEKER, J.

Date of Reserving The Order : 14/07/2023
Date of Pronouncing The Order:24/07/2023

ORDER :

By the present civil revision application, the applicants, who are tenants are challenging the concurrent Judgment of eviction, passed by both the Courts below on the ground of bonafide requirement of the landlords and directing the applicant/tenant to vacate the tenanted premises.

2. Brief facts leading to the filing of the present revision application can be summarised as under : -

The original plaintiff Pandurang Laxman Chaudhari filed Regular Civil Suit No.737 of 2012 under the provisions of

Maharashtra Rent Control Act thereby praying for eviction of the tenant, now deceased Ramkrishna Senu Chaudhari, on the grounds of arrears of rent, bonafide requirement of landlord and availability of alternate accommodation, to the tenant.

3. The case of the plaintiff / landlord is that the house property consists of two rooms on the ground floor at Southern side Plot No.6 City Survey No.2022 admeasuring 10 x 10 square feet and 15 x 10 square feet situated at Navipeth, Jalgaon. The plaintiff is the owner of the said property. Excluding the suit property, the plaintiff is in possession of entire House No.6. The plaintiff had let out the suit property to the defendant at monthly rent of Rs.110/-. The suit property was let out to defendant for residential purpose, but subsequently without permission, the defendant later shifted his residence and started the business of tax consultant in the suit property.

4. The defendant/tenant later on started residing permanently in their house named "Minakshi Niketan/Sadan", Plot No.14 of City Survey No.7982A/5/5 as per the town planning scheme. Its a three storeyed building. The plaintiff contends that the said building is

convenient for residence and business of tax consultant. The carpet area of the ground floor of the said building is 95.69 square metre and the defendant also published an advertisement to let out part of the suit property. On 03/02/2012 and before that on two or more occasions, the defendant had given advertisement in the newspaper to that effect.

5. The plaintiff contended that the defendant can utilize his own property for his residence and business and the suit property is no more required by him. The plaintiff further contends that the plaintiff requires the suit property for his medical practice and the business of his son Kedar, his daughter-in-law Janhvi, his grand son and grand daughter for their business and residence. The plaintiff has got his knee operated and his wife's eyes are operated. Hence, they are in need of the ground floor of the suit property. The plaintiff's family consists of five members including himself, so also plaintiff has a married daughter Girija. At present, the son of plaintiff namely Dr. Kedar and his wife are residing at Thane.

6. It is contended by the defendant that the plaintiff failed to pay the arrears of rent since 01/04/2011 along with rental increases of 4

% per annum and they are in arrears of rent of 3214/-.

7. The defendant has an alternate suitable accommodation available near the suit property. Even after notice, the defendant has refused to vacate the suit premises.

8. The defendant filed written statement and contended that the house No.6 comprises of three rooms and there is a hall on the third floor, a room on ground floor, four rooms on first floor, three rooms on second floor and a hall on third floor are in possession of plaintiff since long. Thus in all 19 rooms and 5 shops are locked and not used by plaintiff since long. So also plaintiff is also having other properties.

9. The rent of the suit property was fixed at monthly rent of Rs.25/- with all taxes subject to periodical increase of rent. Initially rent was accepted by Laxman Chaudhary since 1969. The defendant accepted that there is a house property on Plot No.12 and that the defendant had constructed a three storeyed building thereon. Said building is used as residence and second floor is let out to one Shri. Kolkhare. The defendant contended that the plaintiff wants to let

out the suit property for huge rent and that it is not bona fide required by him.

10. The Trial Court was pleased to decree the suit. The Trial court held that the plaintiff is entitled to a decree of eviction and rendered a finding that the plaintiff requires the suit premises bonafide for his own use and accommodation, and that greater hardship would be caused on the plaintiff if their decree of eviction is refused, and that the plaintiff proved that there is a reasonable accommodation available to the defendant. In view of the same, the Trial Court granted decree of eviction.

11. In an appeal filed before the Appellate Court, the Appellate Court also confirmed the Judgment of the Trial Court. The Judgments of both the Courts is challenged in the present Civil Revision Application.

12. It is contended by the defendant/tenant that the Section 16 of the Maharashtra Rent Control Act provides that, the decree of eviction on the ground of bona fide could be passed only when the landlord requires the suit premises reasonably and bonafide for his

personal use, that may include his family members. Section 16 of the Maharashtra Rent Control Act reads as under : -

Section 16 when landlord may recover possession.

(1)

(a)

(b)...

(g) that the premises are reasonably and bonafide required by the landlord for occupation by himself or by any person for whose benefit the premises are held or where the landlord is a trustee of a public charitable trust that the premises are required for occupation for the purposes of the trust.

(2) No decree for eviction shall be passed on the ground, specified in Clause (g) of sub section (1) if the Court is satisfied that, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it.

13. The learned Advocate submits that the first requirement to granting a decree of eviction against a tenant for bonafide requirement of landlord is that there has to be a reasonable and bonafide need of the landlord, that may include his family members,

and thereafter, the comparative hardship needs to be assessed. In the instant case, since the plaintiff has multiple properties or at least he is in possession of the properties mentioned in House No.6 itself, various numbers of room on second and third floor, and one room on the ground floor, it cannot be said that the plaintiff requires the suit property reasonably and bonafide. The applicant/defendant contends that although the defendant also has property, the question of comparative hardship would only arise if the plaintiff in the first instance requires the tenanted property reasonably and bonafide, and thereafter, comparative hardship needs to be assessed.

14. The learned Advocate relies upon the Judgment of the Hon'ble High Court Bombay Bench At Aurangabad in *Vivek Trimbakrao Paturkar Vs. Sulochanabai (in Civil Revision Application No.91 of 2021)*, decided on 04/03/2022, at paragraphs No.25, 26 and 27, and submits that the principle that the landlord is a best judge of his requirements, and tenant cannot dictate. However, the said principle is to be tested on the touchstone of facts and circumstances of each case and that the landlord has several properties. On suppressing all those material information, the

landlord has lost his opportunity to explain as to how other vacant properties are not suitable for his use and occupation.

15. The learned Advocate relies on the above Judgment and submits that this Court has held that it is the requirement of law that the premises must be required reasonably and bonafide. In absence of satisfaction of these two components, decree cannot be passed. The learned Advocate Mr. Bora submit that the facts in the cases referred above on which the Advocate has relied upon, are very similar in the present case. The landlord owned and possessed seven to eight properties in the city, and it was case that the all the premises were not under use. On the other hand the tenant did not have any other properties either to run his business or for residence, therefore, certainly comparative hardship was dictated in favour of the tenant and a eviction decree was refused.

CONSIDERATION AND CONCLUSION :

16. The Law on the requirements of landlord and the manner in which the provisions beneficial to the landlord in the Rent Control Legislation needs to be interpreted is discussed in the following Judgments of the Supreme Court.

17. In the case of *V. Dhanapal Chettiar Versus Yesodai Ammal*, reported in (1979) 4 Supreme Court Cases 214, the nine Judges Bench of the Hon'ble Supreme Court held that, the Rent Control Legislation is for the benefit of the tenants in some instances, so also, the Court has held that the Rent Control Legislation is not entirely holding one side. Some encroachment was envisaged in the interest of the landlord also and the equity and justice demanded fair play on the part of the legislation not to completely ignore the situation of landlords. The Rent Act gives protection to both. In large number of cases the tenants are given protection and there are some cases in only the landlord needs protection.

The Hon'ble Supreme Court observed in paragraph no.15 in the case of *V. Dhanapal Chettiar (Supra)* as under :-

"15.....

It should be remembered, as we have said above, that the field of freedom of contract was encroached upon to a very large extent by the State Rent Acts. The encroachment was not entirely and wholly one-sided. Some encroachment was envisaged in the interest of the landlord also and equity and justice demanded a fair play on the part of the legislature not to completely ignore the helpless situation of many landlords who are also,

compared to some big tenants, sometimes weaker section of the society. As for example a widow or a minor lets out a family house in a helpless situation to tide over the financial difficulty and later wants a fair rent to be determined. Again suppose for instance in a city there is an apprehension of external aggression, severe internal disturbances or spread of epidemics. A man in possession of his house may go to another town letting out his premises to a tenant financially strong and of strong nerves at a rate comparatively much lower than the prevailing market rates. Later on, on the normalization of the situation as against the agreed rate of rent he approaches the Building Controller for fixing a fair rent in accordance with a particular State Rent Act. Why should she or he be debarred from doing so ? The statute gives him the protection and enables the Controller to intervene to fix a fair rent as against the term of contract between the parties. In a large number of cases it is the tenant who gets this protection. But in some as in the case of Raval the landlord needs and gets the protection."

18. The Hon'ble Supreme Court in the case of *Joginder Pal Versus Naval Kishore Behal*, reported in AIR 2002 Supreme Court 2256, also referred a Judgment in *Arjun Khiamal Makhijani Versus Jamnadas C. Tuliani and Ors.* (1989) 4 SCC 612), wherein it is held

that the provisions of Rent Control Legislations are capable of being categorized into two : those beneficial to the tenants and also beneficial to the landlord, and that the legislative provision beneficial to the landlord should not be interpreted in such a manner so as to benefit the tenants. In the Judgment of *Joginder Pal (Supra)* the Hon'ble Supreme Court also dealt with the test of bonafide requirement and what constitutes for his own use. The Hon'ble Supreme Court has observed at paragraphs No.5, 6, 31 and 32 as under :-

"5. In *Malpe Vishwanath Acharya and Ors. Vs. State of Maharashtra and Anr.* (1998) 2 SCC 1 this Court emphasized the need of social legislations like the Rent Control Act striking a balance between rival interests so as to be just to law. "The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society". While the shortage of accommodation makes it necessary to protect the tenants to save them from exploitation but at the same time the need to protect tenants is coupled with an obligation to ensure that the tenants are not conferred with a benefit disproportionately larger than the one needed. Socially progressive legislation must have a holistic perception and not a short- sighted parochial approach. Power to legislate socially progressive legislations is coupled with a responsibility to avoid arbitrariness and unreasonability. A legislation impregnated with tendency to give undue preference to one section, at the

cost of constraints by placing shackles on the other section, not only entails miscarriage of justice but may also result in constitutional invalidity.”

“6. In Arjun Khiamal Makhijani Vs. Jamnadas C. Tuliani and Ors. (1989) 4 SCC 612, this Court dealing with Rent Control Legislation observed that provisions contained in such legislations are capable of being categorized into two : those beneficial to the tenants and those beneficial to the landlord. As to a legislative provision beneficial to landlord, an assertion that even with regard to such provision an effort should be made to interpret it in favour of the tenant, is a negation of the very principle of interpretation of a beneficial legislation.”

“31. We have already noticed that the purpose of the Act is to restrict increase of rent and the eviction of tenants in urban areas. Still the Legislature has taken care to provide grounds for eviction, one of them being the requirement of the landlord. We have to strike a balance between the need of protecting the tenants from unjustified evictions and the need for eviction when ground for eviction is one such as the requirement of the landlord. If we do not meaningfully construe the concept of requirement the provision may suffer from the risk of being branded as unreasonable, arbitrary or as placing uncalled for and unreasonable restrictions on the right of the owner to hold and use his property. We cannot place a construction on the expression 'for his own use' in such a way as to deny the landlord a right to evict his tenant when he needs the accommodation for his own son to settle himself well in his life. We have to give colour and content to the expression and provide the skin of a living thought to the skeleton of the words

which the Legislature has not itself chosen to define. The Indian society, its customs and requirements and the context where the provision is set in the legislation are the guides leading to acceptance of the meaning which we have chosen to assign to the words 'for his own use' in Section 13 (3)(a)(ii) of the Act."

"32. Our conclusions are crystalise as under:

(i) the words 'for his own use' as occurring in Section 13 (3) (a)(ii) of the East Punjab Urban Rent Restriction Act, 1949 must receive a wide, liberal and useful meaning rather than a strict or narrow construction.

(ii) The expression __ landlord requires for 'his own use', is not confined in its meaning to actual physical user by the landlord personally. The requirement not only of the landlord himself but also of the normal 'emanations' of the landlord is included therein. All the cases and circumstances in which actual physical occupation or user by someone else, would amount to occupation or user by the landlord himself, cannot be exhaustively enumerated. It will depend on a variety of factors such as inter-relationship and inter-dependence __ economic or otherwise, between the landlord and such person in the background of social, socio-religious and local customs and obligations of the society or region to which they belong.

(iii) The tests to be applied are : (i) whether the requirement pleaded and proved may properly be regarded as the landlord's own requirement? and, (ii) Whether on the facts and in the circumstances of a given case actual occupation and user by a person other than the landlord would be deemed by the landlord as 'his own' occupation or user? The answer

would, in its turn, depend on (i) the nature and degree of relationship and/or dependence between the landlord pleading the requirement as 'his own' and the person who would actually use the premises; (ii) the circumstances in which the claim arises and is put forward, and (iii) the intrinsic tenability of the claim. The Court on being satisfied of the reasonability and genuineness of claim, as distinguished from a mere ruse to get rid of the tenant, will uphold the landlord's claim.

(iv) While casting its judicial verdict, the Court shall adopt a practical and meaningful approach guided by the realities of life.

19. The law as discussed in the above Judgment would clearly indicate that the Rent Control Legislation is not to be interpreted one sided and those provisions of Rent Control Legislations which are for the benefit of the landlord are not to be so interpreted that the benefit given to the landlord is taken away.

20. As regards the submission of the learned Advocate for the appellant, that the petitioner has not made out a case for bonafide requirement, the evidence on record suggest that the plaintiff so also his wife has undergone medical procedure and are in need of ground floor for residence. While interpreting a bonafide requirement, we have to be very flexible in terms of the requirement of the landlord

as he is the best Judge of his requirements. As regards comparative hardship, in the instant case, the tenant also has properties as that of the landlord and that he has advertised for leasing his personal properties in the vicinity and there is no dispute about the same.

21. The reliance placed on the above Judgment of Paturkar (Supra) does not come to the aid of the appellant as the Courts below have specifically held that there is evidence produced by the plaintiff, that his wife has undergone eye surgery and he himself has a knee surgery. The plaintiff thus requires the ground floor premises occupied by the tenant and the need of the landlord is reasonable and bonafide. Thus a case is made on landlord that the ground floor premises are reasonably and bonafide in need. The tenants cannot then dictate to the landlord as to how he should meet his requirements. The tenant himself has suitable alternate accommodation and comparative hardship is rightly decided in favour of the plaintiff. I see no error committed by the Courts below and the present civil revision application is dismissed.

(ARUN R. PEDNEKER, J.)

vj gawade/-.