

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.912/2019

BERTALINHA C. NOVAES E
LOURENCO, w/o late Domingos
Caetano Joaquim Goncalo Lourenco,
major of age, c/o Popular Printing
Press, Corte de Oiteiro Road, Panaji,
Goa.

... PETITIONER

Versus

1. MR F. X. PAULINO DIAS
SOUZA, major of age, r/o 31st
January Road, Fontainhas, Panaji
Goa.

2. MR JOHN SEBASTIO
GONCALO LOURENCO, major of
age, and his wife,

3. MRS OLGA LOURENCO, major
of age, both r/o H.No.610, Oilem
Bhat, Cujira, St. Cruz, Goa.

4. CARLOS DOMINGOS
LOURENCO, major of age,

5. VEENA LOURENCO, major of
age,

6. VINCENT LOURENCO, major
of age,

7. VINCENT DOMINGOS
LOURENCO, major of age,

8. HELENA DOMINGOS
LOURENCO, major of age, all
residents of C/o Popular Printing
Press, Corte de Oiteiro Road, Panaji,
Goa.

... RESPONDENTS

Mr S. D. Padiyar with Mr Anthony Joe D'Silva, Mr P. Shirodkar,
Ms K. Gracias and Ms A. Rane, Advocates *for the Petitioner*.
Mr J. Abreu Lobo, Advocate *for Respondent No.1*.

CORAM: M. S. SONAK, J.

Reserved on: 6th July 2023

Pronounced on: 10th July 2023

JUDGMENT:

1. Heard Mr S. D. Padiyar for the petitioner and Mr J. Abreu Lobo for respondent no.1.

2. The petitioner challenges the Judgment and Order dated 26.07.2019 made by the Ad-hoc District Judge-1 (FTC) at Panaji in her capacity as the Rent Tribunal disposing of Rent Revision Application No.10/2016 instituted by Mr F. X. Paulino Dias Souza (respondent no.1) – Landlord and ordering the eviction of the petitioner and respondent nos.2 to 8 from premises bearing House No.1/134/1 in Chalta No.128 of P.T. Sheet No.44 of City Survey Panaji (suit premises). This eviction is ordered under Section 32(4) of the Goa Buildings (Lease, Rent and Eviction) Control Act, 1968 (Rent Control Act) for the alleged failure on the part of the tenants in paying or depositing the rent during the pendency of proceedings for eviction.

3. The parties do not dispute that Mr F. X. Paulino Dias Souza (respondent no.1) or his predecessor in title owned the suit premises. According to the petitioner, respondent no.1's mother, Eugenia Dias, leased the suit premises to the petitioner's husband, Domingos Lourenco, for a monthly rent of ₹25/-. The petitioner claims that this rent was revised to ₹200/- per month in June 1992 and ₹250/- per month in August 2002. The petitioner claims to be in possession of the suit premises in pursuance of a document dated 01.07.1962, through which she operates a printing press under the name and style of Popular Printing Press.

4. However, Mr Lobo, learned counsel for respondent no.1, has a different version. He states that the document dated 01.07.1962 is not signed by any parties; in any case, the same is a forgery. He submits that the suit premises were leased by respondent No.1's father to the late Jose Caetano Gonsalo Lourenco in 1952. On the demise of Jose Caetano Gonsalo Lourenco, the tenancy rights were inherited by Domingos Lourenco, i.e. the late husband of the petitioner and John Sebastiao Gonsalo Lourenco (respondent no.2). Mr Lobo submitted that upon the demise of Domingos Lourenco, the petitioner Bertalinha and her children respondent nos.4 to 8 succeeded to the tenancy rights along with John Sebastiao Gonsalo Lourenco (respondent no.2) and his wife Olga Lourenco (respondent no.3).

5. Thus, even the landlord's version, if accepted in its entirety, suggests that the petitioner Bertalinha and her children,

respondents nos.4 to 8, have tenancy rights in the suit premises together with John and Olga (respondent no.2 and 3). However, Mr Padiyar, learned counsel for the petitioner, asserted that the petitioner and respondent nos.4 to 8 are the exclusive tenants of the suit property based upon the document of 01.07.1962. This controversy is not very relevant to the main issue raised in the present petition.

6. The petitioner's case is that the landlord (respondent no.1) travelled abroad, and, as such, there were difficulties in paying rent. On 04.01.2006, the petitioner sent a cheque of `10,500/- by registered post, but the landlord returned the cheque without encashment. Similarly, a cheque for ₹19,250/- sent by registered post returned with the remark that the landlord was out of the station on 25.04.2012. The petitioner, therefore, filed an application dated 09.05.2012 under Section 18 of the Rent Control Act for the rent deposit with the Rent Controller. This application was numbered Rent Application No.15/2012. Notice in this application was published in the local newspaper "Gomantak Times". However, it is the petitioner's case that despite service through publication, the landlord refused to attend the proceedings under Section 18 of the Rent Control Act.

7. Instead, the landlord caused a notice dated 01.01.2014 to be served upon the petitioner demanding arrears, which the landlord quantified at the rate of ₹4,91,850/-. In this notice, the landlord claimed that the rent for the suit premises was around

₹3,000/- per month. The petitioner has pleaded that this was never the agreed rent.

8. The petitioner sent a reply dated 04.02.2014 to the landlord's above notice dated 01.01.2014. The petitioner calculated the rent at the rate of ₹250/- per month and sent a cheque dated 01.02.2014 in the amount of ₹35,000/- to the landlord along with the reply. Despite receipt of the reply and the cheque, the landlord refused to encash this cheque dated 01.02.2014.

9. The landlord then instituted proceedings for eviction of the petitioner and respondents no.2 to 8 from the suit premises under Section 22 of the Rent Control Act on the ground of default in payment of rents. These proceedings were numbered Rent Case No.29/2014/C.

10. On 21.07.2014, respondents no.2 and 3, i.e. John and Olga, applied Section 32(1) of the Rent Control Act along with the application for condonation of delay seeking leave to deposit the rents before the Rent Controller. On 09.10.2014, the petitioner responded to the eviction proceedings on the lines of the defence indicated in the reply dated 04.02.2014 to the landlord's notice dated 01.01.2014. On 03.09.2016, the Rent Controller allowed John and Olga's application for condonation of delay in depositing rents.

11. The landlord instituted Rent Revision Application No.10/2016 before the Rent Tribunal (Ad-hoc District Judge-1 – FTC) questioning the Rent Controller's order dated 03.09.2016. Notice was served upon all the respondents, including the petitioner. However, the petitioner chose not to contest this revision because the same only challenged the order condoning the delay in depositing rents. This application for condonation of delay was not made by the petitioner but by John and Olga (respondent no.2 and respondent no.3).

12. During the pendency of Rent Revision Application No.10/2016, the landlord (respondent no.1), on 04.04.2019, filed an application dated 14.03.2019 under Section 32(4) of the Rent Control Act requesting the Rent Tribunal to stop further proceedings and to put the landlord in vacant possession of the suit premises.

13. Section 32 of the Rent Control Act reads as follows:-

“32. Payment or deposit of rent during pendency of proceedings for eviction.- (1) No tenant against whom a proceeding for eviction has been instituted by a landlord under this Act shall be entitled to contest the proceedings before the Controller or any appellate or revisional authority or to prefer any appeal or revision under this Act, unless he has paid to the landlord or deposits with the Controller or the appellate or revisional authority, as the case may be, all arrears of rent in respect of the building up to the date of payment or deposit and continues to pay or deposit any rent which may subsequently become due in respect of the building, until the termination of the

proceedings before the Controller or the appellate or revisional authority.

(2) The deposit of rent under sub-section (1) shall be made within such time and in such manner as may be prescribed.

(3) Where there is any dispute as to the amount of rent to be paid or deposited under sub-section (1), the Controller or the appellate or revisional authority, as the case may be, shall, on application made either by the tenant or by the landlord, and after making such inquiry as he deems necessary, determine summarily the rent to be so paid or deposited.

(4) If any tenant fails to pay or to deposit the rent as aforesaid, the Controller or the appellate or revisional authority, as the case may be, shall, unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building.

(5) The amount deposited under sub-section (1) may, subjected to such conditions as may be prescribed, be withdrawn by the landlord on application made by him in that behalf.”

(emphasis supplied)

14. Since there was a controversy about whether the application under Section 32(4) was ever served upon the petitioner or the petitioner's children, even after the matter was heard for some time, this Court, by order dated 23.06.2023 called for record and proceedings in Rent Revision Application No.10/2016 to ascertain the position of service.

15. The records were perused, and from the perusal, it is evident that the landlord's application under Section 32(4) of the Rent Control Act was served only on John and Olga and not any of the other respondents, particularly the petitioner herein. The application under Section 32(4) does not bear any endorsement of receipt by or on behalf of the petitioner or her children. The Roznama does not suggest that a copy of this application was ever served upon the petitioner or her advocate. Accordingly, there is no room for doubt that the landlord's application under Section 32(4) was never served upon the petitioner or her children.

16. Mr Lobo's contention that service upon John and Olga who, according to him, are co-tenants, amounts to service upon the petitioner and her children, cannot be accepted. Firstly, the petitioner and her children have strongly disputed the premise that they were "co-tenants" along with John and Olga. Their case is that the petitioner's husband, Domingos was the sole tenant under the document of 01.07.1962, and upon his demise, the petitioner and her children inherited such tenancy from Domingos. Secondly, the petitioner and her children were separately impleaded as parties in Rent Revision Application No.10/2016. Accordingly, service of the application under Section 32(4) upon them was necessary. Therefore, the principle that notice of eviction upon one of the co-tenants amounts to notice upon others would not apply. The facts in *Smt. Emilia Tinoco (deceased by Lrs) v/s. Shashikant Naguesh Gad & Others*¹

¹ 1996 SCC OnLine Bom 443

are not at all similar to the facts of the present case. Therefore, the said decision will not apply to the facts of the present case.

17. The Roznama in Rent Revision Application No.10/2016 shows that only John and Olga filed their reply to the application under Section 32(4) on 07.06.2019. The matter was argued on behalf of the landlord and John & Olga (respondent no.2 and respondent no.3) on 03.07.2019, and the same was posted for orders. The Roznama entry dated 03.07.2019 states – “*arguments heard on main revision*”. The matter was adjourned for Judgment on 18.07.2019.

18. Surprisingly, the Roznama shows that on 11.07.2019, i.e. after the matter was fully argued and was posted for Judgment on 18.07.2019, the landlord’s lawyer applied to issue notices to respondent nos.5 and 6 in the Rent Revision Application, realising that they were never served. The Roznama for 18.07.2019 states that respondent nos.6 and 7 were duly served. However, the learned counsel for the parties agree that there is a mistake in this Roznama, and the service should be taken as effected upon respondents nos.5 and 6, not respondents nos.6 and 7. On this date, the Presiding Judge was absent. The matter was adjourned for Judgment on 26.07.2019. On that date, the impugned Judgment and Order was made, allowing the landlord’s application under Section 32(4), closing the proceedings, and directing all the respondents, i.e. the petitioner and her children and John & Olga, to put the landlord in vacant possession of the suit premises.

19. John and Olga have not bothered to challenge the above eviction order under Section 32(4) of the Rent Control Act. However, the petitioner has instituted the present petition to challenge the above order dated 26.07.2019, *inter alia*, on the ground that the same was grossly violative of the principles of natural justice and fair play.

20. The rule was issued in this petition on 24.02.2023. Interim relief staying the eviction was granted subject to the petitioner depositing compensation at ₹25,000/- per month effective 01.08.2019. Arrears were directed to be deposited within eight weeks. The petitioner has deposited approximately ₹11,75,000/- in this Court.

21. Mr Padiyar, learned counsel for the petitioner, submitted that neither was any copy of the application under Section 32(4) of the Rent Control Act ever served upon the petitioner nor was the petitioner issued any show cause notice as contemplated under Section 32(4) of the Rent Control Act to show cause why further proceedings should not be stopped and an order made directing the tenants to put the landlord in possession of the building. He submitted that more than mere failure to deposit rent is required. Still, the Rent Controller, the Appellate, or the Revisional Authority must record satisfaction that there was no sufficient cause shown by the tenant to stop all further proceedings and to make an order directing the tenant to put the landlord in possession of the building. He submits that this crucial aspect was not at all appreciated by the Revisional

Authority. He submitted that the Revisional Authority's approach was contrary to several decisions of this Court and the Hon'ble Supreme Court including *Roque Antonio Judas Tadeu Caetano Ribeiro v/s Angelo Cassiano Neves E Souza & 4 Ors.*², *Vasant Tukaram Parab v/s Aurolina Gomes*³, *Ramani Brothers v/s Venetexa Naique Batcar*⁴, *Govind Mahadeo Bandekar v/s Cusum alias Jankibai R. Usgaonkar*⁵, *Kashinath Narayan Nachinolkar and another v/s M. Lily Dias (Smt.) and others*⁶, *Smt. Kanchan Ramdas Moraskar v/s Dr. Armando Joao Benedito Mascarenhas (D) through his Lrs*⁷, *Joao Xavier Pinto v/s Oswald J.C. Velho and 2 others*⁸, *Shri Datta Anant Ghadi v/s Smt Guilhermina Silveira and others*⁹, *Chandrakant Govind Naik v/s Sucenia Dias E Souza*¹⁰.

22. Mr Padiyar submitted that the provisions of Section 32(4) of the Rent Control Act are only directory and not mandatory. Further, the tenant must be allowed to show cause why the proceedings ought not to be stopped, and a direction ought not to be issued to the tenant to put the landlord in possession of the building. He relied on *Bijay Kumar Singh and others v/s Amit Kumar Chamariya and another*¹¹ to support this submission.

2 1989 (2) Goa Law Times 313

3 Writ Petition No.754 of 2009, decided on 30.01.2013

4 1995 (3) BCR 33

5 1995 (3) BCR 269

6 2001 (2) Bom CR 250

7 2014(1) ALL MR 530

8 1990 (1) Goa Law Times 116

9 Writ Petition No.326/1990 decided on 28.10.1999

10 1982 AIR (Goa) 13

11 (2019) 10 SCC 660

23. Mr Padiyar also submitted that the limited issue before the Tenancy Revisional Authority was whether the Rent Controller was justified in condoning the delay of hardly about thirty days in depositing the rent. Mr Padiyar submitted that this application was filed not by the petitioner but by John and Olga. He submitted that in such a revision application, the petitioner and her children were only formal parties. He submitted that behind their back, no application could have been filed under Section 32(4) or in any case, their eviction could not have been ordered without any notice to them. He submitted that John and Olga are colluding with the landlord, which is evident from the fact that John and Olga have not even bothered to challenge the eviction order. Mr Padiyar submitted that John and Olga are not the tenants or, in any case, they are not in possession of the suit premises, and therefore, they have nothing to lose if, in pursuance to the impugned order, the possession of the suit premises is restored to the landlord. For all these reasons, Mr Padiyar submitted that the impugned order warrants interference.

24. Mr Padiyar, on instructions, made a statement that some amount from out of the amount already deposited by the petitioner in this Court can always be paid to the landlord. Still, an effective opportunity must be granted to the petitioner to show cause why no order under Section 32(4) could have been made against her or her children. Mr Padiyar submitted that an application under Section 32(4) was not even maintainable before the Revisional Authority because the challenge before the Revisional Authority was only to an order condoning the delay of

about thirty days in depositing the rents. The Revision Application, therefore, did not qualify as proceedings to secure the eviction of the tenants.

25. For all the above reasons, Mr Padiyar submitted that the impugned order be set aside.

26. Mr Lobo, learned counsel for the landlord, defended the impugned order based upon the reasoning reflected therein. He submitted that the petitioner and her children were not the exclusive tenants of the suit premises. He submitted that, in any case, they were cantankerous and had wilfully and deliberately avoided paying or depositing the rent. He submitted that after the landlord filed an eviction case, there was no justification for the petitioner and her children not to deposit at least the admitted rent before the Rent Controller. He submits that there is no dispute about the default in depositing rents. He submits that the Revisional Authority was perfectly justified in ordering the petitioner's or her children's eviction from the suit premises by resorting to Section 32(4) of the Rent Control Act. He relies on *Smt. Gulbanoo Akbar Habib Velji v/s M/s. Goa Xavier Company (Pvt.) Limited*¹² and certain observations in *Bijay Kumar Singh and others (supra)*.

27. Mr Lobo also submitted that the document of 01.07.1962 is unsigned or, in any case, the same is a forgery. He submitted that the petitioner and her children, based upon the document of

¹² Writ Petition No.892/2019 decided on 20.01.2021

01.07.1962, cannot claim sole tenancy regarding the suit premises.

28. For all the above reasons, Mr Lobo submitted that this petition may be dismissed.

29. As noted earlier, the record bears out that the application under Section 32(4) filed by the landlord on 04.04.2019 was never served upon the petitioner or her children. In the Rent Revision proceedings, the only question involved was whether the Rent Controller's order condoning the delay on the part of John and Olga in depositing the rent was legal and justified. In such a revision application, it is reasonable to proceed on the basis that the petitioner and her children's presence was not strictly required. Even if the Revision were to be allowed, the same could not have directly resulted in the eviction of the tenants.

30. In any case, if the petitioner and her children were sought to be evicted by resort to Section 32(4), then at least the copy of the application under Section 32(4) should have been served upon the petitioner and her children before the impugned order evicting them was made by the Revisional Authority.

31. Section 32(4) of the Rent Control Act does not provide that no sooner there is any default on the part of the tenant in depositing the rent, the Rent Controller or the Appellate or the Revisional Authority must, in every case, stop all further proceedings and make a direction to the tenant to put the

landlord in possession of the building. Section 32(4) contemplates an opportunity for the tenant to show sufficient cause, not just for the default in the deposit of rent but why all further proceedings should not be stopped and an order made to put the landlord in possession of the building. This legal position is clarified by the several decisions relied upon by Mr Padiyar in support of this petition. The Revisional Authority, however, has not chosen to abide by this position. The Revisional Authority only focussed on the default without bothering to see whether there was sufficient cause not to stop further proceedings and evict the tenants. This legal error of approach vitiates the impugned order.

32. Some of the decisions relied upon by Mr Padiyar indicate that even a show cause notice was issued by the Rent Controller to the tenant to show cause as to why further proceedings should not be stopped and an order be made to put the landlord in possession of the building. Although Section 32(4) does not refer to the issue of any such show cause notice, from the wordings used in Section 32(4), it is clear that an opportunity must be granted to the tenant to show cause why all further proceedings must not be stopped and an order made to put the landlord in possession of the suit building.

33. Therefore, even if no formal show cause notice is insisted upon, from the text and the context of Section 32(4), it is evident that at least a copy of the application under Section 32(4) should have been furnished to the petitioner and her children before any

order for their eviction could have been made under Section 32(4) of the Rent Control Act. Since, admittedly, the copy of the application under Section 32(4) was never served upon the petitioner or her children, the petitioner or her children were deprived of the opportunity of showing cause why all further proceedings should not be stopped and why no order directing them to put the landlord in possession of the building should be made. This failure does amount to a breach of the principles of natural justice. This also amounts to depriving the tenants of the opportunity contemplated by Section 32 (4) of the Rent Control Act to show cause why all further proceedings should not be stopped, and an order of their eviction should not be made.

34. At this stage, it is not for this Court to go into the issue of the tenants' conduct or to decide whether the tenants had sufficient cause to show. Mr Lobo pointed out the apparent failure or delay in depositing rents. On the other hand, Mr Padiyar referred to the repeated attempts by the Petitioner to send the rent cheques, which the landlord repeatedly returned. The impugned order must go because no opportunity was granted to the Petitioner, and the Revisional authority incorrectly focussed only on the factum of default without bothering to allow the tenants to show cause why the further proceedings should not stop and eviction ordered.

35. On the above ground, the impugned order dated 26.07.2019 is hereby set aside, and the matter is remanded to the Revisional Authority to decide the application under Section

32(4) of the Rent Control Act afresh on its own merits and in accord with the law. All parties' contentions on the merits and maintainability of such an application are left open.

36. The record *prima facie* shows that on at least two to three occasions, the petitioner sent cheques to the landlord, which the landlord refused to accept. The petitioner also filed an application under Section 18 of the Rent Control Act for the rent deposit. There is a dispute between the parties about the quantum of rent. None of the authorities have resolved this dispute to date. There is also a dispute about whether the petitioner and her children are the exclusive tenants or only the co-tenants, along with John and Olga. Considering the fact that it was the petitioner who had on at least three occasions sent cheques towards arrears of rent to the landlord, the copy of the application under Section 32(4) should have been served upon the petitioner, and the petitioner should have been granted a reasonable opportunity of showing cause as to why further proceedings should not be stopped or why an order of eviction should not be made against the petitioner and her children.

37. At the same time, the landlord deserves compensation because there is no record of the petitioner and her children depositing the rent before the Rent Controller or the Revisional Authority. The petitioner claims to be carrying on the printing press business from the suit premises. However, even the admitted rents were not deposited by the petitioner before the Rent Controller or the Revisional Authority. Mr Padiyar, on

instructions, stated that this Court could make orders for payment of some amounts to the landlord from out of the amount of ₹11,75,000/- deposited by the petitioner. The Petitioner was directed to deposit this huge amount because the Petitioner was suffering an eviction order that was being stayed. Even the Landlord had claimed rent of ₹3000 per month and not ₹25000 per month.

38. Accordingly, by balancing the equities, the landlord (respondent no.1) is permitted to withdraw an amount of ₹5,00,000/- from out of the amount deposited by the petitioner in this Court. The Registry must transfer the balance amount to the Revisional Court. The status of such amount will abide by the orders that the Revisional Authority will make in Rent Revision Application No.10/2016 and the application under Section 32(4) of the Rent Control Act filed by the landlord therein.

39. The parties to appear before the Revisional Authority on 09.08.2023 at 10.00 a.m. and file an authenticated copy of this order. The registry to ensure that the record and proceedings are sent to the Revisional Authority at the earliest or in any case before 09.08.2023.

40. Suppose parties other than the petitioner and respondent no.1 do not appear on the said date. In that case, the Revisional Authority will issue notices to such parties by fixing any

appropriate date. Further, the application under Section 32(4) of the Rent Control Act must be served upon all such parties, and all parties must be granted an opportunity to show cause in terms of Section 32(4) of the Rent Control Act. All contentions of all parties in this regard are expressly kept open.

41. The rule is made absolute in the above terms.

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

M. S. SONAK, J.

SUCHITRA
NANDAN
SINGBAL

Digitally signed by
Suchitra Nandan
Singhal,
DN: c=IN, o=, ou=, email=singhal@nic.in, cn=Suchitra Nandan
Singhal