

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 435 OF 2022

Gangadhar R. Shanbhag
aged 70 years, Flat No.2, 1st Floor,
Mulla Building, Opp Cine Aaisha,
Ponda, Goa.

.... Petitioner.

Versus

Mulla Issub (since deceased)
through Legal Representatives
1a. Smt. Sagira Bi Mula,
Widow of Mulla Issub,
aged 73 years
1b. Mr. Mulla Mustak,
Son of Mulla Issub, aged 50 years
1c. Mr. Mulla Ikhlak
Son of Mulla Issub, aged 52 years
1d. Mulla Rafat
Son of Mulla Issub, aged 35 years
1e. Mrs. Sayeda Bi
Daughter of Mulla Issub, aged 54 years
1f. Mrs. Famida Bi
Daughter of Mulla Issub, aged 49 years
1g. Mrs. Saeeda Bi
Daughter of Mulla Issub, aged 46 years
All residing at Shapur, Bandora Goa

.... Respondents.

Mr Jayant Umesh Karn, Advocate *for the Petitioner.*

Mr Premanand A. Kholkar, Advocate *for the Respondents*
No.1(a) to 1(g).

CORAM : M. S. SONAK, J.

DATE : 21st APRIL 2023

ORAL JUDGMENT :

1. Heard Mr Karn for the Petitioner and Mr Kholkar for Respondents No.1(a) to 1(g).
2. Rule. The rule is heard immediately with the consent of and at the request of the learned Counsel for the parties.
3. The Petitioner challenges the Judgments and Orders dated 21/9/2005 and 16/3/2017, passed by the Rent Controller and the Appellate Authority (District Judge-1, North Goa at Panaji), concurrently holding that the Respondent-landlord had proved that he requires the tenanted premise for his own occupation bona fide and further that the Petitioner (tenant) had acquired vacant possession of other premises within an area of 5 km. radius from the tenanted premises. Based on these grounds, the two Courts have ordered the Petitioner's eviction from the suit premises.
4. Though the Appeal Court order was made on 16/3/2017, this Petition was instituted only on 22/10/2021, *i.e.* after almost four and half years. Mr Karn has, however, explained that the Petitioner suffered from heart ailments, which were followed by the COVID pandemic, and, therefore, this Petition could not be filed earlier. Mr Karn also explained that the Petitioner's Advocate did not keep

him posted on the developments of the matter. He also complained about the landlord filing for execution after some delay.

5. The explanation is entirely frivolous. The explanation smacks of mala fides because the Petitioner has taken full advantage of his delay. The Petitioner was most irregular in paying the paltry and agreed rent during the pendency of proceedings. However, even on merits, the Petitioner has made out no case whatsoever for interference with the concurrent findings of fact. Therefore, instead of dismissing this Petition on the ground of delay and laches, Mr Karn, learned Counsel for the Petitioner, was heard on the merits of the matter.

6. Mr Karn learned Counsel for the Petitioner has submitted that no adequate opportunity was granted to the Petitioner to present his case. He offers that though the matter may have been adjourned on several occasions, the same was for good and sufficient reasons. He submitted that the Petitioner was the General Manager of E.D.C. Ltd. and had to attend meetings, interviews, and even Assembly Sessions. He referred to the provisions of Section 22(2) of The Goa Buildings (Lease, Rent & Eviction) Control Act, 1968 (Rent Control Act) to submit that the Controller, after giving the tenant reasonable opportunity of showing the cause, can make an eviction order. He offers that no such reasonable opportunity was granted to the Petitioner.

7. Mr Karn admitted that the Petitioner had purchased alternate premises. But, Mr Karn submitted that these alternate premises were purchased for the residence of the Petitioner's parents, unemployed brother, and his family members. He proposes that in such circumstances, the provisions of Section 22(2)(e) of the Rent Control Act would not be attracted. He submits that such provisions are attracted only when the tenant builds or acquires vacant possession or has been allotted a residence. He submits that none of these three contingencies are attracted in the present case and, therefore, no eviction could have been ordered on the said ground.

8. Mr Karn submits that the landlord did not establish even the ground of bona fide personal occupation in this case. In his written statement, the Petitioner pleaded that the landlord has a palatial house of eight rooms and, therefore, there was no necessity to secure the Petitioner's eviction. He, therefore, submits that the ground under Section 23(1)(a) of the Rent Control Act was not made out.

9. Mr Karn submitted that the Rent Controller discarded the Petitioner's evidence because the Petitioner could not remain present to face the cross-examination. However, the Appellate Authority committed an error apparent on the face of the record by

relying upon the Petitioner's evidence to dismiss the Petitioner's appeal.

10. Mr Karn submits that this Petition be allowed for all the above reasons.

11. Mr Kholkar, learned Counsel for the legal representatives of the deceased landlord, submits that this is a case of concurrent findings of fact, which suffer from no perversity. Therefore, this Court should dismiss this Petition. He pointed out that more than ample opportunities were granted to the Petitioner, who was bent on delaying the matter to the landlord's detriment. Mr Kholkar pointed out that both the grounds of eviction were proved based upon compelling evidence from the landlord. He submitted that the Petitioner led no contrary evidence. He offered that in such matters, the landlord is not required to establish some dire need which, in any case, was found in the present case. He pointed to the irregularity in the deposit of rents during the pendency of the proceedings and how the Petitioner did not pay market rate compensation since 2005 after his eviction was ordered.

12. For all the above reasons, Mr Kholkar submitted that this Petition may be dismissed with exemplary costs.

13. Rival contentions now fall for my determination.

14. Apart from the issue of delay and laches, as noted earlier, this Petition also deserves to be dismissed on merits. The eviction proceedings were instituted in 1998. The Petitioner, by delaying the proceedings before the Rent Controller and by delaying even the institution of this very Petition, has succeeded in continuing in the tenanted premises for almost 25 years since the eviction proceedings were instituted in 1998. Mr Kholkar pointed out that though the rent was only ₹500/- per month, the Petitioner was most irregular in paying the same.

15. To the Court's query as to whether the Petitioner deposited the rent before the Rent Controller or the appeal Court during the pendency of the proceedings, Mr Karn responded that since the relationship between the Petitioner and the landlord was cordial, the amounts used to be directly deposited in the landlord's bank account. But, again, nothing was produced to make good this submission across the Bar.

16. Regarding reasonable opportunity, the Rent Controller has noted that the Petitioner sought several adjournments to commence his evidence. Finally, the Petitioner's examination-in-chief was partly recorded on 18/6/2003. But, again, the Petitioner remained absent by giving one reason after another. The Rent Controller has referred to Roznama to show that ample opportunities were given to the Petitioner to complete his evidence.

However, despite the opportunities, the Petitioner remained absent or avoided facing cross-examination. Therefore, the Rent Controller, by order dated 29/3/2004, *i.e.* almost nine months after the examination-in-chief was partly recorded, closed the Petitioner's evidence.

17. Nothing has been pointed out to contradict the findings of the Rent Controller. The findings are based on the Roznama entries. Accordingly, the Petitioner cannot complain about the lack of reasonable opportunity. The Petitioner was granted more than ample opportunities even though this was at the cost of the landlord, who ultimately expired during these proceedings' pendency. Therefore, the contention about lack of reasonable opportunity is, hereby, rejected.

18. Regards the second contention concerning ground in Section 22(2)(e) of the Rent Control Act, reference is necessary to the provisions in the said section. The same are transcribed below for convenience:

"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) ...

(d) ...

(e) that the tenant of a dwelling house has, whether before or after the commencement of this Act, built, acquired vacant possession of, or been allotted a residence 13[within an area of five kilometers radius for the outer limits of the city or village as the case may be, where such dwelling house is situated]."

19. In the present case, the landlord clearly pleaded to the requirements of the above ground by pointing out how the Petitioner had acquired vacant possession of alternate premises within the limits prescribed under the said section. Further, the landlord also led compelling evidence to prove this aspect.

20. In paragraph 9 of his written statement, the Petitioner did not deny the factum of the purchase of alternate residential premises. However, he claimed that this Flat was acquired in his name, and the same was not for his benefit but for the benefit of his parents and younger brother Vinayak. He further pleaded that his aged parents also reside in the acquired flat.

21. Paragraph 9 of the Petitioner's written statement reads as follows :

"9. With reference to para 4 of the application respondent states that the Flat which is acquired in the name of the respondent is not for the benefit of the respondent himself but it is for the benefit for his uneducated younger brother

by name Shri Vinayak who has established an independent family unit distinct from the family unit of the respondent. The aged parents of the respondent are also residing in the said acquired Flat."

22. There are further pleadings to the same effect in paragraphs 12, 15 and 20 of the written statement, which has been placed on record by Mr Kholkar, learned Counsel for the Respondents. The Petitioner conveniently suppressed this written statement though interim relief was sought in this Petition and pressed ex-parte once a warrant of possession was served on him.

23. Based on the landlord's evidence, the two courts have recorded concurrent findings that the Petitioner indeed acquired vacant possession of alternate premises. On the date when the Petitioner purchased the alternate premises, it is evident that he was put in vacant possession of the same. The alleged circumstance that the Petitioner has permitted his younger brother and his parents to reside in such alternate premises is, by no means, sufficient to ward off eviction on the ground contemplated by Section 22(2)(e) of the Rent Control Act.

24. The two Courts have held that the Petitioner's case is unbelievable. This finding deserves to be accepted. The Petitioner, in this case, insists on occupying the tenanted premises which, the two Courts have stated, in the heart of Ponda city by paying a

meagre rental of ₹500/- per month. At the same time, the Petitioner has admitted to having the financial capacity to purchase alternate premises in or around the same locality. Mr Karn states that these premises were to settle the Petitioner's younger brother and his parents. The Petitioner is, no doubt, entitled to adopt such a charitable attitude, but the same should be at his own costs, not at the landlord's costs. As it is, the Petitioner has failed to prove his version, however frivolous such a version may be. Despite several opportunities, the Petitioner failed to offer himself for cross-examination.

25. As noted earlier, the Petitioner only deposed by the examination-in-chief but failed to offer himself for cross-examination even though he was granted several opportunities. In his examination-in-chief, the Petitioner admitted executing the agreement with the builder. The appeal Court has observed that the Petitioner was not regular in depositing the rent.

26. Mr Karn's contention about the appeal Court looking into the examination-in-chief of the Petitioner is entirely misconceived. The Rent Controller did not look into the Petitioner's examination-in-chief because as the same was not tested by cross-examination. However, there could be no bar to consider the Petitioner's examination-in-chief to the extent this examination contained admissions against his interest.

27. Thus, the evidence on record, including the admissions of the Petitioner in the pleadings and the examination-in-chief, was more than sufficient to prove the ground under Section 22(2)(e) of the Rent Control Act. Moreover, the landlord had also led independent evidence to prove this ground.

28. As far as the ground of bona fide personal occupation is concerned, the two Courts have concurrently held the requirement of this ground as proved. The Petitioner or his Counsel demonstrates no perversity. Merely stating in the pleadings that the landlord has a palatial mansion of eight rooms is insufficient. The two courts have considered the evidence on record and the law on the subject.

29. In such matters, the landlord's assessment must be respected. The tenant cannot dictate terms to the landlord. The landlord need not prove any dire necessity, but at the same time, there must be a necessity and not merely some desire, as was correctly pointed out by Mr Karn, learned Counsel for the Petitioner. By applying correct principles, the two Courts have recorded concurrent findings of fact.

30. On the aspect of comparative hardship, there is evidence from the landlord. However, there is no evidence from the Petitioner-

tenant even though the onus had shifted upon the Petitioner, given the evidence led by the landlord on this issue.

31. Accordingly, both the grounds of eviction are made out. Moreover, the concurrent findings of fact warrant no interference. The Petitioner has successfully prolonged the eviction proceedings for almost 25 years, during which the original landlord expired. Moreover, the record shows that the Petitioner did not bother to regularly pay the monthly rent of ₹500/- regarding the tenanted premises. Therefore, the submission across the Bar about the cordial relationship is misconceived and not established. Moreover, such a relationship is no defence for not depositing even the admitted and paltry rents during the pendency.

32. Typically, in such matters, the Petitioner should have been required to at least deposit compensation at market rate after the eviction decree was made against him by the Rent Controller on 21/9/2005 or at least by the Appeal Court on 16/3/2017. However, the Petitioner has avoided all this by instituting the Petition almost four years after the dismissal of his appeal.

33. Mr Karn submitted that even the landlord was to be blamed for filing the execution proceedings after 2-3 years from a dismissal of the appeal. This submission is quite unfortunate because even the landlord must have been affected by the COVID pandemic.

But, in any case, any delay on the landlord's part was to his detriment and not the Petitioner's detriment. The Petitioner continued in the premises despite the eviction orders and without any stay on the execution.

34. Accordingly, this is a fit case for dismissal of this Petition with exemplary costs. Costs, to some extent, should compensate the L.R.s of the deceased landlord for the compensation amount which they would have otherwise been entitled to given the law in *Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd.*¹; *Heera Traders vs. Kamla Jain*² and *State of Maharashtra and anr. vs. Super Max International Pvt. Ltd. and ors.*³

35. The evidence on record shows that the tenanted premises were situated in the heart of Ponda town. Furthermore, the tenanted premises is flat which admeasures 95 sq. metres. Accordingly, even on a conservative basis, the market rent would be at least 5,000/- per month, accepting Mr Karn's contention that the building was 40 years old. However, Mr Kholkar maintains that the monthly market rent is Rs 15000.

36. Considering the above factors, this Petition is dismissed with 1,00,000/-costs payable within six weeks from today. The cost

1. (2005) 1 SCC 705

2. 2022 SCC OnLine SC 220

3. (2009) 9 SCC 772

amount must be deposited in this Court within four weeks from today. Upon deposit, the Respondents will be entitled to withdraw the same unconditionally.

37. Mr Kholkar points out that execution has already been lodged in 2018, and the order of warrant of possession has already been issued. Accordingly, the execution is to proceed in accordance with the law.

38. At this stage, Mr Karn, based on instructions from the Petitioner in the Court, requests that the Petitioner be granted six months' time to vacate the tenanted premises. He states that the Petitioner will file necessary undertakings and pay compensation at the rate of 5,000/- per month for occupation for six months.

39. Accordingly, subject to the Petitioner filing an undertaking within seven days from today, and furnishing an advance copy of the same to Mr Kholkar, learned Counsel for the Respondents, the execution is stayed for six months from today. Further, as a condition for this stay, the Petitioner should deposit costs of 1,00,000/- within six weeks and an advance compensation of ₹ 30,000/- (5000 x 6 months). In the undertaking, the Petitioner should specify that presently he is in possession of the tenanted premises. Further, he will not create any third-party rights or part with the possession of the tenanted premises. The undertaking

should also clearly state that the Petitioner and his family members will vacate the tenanted premises on or before 31/10/2023 without giving any excuses. Finally, the key must be deposited in this Court with notice to Mr Kholkar.

40. Mr Karn, on instructions, states that such an undertaking will be filed within seven days from today after giving an advance copy to Mr Kholkar. Mr Karn further says that the Petitioner has been apprised of the implications of providing such an undertaking to the Court.

41. The Petition is disposed of in the above terms.

The rule is discharged. Interim relief, if any, is modified in the above terms.

42. All concerned to act based on an authenticated copy of this Judgment and Order.

M. S. SONAK, J.

SANTOSH S. MHAMAL
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SANTOSH S. MHAMAL
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