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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10195 OF 2023

Shakuntala Shankar Gujar (since deceased)
through legal heirs Sunita Vijay Gujarathi and ors. .Petitioners

Versus

Anant Shankarsa Gujrathi (since deceased)
through legal heirs Girish Anant Gujrathi and ors. .Respondents

Mr. Moin Chowdhari a/w Mr. Sachin Bhaskar, Advocate, for the
Petitioners

Mr. Vivek Salunke a/w Mr. Anuj Tiwari, Advocate, for the Respondents

CORAM : MADHAV J. JAMDAR, J.
DATE : 19th AUGUST 2023

P. C.:

1. Heard Mr. Moin Choudhary along with Mr. Sachin Bhaskar,
learned counsel appearing for the Petitioners and Mr. Vivek Salunke,
learned counsel appearing for the Respondents.

2. By way of the present Writ Petition filed under Articles 226
and 227 of the Constitution of India, the Petitioners-Tenants are
challenging the legality and validity of the Judgment and Decree dated
10th July 2012 passed by the learned Civil Judge Junior Division, Karjat,
District Raigad in Reg. Civil Suit No.112 of 2009 as well as the legality

and validity of the Judgment and Decree dated 7th February 2020 passed by the learned Ad hoc District Judge-I, Panvel, District Raigad in Regular Civil Appeal No. 112 of 2009.

3. It is the contention of the learned counsel appearing for the Petitioners that the entire plaint does not set out under which Act the suit has been filed i. e. under the Maharashtra Rent Control Act, 1999 (hereinafter referred to as “**M. R. C. Act**”) or under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as “**Bombay Rent Act**”). It is the contention of the Petitioners that various averments in the plaint show that it has been filed under the provisions of the Bombay Rent Act as the contentions are raised regarding acquisition of alternate premises, a ground which is no longer available under the M. R. C. Act. It is submitted that the learned Trial Court has framed issue nos. 2 and 3 regarding acquisition of premises at Dinkar apartment and bungalow – double storeyed building at MHADA Colony and therefore, it is clear that the Suit has been filed under the provisions of the Bombay Rent Act. It is submitted that as the Bombay Rent Act is repealed by Section 58 of the M. R. C. Act and as the M. R. C. Act has come into force w. e. f. 31st March 2000, the suit which has been filed on 5th November 2009 under the provisions of the Bombay Rent Act is not maintainable at all. It is submitted that the

Appellate Court has, in fact, held that the provisions of the Bombay Rent Act are applicable and therefore, both the Courts have committed material irregularity.

4. It is submitted that a reasonable cause exists for non-user of the suit premises, as the Defendant No.1 – Shakuntala Gujar who was occupying the suit premises was unwell and therefore, she was sometimes residing in Dinkar Apartment, sometimes in the bungalow at MHADA colony and sometimes in the suit premises. Reliance is placed upon the medical certificate issued by Dr. P. M. Kale dated 1st October 2009.

5. It is also a submission of learned counsel appearing for the Petitioners that the original tenant was Shankar Gujar. He passed away on 22nd October 2008 and on his death, he was survived by his wife - Shakuntala as well as three daughters and one son. It is the submission of the Petitioners that said three daughters were not made parties to the suit and therefore, the suit is bad for non-joinder of necessary parties.

6. On the other hand, Mr. Vivek Salunke, learned counsel appearing for the Respondents submitted that the suit, in fact, has been

filed under the provisions of the M. R. C. Act. The suit has been filed *inter alia* on the ground of non-user and default in payment of rent. He submitted that the contentions regarding acquisition of alternate premises were raised to support the ground of non-user. Mr. Salunke admitted that there is some confusion in the Judgment of the Appellate Court regarding applicability of the Bombay Rent Act. He submitted that the said observations more particularly, in paragraph 14 are not proper. He submitted that as the M. R. C. Act came into force on 31st March 2000 and the suit has been filed on 5th November 2009 and therefore, there is no question of applicability of the Bombay Rent Act to the suit which has been filed in the year 2009. However, he submitted that the ground regarding non-user is identical as in the Bombay Rent Act as well as the M. R. C. Act and therefore, there is no miscarriage of justice or no prejudice which has been caused to the Petitioners. He submitted that both the Courts have concurrently held that the suit premises were not used for more than six months immediately prior to before the institution of the suit. He submitted that as far as default in payment of rent is concerned, both the Courts have concurrently held that the tenant has committed default.

7. As far as the contention regarding non-joinder of necessary parties is concerned, it is the submission of Mr. Salunke, learned

Counsel that as per the provision of Section 7(15) of the M. R. C. Act, where the premises are let for residence, any member of the tenant's family who is residing with the tenant at the time of his death, becomes the tenant or, in absence of such member, any heir of such deceased tenant, as may be decided, in the absence of agreement, by the Court. He submitted that all the sisters were staying at difference places i. e. at Nashik, Thane and Nanded. He submitted that original tenant - Shankar Gujar passed away on 22nd October 2008 and at that time, Defendant No.1 i.e. widow of Shankar Gujar viz. Shakuntala Gujar and Defendant No.2 – Sanjay Gujar were residing with deceased Shankar Gujar – tenant and therefore, they are the tenants of the suit property and in view thereof, they have been impleaded as defendants. He therefore, submitted that there is no substance in the said contention. He pointed out various admissions by the witness for the defendants and submitted that Defendant No.1 has moved to Dinkar Apartment and Defendant No.2 has moved to the bungalow in MHADA colony. He pointed out that suit notice dated 30th July 2009 as well as the suit summons were served on these defendants on the said respective addresses.

8. He, therefore, submitted that no interference is warranted by this Court under Articles 226 and 227 of the Constitution of India.

9. The factual position on record shows that the suit was filed on 5th November 2009. The M. R. C. Act came into force w. e. f. 31st March 2000 and by its Section 58, the Bombay Rent Act was repealed. Therefore, it is very clear that the Act which is applicable and in force is M. R. C. Act and thus, the observations of the Appellate Court that Bombay Rent Act is applicable are totally wrong.

10. In view of the above referred observations of the learned Appellate Court, it is the contention of the learned counsel appearing for the Petitioners that the matter is required to be remanded to the learned Appellate Court by quashing and setting aside its Judgment and Decree dated 07.02.2020. However, it is to be seen that the grounds of eviction are non-user of tenanted premises and default in payment of rent. Both these grounds were available under the Old Statute i. e. the Bombay Rent Act as also available under the New Statute i. e. M. R. C. Act.

11. To appreciate the contention raised by Mr. Salunke, learned counsel, as far as ground of non-user is concerned, that the provisions in both the Acts are identical, it is necessary to set out the relevant provisions of the Bombay Rent Act and the M. R. C. Act, which read as

under :-

The Bombay Rents, Hotel & Lodging House Rates Control Act, 1947

“13. When landlord may recover possession

(1) Notwithstanding anything contained in this Act but subject to the provisions of sections 15 and 15A, a landlord shall be entitled to recover possession of any premises if the Court is satisfied--

(k) that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit; or”

The Maharashtra Rent Control Act, 1999

“16. When landlord may recover possession

(1) Notwithstanding anything contained in this Act but subject to the provisions of section 25, a landlord shall be entitled to recover possession of any premises if the Court is satisfied--

(n) that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit.”

Thus, it is clear that the provisions in both the statutes are identical.

12. As far as non-user is concerned, Section 16(1)(n) of the M. R. C. Act provides that the landlord shall be entitled to recover possession of any premises, if the Court is satisfied that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit. Although the issue regarding acquisition of alternate premises is framed by the learned Trial Court, Mr. Salunke, learned counsel is right in contending that the said contention regarding acquisition of alternate premises is in aid of the ground of non-user.

13. In the plaint, it is specifically mentioned that the Defendant No.1 has acquired the premises in Dinkar apartment and the said premises were purchased on 11th July 2007. It is also mentioned in the plaint that the Defendant No. 2 has constructed a bungalow at MHADA colony, Karjat and that they have moved to the said bungalow about eight years ago. In paragraph 3 of the plaint, it is specifically mentioned that w. e. f. 11th July 2007 none of the defendants are staying in the suit premises and the suit premises has been kept locked. The suit has been filed on 5th November 2009. Both the Courts have concurrently held that the defendants have shifted to the alternate premises at least w.e.f.

11th July 2007 and the suit premises is not being used and it has been kept locked. It is significant to note that the suit notice dated 30th July 2009 was served on Defendant No.1 at her address at Dinkar apartment and on Defendant No. 2 at the address of bungalow constructed at MHADA colony.

14. Learned counsels appearing for the Petitioners have strongly relied on the receipts issued by the Maharashtra State Electricity Distribution Co. Ltd. to contend that the suit premises are being used. However, noting on the said bills specifically state that the premises are not in use and therefore, the minimum charges are levied.

15. As far as the factual position regarding acquisition of alternate premises is concerned, the defendants have, in fact, accepted the same. It is also accepted that Defendant No. 2 is not residing in the suit premises and is residing at bungalow constructed in MHADA Colony. Even that Shakuntala (Defendant No. 1) (now deceased) was not residing in the suit premises is also an accepted position. The only explanation given is that as she was suffering from HBPC, joint pain, weakness and depression, she was advised to take rest and therefore, she moved to Dinkar apartment as the said apartment has a separate washroom. To substantiate said contention, a Medical Certificate is

produced. However, except the said medical certificate, there is no other documentary evidence on record to show that the Defendant No.1 moved to Dinkar apartment for the above mentioned reason. It is also significant to note that the Defendants have not produced any documentary evidence to substantiate said contention that Defendant No. 1 moved to the said Dinkar apartment due to her medical condition. The Plaintiff examined himself to prove the case and the Defendants examined Defendant No. 2 – Sanjay Shankar Gujar as D.W.1. He is the only witness examined on behalf of the Defendants. The said D.W.1 was cross-examined on 10th January 2012 and he admitted that there is no Medical Certificate produced regarding health condition of his mother. After the evidence was closed on 10th January 2012, the Defendants along with list of documents dated 16.01.2012 produced said Medical Certificate dated 01.10.2009. Thus, the said Medical Certificate is not reliable.

16. It is an admitted position that the Deceased Defendant No.1 had moved to Dinkar apartment premises and Defendant No.2 moved to the bungalow constructed at MHADA colony at Karjat long ago before filing of the suit. Both the Courts have concurrently held that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months

immediately preceding the date of the suit. Both the Courts have concurrently found that the ground of non-user is proved. Learned counsel appearing for the Petitioners has failed to point out any material on record to show that the said finding is not in accordance with the evidence on record.

17. Therefore, this is not a case where interference of this Court is warranted under Articles 226 and 227 of the Constitution of India. Accordingly, this Writ Petition is dismissed, however, with no order as to costs.

[MADHAV J. JAMDAR, J.]