

CASE NO.:
Appeal (civil) 5326 of 2007

PETITIONER:
Usha P. Kuvelkar & Others

RESPONDENT:
Ravindra Subrai Dalvi

DATE OF JUDGMENT: 20/11/2007

BENCH:
G.P. Mathur & V.S. Sirpurkar

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) No.21031 of 2006)

V.S. SIRPURKAR, J.

1. Leave granted.

2. In this appeal the legal heirs of the Original Landlord have come up to challenge the judgment of the High Court of Bombay at Goa, whereby the learned Single Judge of that Court set aside the orders of the two authorities below and remanded the matters for fresh adjudication. The tenant-respondent herein had filed a Civil Revision Application as also the Writ Petition and it was by a common judgment that the said Civil Revision and the Writ Petition came to be disposed of. The basic facts are as follows.

3. That Late Prabhakar Govind Sinai Kuvelkar was, admittedly, the owner of the premises in question being Flat No.C-S-40(5). This was a flat in Cooperative Housing Society called Adarsha Cooperative Housing Society Ltd., Caranzalem, Goa. The said flat was leased out to the tenant-respondent herein for an initial period of 11 months vide Lease Deed dated 31.12.1977 and the said tenancy was continued by the landlord-appellant even after the expiry of 11 months as he was unable to occupy the said flat at that point of time. An application came to be filed on 3.7.1986 being Eviction Case No.8 of 1987 before the Additional Rent Controller, North Goa, Panaji on the ground that the said premises was required for his own personal occupation and also for the members of his family. It was also alleged that the tenant-respondent was in arrears of rent and had also defaulted in making payment of municipal tax. During the pendency of the eviction petition, the landlord-appellant started suffering from heart problems and required continuous treatment of Dr.S.V. Bhandare of Panaji and, therefore, preferred an amendment application to bring on record the subsequent facts as also to substantiate the claim of his own personal requirement. It was also pointed out that the wife of the landlord-appellant had developed Rheumatoid disease and was also under the constant care of Dr.S.V. Bhandare of Panaji. The landlord-appellant pointed out that on account of the above ailment, the need to shift to Panaji became even more acute. The landlord also pleaded in the said amendment application a new ground which became available in view of amendment of Section 23-A of the Goa Daman & Diu Building (Lease, Rent & Eviction) Control Act, 1968 (hereinafter referred to as 'the Act') introduced during the pendency of the eviction case. This amendment to the Section came into force with effect from 22.2.1988 and by the said amendment a right was provided to the landlord to recover immediate possession of the premises if such landlord was an employee of the State Government and had duly retired and required the premises for personal bonafide occupation for himself or any member of his family. In fact the amendment provided for summary procedure for eviction. It was pointed out that the landlord had retired from service on 31.5.1983 and as such required the premises for his own bonafide occupation.

4. Voluminous evidence came to be introduced about the critical medical condition of the landlord and that of his wife by filing medical certificates issued by Dr.S.V. Bhandare and by examining him in support of the need on the part of the landlord to stay at Panaji to avoid stress and strain of frequent traveling. This was opposed by the tenant-respondent herein on the ground that there were no such medical problems on the part of the landlord and his wife and the house in question was also not convenient as it was on second floor. The landlord also reiterated that he was a retired State Government servant and had no house at Panaji though he owned house in Ponda city, away from Panaji and that he required the house for his bonafide occupation. On this basis the Additional Rent Controller considered the entire evidence and allowed the application. The appeal filed by the tenant-respondent before the Appellate Authority was also dismissed. Thus on facts both the authorities held the need of the landlord to be bonafide and also accepted the contention based on Section 23A(3) of the Act. It was also held that the landlord had retired as a Government servant and since he did not have any other house in Goa and wanted to stay bonafide in his house at Goa, he was justified in making the application for eviction. Thus, the application was allowed by both the courts below under Section 23(1)(a)(i) as also Section 23A(3) of the Act. The Appellate court also pointed that in respect of the findings of the Additional Rent Controller on the contention based on Section 23A(3), no appeal lied against the orders passed under Section 23A(3) which was barred specifically under Section 23A(1)(3A)(h) of the Act.

4. The tenant-respondent preferred a Petition against the concurrent orders of the Additional Rent Controller and Administrative Tribunal, Goa, Daman & Diu at Panaji. The writ petition came to be filed against the finding under Section 23(1)(a)(i), while subsequently a Revision Petition was filed against the findings under Section 23A(3) of the Act as recorded by the Rent Controller. The High Court allowed both the petitions and in so far as the Revision Petition is concerned, the matter has been ordered to be remanded back to Additional Rent Controller, whereas in so far as the Writ Petition is concerned, the matter has been remanded to the Administrative Tribunal. It is this common judgment which falls for our consideration in the present appeal at the instance of the Legal Heirs of the original landlord since it is reported that during the pendency the landlord had expired.

5. Shri Dhruv Mehta, the learned Advocate appearing on behalf of the landlord-appellant firstly contends that the High Court has gravely erred in setting aside the findings of fact recorded by the Additional Rent Controller and the Appellate Authority under Section 23(1)(a)(i) of the Act whereby both the authorities had concurrently found that the bonafide personal need of the landlord has been proved. He also invited our attention to the fact that the amended Section 23A was applicable specifically to the pending proceedings also and as such the Additional Rent Controller was perfectly justified in granting the application on the additional ground raised by way of an amendment under Section 23A of the Act. As against this the learned counsel for the tenant-respondent supported the order of the High Court and pointed out that the amended Section 23A was not available to the landlord and the Additional Rent Controller could not have given the relief under that Section and, therefore, the remand was justified. It was also suggested that Section 23A(3) was not retrospective and did not apply to the pending proceedings and that because of the further amendment to that Section in the year 1994, the landlord had lost the right as the categories of landlords named in that amended Section were amended and the Government Servant was removed therefrom. Learned counsel also feebly tried to argue that since during the pendency of the appeal the original landlord had expired, there was no question of his bonafide need remaining alive and that the High Court was justified in remanding the matter.

6. We have carefully seen all the three orders, i.e., of Additional Rent Controller, Administrative Tribunal and that of the High Court. We find ourselves unable to agree with the findings of the High Court in para 3 of its judgment that the order of the Additional Rent Controller is cursory and

sketchy and that the Additional Rent Controller has not taken into account various aspects pertaining to the dispute. On the other hand a glance at the order of the Additional Rent Controller suggests that he has not only meticulously referred to the pleadings of the parties in detail but has discussed the whole evidence whereafter he has recorded finding to the effect that the landlord was suffering from heart problem and his wife was suffering from Rheumatoid disease that required the medical treatment from Dr.S.V. Bhandare from Panaji and that for that purpose they were required to live at Panaji instead of taking stress and strain of traveling from Ponda to Panaji. It was also recorded by the Additional Rent Controller that the applicant was a Government servant having retired from service in 1983 and he was not having any residential accommodation in or around Panaji City. The Additional Rent Controller thus, in so far as the merits of the matter under Section 23(1)(a)(i) are concerned, has given a proper finding of fact.

7. In so far as amended Section 23A(3) is concerned, the Additional Rent Controller has considered the whole Section and has recorded a specific finding in favour of the landlord. The Additional Rent Controller has also considered the contention raised by the tenant that the amended Section would not be applicable to the case of the landlord because he had retired earlier on 31.5.1983 and has correctly given a finding that Section 23A is operative and effective from 22.2.1988. The Additional Rent Controller has correctly held that since the amendment was made applicable even to the pending proceedings, the present case would be covered by the amendment. It was not disputed very seriously that the landlord was in fact the Government servant and had retired from service on 31.5.1983. therefore, in our opinion on both the counts the landlord-appellant had proved his case.

8. We have carefully seen the judgment of the Administrative Tribunal also which judgment shows that the Tribunal has confirmed the findings of fact firstly on the question of Section 23(1)(a)(i) and held that the landlord had proved his bonafide need for personal occupation. The Tribunal has also referred to the medical certificate (Exhibit 4) in respect of the landlord himself and medical certificate (Exhibit 5) in respect of his wife. It has also referred to the evidence of AW1 Shyam Bhandary who has issued those certificates. In paras 7, 8 and 9 of the judgment the Appellate Tribunal has correctly considered the need independently of the Rent Controller's order. He has also correctly held that the need of the landlord was genuine, honest and in good faith.

9. We are fully satisfied with both the orders. On this backdrop we find the order of the High Court to be sketchy and laconic. Beyond saying that the Additional Rent Controller has not applied his mind, the High Court has not considered anything. As regards Section 23A(3), the High Court has actually avoided to give a finding whether it is retrospective or prospective by merely saying that the Tribunal had not given that finding. In our opinion it was not necessary for the Tribunal to give that finding at all for the simple reason that the appeal against the order passed under Section 23A(3) was not maintainable at all. The High Court completely ignored the fact that there was a Civil Revision against that finding. Even assuming that such a Civil Revision was maintainable, the High Court was bound to consider the question of its prospective or retrospective operation. Very strangely, the High Court has remanded the proceedings in the Civil Revision to the Additional Rent Controller. At the same time, the High Court has remanded the proceedings in the writ petition to the Administrative Tribunal for adjudication. Further, at the same time, a fresh opportunity has been given to the parties to lead evidence. We do not know as to how the Administrative Tribunal, which is an Appellate Authority would be taking the evidence. In our opinion, the judgment of the High Court is completely erroneous.

10. We are convinced that the findings of the learned Additional Rent Controller as also the Administrative Tribunal on the bonafide need of the landlord are correct and the High Court has gravely erred in setting aside the concurrent findings of fact that too without giving any reasons worth the name. Therefore, on that question itself the landlord-appellant (his legal heirs) should succeed.

11. It was tried to be argued by the learned counsel for the respondent that since the landlord had died, the need had expired with him and that the question will have to be examined again regarding the bonafide personal need of the landlord. The question is no more res integra and is covered by the decision of this Court in Shakuntala Bai & Others vs. Narayan Das & Ors. [(2004) 5 SCC 772]. This Court has observed:
\023\005.The bonafide need of the landlord has to be examined as on the date of institution of the proceedings and if a decree for eviction is passed, the death of the landlord during the pendency of the appeal preferred by the tenant will make no difference as his heirs are fully entitled to defend the estate.\024

In the same decision a contrary note expressed by this Court in P.V. Papanna vs. Padmanabhaiah [(1994) 2 SCC 316] was held to be in the nature of an obiter. This Court in Shakuntala Bai & Ors. (supra) referred to the decision in Shantilal Thakordas vs. Chimanlal Maganlal Telwala [(1976) 4 SCC 417] and specifically observed that the view expressed in Shantilal Thakordas\022s case did not, in any manner, affect the view expressed in Phool Rani vs. Naubat Rai Ahluwalia [(1973)1 SCC 688] to the effect that where the death of landlord occurs after the decree for possession has been passed in his favour, his legal heirs are entitled to defend the further proceedings like an appeal and the benefit accrued to them under the decree. Here in this case also it is obvious that the original landlord Prabhakar Govind Sinai Kuvelkar had expired only after the eviction order passed by the Additional Rent Controller. This is apart from the fact that the landlord had sought the possession not only for himself but also for his family members. There is a clear reference in Section 23(1)(a)(i) of the Act regarding occupation of the family members of the landlord. In that view the contention raised by the learned counsel for the respondent must be rejected.

12. In so far as the contention regarding Section 23A(3) is concerned, the learned counsel for the respondent took us through the Section and tried to suggest that the said Section was not applicable as firstly it was not applicable to the retired State Government servants like the appellant-landlord and secondly the amendment was not applicable as it was a prospective amendment. The legislative history shows that Section 23A(3) was brought in by way of an amendment. Section 23A was further amended and this amendment was passed on 23.7.1987 and was published vide Notification No.7/27/87-LA dated 2.12.1987 and the same came into force as per Notification No.10/8/87/RD dated 27.2.1988. It was published in the Official Gazette (Extraordinary No.2) Series I No.47 dated 22.2.1988. After this amendment the Section stood as under:

\02323A(3) Notwithstanding anything contained in this Act:

(3) a landlord, who is member of the armed forces of the Union or who is an employee of the Central or the State Government or Railways or who was such member or employee as the case may be and is duly retired (which term shall include premature retirement) shall be entitled to recover possession of any premises are bonafide required by him for occupation by himself or any member of his family (which term shall include a parent or other relation ordinarily residing with him and dependent on him) and the Controller shall pass an order for eviction on such ground of the landlord at the hearing of the suit, produced a certificate signed by the Head of the Services of his Commanding Officer or by the Head of his Department as the case may be to the effect that:

(i) He is presently a member of the armed forces of the Union or employee of the Central or the State Government or Railways or he was such member or employees as the case may be and is now retired ex-serviceman or employee as the case may be.

(ii) He does not possess any other suitable residence in the local area where he or the members of his family can reside;

(b) Not relevant\024.

It was not seriously disputed before the Additional Rent Controller that the applicant was in service of the Government of Goa, Daman & Diu and had retired on 31.5.1983. In fact there appears to be no contrary evidence led to the assertion that the landlord was a government servant and he had retired on 31.5.1983. The further amendment made to Section 23A(3) added sub-clause (c) after clause 3(i)(b). The said clause was:
\023The provisions of this sub-section shall be applicable to all applications including those pending proceedings before any Controller, Tribunal, Court and all such proceedings shall be disposed of in accordance with the provisions of this Section.\024

The further amendment also provided a summary procedure. For our purposes the relevant clause is Clause (h) which is as under:
\023No appeal or second appeal shall lie against an order for the recovery of possession of any residential building made by the Controller in accordance with the procedure specified in this sub-section.

Provided that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this sub-section is according to law, call for the records of the case and pass such order in respect thereto as it thinks fit.\024

The language of sub-section 23A(3)(c) which we have quoted above leave no manner of doubt that the Section was clearly applicable to the pending proceedings like the present one. It is obvious that the amendment application was filed by the landlord on 8.2.1989 wherein a specific reference is made to the above mentioned legal position. Beyond baldly denying the tenant has done nothing worth the name. We have seen the judgment of the Additional Rent Controller who has considered Section 23A(3) extensively. There can be no doubt that the provision was applicable to the proceedings and as such the Additional Rent Controller was right in accepting the case of the landlord to the effect that firstly he was a government servant having retired on 31.5.1983, secondly he had no house in Panaji where the concerned residential premises existed and thirdly that he wanted the house for his own bonafide occupation. We, therefore, reject the contention of the respondent that Section 23A(3) was not applicable to the present proceedings. The judgment of the High Court is woefully wanting on this aspect. No argument was raised by the counsel for the respondent regarding the 1994 amendment.

13. In the result the appeal is allowed. The Judgment of the High Court is set aside and that of the Additional Rent Controller and the Administrative Tribunal are restored with costs.