Rasik Auto Stores and Others

Vs

Navin V. Hantodkar and Another

Slp (C) No. 16221 of 1998

(S. B. Majmudar, M. Jagannadha Rao JJ)

10.11.1998

ORDER

1. We have heard learned Senior Counsel for the petitioners. His only contention was that in the light of clause 13(3)(vi) of the C.P. & Berar Rent Control Order, 1949, because the landlord is having other premises of his own in the adjoining part of the very suit premises, the suit for possession of the suit premises was liable to fail. The said provision reads as under :

> "13. (3) If after hearing the parties the Controller is satisfied -
>
> #(i) - (v) * * *##
>
> (vi) that the landlord needs the premises or a portion thereof, for the purpose of his bona fide occupation provided that he is not occupying any other premises of his own in the city or town concerned; or....."

2. Learned Senior Counsel for the petitioners is right when he contends that if the above clause is literally read, it would indicate that the moment it is shown that the landlord is occupying any other premises of his own in the city his suit for bona fide requirement of the suit premises can never be entertained and nothing more is required to be shown save and except establishing on record that the landlord is having other premises of his own in the city. It is not in dispute that the suit premises are situated in a building where in the other part, the respondent-landlord is carrying on his clinic and his need is for expansion of the said clinic and that is why he requires the suit premises. The aforesaid contention of learned Senior Counsel would have required closer scrutiny but for the fact that there is a decision of a three-Judge Bench of this Court in Boorgu Jagadeshwaraiah & Sons v. Pushpa Trading Co. [(1998) 5 SCC 572] which repelled similar contention. The said decision has taken the view on a pari materia provision found in Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960, wherein Section 10(3)(a)(iii) provided that a landlord may apply to the Controller for an order directing the tenant to put the landlord in possession of the building in case it is any other non-residential building, if the landlord is not occupying a non-residential building in the city, town or village concerned which is his own or to the possession of which he is entitled whether under this Act or otherwise. Construing these words, it was observed in para 8 of the Report, as under : (SCC p. 575)

> "8. (That) the aspects of quality, size and suitability of the building have been totally put out of consideration (by the courts below). We think this would frustrate the purposes of the Act. Here was a claim set up by the landlord that the non-residential premises he owned did not serve the purpose of his need of setting up a textile and

> cloth business and that the need could only be met in seeking eviction of the tenant from the premises sought."

Accepting the said contention, this Court remanded the proceedings for getting a finding on this aspect.

3. In the facts of the present case, there is a clear finding recorded by the Rent Controller as well as by the appellate court that 300 sq. ft of the accommodation available with the respondent-landlord in the building is insufficient for two doctors as the landlord and his wife, both are practising doctors.

4. In view of this finding arrived at on facts and accepted by the High Court, in our view, no need for remand would arise. The ratio of the aforesaid decision would squarely stare in the face of the petitioners.

5. In the result, the petition fails and is dismissed.

Court Masters