

T. Sivasubramaniam and Others

Vs

Kasinath Pujari and Others

Civil Appeals Nos. 5388-89 of 1998

(V. N. Khare, S. N. Phukan JJ)

31.08.1999

JUDGMENT

V. N. KHARE, J. –

1. The appellants herein are the landlords (hereinafter referred to as "the landlord"). The landlord filed a petition before the Rent Controller under Sections 10(2)(ii)(a), 10(2)(vii) and 10(3)(a)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as "the Act") for eviction of the respondent tenants from the premises. The respondent tenants contested the said petition denying the alleged requirements of the landlord for the premises as bona fide. The Rent Controller allowed the petition filed by the landlord and ordered eviction of the tenants. The appeals preferred by the tenants were also rejected by the appellate authority. However, the High Court in the revision petitions filed by the tenants set aside the orders of the two courts below and allowed the revisions. The High Court was of the view that the landlord having not set out his need, much less bona fide need, for the premises in the petition, no order for eviction could have been passed against the tenants. It is against the said judgment of the High Court the landlord is in appeal before us.

2. Challenge to the order under appeal is laid on twin grounds. The first ground is that the element of need for the premises is implicit when a landlord desires to live separately from his father and the view taken by the High Court that the mere desire to live separately is not sufficient to constitute need for the premises, is erroneous. The second ground is, that it is not permissible for the High Court in exercise of its revisional jurisdiction under Section 25 of the Act to interfere with the concurrent finding of fact arrived at by the two courts below. According to the learned counsel, the High Court while upsetting the judgments of the two courts below has transgressed its powers conferred on it by Section 25 of the Act.

3. In order to appreciate the arguments of learned counsel, it is relevant to set out the relevant provisions under which the landlord filed petition for eviction of the tenants. Section 10(3)(a)(i) and (e) of the Act reads as under :

"10. (3)(a) A landlord may, subject to the provisions of clause (d), apply to the Controller for an order directing the tenant to put the landlord in possession of the building -

(i) in case it is a residential building if the landlord requires it for his own occupation or for the occupation of any member of his family and if he or any member of his family is not occupying a residential building of his own in the city, town or village

concerned;

(e) The Controller shall, if he is satisfied that the claim of the landlord is bona fide, make an order directing the tenant to put the landlord in possession of the building on such date as may be specified by the Controller and if the Controller is not so satisfied he shall make an order rejecting the application :"

A bare reading of the aforesaid provisions would show that a landlord can seek an order of eviction against a tenant (a) if he requires the premises for his own occupation or for occupation of any member of his family; and (b) the landlord or any member of his family is not occupying a residential building of his own in the city, town or village concerned and an order of eviction against a tenant cannot be passed by the Rent Controller unless he is satisfied that the requirement of the landlord for the premises is bona fide. In the present case, the landlord sought the eviction of the tenant on the following averments made in his petition filed under Section 10(3)(a)(i) of the Act :

"6. The petitioners are now living with the father of the 1st petitioner. They are now desirous of living independently away from their father. The petitioners do not have any house of their own in the city of Madras and neither of them are occupying a residential building of their own in the city of Madras."

The aforesaid averments show that the landlord sought the possession of the premises by evicting the tenant merely on the ground that he desires to live independently away from his father. The question that arises for consideration is whether mere desire to live separately from the father would constitute need or requirement for the premises. In *Hameedia Hardware Stores v. B. Mohal Lal Sowcar* ((1988) 2 SCC 513) this Court held thus : (SCC Headnote)

"A landlord seeking eviction of a tenant from a non-residential premises under Section 10(3)(a)(iii) of the Act in order to succeed in his petition should establish that he bona fide requires the premises, in addition to proving the other ingredients referred to therein, since clause (e) of Section 10(3) is also applicable to a petition filed under sub-clause (iii) of Section 10(3). The word 'claim' means 'a demand for something as due' or 'to seek or ask for on the ground of right' etc. The word 'claim' in clause (e) of Section 10(3) of the Act should, therefore, be construed as 'the requirement' of the landlord or his deservedness. 'Deserve' means 'to have a rightful claim' or 'a just claim'. In the context of Rent Control law which is enacted for the purpose of giving protection to tenants against unreasonable evictions and for the purpose of making equitable distribution of buildings amongst persons who are in need of them in order to prove that his claim is bona fide a landlord should establish that he deserves to be put in possession of the premises which is in the occupation of a tenant."

In *Amarjit Singh v. Khatoon Quamarain* ((1986) 4 SCC 736) it was held that the distinction between "desire" and "need" must also be kept in view for purpose of eviction of a tenant for bona fide need of the landlord. In *Ram Dass v. Ishwar Chander* ((1988) 3 SCC 131) it was held thus : (SCC Headnote)

"Landlord's desire for possession, however honest it might otherwise be, has

inevitably a subjective element in it and that desire, to become a 'requirement' in law must have the objective element of a 'need'."

4. From the aforesaid decisions it is clear that mere desire of the landlord to live separately from his father cannot be attributed to his need for the premises occupied by the tenant. It is often seen that a desire often takes its origin from what one likes and dislikes and necessarily it is not dependent upon his need. But we cannot lose sight of the fact that sometimes the desire may be the outcome of one's need. So when a landlord desires a premises, the requirement of law is that the landlord must set out his need for the premises in his petition and establish that such a need is bona fide. The need must be bona fide, genuine, honest and conceived in good faith. In the present case what we find is that, it was not pleaded by the landlord in his petition that he for certain compelling reasons desired to live separately from his father and for that reason he required the premises. We also do not find any evidence on record to show that the landlord required the premises and his need was bona fide. The only material on record for eviction of the tenants before the Rent Control Authority was mere desire of the landlord to live separately from his father. Such a desire is not a substitute of the need for the premises which a landlord is required to plead and establish. Thus, we are of the view that the landlord's desire to live separately was not a valid ground for eviction of the tenants from the premises. We, therefore, find no substance in the submission of learned counsel for the appellants.

5. So far as the second submission is concerned, the language employed on Section 25 of the Act, which confers revisional jurisdiction on the High Court, is very wide. Under Section 25 of the Act, the High Court can call for and examine the record of the appellate authority in order to satisfy itself as to regularity of such proceedings or the correctness, legality or propriety of any decision or orders passed therein. The words "to satisfy itself" employed in Section 25 of the Act no doubt is a power of superintendence, and the High Court is not required to interfere with the finding of fact merely because the High Court is not in agreement with the findings of the courts below. It is also true that the power exercisable by the High Court under Section 25 of the Act is not an appellate power to reappraise or reassess the evidence for coming to a different finding contrary to the finding recorded by the courts below. But where a finding arrived at by the courts below is based on no evidence, the High Court would be justified in interfering with such a finding recorded by the courts below. In the present case what we find is that neither has the landlord set out his need or requirement for the premises for his occupation in his petition nor has he led any evidence to show that his need is bona fide. In the absence of such evidence, the Rent Controller and the first appellate authority acted contrary to law in allowing the petition of the landlord by directing the eviction of the tenants. In such circumstances, the High Court was fully justified in interfering with the findings of the courts below. We, therefore, reject the second submission of learned counsel.

6. For the aforesaid reasons we do not find any merit in the appeals which are accordingly dismissed. There shall be no order as to costs.