

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

C.A. NO.6125 OF 2008

@ Petition(s) for Special Leave to Appeal (Civil) No(s).4764/2006

MAGANLAL S/O KISHANLAL GODHA

Petitioner(s)

VERSUS

NANASAHEB S/O UDDHAORAO GADEWAR

Respondent(s)

Date: 16/10/2008 This matter was called on for judgment today.

For Petitioner(s) Mr. P.N. Gupta, Adv.

For Respondent(s) Mr. Shivaji M. Jadhav, Adv.

Hon'ble Mr. Justice Lokeshwar Singh Panta pronounced judgment of the Bench comprising of Hon'ble Mr. Justice R.V. Raveendran and His Lordship.

Leave granted. The Appeal is allowed in terms of signed non-reportable judgment placed on the file.

The respondent-tenant is directed to handover the vacant possession of the suit premises to the appellant-landlord on or before 31st July, 2009. He shall file usual undertaking before this Court within four weeks from the date of this order. In the facts and circumstances of the case, the parties are left to bear their own costs.

(A.D. Sharma)
Court Master

(Phoolan Wati Arora)
Court Master

(Signed Non-Reportable Judgment is placed on the file)

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL No. OF 2008
[Arising out of S.L.P. (C) No.4764 of 2006]

Maganlal son of Kishanlal Godha Appellant

Versus

Nanasaheb son of Udhaorao Gadewar Respondent

JUDGMENT

Lokeshwar Singh Panta, J.

1. Leave granted.
2. This appeal arises out of the judgment and order dated 01.12.2005 passed by the Division Bench of the High Court of

Judicature at Bombay, Nagpur Bench, Nagpur. By the impugned order, the Division Bench has set aside the judgment and order dated 14.02.1995 of the learned Single Judge in Writ Petition No. 400/1990 and restored the order dated 06.11.1989 of the Appellate Authority whereby the order dated 07.03.1988 recorded by the Rent Controller, Nagpur granting permission to the landlord under Clause 13(3) (iv) and (vi) of the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949, has been quashed and set aside.

3. Briefly stated, the facts of the case are as follows:

Maganlal Kishanlal Godha, appellant herein, is the owner of three storey house bearing Corporation No. 57/0-4 in Ward No. 28 in Bapurao Gali, Itwari, Nagpur. One portion on the ground floor of the said house, except one room, is occupied by Nanasaheb the respondent-tenant herein on rent of Rs. 140/- per month.

4. The appellant-landlord on 30.09.1982, filed an application before the Rent Controller, Nagpur seeking permission to terminate the tenancy of the respondent-tenant under Clause 13 (3) (iv) and (vi) of the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 (hereinafter referred to as "Rent Control Order"). It was the case of the appellant-landlord before the Rent-Controller that he purchased the suit house by a registered sale deed in the year 1968 from the previous owner. The appellant-landlord was carrying on cloth business at Gondia and his son Pradeep Jain, at the time of filing of the eviction application, was studying in M. Tech. and residing in a Hostel at Nagpur. It was contended that after completing the education, Pradeep Jain will start independent business for which the demised premises were required by the appellant-landlord. The appellant-landlord further stated that he wanted to shift his residence from Gondia to Nagpur, therefore, he needed the demised premises for his bona fide requirement as well. During the pendency of the eviction proceedings, the appellant-landlord filed an application seeking amendment of the pleadings. The said application was allowed by the Rent Controller on 08.07.1985. The appellant-landlord had pleaded in the amended petition that he has applied for licence to manufacture of Oxalic acid in Bhandara District. According to the appellant-landlord, his son Pradeep Jain had completed his M.Tech. education in Chemical

Engineering and wanted to look after the sales of Oxalic acid business to be started in the demised premises by the appellant-landlord. On these premises, the appellant-landlord sought the eviction of the respondent-tenant.

5. The respondent-tenant, in the written statement filed on 06.01.1983, admitted the relationship of landlord and tenant between the appellant and himself. He denied the allegation of change of user of the demised premises from residential to the non-residential as alleged by the appellant-landlord. He stated that the demised premises were let out to him for non-residential purpose by predecessor-in-title of the appellant-landlord. He specifically stated that the alleged bona fide need, pleaded by the appellant-landlord, is nothing but a pretext to secure enhancement of the rent and also to get him evicted by illegal and unfair method.

6. On the pleadings of the parties, the Rent Controller framed necessary issues. Both the parties went to trial and led their evidence. After considering the evidence, the Rent Controller granted permission to the appellant-landlord to determine the tenancy under Clause 13 (3) (iv) and (vi) of the Rent Control Order.

7. Being aggrieved by the order of the Rent Controller, the respondent-tenant preferred an appeal under Clause 21 of the Rent Control Order and the Additional District Magistrate, Nagpur (Appellate Authority) by order dated 06.11.1989 allowed the said appeal and set aside the order of the Rent Controller.

8. Against the Appellate Authority's order, the appellant-landlord filed Writ Petition No. 400/1990 before the High Court of Judicature at Bombay, Nagpur Bench. The learned Single Judge, by order dated 14.02.1995, partly allowed the writ petition upholding the order of the Appellate Authority to the extent it quashed the order of the Rent Controller granting relief to the appellant-landlord under Clause 13 (3) (iv) of the Rent Control Order. However, the order of the Rent Controller dated 07.03.1988 granting permission to the appellant-landlord to terminate the tenancy of the respondent-tenant under Clause 13 (3) (vi) of the Rent Control Order was restored and to that extent the order of the Appellate Authority was set aside.

9. Being aggrieved, the tenant filed a writ appeal before the Division Bench of the High Court, which was allowed by the Bench on 01.12.2005 whereby the judgment and order passed by the learned Single Judge was set aside and the order of the Appellate Authority dated 06.11.1989 was restored. Hence, the appellant-landlord has challenged the correctness and validity of the order of the Division Bench of the High Court in this appeal.

10. We have heard learned counsel for the parties and with their assistance, examined the material on record. The relationship of landlord and tenant between the appellant and the respondent is not in dispute.

11. The Division Bench of the High Court, while setting aside the judgment and order of the learned Single Judge observed as under:

"The learned Single Judge totally ignored the material on record which was considered by the Appellate Authority under the Rent Control Order, which totally belies the claim of the respondent-landlord for bona fide requirement and it is evident from the documents placed on record by the appellant-tenant. The first notice dated 12.07.1982 sent to the appellant-tenant by Advocate Shri Mahajan, which is in the form of a quit notice wherein reason given for issuing the quit notice is stated in para 4 which reads as under:

'That the premises occupied by you can easily fetch the rent of Rs. 1,000/- per month. You are an undesirable tenant and hence this quit notice is issued.'

The same was replied by the Advocate for the appellant-tenant on 15.07.1982 in which it is specifically denied that the premises were given for residential purpose, on the other hand it was claimed that the premises were given on rent for non-residential purpose and the appellant-tenant was running his Dispensary since 1958. In so far as the demand for rent is concerned, it was stated that previously the rent was Rs. 80/- per month and it was raised from time to time and now the appellant-tenant is paying Rs. 140/- per month. It was specifically denied that the premises can fetch Rs. 1,000/- per month as alleged. It was further contended that the alleged termination of tenancy is illegal. Therefore, it can be seen that the whole object of respondent-landlord in issuing the notice to quit was that the premises were fetching less rent whereas it can fetch Rs. 1,000/- and as the appellant-tenant was paying Rs. 140/-, he was an undesirable tenant. There is no whisper in the said notice, which was sent to the appellant-tenant hardly a month before the rent control proceedings came to be initiated and if the respondent-landlord wanted the premises for his bona fide occupation then there is no reason why this fact was not mentioned in the said notice. Therefore, it can be

necessarily inferred that the need to occupy the premises by the respondent-landlord cannot be said to be natural, real, necessary and honest. Further, there are documents on record to show that except for portion of the ground floor of the house which is in occupation of the appellant-tenant, rest of the house was already in use and occupation of the respondent-tenant, which has been brought on record by placing the declaration given by the respondent-tenant to the Municipal Corporation as required for assessment of taxes. Unfortunately, the learned Single Judge ignored this material evidence in spite of the fact that the Appellate Authority under the Rent Control Order has based its findings by placing reliance on these documents which are material on record."

12. The only question arising for our consideration in this appeal is whether the Division Bench of the High Court has erred in appreciating the evidence considered by the learned Single Judge in his order and whether the order impugned before us is not in conformity with the provisions provided in the Rent Control Order. The relevant provisions applicable to the present case may be referred to for examining the factual situation as well as the finding of the Division Bench on legal issue.

13. Clause 13 of the Rent Control Order provides the grounds on which the landlord is entitled to determine lease of tenancy. The provisions relevant for the purpose of deciding this appeal reads as under:

"13 (1) No landlord shall, except with the previous written permission of the Controller :-

3. give notice to a tenant determining the lease or determine the lease if the lease is expressed to be determinable at his option ; or

4. xxxx xxxx

(2) A landlord who seeks to obtain permission under sub-clause (1) shall apply in writing to the Controller in that behalf:

Provided that where the tenancy is for a specified period agreed upon between the landlord and the tenant, no application under items (vi) and (vii) of sub-Clause (3) shall be entertained by the Controller before the expire of such period.

(3) If after hearing the parties, the Controller is satisfied:-

(i) xxxx xxxx

(ii) xxxx xxxx

(iii) xxxx xxxx

(iv) that the tenant has used the house or premises or any part thereof for a purpose other than that for which it was leased; or

(v) xxxx xxxx

(vi) that the landlord needs the house or a portion thereof for the purpose of his bona fide residence, provided he is not occupying any other residential house of his own in the city or town concerned; or

(vii) xxxxxx

(viii) xxxxxx

(ix) xxxxxx "

14. The eviction of the respondent-tenant recorded by the Rent Controller has been confirmed by the learned Single Judge on the ground of bona fide requirement of the appellant-landlord in terms of Clause 13 (3) (vi) of the Rent Control Order. On plain reading of the language of Clause 13 (1) (a) of the Rent Control Order, it is clear that the question of determination of tenancy would arise only after permission to serve such notice is granted by the Rent Controller. Thus, the notice issued by the Advocate on behalf of the appellant-landlord prior to filing of the application for eviction of the respondent-tenant under Clause 13 (3) (vi) was not a mandatory requirement postulated under the provisions of the Rent Control Order. As there was no statutory requirement that the landlord should issue a notice of eviction to the tenant before initiating proceedings under clause 13(3) of the Rent Control Order, the Division Bench of the High Court was not right in drawing an inference against the appellant-landlord for not stating the ground of bona fide requirement of the premises in the notice dated 12.07.1982 issued to the respondent-tenant before the institution of eviction proceedings which commenced on 30.09.1982.

15. The appellant-landlord applied to the Rent Controller for determination of the tenancy of the respondent-tenant on two grounds, i.e. under clause 13 (3)(iv) and (vi) of the Rent Control Order. His claim was that his son Pradeep Jain, at the time of application, was a student of M. Tech. at Nagpur and after completing his examination in Chemical Engineering, he wanted to start his business of manufacturing oxalic acid in the factory to be set up in the demised premises. He stated that

he also wanted to shift his business and residence from Gondia to Nagpur, therefore, he was in need of the premises for himself and for the bona fide occupation of his son. During the pendency of the eviction proceedings, the Rent Controller vide Order dated 08.07.1985 allowed the application of the appellant-landlord for amendment of the pleadings. In para 5 (a) of the amended application, the appellant-landlord stated that his son Pradeep Jain has since qualified M. Tech. examination in Chemical Engineering and the applicant has also applied for licence to manufacture Oxalic acid in Bhandara District. According to the version of the appellant-landlord, his son Pradeep Jain will reside at Nagpur in the demised premises and will look after the sales of Oxalic acid. Alternatively, it was claimed by the appellant-landlord that if the licence for manufacturing Oxalic acid is not granted by the competent authority, his son will shift to Nagpur and start an industry for manufacturing chemical products. It is further established that Pradeep Jain cannot make up his future career by staying in Gondia which is a small town and, therefore, for building up his future career, Pradeep Jain has to be shifted to Nagpur. In the light of the evidence on record, we are of the opinion that the order of the Division Bench of the High Court cannot be sustained. The entire approach of the Division Bench in setting aside the finding recorded by the Rent Controller and affirmed by the learned Single Judge was erroneous and the Division Bench mis-directed itself while considering the question of bona fide requirement in terms of Clause 13 (3) (vi) of the Rent Control Order, which postulates that there must be an element of need as opposed to a mere desire or wish of the landlord.

16. This Court in *Sait Nagjee Purushotham & Co. Ltd. v. Vimalabai Prabhulal & Ors.* [(2005) 8 SCC 252] held that it is always a prerogative of the landlord that if he requires the premises in question for his bona fide use for expansion of business, this is no ground to say that the landlords are already having their business at Chennai and Hyderabad, therefore, it is not genuine need. Further, it is held that it is not the tenant who can dictate the terms to the landlord and advise him what he should do and what he should not. It is always the privilege of the landlord to choose the nature of the business and the

place of the business.

17. In the case of *Pratap Rai Tanwani v. Uttam Chand* [(2004) 8 SCC 490], it was held that the bona fide requirement of the landlord has to be seen on the date of the petition and the subsequent events intervening due to protracted litigation will not be relevant. It was held that the crucial date is the date of petition; therefore, the normal rule is that the rights and obligations of the parties are to be determined on the date of petition and that subsequent events can be taken into consideration for moulding the reliefs provided such events had a material impact on those rights and obligations. It was further observed that it is a stark reality that the longer is the life of the litigation the more would be the number of developments sprouting up during the long interregnum. Therefore, the Courts have to take a very pragmatic approach of the matter. It is common experience in our country that especially landlord-tenant litigations prolong for a long time. It is true that neither can the person who has started the litigation sit idle nor can the development of the event be stopped by him. Therefore, the crucial event should be taken as on the date when the suit for eviction was filed, unless the subsequent events materially change the ground of relief.

18. In the case of *Gaya Prasad v. Pradeep Srivastava* [(2001) 2 SCC 604], this Court held that the landlord should not be penalized for the slowness of the legal system and the crucial date for deciding the facts of the requirement of the landlord is the date of his application for eviction. It is also observed that the process of litigation cannot be made the basis for denying the landlord relief unless the litigation at least reaches the final stages. However, it is further added that subsequent events may, in some situations, be considered to have overshadowed the genuineness of the landlords' needs but only if they are of such nature and dimension as to completely eclipse such need and make it lose the significance altogether.

19. So far as the findings of the learned Single Judge with regard to the eviction of the respondent-tenant on the ground of using the demised premises for the purpose other than that for which it was leased under Clause 13 (3) (iv) is concerned, that has been held against the appellant-landlord and there was no cross-appeal before the

Division Bench. Therefore, we need not go into the merits of the findings of the learned Single Judge on that ground.

20. In the result, for the aforesaid reasons, the appeal is allowed and the judgment and order dated 01.12.2005 passed by the Division Bench of the High Court in Letters Patent Appeal No. 58/1995 is set aside and the judgment and order of the learned Single Judge dated 14.02.1995 recorded in Writ Petition No. 400/1990 is upheld. Consequently, the order of the Rent Controller dated 07.03.1988 granting permission to the appellant-landlord to terminate the tenancy of the respondent-tenant under Clause 13 (3) (vi) of the Rent Control Order, 1949 shall stand restored.

21. The respondent-tenant is directed to handover the vacant possession of the suit premises to the appellant-landlord on or before 31st July, 2009. He shall file usual undertaking before this Court within four weeks from the date of this order.

22. In the facts and circumstances of the case, the parties are left to bear their own costs.

.....J.
(R. V. Raveendran)

.....J.
(Lokeshwar Singh Pant)

New Delhi.
October 16, 2008.