Mrs. Rena Drego vs Lalchand Soni, Etc on 5 March, 1998

Equivalent citations: AIR 1998 SUPREME COURT 1990, 1998 (3) SCC 341, 1998 AIR SCW 1840, 1998 (2) ALL CJ 911, 1998 (2) SCALE 256, 1998 (3) ADSC 74, 1998 SCFBRC 147, 1998 BOMRC 306, 1998 ALL CJ 2 911, (1998) 2 SCR 197 (SC), (1998) 2 JT 369 (SC), 1998 (2) SCR 197, (1998) 3 ALLMR 173 (SC), (1998) 2 KER LT 24, 1998 ADSC 3 74, (1998) 1 CURCC 178, (1998) 1 RENCR 349, (1998) 1 GUJ LH 513, (1998) 1 RENCJ 490, (1998) 2 SCJ 20, (1998) 2 SUPREME 376, (1998) 2 SCALE 256, (1998) 3 BOM CR 320, 1998 (2) BOM LR 43, 1998 BOM LR 2 43

Bench: S. Saghir Ahmad, K.T.Thomas

PETITIONER:
MRS. RENA DREGO

Vs.

RESPONDENT:
LALCHAND SONI, ETC.

DATE OF JUDGMENT: 06/03/1998

BENCH:
S. SAGHIR AHMAD, K.T.THOMAS

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T Thomas,J.

Leave granted.

A landlady had rented out her flat situate at Bandra (West) in Bombay (now Mumbai) to a tenant in 1969 for a rent of Rs. 200/- per month. As years passed by, she found it difficult to accommodate her large family in the small residential apartment where she is presently living. So, she moved the

Court in 1977 for a decree of eviction of her tenant from her flat at Bandra. Of course, she cast the net very wide covering a variety of grounds to have a decree for eviction, but what ultimately survived among them was the ground envisaged in Section 13 (1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'the Act'), i.e., bona fide and reasonable requirement of the tenanted premises for her own occupation. though, she was not suited by the trial court (which is the Small Causes Court, Bombay), she went in appeal to the appealable bench of the Court of Small causes, where she got a decree for eviction on the ground mentioned above. But the said decree did not enure to her benefit as the same was later upset by the High court of Bombay when the tenant filed writ petition under Article 227 of the Constitution for quashment of the same. This appeal, by special leave, has been filed by the landlady impugning the aforesaid judgment of the Bombay High Court.

It is to be pointed out, right now itself, that need of the landlady for additional accommodation in view of large family was recognised by the trial court. Still she was non- suited by the trial court on the premise that her pleadings on that score were scanty. Appeal Court after concurring with the finding which was favourable to the landlady did not take the inadequacy in the pleadings as capable of fatally affecting her cause. Hence the appeal court found no hurdle in granting the decree of eviction. But a learned single judge of the High court who quashed the Said decree held the landlady guilty of two wrongs. First is that she did not speak the truth in her evidence that her eldest son (whose name is Giles Drego) has his own flat where he is living with his family (The landlady has admitted in her reply affidavit filed in the High Court, during the pendency of the Writ petition, that her son Giles Drego and his wife are joint owners of a flat situate at Vasai in Thane district). Second is that, she failed to specify the plinth area of the apartment in which she is presently living with her family.

According to us, the high Court has traversed far beyond the limit of its supervisory jurisdiction under Article 227 of the Constitution when the learned Single Judge reversed the Decree of eviction which was based on findings of facts arrived at by the fact-finding authority upon the evidence on record. it would have been well for the High court to remind itself that it was not exercising certiorari jurisdiction under Article 226 of the Constitution but a supervisory jurisdiction under Article 226 of the Constitution but a supervisory jurisdiction under Article 227 which obliges the High Court to confine to the Scrutiny of records and proceedings of the lower tribunal. By relying on fresh materials which were not before the tribunal, the High Court should not have disturbed findings of facts in exercise of such supervisory jurisdiction. it is now well high settled that power under Article 227 is one of judicial superintendence which cannot be used to upset conclusions of facts, however erroneous those may be, unless such conclusions are so perverse or so unreasonable that no court could ever have reached them Way back in 1954, a Constitution Bench of this Court, in Waryam Singh & anr. Vs. Amarnath & anr. (AIR 1954 SC 215) has pointed out that the power of superintendence conferred by Article 227 should be exercised "most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors." (emphasis supplied) The said decision was made in an appeal which considered an order passed by a Rent control court. Quoting the aforesaid dictum a three Judge Bench of this Court has in Babhutmal Raichand Oswal Vs. Laxmibai R. Tarte & Anr. (AIR 1975 SC 1297) observed thus:

> " The power of superintendence of High Court under Article 227 being extraordinary is to be exercised most sparingly and only in appropriate cases. The power, as in the case of certiorari jurisdiction, cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal. The High Court cannot, in guise of exercising its jurisdiction under Art. 227, convert itself into a court of appeal when the legislature has not conferred a right of appeal and made the decision of the subordinate court or tribunal final on facts. The High Court cannot, while exercising jurisdiction under Art. 227, interfere with findings of fact recorded by the subordinate court or tribunal. It's function is limited to seeing that the subordinate court or tribunal functions within the limits of its authority. it cannot correct mere errors of fact by examining the evidence and appreciating it."

The aforesaid position has been reiterated by the Court on subsequent occasions also (vide M/s. India Pipe Fitting Co. vs. Fakruddin M.A. Baker & anr, AIR 1978 SC 45; Sukhbir Narain vs. Deputy director of Consolidation, AIR 1987 SC 1645).

For appreciating the arguments or both sides, we have to take a look at the provision under which the landlady claimed eviction. The material portion of Section 13(1)(g) of the Act is the following:

> "13. When landlord may recover possession:-
>
> (1) Notwithstanding anything contained in this Act (but subject to the provisions of section 15 and 15A, a landlord shall be entitled to recover possession of any premises if the Court is satisfied.-
>
> x x x
>
> (g) that the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held or where the landlord is a trustee of a public charitable trust that the premises are required for occupation for the purposes of the trust; or x x x Sections 15 and 15A have no bearing on the facts of this case and hence it is not necessary to extract them here. However, sub-section 2 of Section 13 also has to be quoted which reads thus:
>
> (2) No decree for eviction shall be passed on the ground specified in clause (g) of sub-section (1) if the Court is satisfied that, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it.

Where the Court is satisfied that no hardship would be caused either to the tenant or to the landlord by passing the decree in respect of a part of the premises, the Court shall pass the decree in respect of such part only".

The important postulates for constituting the aforesaid ground are: (1) the requirement of the landlord for his occupation of the tenanted premises should be reasonable ; (2) it should also be bona fide; (3) the hardship of the tenant in case of eviction should not be more than the hardship of the landlord if he fails to get the eviction order. Whether the requirement is reasonable or not can only be judged from the facts since no strait-jacket formula can be evolved for it.

it is difficult to give an exact definition of the word 'reasonable'. It is often said that "an attempt to give a specific meaning to the word `reasonable' is trying to count what is not number and measure what is not space." The author of 'Words and Phrases' [Permanent Edition] has quoted from In re Nice & Schreiber, 123 F. 987,988 to give a plausible meaning for the said word. He says "the expression 'reasonable ' is a relative term, and the facts of the particular controversy must be considered before the question as to what constitutes reasonable can be determined." it is not meant to be expedient or convenient but certainly something more that . While interpreting the word 'reasonable' in Section 13 of the Act, the Bombay High Court has suggested in Krishchand Moorjimal vs. Bai Kalavati, AIR 1973 Bombay 46, "that the word 'reasonable' cannot mean convenient or luxurious, though it may not necessarily exclude the idea of convenience and comfort." However, the expression reasonable can be taken as providing an angle which is conformable or agreeable to reasons, having regard to the facts of the particular controversy.

In Municipal Corporation of Delhi vs. Jagan Nath Ashok Kumar, 1987 (4) SCC 497, this Court has stated that "the word 'reasonable' has in law prima facie meaning of reasonable in regard to those circumstances of which the actor, called upon to act reasonable, knows or ought to know." This has been reiterated by Sabyasachi Mukherjee J. (as his Lordship then was) in Gujarat Water Supply & Sewerage Board vs. Unique Erectors (Gujarat) p. Ltd, 1989 (1) SCC 532.

For the present purpose, the broad features of this case, which are undisputed, can be looked at. They are: (1) Appellant is now living in a small apartment which has only one bedroom, one living room, a kitchen and a toilet; (2) appellant is living with her husband and her grown up sons (Cedric Drego, his wife and a child, and the youngest son Nereus Drego); (3) the eldest son Giles Drego is staying in another flat with his wife and children; (4) the tenant is in occupation of yet another flat situate in the same locality which, on his own admission, is " kitchen plus three -room flat."

In the light of the above admitted factual position when the landlady says that the she needs more accommodation for her family, there is no scope for doubting the reasonableness of the requirement. Further the above circumstances would raise a presumption that the requirement is bona fide also. The tenant has failed to show that the demand for eviction was made with any oblique motive and in the absence of any such evidence the presumption of bona fides stands unrebutted.

There cannot be any possible contention that the hardships, if any, which may enure to the tenant in the event of eviction from this tenanted premises, would be more than the hardship which appellant is now facing due to shortage of the space in her possession, particularly in view of the large number of members of the family living there.

It is unfortunate that the High Court has given undue prominence to a seeming discrepancy in the evidence of the landlady regarding the flat of her eldest son Giles Drego. In her evidence she declined to agree to the suggestion of the cross-examination that Giles Drego owns another flat, but in her affidavit, filed in the High Court, she admitted that the said son owns a flat jointly with his wife. It is not clear from the averments in the affidavit whether Giles drego came into possession of the said flat during the interval between the evidence taking stage and launching of the writ petition. Even otherwise there is nothing to indicate in the judgment of the appellate authority that it was persuaded by the aforesaid answer of the landlady in cross-examination. That authority was concerned about the plight of the third son Cedric drego who was working in Taj Hotel. This can be discerned from the following reasons advanced by the appellate authority:

> " It is absolutely and clearly established that as of now, the family of the landlady, including her son in Taj Hotel and daughter- in-law have no place for residence. That they would become entitled to it in future or even further that they could have got it and have not attempted to get it would not by itself vitiate the case of the requirement set up by the landlady. Here, quite plainly speaking the case of the requirement set up by the landlady. Her, quite plainly speaking the case appears to be that the landlady is put up in a flat belonging to her husband and that flat falls short of the requirement and therefore, there is a need for additional accommodation. We do not find any thing unreasonable or male fide in t he case tried to be set up by the landlady."

The other ground highlighted by the learned single judge for upsetting the decree of eviction is that the landlady did not specify the plinth area of the space which is presently in her of occupation. There is no legal requirement that the person who claims eviction on the ground under Section 13(1)(g) of the Act shall specify the area in his possession. However, if the High Court thought it necessary to know the exact plinth area in the possession of the appellant, she could have been asked to spell it out. It was not done, and instead learned Single Judge has blamed her in the following terms:

> " Even at this stage, no attempt has been made by filling an affidavit to show what is the area of the flat presently occupied by the landlady."

As a matter of fact, the landlady had mentioned it, which the High Court has overlooked. In the affidavit sworn to by the landlady in the writ petition filed in the High Court the following averment has been made:

> " I say that I am holding and occupying a flat admeasuring 560 sq. ft. which consists of one bed room, one living room, one kitchen and a bathroom along with W.C."

We find no justification for the High Court for quashing the decree of eviction passed by a competent court on satisfaction of the ground under Section 13(1)(g) of the Act. We, therefore, allow these appeals and set aside the impugned judgment of the high Court. The decree of eviction will stand restored subject to a rider that respondent- tenant can have three months' time from today for surrendering the premises in question, provided he gives the undertaking on usual terms within

four weeks in the Registry of this Court.