Supreme Court of India
M/S. Variety Emporium vs V. R. M. Mohd. Ibrahim Naina on 27 November, 1984
Equivalent citations: 1985 AIR 207, 1985 SCR (2) 102
Author: Y Chandrachud
Bench: Chandrachud, Y.V. ((Cj)

PETITIONER:
M/S. VARIETY EMPORIUM

Vs.

RESPONDENT:
V. R. M. MOHD. IBRAHIM NAINA

DATE OF JUDGMENT27/11/1984

BENCH:
CHANDRACHUD, Y.V. ((CJ)
BENCH:
CHANDRACHUD, Y.V. ((CJ)
THAKKAR, M.P. (J)

CITATION:
1985 AIR 207 1985 SCR (2) 102
1985 SCC (1) 251 1984 SCALE (2)829
CITATOR INFO :
R 1987 SC 741 (13)
F 1987 SC2055 (13)
RF 1988 SC1074 (7)
RF 1991 SC1760 (20)

ACT:
Constitution of India, 1950, Article 136-Power to grant special leave in Rent cases where three courts have accepted the plea of bona fide personal requirements-onus of proof lies on the petitioner tuition to prove unjustness of t decisions o the court as to bonafide personal need-Subsequent events must also be looked into by the Courts as regards continued requirement for personal purposes-Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, Section 10 (3) (i) and (iii), scope of,

HEADNOTE:
The respondent-landlord through an instrument inter vivos , filed seven petitions for ejectment under section 10 (3) (i) and (iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (Tamil Nadu Act XVIII of 1960 as amended by Act I of 1980) against seven different tenants. Four out of these occupied shop premises on the ground floor while the other three occupied residential

premises on the first floor of a building situated at Door No. 14, Pursuawalkam High Road, Madras. The plea of bona fide personal requirement was accepted by the trial Judge who decreed all the petitioner and passed orders of eviction against every one of the seven tenants. One of these, who occupied a so-called shop measuring 4' x 4' under a stairway, and another tenant in the residential portion on the first floor acquiesced in the decree of eviction passed against them. Five out of the seven tenants filed appeals against the orders of their eviction. The Appellate Authority dismissed all the three appeals of the tenants of the shop premises on the ground floor, but allowed the appeals filed by the two tenants of the residential premises on the first floor. Thus the respondent succeeded in obtaining decrees for possession against all the four tenants on the ground floor and one tenant on the first floor. Against the said orders of the Appellate Court, the appellant alone preferred a Civil Revision Petition (CRP. 122 of 1979) before the High Court. The High Court dismissed the petition. Hence the tenant's appeal by special leave of the Court.

Allowing the appeal, the Court

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HELD: 1.1 The jurisdiction of the Supreme Court to grant special leave to appeal under Article 136 of the Constitution has to be exercised sparingly. Concurrence of three Courts, as in this case that the respondent has proved that he requires the suit premises bona fide for his personal need, UNDOUBTEDLY has relevance on the question whether the Supreme Court should

103

exercise its jurisdiction under Article 136 of the Constitution to review a particular decision of the Courts below. But, that cannot possibly mean that injustice must be perpetuated because it has been done three times in a case. [105-H]

1. 2 In the instant case, by drawing a priori conclusions the Courts have denied justice to the appellant. The trial court deluded itself into believing as proved, what remained to be proved by the production of evidence which could have been produced but was not only not produced but was suppressed. The first appellate court decided the question of landlord's bonafide requirement by the application of formula which confuses 'requirement' or 'need' with 'desire'. And, the High Court refused to apply its mind to a question which, if examined, could have altered the course of justice. [106E-F]

1. 3 The burden of showing that a concurrent decision of two or more Courts or Tribunals is manifestly unjust Iies on the appellant. But once that a burden is discharged, it is not only the right but the duty of the Supreme Court to remedy the injustice. [IIIA-B]

1. 4 The argument that such an interference by the

Supreme Court may lead and in practice, does lead to different standards being applied by different courts to find out whether a concurrent decision is patently illegal or unjust is inevitable in the present dispensation. Quantatively, the Supreme Court has a vast jurisdiction which extends over matters as far apart as Excise to Elections and Constitution to Crimes. The Court sits in Benches and not en banc, as the American Supreme Court does. Indeed, even if the entire Court were to sit to hear every one of the matters which have been filed during any year a certain amount of individuality in the response to injustice cannot be avoided. It is a well-known fact of constitutional history, even in countries where the whole court sits to hear every case, that the composition of majorities is not static. It changes from subject to subject though, perhaps, not from case to case. Personal responses to injustice are not esotenic. Indeed, they furnish refreshing assurance of close and careful attention which the Judges give to the cases which come before them The litigating public will not prefer a computerised system of administration of justice: only, that the Chancellor's foot must treadwarily. [lO6A-D]

1. S In appropriate cases the Court must have regard to events as they present themselves at the time when it is hearing the proceeding before it and mould the relief in the light of those events.[lIIE]

Hasmat Rai v. Raghunarh Prasad [1981] 3 SCR 605 followed

OBSERVATlON: [It is quite disparaging to describe a tenant's attempt to resist eviction by lawful means as a "hue and cry". And, it is inequitous in the extreme that any court of law, and least of all a Rent Act tribunal which has to deal with a human problem of great magnitude, should regard it as a matter of no moment that an order of eviction will throw the tenant on the street. A judge does not have to wear a shoe in order to know where it pinches. Therefore, he does not have to face the prospect of being driven to the street in order
104

to realise what it means. His training legal equipment and experience of life are his tools of education and social awareness. This does not mean that a decree of eviction can never be passed against a tenant but, whether the provisions of a law specifically require it or not the court has to have regard for all the aspects of the matter before it and the foreseeable consequences of the order which it proposes to pass]. [IO8D-F]

JUDGMENT:

CIVIL APPELLATE JURISDlCTlON: Civil Appeal No. 3358 of 1979.

Appeal by Special leave form the Judgment and order dated the 31st October, 1979 of the Madras High Court in C. R. P. No. 122 of 1979.

C. S. Vaidyanathan for the appellant.

V. M. Tarkunde and Shakeel Ahmed for the Respondent. The Judgment of the Court was delivered by CHANDRACHUD, C.J.: The respondent-landlord filed 7 petitions for ejectment against 7 different tenants. Four out of these occupied shop premises on the ground floor and the other 3 occupied residential premises on the first floor of a building situated at Door No. 14, Pursuawalkam High Road, Madras. The appellant is one of the four tenants of a shop on the ground floor.

The case of the respondent is that he is running a wholesale business in textiles on the first floor of a building at 93,Godown Street, Madras; that it is inconvenient and uneconomical for him to carry on his business there; that he was incurring heavy losses in his wholesale business by reason of conditions peculiar to the location of his business and that, therefore, he wanted to wind up the wholesale business and start a retail business in the building which was in the occupation of his tenants.

The learned trial Judge decreed all the petitions and passed orders of eviction against every one of the 7 tenants. One of these, who occupied a so-called shop measuring 4' x 4' under a stairway, acquiesced in the decree of eviction passed against him. The other 3 tenants of the shop premises challenged the decrees of eviction passed against them by filing appeals before the Appellate Authority.

In so far as the residential premises are concerned, 2 out of the 3 A tenants on the first floor filed appeals against the eviction decrees. The third tenant, like the ground floor tenant under the stairway, acquiesced in the decree. In short, S out of the 7 tenants against whom decrees for eviction were passed, filed appeals while the remaining two did not.

The Appellate Authority dismissed all the 3 appeals of the tenants of the shop premises on the ground floor but, allowed the appeals filed by the two tenants of the residential premises on the first floor. The combined result of the proceedings in the trial Court and the first appellate Court was that the respondent succeeded in obtaining decrees for possession against all the 4 tenants on the ground floor and 1 tenant on the first floor.

Out of the 3 tenants on the ground floor against whom decrees for eviction were confirmed by the Appellate Authority (the fourth tenant not having appealed), only one, namely, the appellant herein, went to the High Court by way of a civil revision petition (C.R.P. No. 122 of 1979). The other two tenants on the ground floor accepted the decree of eviction confirmed by the Appellate Authority. Thus, the position which obtained during the tendency of the civil revision petition before the High Court was that the respondent had succeeded, finally and conclusively, in establishing his right to recover or in recovering possession from 3 out of the 4 tenants of the shop premises on the ground

floor and 1 out of the 3 tenants of the residential premises on the first floor. The High Court having dismissed the civil revision petition, the appellant has filed this appeal by special leave.

It cannot be overlooked that three courts have held concurrently in this case that the respondent has proved that he required the suit premises bona fide for his personal need. Such concurrence, undoubtedly, has relevance on the question whether this Court should exercise its jurisdiction under Article 136 of the Constitution to review a particular decision. That jurisdiction has to be exercised sparingly. But, that cannot possibly mean that injustice must be perpetuated because it has been done three times in a case. The burden of showing that a concurrent decision of two or more Courts or Tribunals is manifestly unjust lies on the appellant. But once that burden is discharged, it is not only the right but the duty of this Court to remedy the injustice. Shri Tarkunde, who appears for the respondent, argued that this may lead and, in practice, does lead to different standards being applied by different courts to find out whether a concurrent decision is patently illegal or unjust. That in the present dispensation, is inevitable. Quantitatively, the Supreme Court has a vast jurisdiction which extends over matters as far apart as Excise to Elections and Constitution to Crimes. The Court sits in Benches and not en banc, as the American Supreme Court does. Indeed, even if the entire Court were to sit to hear every one of the eighty-thousand matters which have been filed this year, a certain amount of individuality in the response to injustice cannot be avoided. It is a well-known fact of constitutional history, even in countries where the whole court sits to hear every case, that the composition of majorities is not static. It changes from subject to subject though, perhaps, not from case to case. Personal responses to injustice are not esoteric. Indeed, they furnish refreshing assurance of close and careful attention which the Judges give to the cases which come before them. We do not believe that the litigating public will prefer a computerised system of administration of justice: only, that the Chancellor's foot must tread warily.

Counsel for the appellant, Shri Vaidyanathan, has discharged admirably the heavy onus which lies upon him to establish that the decision come to by three courts in this case is such as cannot possibly be accepted. We will proceed to show immediately how by drawing a priori conclusions, the courts, with great respect, have denied justice to the appellant. The trial court deluded itself into believing as proved, what remained to be proved by the production of evidence which could have been produced but was not produced. The first appellate court decided the question of landlord's bona fide requirement by the application of a formula which confuses 'requirement' or 'need' with 'desire'. And, the High Court refused to apply its mind to a question which, if examined, could have altered the course of justice.

The firm called 'Artex company' of which the respondent is a partner, is in occupation of business premises situated at 93, Go down Street, Madras. The firm took those premises on a lease dated December 21, 1973 for a period of 21 years ending with December21, 1994. Even to-day that lease is good for another ten years. The reasons given by the respondent for seeking the eviction of the appellant and the other six tenants are these. The main gate of the Godown Street premises is opened at 9.OO a.m. and is closed at 5.OO p.m., making it impossible for him to receive his A customers before 9.OO A.M. Or after 5.00 P.M.; there is severe competition amongst the wholesale businessmen in the Godown Street; and, there is a great deal of traffic congestion on the Godown Street. These circumstances have enormously affected the business and since, the firm is incurring

losses day by day, it wanted to wind up the wholesale business and start a retail business in the premises which are in the occupation of the tenants.

The appellant challenged the contention of the respondent that he was incurring losses in his wholesale business at Godown Street and called upon him to produce the balance-sheet, Incometax returns and account books of the firm. instead of producing these documents which would have reflected the financial position of the wholesale business, the appellant offered the lame excuse that the balance-sheet was in the custody of his auditor who was out of station. It seems to us surprising that, instead of drawing an adverse inference against the respondent for non-production of documents which he was called upon to produce, the trial court accepted the ipse dixit of the respondent that he was incurring losses in his wholesale business, wherefor it had become necessary for him to obtain possession of the suit premises in order to start a retail business. The sole or, at least, the main reason why the ' respondent requires the suit premises is that his present place of business is so located as to cause loss to the business. Evidence showing that the business was running into a loss was not only not produced but t suppressed.

Having seen that the trial Court accepted the case of the respondent without an objective and careful assessment of the evidence bearing upon the so-called requirement of the landlord, we will turn to the judgment of the Appellate Authority. The learned appellate Judge says that the single circumstance that the respondent was running his business in tenanted premises was sufficient to justify the conclusion that his requirement of the suit premises was bonafide. After recording this conclusion, the learned appellate Judge proceeds to say:

> "The hue and cry of the tenants in the ground floor portion of the petition-mentioned premises that they will be thrown to the street in the event of an order of eviction being passed need not at all be considered. The very fact H that the respondent had filed this petition immediately after his purchase of the property in the year 1975 goes a long way to prove that his very purpose of purchasing the premises must have been to set up his business whether wholesale or retail in the petition-

metioned premises."

The appellate Court went one step ahead of the respondent by making out a case for him which he himself did not think it proper to make. It was not his case that he wanted possession of the suit premises for the reason that he was carrying on his business in tenanted premises. His case was that it had become uneconomical to run the wholesale business in the Godown Street premises and therefore he wanted to start a retail business in his own building which was in possession of the appellant and other tenants.

Apart from this, it is quite disparaging to describe a tenant's attempt to resist eviction by lawful means as a "hue and cry". And, it is inequitous in the extreme that any court of law, and least of all a Rent Act tribunal which has to deal with a human problem of great magnitude, should regard it as a matter of no moment that an order of eviction will throw the tenant on the street. A judge does not have to wear a shoe in order to know where it pinches. Therefore, he does not have to face the

prospect of being driven to the street in order to realise what it means. His training, legal equipment and experience of life are his tools education and social awareness. We do not suggest that a decree of eviction can never be passed against a tenant but, whether the provisions of a law specifically require it or not, the court has to have regard for all the aspects of the matter before it and the foreseeable consequences of the order which it proposes to pass. Finally, it is impossible to subscribe to the view of the appellate Court that the very fact that the respondent had filed the eviction petitions immediately after he purchased the property, proves that the purpose of purchasing the property was to set up a business there, "whether wholesale or retail"

The judgment of the High Court is in the nature of an order of summary dismissal of the revision petition. After allotting a page and three quarters to the re- statement of the arguments made before it, the High Court disposed of the proceeding in the following I I few lines:

> "l am afraid that once the authorities below have taken into account all these circumstances and have come A to the conclusion that the requirement of the respondent is bonafide, it is not for this Court, as if a court of appeal, to go into these facts again and hold against the respondent herein. Consequently, the civil revision petition fails and is dismissed." B The High Court is right that, sitting in revision, it could not have reappreciated the evidence in the case as if it were a court of appeal. But, in saying so, the High Court, with respect, missed the real point in the case.

The main contention of the appellant before the High Court was that so long as the eviction petitions were pending in the trial Court and the first appellate Court, it could not be predicated with certainty as to in how many cases the respondent would succeed finally. That position had crystalised after the Appellate Authority had rendered its judgment. As stated by us at the beginning of this judgment, I out of the 3 tenants on the first floor did not challenge the decree for eviction passed by the trial Court. The landlord had, therefore, succeeded finally against him. Out of the 4 tenants of the shop premises on the ground floor, the tenant under the stairway did not challenge the decree for eviction passed against him by the trial Court. We will, however, leave that gentleman alone, since he was in possession of an area measuring 4' x 4' only. The remaining 3 tenants on the ground floor, including the appellant, had filed appeals against the decrees of eviction but, all the three appeals were dismissed by the Appellate Authority. Two out of these 3 tenants did not challenge the decrees passed by the appellate Authority, with the result that the respondent succeeded finally and conclusively against those 2 tenants. The position which thus emerged for the first time when the civil revision petition was being argued before the High Court was that, the landlord had succeeded finally in obtaining orders for eviction against 3 out of the 4 tenants on the ground floor and 1 out of the 3 tenants on the first floor. This position had undoubtedly brought about a change in the state of affairs which existed at the inception of the ejectment proceedings and which existed partly during the tendency of the proceedings before the Appellate Authority. Erasing himself on the change in the factual position which had come about after the Appellate Authority gave its decision, the appellant argued before the High Court that the subsequent events ought to be taken into account for the purpose of finding out whether the landlord still required the shop premises in possession of the appellant, which, it would appear, admeasure about 308 square feet. That contention was brushed aside by the High Court with the short order extracted above.

No authority is needed for the proposition that, in appropriate cases, the Court must have regard to events as they present them selves at the time when it is hearing the proceeding before it and mould the relief in the light of those events. We may, however, draw attention to a decision of this Court in Hasmat Rai v. RaghuC nath Prasad,(l) the ratio of which may be stated thus:

When an action is brought by a landlord for the eviction of a tenant on the ground of personal requirements, the landlord's need must not only be shown to exist at the date of the suit, but it must exist on the date of the appellate decree, or the date when a higher Court deals with the matter. During the progress and passage of proceeding from court to court, if subsequent events occur which, if noticed, would non-suit the landlord, the court has to examine and evaluate those events and mould the decree accordingly. The tenant is entitled to show that the need or requirement of the landlord no more exists by pointing out such subsequent events, to the court, including the appellate court. In such a situation, it would be incorrect to say that as a decree or order for eviction is passed against the tenant, he cannot invite the Court to take into consideration subsequent events. The tenant can be precluded from so contending only when a decree or order for eviction has become final. (See pages 606-607).

Justice R.S. Pathak, who concurred with Justice D.A. Desai and Justice Venkataramiah, expressed the same view thus:

It is well settled now that in a proceeding for the ejectment of a tenant on the ground of personal requirement under a statute controlling the eviction of tenants, unless the statute prescribes to the contrary, the requirement must (1) [1911] 3 S.C.R. 605 continue to exist on the date when the proceeding is finally A disposed of either in appeal or revision, by the relevant authority. That position is indisputable. (See page 624).

The High Court having failed to consider the circumstances which had arisen before it for the first time, it becomes our duty to have regard to them. Having considered the evidence in the case, particularly the fact that the landlord has obtained decrees for possession against 3 out of the 4 tenants on the ground floor and 1 out of the 3 tenants on the first floor, we do not see any justification for evicting the appellant from the premises in his occupation. The landlord's requirement, such as it is, is more than adequately met by the eviction of those 4 tenants.

It is doubtful whether the respondent would have at all succeeded in any one of the 7 cases if, the trial court had correctly appreciated the effect of suppression of the material documentary evidence by him. But, the eviction decrees passed against 6 out of the 7 tenants are now an accomplished fact and those matters, having been finally determined, cannot be reopened.

For these reasons, we allow this appeal and set aside the judgments of the High Court, the Appellate Authority and the trial Court. The respondent's petition for eviction of the appellant will stand dismissed. Respondent shall pay to the appellant the costs of all the three Courts, which we quantify at rupees five thousand. F S.R. Appeal allowed.