

T. SIVASUBRAMANIAM AND ORS.

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v.

KASINATH PUJARI AND ORS.

AUGUST 31, 1999

[V.N. KHARE AND S.N. PHUKAN, JJ.]

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*Rent Control & Eviction*

*Tamilnadu Building (Lease and Rent Control) Act, 1960—Sections 10(3) (a) (i) and 10(3) (e)—Eviction—Bonafide need—Landlord desirous of living separately—Desire arising out of need—Evidence adduced to show that need was bonafide—No Desire may be outcome of one's need—Held, when landlord desires a premises, he must set out his need for the premises in his petition and establish that such a need is bonafide—Thus, mere desire cannot constitute need and a ground for eviction.*

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*Section 25—Revisional Jurisdiction—High Court—Not to interfere with finding of facts merely because it disagrees with the findings of the lower court—However, where a finding is based on no evidence, High Court would be justified in setting aside such finding recorded by the lower court.*

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**The appellants filed a petition for eviction of respondents from the premises under Sections 10(2) (ii) (a), 10(2) (vii) & 10(3) (a) (i) of T.N. Building (Lease and Rent Control) Act, 1960 before the Rent Controller. In the petition appellant did not set out his need much less bonafide need for the premises. There was a bare statement that appellant desired to live separately from his father. The Rent Controller allowed the petition and ordered eviction. The respondents went in appeal before the Appellate Court and it rejected the appeal. The High Court allowed the respondent's revision petition and set aside the order of eviction on the ground that appellant did not set out his bonafide need for the premises.**

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**In appeal to this Court the appellants contended 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 mere desire to live separately is not sufficient to constitute need for the premises, is erroneous; and that it is also not permissible for the High Court in exercise of its revisional jurisdiction under Section 25 of the Act to interfere with**

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A the concurrent findings of fact arrived at by Lower Courts.

Dismissing the appeals, the Court

B HELD : 1.1. A desire takes its origin from what one likes and dislikes and necessarily it is not dependent upon one's need. But sometimes the desire may be the outcome of one's need. So when a landlord desires a premises, the requirement of Sections 10(3) (a) (i) and 10(3) (e) of T.N. Building Act, 1960 is that the landlord must set out his need for the premises in his petition and establish that such a need is bonafide. The need must be bonafide, genuine, honest and conceived in good faith. [147-G-H]

C *Hameeda Hardware Stores v. Mohan Lal Sowcar*, [1988] 2 SCC 513; *Amarjit Singh v. Smt. Khatoon Quamarain*, [1986] 4 SCC 736 and *Ram Dass v. Ishwar Chander*, [1988] 3 SCC 131, relied on.

D 1.2. In the present case, 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. There was no evidence on record to show that the landlord required the premises and his need was bonafide. 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, the landlord's desire to live separately is not a valid ground for eviction of the tenants from the premises. [148-A-C]

F 2.1. Section 25 of the Act confers revisional jurisdiction to the High Court. The words "to satisfy itself" as to regularity of such proceedings or the correctness, legality or propriety of any decision or orders passed is a power of superintendence. 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. 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. [148-C-E]

H 2.2. In the instant case 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 bonafide. 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. Thus, the High Court was fully justified in interfering with the findings of the court below. [148-E-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5388-5389 of 1998.

From the Judgment and Order dated 17.12.97 of the Madras High Court in C.R.P. Nos. 208-209 of 1994.

A.T.M. Sampath and V. Balaji for the Appellants.

V. Krishnamurthy, V. Balachandran and T. Harish Kumar for the Respondents.

The Judgment of the Court was delivered by

V.N. KHARE, J. 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 Tamilnadu Building (Lease and Rent Control) Act, 1960 (hereinafter referred to as 'the Act') for eviction of the respondents-tenants from the premises. The respondents-tenants contested the said petition denying the alleged requirements of the landlord for the premises as *bonafide*. 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 *bonafide* 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.

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

A of the Act to interfere with the concurrent findings 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.

B 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. Sections 10(3)(a)(i) and (e) of the Act read as under:

C “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.

D (e) The Controller shall if he is satisfied that the claim of the landlord is *bonafide*, 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.”

E 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  
 F 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 *bonafide*. In the present case, the landlord sought the eviction of the tenants on the following averments made in his petition filed under Section 10(3)(a)(i) of the Act.

G 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”.*

H The aforesaid averments show that the landlord sought the possession of the

premises by evicting the tenants 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 of the premises. In *Hameeda Hardware Stores v. Mohan Lal Sowcar*, [1988] 2 SCC 513, this Court held thus: A

*"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 bonafide 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 deserveness. '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 bonafide a landlord should establish that he deserves to be put in possession of the premises which is in the occupation of the tenant".* B C D

In *Amarjit Singh v. Smt. 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. Iswar Chander*, [1988] 3 SCC p.131, it was held as thus : E

*"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 must have the objective element of a need".* F

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 takes its origin from what one likes and dislikes and necessarily it is not depended upon need. But we cannot lose sight of the fact that sometimes the desire may be 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 *bonafide*. The need must be *bona* G H

- A *vide*, 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 desires 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 landlords to live separately from his father. Such a desire is not 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
- C of learned counsel for the appellants.

- D So far as the second submission is concerned, the language employed in Section 25 of the Act, which confers revisional jurisdiction to 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. That
- E 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
- F landlord set out his need or requirement for the premises for his occupation in his petition nor he led any evidence to show that his need is *bonafide*. 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,
- G therefore, reject the second submission of learned counsel.

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.