PRATAP RAI TANWANI AND ANR. A

v.

UTTAM CHAND AND ANR.

SEPTEMBER 8, 2004

[ARIJIT PASAYAT AND B
PRAKASH PRABHAKAR NAOLEKAR, JJ.]

Rent Control and Eviction :

*M.P. Accommodation Control Act, 1961—Sections 12(1)(f) & 17— Eviction suit—***Bona fide** *need of premises—Suit decreed—Affirmed by First Appellate Court—Second appeal—During its pendency landlord's son completing studies and going abroad—But High Court held that the* **bonafide** *need continued to subsist—On appeal, Held :* **Bonafide** *need did not eclipse merely because certain developments occurred pendente lite—Delivery of possession to landlord—Time extended—However, protection available to tenant under Section 17 of the Act in case of non-user of premises by landlord for purpose for which eviction was sought for.* C D

Landlord filed suit for eviction under the M.P. Accomodation Control Act, 1961 *inter alia* **on ground of** *bonafide* **requirement. Trial Court found the need to be genuine and decreed the suit. First Appellate Court affirmed the same. In second appeal, the Appellant-tenants pleaded that during pendency of the matter, son of Respondent-landlord had acquired a decree in Engineering and settled in USA with no chance of coming back to India and therefore, the alleged** *bonafide* **need and requirement had become non-existent. High Court, however found that requirement of Section 12(1)(f) was fully complied with and in view of concurrent findings that there was** *bona fide* **need of the premises, dismissed the second appeal.** E F

In appeal to this Court, it was contended that on the facts of the case High Court lightly set aside the subsequent events and erroneously came to the conclusion that the need subsisted. G

Respondents however contended that a person for whose *bonafide* **need the premises are required, cannot just remain idle in anticipation of getting the premises for starting business; that as there was delay in** H

A disposal of the matter, the son of landlord completed his Engineering studies and took temporary employment with visa for limited period but intended to come back to India as soon as the premises were available to start the business and that in any event, if there was non-user of the premises for the purpose for which eviction was sought for, the tenant had protection in terms of section 17 of the Act.

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Dismissing the appeal, the Court

HELD : 1.1. If a young entrepreneur decides to launch a new enterprise and on that ground he or his father seeks eviction of a tenant from the building, the proposed enterprise would not get faded out by subsequent developments during the traditional lengthy longevity of the litigation. His need may get dusted, nonetheless the need would remain intact. It is pernicious and unjust to shut the door before an applicant just on the eye of his reaching the finale after passing through all the previous levels of the litigation merely on ground that certain developments occurred pendente lite because the opposite party succeeded in prolonging the matter for such unduly long period. [201-C, D]

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Gaya Prasad v. *Pradeep Srivastava,* [2001] 2 SCC 604, relied on.

Ramesh Kumar v. *Kesho Ram,* [1992] Suppl. 2 SCC 623, referred to.

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1.2. What the Appellants have highlighted as subsequent events fall within the realm of possibility or probability of non-return but a certainty is necessary to be established to show that the need has been eclipsed. [204-D]

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2. The Appellate Court is required to examine, evaluate and adjudicate the subsequent events and their effect, which has been done in the instant case. In the background of the factual position, it is clear that the High Court had considered the subsequent events which the Appellants highlighted and then held that the *bona fide* need continues to subsist. [204-D, C]

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Hasmat Rai v. *Raghunath Prasad,* [1981] 3 SCC 103, relied on.

Ram Dass v. *Ishwar Chander,* [1988] 3 SCC 131; *Gulabbai* v. *Nalin Narsi Vohra,* [1991] 3 SCC 483; *Bega Begum* v. *Abdul Ahad Khan,* [1979] 1 SCC 273; *Shiv Sarup Gupta* v. *Dr. Mahesh Chand Gupta,* [1999] 6 SCC

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222 and *Atma S. Berar* v. *Mukhtiar Singh,* [2003] 2 SCC 3, referred to. A

3. Considering the fact that the tenants are occupying the premises for nearly two decades, the time granted by the High Court to the Appellant to vacate the premises is extended till the end of 2005 subject to Appellant's filing the requisite undertaking before Trial Court and continuing to make payment of rents due within the stipulated time. Arrears, if any, shall be paid to Respondents within two months from the date of the judgment. [204-H, 205-A] B

4. Besides it would be appropriate to take note of Section 17 of the Act which deals with consequences which statutorily follow if there is deviation from the purposes for which possession has been recovered. If in the instant case such contingency arises, the Respondents shall re-deliver possession to the Appellants-tenants on such terms as the Rent Controlling Authority shall fix. [204-E, F] C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7608 of 2002. D

From the Judgment and Order dated 24.6.2002 of the Madhya Pradesh High Court in S.A. No. 914 of 2001.

Raju Ramachandran and Prakash Shrivastava for the Appellants. E

S.S. Khanduja, for the Respondents.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. : The tenants are in appeal against the F impugned judgment of the VIIth Civil Judge No. 2, Bhopal, M.P., the first Appellate Court, and finally the judgment of affirmation by learned Single Judge of the Madhya Pradesh High Court at Jabalpur. Background facts in a nutshell are as follows:

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A suit for eviction was filed before the trial court under Section 12 (1)(a)(b) and (f) of the Madhya Pradesh Accommodation Control Act, 1961 (in short the 'Act'). The plaintiffs filed the suit on the ground that (a) there was default in payments of the rent due, (b) the tenant (defendant No. 1) had unlawfully sublet the tenanted premises and (c) for *bona fide* requirement. The trial court framed, in total, 13 issues and held that the need of the H

A plaintiffs, so far as the suit premises are concerned, was genuine and *bona fide*. It was also held that the plaintiffs had not got other suitable accommodation available and the defendant No. 1 had sublet the premises to defendant No. 2. The suit was accordingly decreed.

B In appeal the Appellate Authority held that the plea of subletting was not established. However, the finding regarding *bona fide* need was affirmed by the First Appellate Court. In Second Appeal the judgments of the courts below, so far as it was adverse to the appellant, were affirmed. Tenants filed an application in terms of Order 41, Rule 27 of the Civil Procedure Code 1908 (in short the 'CPC'). Another application for amendment of the Written C Statement was also filed. By these two applications the appellants wanted to highlight the alleged factual position that during the pendency of the matter Naresh Talreja son of the appellant No. 1, Uttam Chand (respondent No.1 herein) had acquired a degree in Engineering, got an employment in an Indian Company and subsequently was settled in USA and was working there, with no chance of his coming back to India. Therefore it was submitted that the D alleged *bona fide* need and requirement, for which the application was filed, had become non-existent, thereby disentitling the plaintiffs from any relief.

The present respondents refuted the claim of the appellants and submitted that since there was no other accommodation readily available E Naresh Talreja pursued study in Engineering and was temporarily engaged in USA. He wanted to come back and start his business.

The High Court found that the requirements of Section 12(1)(f) of the Act were fully complied with and in view of concurrent findings recorded to the effect that there was *bona fide* need of the premises, Second Appeal F had no merit. Accordingly the High Court dismissed the Second appeal. Time was granted till the end of August, 2002 to vacate the premises.

In support of the appeal, Mr. Raju Ramachandran, learned Senior counsel submitted that the High Court has lightly set aside the subsequent events. It is a settled position in law that the question whether a person has G *bona fide* need, was not restricted to the point of time when the application for eviction is made; it continues till final adjudication. On the facts of the case the High Court has erroneously come to the conclusion that the need subsisted.

H *Per contra*, learned counsel for the respondents submitted that a

person, for whose *bona fide* need the premises are required, cannot just remain idle in anticipation of getting the premises for starting business. As there was delay in disposal of the matter, Naresh completed his studies and had taken temporary employment with visa for limited period and intended to come back to India as soon as premises are available to start the business. In any event, it was pointed out if there was non-user of the premises for the purpose for which eviction was sought for, the concerned tenant has protection in terms of Section 17 of the Act.

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. If a young entrepreneur decides to launch a new enterprise and on that ground he or his father seeks eviction of a tenant from the building, the proposed enterprise would not get faded out by subsequent developments during the traditional lengthy longevity of the litigation. His need may get dusted, patina might stick on its surface, nonetheless the need would remain intact. All that is needed is to erase the patina and see the gloss. It is pernicious, and we may say, unjust to shut the door before an applicant just on the eve of his reaching the finale after passing through all the previous levels of the litigation merely on the ground that certain developments occurred pendente lite, because the opposite party succeeded in prolonging the matter for such unduly long period.

We cannot forget that while considering the *bona fide*s of the need of the landlord the crucial date is the date of petition. In *Ramesh Kumar* v. *Kesho Ram,* [1992] Suppl. 2 SCC 623 a two-judge Bench of this Court (M.N. Venkatachalia, J., as he then was, and N.M. Kasliwal, J.) pointed out that the normal rule is that rights and obligations of the parties are to be determined as they were when the lis commenced and the only exception is that the court is not precluded from moulding the reliefs appropriately in consideration of subsequent events provided such events had an impact on those rights and obligations. What the learned Chief Justice observed therein is this (SCC pp. 626-27, para 6)

> "6. The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which

A bear on the moulding of the relief occur, the court is not precluded from taking a 'cautious cognizance' of the subsequent changes of fact and law to mould the relief."

The next three-Judge Bench of this Court which approved and followed the above decision, in *Hasmat Rai* v. *Raghunath Prasad,* [1981] 3 SCC 103 B has taken care to emphasise that the subsequent events should have "wholly satisfied" the requirement of the party who petitioned for eviction on the ground of personal requirement. The relevant passage is extracted below : (SCC pp. 113-14, para 14)

C "Therefore, it is now incontrovertible that where possession is sought for personal requirement it would be correct to say that the requirement pleaded by the landlord must not only exist on the date of the action but must subsist till the final decree or an order for eviction is made. If in the meantime events have cropped up which would show that the landlord's requirement is wholly satisfied then D in that case his action must fail and in such a situation it is incorrect to say that as decree or order for eviction is passed against the tenant he cannot invite the court to take into consideration subsequent events."

E The judicial tardiness, for which unfortunately our system has acquired notoriety, causes the lis to creep through the line for long long years from the start to the ultimate termini, is a malady afflicting the system. During this long interval many many events are bound to take place which might happen in relation to the parties as well as the subject-matter of the lis. If the cause of action is to be submerged in such subsequent events on account F of the malady of the system it shatters the confidence of the litigant, despite the impairment already caused.

The above position in law was highlighted in *Gaya Prasad* v. *Pradeep Srivastava,* [2001] 2 SCC 604.

G One of the grounds for eviction contemplated by all the rent control legislations, which otherwise generally lean heavily in favour of the tenants, is the need of the owner landlord to have his own premises, residential or non-residential, for his own use or his own occupation. The expressions employed by different legislations may vary such as "*bona fide* requirement", H "genuine need", "requires reasonably and in good faith", and so on. Whatever

be the expression employed, the underlying legislative intent is one and that has been demonstrated in several judicial pronouncements of which we would like to refer to only three.

In *Ram Dass* v. *Ishwar Chander,* [1988] 3 SCC 131 M.N. Venkatachaliah, J. (as His Lordship then was) speaking for the three-Judge Bench, said: (SCC pp. 134-35, para 11)

> "11. Statutes enacted to afford protection to tenants from eviction on the basis of contractual rights of the parties make the resumption of possession by the landlord subject to the satisfaction of certain statutory conditions. One of them is the *bona fide* requirement of the landlord, variously described in the statutes as '*bona fide* requirement', 'reasonable requirement', '*bona fide* and reasonable requirement' or, as in the case of the present statute, merely referred to as 'landlord requires for his own use'. But the essential idea basic to all such cases is that the need of the landlord should be genuine and honest, conceived in good faith; and that, further, the court must also consider it reasonable to gratify that need. Landlord's desire for possession, however honest it might otherwise be, 'requirement' in law must have the objective element of a 'need'. It must also be such that the court considers it reasonable and therefore, eligible to be gratified. In doing so, the court must take all relevant circumstances into consideration so that the protection afforded by law to the tenant is not rendered merely illusory or whittled down."

In *Gulabbai* v. *Nalin Narsi Vohra,* [1991] 3 SCC 483 reiterating the view taken in *Bega Begum* v. *Abdul Ahad Khan,* [1979] 1 SCC 273 it was held that the words "reasonable requirement" undoubtedly postulate that there must be an element of need as opposed to a mere desire or wish. The distinction between desire and need should doubtless be kept in mind but not so as to make even the genuine need as nothing but a desire.

Recently, in *Shiv Sarup Gupta* v. *Dr. Mahesh Chand Gupta,* [1999] 6 SCC 222 this Court in a detailed judgment, dealing with this aspect, analysed the concept of *bona fide* requirement and said that the requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant refers to a state of mind prevailing with the landlord. The only way of peeping into

A the mind of the landlord is an exercise undertaken by the judge of facts by placing himself in the armchair of the landlord and then posing a question to himself - whether in the given facts, substantiated by the landlord, the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is *bona fide*. We do not think that we B can usefully add anything to the exposition of law of requirement for self-occupation than what has been already stated in the three precedents.

The above position was remained effected in *Atma S. Berar* v. *Mukhtiar Singh*, [2003] 2 SCC 3 :

C In the background of the factual position one thing which clearly emerges is that the High Court had considered the subsequent events which the appellants highlighted and tend to hold that the *bona fide* need continues to subsist. As observed in *Hasmat Rai's* case (supra) the appellate Court is required to examine, evaluate and adjudicate the subsequent events and their D effect. This has been done in the instant case. That factual finding does not suffer from any infirmity. What the appellants have highlighted as subsequent events fall within the realm of possibility or probability of non-return and a certainty, which is necessary to be established to show that the need has been eclipsed.

E At this juncture it would be appropriate to take note of Section 17 of the Act. Same deals with consequences which statutorily follow if there is deviation from the purposes for which possession has been recovered. If in the instant case such contingency arises, the respondents shall re-deliver possession to the appellants-tenants on such terms as the Rent Controlling Authority shall fix.

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Learned counsel for the appellants submitted that considering the long period of tenancy a reasonable time should be granted to the appellant to vacate the premises.

G Learned counsel for the respondents submitted that the High Court has granted time till the end of August, 2002 and by order dated 9th August, 2002 status quo regarding possession was directed to be maintained. Undisputedly the tenants are in occupation of the tenanted premises.

Considering the fact that the tenants are occupying the premises for H nearly two decades, in our considered view the time granted by the High

Court can be extended till the end of 2005. The period of tenancy is extended till the aforesaid date subject to the appellants' filing the requisite undertaking before the trial court and make continuing to payment of rents due within the stipulated time. Arrears, if any, shall be paid to the respondents within the period of two months from today. A

The appeal stands dismissed subject to the aforesaid directions with no orders as to costs. B

B.B.B. Appeal dismissed.