

(1987) 09 BOM CK 0001

In the Bombay High Court

Case No : Letters Patent Appeal No. 635 of 1984 in Writ Petition No. 2650 of 1979

Abdeali Ali

APPELLANT

Vs

Haji Abdul Jalil and Others

RESPONDENT

Date of Decision : 11-09-1987

Acts Referred:

Citation : (1988) 1 BomCR 212 : (1987) MhLj 911

Hon'ble Judges : V.A. Mohta, J;G.G. Loney, J

Bench : Division Bench

Advocate : P.N. and V.P., Vijay P. Karekar and M.D. Zoting, for the Appellant; P.G. Palshikar, S.V. Akolkar and Sajjad Hussain for respondents 1 and 3, for the Respondent

Judgement

V.A. Mohta, J.—Abdeali Turabali owns a small double storeyed non-residential house situated on Bhandara Road, Itwari, Nagpur. Haji Chhotemiya (since deceased) was a tenant. The owner filed application for permission to terminate tenancy under Clause 13(3)(v) and (vi) of the C.P. & Berar Letting of Houses and Rent Control Order, 1949 ("the HRC Order"). The Controller allowed the application on both the grounds. In appeal filed by legal heirs of Chhotemiya (who died after his evidence was recorded), the Collector maintained the order granting permission under Clause 13(3)(v) but set aside the order under Clause 13(vi). The legal representative of Chhotemiya filed a writ petition in the High Court questioning the validity of permission granted under Clause 13(3)(v) by the Controller as well as the Collector. The learned Single Judge quashed the permission. Aggrieved by the order of dismissal of his application under both the grounds, the present letters patent appeal has been filed by the owner.

2. From the material on record, the following undisputed positions emerge : Abdeali since last several years is in private service in a stationary cum general shop by name ""Saifi Traders"" for last several years. The house in question is his only house property in the city of Nagpur. It is in possession of two tenants.

On the ground floor admeasuring 4" x 11" Haji Chhotemiya was carrying business of selling fountain pens since before 1940. On the first floor there is some other tenant. Abdeali resides in some other tenanted house along with his wife, four grown up sons and three daughters. Sons are not engaged in any business. Haji Chhotemiya had started his career as a merchant in the premises of Abdeali. He lived and carried on business with his sons as one family, each member depending upon each other. In the year 1953 Chhotemiya constructed a three storeyed house in a nearby business locality Gandhibagh. He let out nine shops on the ground floor to various tenants and occupied with his family first and second floor for residence. He took on rent subsequently three non-residential premises on and near about Bhandara Road. Two are situated in one and the same building. The ground floor shop has an area of 11" x 24" and first floor an area of 8" x 22" The third small shop is on ground floor where fountain pens are kept in a show case.

3. The owner contends that (a) the tenant has secured alternative accommodation as contemplated under Clause (v) and (b) he needs the premises for bona fide business for which he has no house in the city. The Controller held that the tenant had secured alternative accommodation. He further held that the landlord's son were grown up, were unemployed, money can always be raised by taking loan, the landlord had no other house of his own in the city and thus need for bona fide occupation was real. Appellate Court also took the same view of evidence as far as Clause (v) is concerned but rejected the application under Clause (vi) holding that pleadings of the landlord were not clear and that he had recently let out the first floor of the house to some one which showed that he had really no intention to carry business. The learned Single Judge took a view that order rejecting the application under Clause 13(3) (vi) was based on appreciation of evidence requiring no interference in writ jurisdiction but interfered with order under Clause (v) on the ground that the appreciation of evidence on that point was perverse. According to the learned Judge the additional accommodation available with the tenant was not ""alternative"" as contemplated under the relevant clause.

4. The first submission of Shri Palshikar, the learned Counsel for the respondents-tenants is that Clause 13(3)(v) does not at all apply to non-residential premises.

We extract the relevant part of Clause 13(3) :

""13(3) If after hearing the parties the controller is satisfied ---

(i) x x x

(ii) x x x

(iii) x x x

(iv) x x x

(v) that the tenant has secured alternative accommodation or has left the area

for a continuous period of four months and does not reasonably need the house;

Explanation.---For the purpose of this item tenant shall be deemed to have secured an alternative accommodation if he owns a residential house in the city or town concerned and if such house is constructed on a site lying vacant on 1st January, 1951 or on a site made vacant on or after that date by demolition of any structure standing on such site; or

(vi) x x x

(vii) x x x

(viii) x x x

(ix) x x x

he shall grant the landlords permission to give notice to determine the lease as required by sub-clause (1)"".

The terms "house", "tenant", "landlord" are all defined under the HRC Order. House means ""a building or part of a building, whether residential or non-residential"". It includes many other things such as the garden, grounds and out-houses (if any) appurtenant to such building or part of a building, and any furniture supplied by the landlord for use in such building or part of a building. The terms "landlord" and "tenant" are defined with reference to the term "house". Grounds (i) to (ix) specified in Clause 13(3) make no distinction between a residential house and a non-residential house. The expression, ""residential house"" is to be found only in the Explanation to Clause 13(3)(v) and that seems to be the inspiration behind the above submission. In our judgment having regard to the plain and unambiguous language used in Clause 13(3)(v), the contention is illusory. Substantive clause makes no distinction whatsoever based on the nature of accommodation and well recognised rule of interpretation of Statute is to give effect to the plain language.

5. The other settled position is that an Explanation normally does not enlarge or restrict the scope of a substantive provision. Instances are known where statute and Explanation do not operate upon the same subject matter. Some time it is added by way of exception, some times to stress upon a particular aspect which ordinarily would not appear clearly from the section or clause. In the instant case that appears to be the position. While the substantive clause operates upon all houses, the Explanation deals with only residential houses and that too for a limited purpose of drawing presumption. The presumption is that if a case relates to a residential accommodation and a tenant owns a residential house in the city which is constructed after 1st January, 1951 on the plot lying vacant or made vacant on or after that date, he will be deemed to have secured alternative accommodation. No such or any other presumption can be drawn in the matter of a non-residential accommodation. Explanation thus, has no impact on the operation of Clause 13(3)(v) as such. We are quite conscious that the word ""Explanation"" is not decisive of the matter, legislative intention being always

paramount. But it is axiomatic that normally an explanation has to be read as explanation and if language used in it is capable of two interpretations, the one which is consistent with its being an explanation ought to be preferred. Even if the explanation in question is used as a proviso, it cannot have impact on the language of the clause which is absolutely unambiguous and admits of no exception in the matter of a non-residential accommodation. It is difficult to hold that Clause 13(3)(v) is intended to restrict to only residential accommodation and not to operate upon non-residential accommodation even though tenant has secured alternative accommodation. In our view therefore Clause 13(3)(v) operates upon residential and non-residential accommodation alike.

6. Our attention was drawn by Shri Palshikar, to the case of *Vithaldas v. Mansukhlal*, 1980 Mh.L.J. 612 in which the Explanation fell for consideration. That was a case where tenancy was in respect of a non-residential house and the tenant had purchased in the town, a house which was residential cum non-residential. Question arose whether in this back ground presumption referred to in the Explanation could be drawn. Division Bench observed :---

""The premises in question were used for non-residential purposes and hence the Explanation to Clause 13(3)(v) of the Rent Control Order, as the learned Judge rightly observed, had no application, which relates only to a residential house.""

In the above case, the Division Bench has proceeded on the assumption that Clause 13(3)(v) applies to a non-residential house. It has merely dealt with the Explanation and in that context only the above observations are made. True it is that the point raised before us is not agitated and decided, but the fact remains that it is no authority in support of a contention that Clause 13(3)(v) applies only to residential premises. Reliance on the case of *S. Kartar Singh Vs. Chamanlal and Others*, was also placed. The said decision has considered the provisions of the Delhi Rent Control Act, the scheme of which is entirely different. There are many rent control legislation which operates upon residential as well as non-residential houses. Delhi Rent Control Act belongs to former category.

7. What is the concept behind the expression "alternative accommodation" used in Clause 13(3)(v) is the next question. The following four ingredients of the clause become patent :---

- (a) tenant must have secured other accommodation,
- (b) it must be in his actual possession,
- (c) acquisition of accommodation must be subsequent to the tenancy of the premises in question,
- (d) such accommodation must be suitable.

Dealing with Clause 13(3)(v) of the HRC Order, the following pertinent observations are made in *Vithaldas* (supra) :---

""The word "alternative" means offering a choice of two or more things and if one is chosen the other is rejected. The word connotes a necessity for deciding between two courses or propositions either of which may be chosen, but not both. The two contrasted or paired courses or thing may or may not be identical, or exactly similar, or as convenient as the other accommodation that is pointed out as a substitute or as an alternative accommodation may have some plus or minus points, some merits or demerits as compared to the one in question in the occupation of the tenant and even so it could be termed as an alternative accommodation as the word "alternative" does not connote two exactly identical things, situations or courses.""

.....An improper or unsuitable accommodation certainly cannot be called an alternative accommodation and in this view of the matter the element of suitability, convenience or otherwise is ingrained in the term "alternative. Therefore, whether an accommodation is really an alternative accommodation or not would always depend upon the facts and circumstances of a case.""

"Suitable" is thus the key word. Suitability, however cannot be determined in a vacuum. What is suitable will depend upon the facts of each case. What may be suitable in one case may not be so in the other case. It will vary according to various conditions such as financial, social, local, individual and the like. It will also not depend merely on a whim, caprice, desire or intention of a tenant. In this connection, we may make useful reference to the following observations in the case of Shrinivas Vaman Karve and Another Vs. Chandanben Jayantilal Dalal and Others, made in the context of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947:--

""If the Court is satisfied that the tenant has acquired vacant possession of a suitable residence as in this case the question of intention of the tenant in acquiring such vacant possession is not relevant. To import intention of the tenant as a necessary ingredient in Clause (1) would virtually leave the landlord (and as a necessary consequence others who need rented premises) to the vagaries of a tenant who having acquired vacant possessions of a suitable residence, would say that he had no intention to go to reside there, nor did he entertain that intention at the date of institution of the suit. The intention of the Legislature in enacting Clause (1) is to see that residential premises are made available to those who are in greater need of them than those who acquire vacant possession of suitable residential premises."

The thread of reasonableness runs through the concept. Thus suitable means as much enough and proper as may be necessary to answer the purpose intended when viewed from a reasonable stand point. To hold otherwise means to give charter to the tenant to hold on the premises only because it is profitable to do so even at the cost of those who are in greater need of the premises.

8. The basic facts in this case stare at us. This case illustrates that it is a myth to presume that every tenant belongs to a weaker section of the society. Business

of Chhotemiya and his legal heirs was and is to sell fountain pens. The tenanted shop in question is only of dimension 4" x 11". The tenant's family in addition to owning and possessing a big residential as well as non-residential house of their own has secured subsequent to the creation of the tenancy in question three additional tenanted shops in a business locality nearby two of which are on ground floor and one on the first floor. In the two, business of fountain pen is being carried on and the third is being used as a godown-cum-cutlery shop. The tenant let out 9 shops in his building after construction and is residing with family on the first and second floor. Assuming that the three storeyed house can be totally left out of consideration because at the time of the application in the year 1974, all 9 shops were in fact let out and were not available for occupation, undisputed position remains that the tenant is in actual physical possession of three other tenanted premises, sizes of at least two of which are manifold bigger than the premises in question. They are situated in the business localities. The tenant is now dead. The two authorities took view that the tenant had scoured alternative accommodation. It has been discussed how the other tenanted accommodations are suitable and, therefore, alternative. True it is that even the three storeyed house has been considered as an alternative accommodation. Even if that part of the reasoning is trimmed off from the orders, the conclusion that other tenanted premises are suitable remains unaffected. If in the whole back ground, the two authorities have concurrently come to the conclusion that case under Clause 13(3)(v) was made out. It is difficult to see how those orders could be termed "perverse". We are unable to see any perversity in the conclusions. In any case real and equitable justice was done by the rent control authorities and the circumstances did not warrant interference in discretionary relief under Article 226 read with Article 227 of the Constitution of India. The learned Single Judge has held that the tenant had no suitable shop for "retail" pen business which he was carrying on in the shop in question. This finding is reached on the basis of a stray sentence uttered by Chhotemiya in his examination-in-chief. A mere ipse dixit of the tenant that other premises are not suitable for retail pen business cannot be accepted. Several answers given in the cross-examination demolish the correctness of the statements. In the whole back ground the tenant's insistence to carry on retail business only in the premises in question cannot be said to be reasonable. The learned Single Judge has further held that the rent receipt was in the name of one son of a tenant and there was nothing on record to show that the business of the tenant and his son is one and the same. It seems to us that the attention of the learned Single Judge was not drawn to the statement in the reply of the tenant to the effect that "all his sons and daughters are living together as one family and each one of the member is dependent upon the other". In our view, therefore, the circumstances in totality and basic facts warranted no interference in writ jurisdiction. We, therefore, restore the orders passed by the Rent Control Authorities granting permission under Clause 13(3)(v).

9. This takes us to the consideration of an order under Clause 13(3)(vi). We have

doubts about the correctness of the view taken by the authorities on this aspect but as findings are based on some evidence we must respect those findings. We, therefore, see no reason to take a different view than the one taken by the learned Single Judge, in this regard.

10. To conclude, this letters patent appeal is partly allowed. The order granting permission under Clause 13(3)(v) of the HRC order by the Rent Control Authorities is restored. No order as to costs.