

(1979) 05 GUJ CK 0003
In the Gujarat High Court

Abdulkarim Abdulraheman Dilhiwala and Others

APPELLANT

Vs

Alibhai Noormohmad Kadiwala

RESPONDENT

Date of Decision : 03-05-1979

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1)(1), 13(1)(1)

Citation : (1980) 21 GLR 685

Hon'ble Judges : S.H. Sheth, J

Bench : Single Bench

Judgement

S.H. Sheth, J.—The plaintiff filed the present suit against the defendants for recovering possession of the suit premises on several grounds. One of the grounds which was urged was that the defendants have acquired suitable alternative accommodation within the meaning of Section 13(1)(1) of the Bombay Rent Act. It was alleged that defendants have constructed two buildings.

2. In defence the defendants admitted that they have constructed two buildings on land which they have taken on rent but that they have constructed them for business purposes. They also contended that one of the two buildings was constructed out of the loan which was raised from the tenants. Therefore, that entire building was let out to the tenants.

3. The learned trial Judge found that one of the two buildings was situate in a business area, that is to say, opposite Surat Railway Station. So far as the second building was concerned, he found that it was suitable for residence though it was situate adjacent to the first mentioned building. He, therefore, found that defendants have acquired suitable residential accommodation and in consequence passed decree for possession.

4. The defendants appealed to the District Court. The learned appellate Judge found that both the buildings which the defendants have constructed are suitable for residence. It was further held by the learned appellate Judge that the defendants have not proved that they had raised loan out of which one of the

two buildings was constructed. The third finding which the learned appellate Judge has recorded was that it is immaterial where the buildings are situate. It was also immaterial, according to the learned appellate Judge, whether they were intended to be used for business purposes or residential purposes. He, therefore, confirmed the finding recorded by the learned trial Judge and dismissed the appeal.

5. It is that appellate decree which is challenged by the defendants in this Civil Revision Application.

6. I have not stated all the grounds for possession urged by the plaintiff in his suit because decree has been passed against the defendants only u/s 13(1)(1) of the Bombay Rent Act and that is the only finding which has been recorded against the defendants. Miss Shah who appears on behalf of the defendants has raised three-fold argument before me. According to her, while considering the suitability of a building for residential purpose, the area where it is situate must be taken into account. Secondly, she has argued that the purpose for which the building is constructed or acquired should also be taken into account. Thirdly, she has argued that before a Court comes to the conclusion that a particular building which a tenant has acquired will provide him suitable residential accommodation, the character of the building must also be taken into account.

7. Some of the basic propositions which Miss Shah has raised before me are fairly sound. So far as the area where the building is situate is concerned, merely because a building is situate in a business area, it can never be said ex-bypothesi that it is unsuitable for residential purpose. There is never a rigid demarcation of a business area from a residential area. Secondly, it is the tenant's choice where to construct his building. Merely because he of his own volition has constructed a building in a business area, the building being otherwise suitable for residential purposes, it can never be said that the mere situation of such a residential house in a business area renders it unsuitable as a residence. Therefore, mere unilateral choice of a locality or an area where a tenant constructs a building, given all other factors equal, cannot visit upon the landlord and deny to him his claim for possession u/s 13(1)(1) of the Bombay Rent Act.

8. Having examined the basic proposition which Miss Shah has raised before me, I now turn to the facts found by the learned appellate Judge. It has been found by him that the area in which the defendants have constructed two houses is not an exclusively business area. It is a mixed area where there are residential premises as well as business premises. Therefore, not only the basic proposition which Miss Shah has advanced before me does not, on meticulous analysis, appear to be correct and well-founded but, assuming that it is otherwise sound and well-founded, it does not fit into the facts found by the learned appellate Judge. I am, therefore, unable to accede to the first argument which Miss Shah has raised before me.

9. So far as the second argument is concerned, it is weaker than the first one.

Whether a tenant who has constructed or acquired a suitable residential accommodation wants to use it for business purpose or not is not the test which can be applied for the purpose of deciding a case u/s 13(1)(1) of the Bombay Rent Act. If the unilateral intention of the tenant is material, then no landlord in any conceivable case would be able to take advantage of the provision of Section 13(1)(1) of the Bombay Rent Act. Therefore, to give effect to the unilateral intention which a tenant has is to defeat the provisions of Section 13(1)(1). It cannot be done because if such an intention is given effect to and acted upon, the claim made by a landlord for recovery of possession of his premises from his tenant u/s 13(1)(1) will stand dismissed and rejected as soon as the tenant in his written statement states that the alternative accommodation acquired or built by him is intended to be used by him for business purposes and not for residential purposes. I am unable to conceive of a case where a statutory provision can be defeated so easily by a mere unilateral declaration of a party. The second argument which Miss Shah has raised is therefore rejected.

10. The last argument which Miss Shah has raised is that the buildings which the defendants have constructed can be said to be suitable alternative residence provided they satisfy the basic characteristics of a residence. In principle this argument is well-founded. If a tenant constructs a building which cannot be used for a purpose other than a godown, it can never be a suitable alternative residence acquired by the tenant. Similarly, if a tenant constructs a building which can be used only as a factory or a workshop or as a mere shop and is incapable of being used as a residence, it can never be said that the tenant has acquired suitable residential accommodation. However, even though the basic proposition which Miss Shah has raised before me is sound and well-founded, it does not apply to the instant case. It has been found by the learned appellate Judge that two houses which the tenants have constructed answer fully the characteristics of a residence. They have residential rooms. They have windows and all those things which are required in a residential premises.

11. In fact, in one of the buildings a lodging house is run. I may state that though it is a lodging house in the real sense of the expression; the learned appellate Judge has described it as a boarding house. It is not a boarding house in the sense that food is prepared there and served to the customers. It is a lodging house in the sense that lodgers stay in that house on payment. It appears that in this case it is used as a small residential hotel or a residential guest-house. In my opinion, therefore, the two houses which the defendants have constructed are residential in character and can be used by them as residence.

12. In this view of the matter, I see no reason to interfere with the decree for possession passed by the Courts below. No other contention has been advanced by Miss Shah before me in support of this Civil Revision Application. The Civil Revision Application, therefore, fails and is dismissed. Rule is discharged with costs.