

(1968) 03 BOM CK 0022

In the Bombay High Court

Case No : Special Civil Application No's. 2203 of 1965 and 116 of 1966

Badrinarayan Ramsukh Rathi

APPELLANT

Vs

Nichaldas Tejbhandas Sindhi and Another

RESPONDENT

Date of Decision : 11-03-1968

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13, 13(1), 13(3A), 13(3B)
Constitution of India, 1950 — Article 227

Citation : AIR 1969 Bom 119 : (1968) 70 BOMLR 481 : (1969) ILR (Bom) 38

Hon'ble Judges : V.S. Deshpande, J

Bench : Single Bench

Advocate : S.C. Pratap, for the Appellant; M.L. Pendse, for the Respondent

Judgement

1. The petitioner is the owner of two houses bearing No.1163 and No. 667 situated at Raviwar peth, Poona. Respondent No. 1 is Special Civil Application No. 2203 of 1965 and Respondent No.1. in Special Civil Application No. 116 of 1966 are the tenants of house No. 1163. There was one more tenant of house No. 667. The petitioner wanted to demolish the original construction on these two houses and have a fresh one building constructed thereon, in place of the two separate houses. He therefore devised a plan of one full-fledged building and then got the said plan duly sanctioned from the Municipality on or about 30th May 1961. He then approached the Tribunal constituted u/s 13(3B) of the Bombay Rent Act and obtained a certificate from them as required under the said sub-section (3B) of Section 13. He then gave a notice to the three tenants, i.e., two tenants of house No. 1163 and also the tenant of house No.667, terminating their tenancy alleging that he reasonably and bonafide required the premises in dispute for the immediate purpose of demolishing them and such demolition was to be made for the purpose of erecting new building on the premises sought to be demolished. The tenancy was terminated by the end of October 1962. He then instituted suits under the Bombay Rent Act against all the three tenants claiming possession of the premises from the three tenants u/s 13(1)(hh) of the

Bombay Rent Act for the purpose of demolishing and constructing a new building thereon, and as required by sub-section (3A) and (3B) of Section 13, he gave an undertaking to the Court and also produced the certificates as required under the said sub-sections.

2. His suit against the tenant in house No. 667 has ultimately been decreed and decree has been confirmed by the High Court. I am informed that construction in place of old house No.667, in terms of the plan has already been completed. The two suits against the present respondents in the two Special Civil Applications occupying house No. 1163, however, passed through chequered career. It appears that the original certificates were filed in the suit against the tenant in house No. 667 and the said certificates or copies thereof were not filed in the suits against these two tenants when the suits were instituted and the suit claims were sought to be defeated by these two tenants on the technical ground that such certificates were not enclosed along with the plaint at the time of institution of the suits. Realising the force of the plea of the defendants, the plaintiff withdrew the suits with the leave of the Court, but the tenants preferred appeals to the District Court against the order permitting the plaintiff to withdraw the suits. The said appeals were dismissed and then the present two suits were filed by the plaintiff afresh for the same relief. This is why the plaintiff's claim in regard to possession of the house No. 1163 remained pending till this day, even though a part of the construction as contemplated according to the original plan on the plot of house No.667 has been completed.

3. This claim was resisted by both the tenants by raising several defences. The plaintiff had alleged that these two houses No. 1163 and No. 667, were adjacent to each other and therefore he wanted to have a fresh construction of one building in place of both these houses according to the plan approved by the Municipality. The defendants denied that these two houses were adjacent to each other. It was denied that plaintiff wanted to demolish the two houses with the object of constructing a new building or that the new construction cannot be had without the demolition of the existing construction. It was alleged that the certificate granted by the Tribunal was invalid. It was also alleged that the tenancy was not duly terminated and that the suit was not properly instituted. It was also alleged that copy of the certificate was not valid and the suit was as good as filed without enclosing the certificate of the Tribunal Plaintiff's claim for bonafide requirements for demolition of the construction was also denied. It was also alleged that the plan as submitted does not satisfy the requirements of Section 13(3A) of the Bombay Rent Act

4. Issues were framed and after recording the evidence, the learned trial Judge decreed both the suits. Suit No.4571 of 1952 against Nichaldas was decreed by judgment dated 29th June 1964 while Suit No.4573 of 1962 was decreed against the tenant Ramchand Surajmal by judgment dated 25th July 1964. A decree for rent also was claimed and allowed but we are not concerned in these Special Civil Applications with the claim for rent.

5. Both the tenants preferred appeals to the District Court. Appeal No.545 of 1964 was preferred by the tenant Nichaldas against the decree in Suit No. 4571 of 1962, while Appeal No. 618 of 1964 was preferred by the tenant Ramchand Surajmal against the decree in Suit No.4573 of 1962. Both these appeals were heard by the learned Assistant Judge, Poona, who allowed the appeals by his judgment and decree dated 23rd September 1965, disposing of the two appeals by a common judgment. The plaintiff has therefore preferred the present two Special Civil Applications to this Court challenging the judgment of the Assistant Judge delivered in the above two appeals. As the points arising both the cases are common, both the Special Applications are disposed of by a common judgment.

6. The trial Court found that these two houses, No. 1163 and No. 667, are adjacent and proceeded on the basis that a new building was sought to be constructed by demolition of these two houses on the plots where the two houses are situated, on the assumption that the premises covered by these two houses No. 1163 and No. 667, are one premises. The learned Judge held that the evidence in the case produced by the plaintiff was satisfactory to hold that plaintiff wanted the possession of these premises as he reasonably and bonafide required the same for the immediate purpose of demolishing them and such demolition was sought to be made for the purpose of erecting a new building. He also found that the new building was actually intended to be constructed on the premises sought to be demolished. It was urged before the learned Judge that there was one loft on the top of the first floor and as such the construction in house No. 1163 did not consist of only two floors but consisted of more than two floors and as such Section 13(1)(hh) of the Bombay Rent Act was not attracted. This contention was negatived by the learned Judge. The learned Judge decided the reasonableness and bona fides of the plaintiff's requirements from the point of view that one building was being constructed in place of two and he looked at the plan submitted by the plaintiff, as approved by the Municipality, from this point of view to ascertain as to whether any undertaking was given by the landlord in terms of sub-section (3A) of Section 13 and as to whether a certificate was obtained by the landlord in compliance with sub-section (3B) of Section 13 and as to whether plaintiff had given the required undertaking to provide accommodation to the evicted tenants immediately after the construction was over.

7. In appeal, however, the learned Assistant Judge came to the conclusion firstly, that house No.1163 and house No. 667 were not adjacent. He then found that these two houses constituted two separate entities and he examined the legal position and the requirements of Section 13(I)(hh). Section 13(3A) and S.13(3B) of the Bombay Rent Act on the assumption that the application was only for the demolition of the existing structure on house No. 1163 and construction of a building thereon. Admittedly, the plan as conceived by the landlord and submitted to and approved by the Municipality is of construction of only one building in place of the two constructions on house No.1163 and house No. 667.

The plan contemplates all residential tenements only in the place where the structure of house No. 667 was located. The plan does not provide for any residential tenements in place of the structure now standing in house No. 1163. In the structure standing in house No. 1163 the plan provides a big passage leading from Someshwar Mandir Road to the residential tenements constructed in place of house No. 667 and there is a provision for constructing a shop in the remaining part of house No. 1163. This being the position, as planned in regard to the proposed construction in place of the structure in house No. 1163, the learned Judge found that the requirement of a construction of two times the number of residential tenements and not less than two times the floor area, as ordained in sub-section (3A) (a) of Section 13 of the Bombay Rent Act is not even sought to be complied with in the proposed construction after the demolition of the existing structure in house No. 1163. Consistent with this approach he also found that the requirements of the landlord for demolition of the structure for such purpose was not reasonable or bona fide. Accordingly he allowed the appeal and dismissed the suit.

8. The first point that falls for consideration is as to whether the houses Nos. 1163 and 667 are adjacent or not. The plaintiff's case, as pleaded, is that they are adjacent. The defendants in both the suits have undoubtedly challenged this assertion, but the trial Court has found that these two houses are adjacent. The trial Court relied on the evidence of the plaintiff and also the plan that is submitted at Exhibit 32. This evidence of the plaintiff is really not challenged by the defendants at all. In fact, defendant Ramchand has in terms admitted that these two houses are adjacent, but defendant Nichaldas does not say a word on this point in his evidence. In spite of this factual position, the learned Assistant Judge has held that these two houses are not adjacent. The learned Judge relies on what he describes as admissions of the plaintiff in cross-examination for arriving at this conclusion. This he has considered in paragraphs 10 and 11 of his judgment and the alleged admission of the plaintiff in cross-examination is referred to by him in para. 11 of the judgment. Mr. S. C. Pratap, the learned advocate appearing for the petitioner-plaintiff, urged that this finding of the learned Assistant Judge is the result of misreading of the evidence of the plaintiff. After hearing the learned advocates and after reading the evidence myself, I find that Mr. Pratap's grievance is perfectly justified. I have not been able to find a single sentence or word either in the learned Judge's discussion of this part of the evidence in paragraph 11 of his judgment or in the entire cross-examination of the plaintiff suggesting that the two plots are not adjacent. This apart, I have examined the plan (Exhibit 32/1) with the assistance of the two advocates and their clients who were present in Court, and there can hardly be any doubt that the two houses, No. 1163 and No. 667, adjoin each other, though the two are accessible from two different roads. The only grievance of Mr. Pendse appearing for the defendants in both the cases was that at present the two houses are not accessible inasmuch as the two houses are separated by an inter-connecting wall. But this wall cannot act as an insurmountable difficulty once the

construction is allowed to be made in accordance with the plan approved by the Municipality. Thus, the finding of the Assistant Judge that the two plots are not adjacent is contrary to the unchallenged evidence on record and deserves to be set aside.

9. Now, the facts established in this case are these: The plaintiff is the owner of the two houses, No. 1163 and No.667. He wants to demolish the entire structure that exists on these two houses. He has conceived a plan for construction of a building covering the plots occupied by the present structures of these two houses. This plan has been approved by the Municipality. It will only be reasonable to infer that the construction proposed by the plaintiff is in no way contrary to the rules and regulations of the Municipality, when the Municipality has accorded its sanction for the construction in accordance with the plan approved by them. The plaintiff wanted the possession of these two houses for the purposes of demolishing and constructing a fresh building thereon in accordance with this plan. He has satisfied the Tribunal as required u/s 13(3A) of the Bombay Rent Act that the plans and estimates for the proposed new building have been properly prepared and the necessary funds for the purpose of the erection of the new building are available with him and that the other conditions imposed by the State Government have also been complied with. He has also given an undertaking as required under clause (a) of sub-section (3A) of Section 13 of the Act that the building sought to be erected shall contain not less than two times the number of residential tenements and not less than two times the floor area contained in the premises sought to be demolished and also given an undertaking in terms of clauses (b) and (c) of subsection (3A). It is not disputed by Mr. Pendse, the learned advocate appearing for the two defendants, that looking to the plan of the building as a whole, sought to be constructed in place of the two houses, the plan does conceive of residential tenements which are two times the number as required under sub-section (3A), clause (a). and also two times the floor area contained in the structures on both the two houses prior to demolition. As stated above, the plaintiff succeeded in his suit against the tenant in house No. 667 in getting him evicted and immediately after eviction of the said tenant the landlord has constructed the tenements in place of the old structure in house No. 667 in terms of the plan approved by the Municipality and the certificate granted by the Tribunal. If he has not been able to complete the construction in accordance with the plan in regard to house No. 1163, it was only because the pendency of the present proceedings against the tenants prevented him from doing so.

10. But Mr. Pendse says that in spite of the above factual position, plaintiff cannot succeed in getting the possession of the house in dispute, namely, No. 1163 u/s 13(1)(hh) of the Bombay Rent Act on the ground of his bona fide and reasonable requirements of the same, as he is not erecting a new building on the premises sought to be demolished, as contemplated under sub-section (3A)(a) of the said section. Argument is that the landlord is not permitted to have an integrated plan of one new building for construction by demolition of the existing

structures of the houses or buildings on more than one plot. All that Section 13(1) (hh) permits the landlord is to have the premises for the immediate purpose of demolishing them, if he can erect a new building on the premises sought to be demolished. If the new tenements are to be included in a building on some other premises, such as house No. 667 in this case, and no residential tenements are provided in the proposed plan approved by the Municipality on the present structure of house No. 1163. there is not even an attempt to comply with the provisions of Section 13(1)(hh), and as such plaintiff cannot succeed. Answer to this argument depends entirely on the construction of the words "for the purpose of erecting new building on the premises sought to be demolished". Does the word "premises" in clause (hh) of Section 13(1) and particularly in the latter part of the said clause quoted above, mean necessarily a building in which present tenements are located or does the word "premises" also mean the said building or house and, or some other houses belonging to the landlord by the demolition of which one new building is sought to be erected by him after approval of the same from the local authority?

11. Now. S. 12 of the Bombay Rent Act restricts the landlord's right to terminate contractual tenancies and evict his tenant according to the terms of the contract, as long as the tenant is ready and willing to pay the standard rent and observes and performs the other conditions of the tenancy in so far they are consistent with the provisions of the Act. This is undoubtedly a restriction on the rights to hold and enjoy the property belonging to the citizen. However, this restriction is relaxed by providing several contingencies in Section 13 on the happening of which the landlord is entitled to terminate the tenancy and get possession of the leased premises. Clauses (a) to (f) and (1) and (k) of sub-section (1) of Section 13 deal with the acts of the tenant, which disentitle him to the protection of the Act and enables the landlord to terminate his tenancy. Clauses (g), (h), (hh) and (hhh) deal with the contingencies where the landlord reasonably and bona fide requires the premises for certain purposes. Clause (1) then provides for the contingency where the tenant's requirements of the leased premises come to an end because of his acquisition of suitable residential premises somewhere else. We are in this case concerned with the requirements of the landlord u/s 13(1) (hh). This clause enables the landlord to temporarily terminate the tenancy and get possession of the premises for the immediate purpose of demolishing them if the demolition is contemplated for the purpose of erecting new building on the premises sought to be demolished. This requirement must be reasonable and bona fide. Sub-sections (3A) and (3B) of Section 13 provide for certain acts by the landlord to ensure that the alleged requirements of the landlord for demolition and erection of new building are really genuine and the protection afforded to the tenant by the other provisions of the Rent Act is not rendered illusory. Section 17A enables the tenant to get possession of the vacated premises if the work of reconstruction is not started within the time mentioned in Sub-section (3A) of Section 13. Section 17B and Section 17C further ensure that the tenant so evicted gets back the possession of the tenement in the new

building on the same terms and conditions on which he occupied it immediately before his eviction.

12. The scheme as laid down in sub-sections (3A) and (3B) of Section 13 of the Bombay Rent Act requires the land-lord to obtain a certificate from the duly constituted Tribunal to the effect that the plans and estimates of the new building have been properly prepared and the necessary funds for the reconstruction of the house are available to the landlord and other conditions laid down by the State Government in this behalf are complied with by him. He is also required then to give an undertaking to the Court at the time of the institution of the suit saying that the new proposed building shall contain not less than two times the number of residential tenements and not less than two times the floor area contained in the premises sought to be demolished.

13. As stated above, all these sub-clauses and clauses of Section 13 in a way seek to relax the restrictions imposed on any landlord in the matter of employment of his own property. The object of Section 13(1)(hh) seems to permit the landlord to have a new construction of his choice in place of the existing structure. But while ensuring the tenant's right to get back the possession of the premises or tenements in lieu of the lost ones on the same terms and conditions in the new building, the Legislature also has imposed a further condition on the landlord so desiring to erect a new building in place of the old, that he should undertake to have not less than two times the number of residential tenements in his contemplated new building and not less than two times the floor area contained in the premises sought to be demolished. The object of these provisions is very clear. In the first instance, the owner of the building is enabled to demolish the old types of structures which may, in some cases, be found to be only unsuitable to modern ideas and modern requirements, subject to the security of the tenants' right to get similar tenements at standard rent. But then the object also seems to be to ensure that in the course of this erection of a new building provision is also made by the landlord for more residential accommodation. The requirements of having not less than two times the number of residential tenements and not less than two times the floor area can have no other object in view.

14. But once the landlord is prepared to comply with these requirements, no other restriction is sought to be placed on his rights. He is enabled to have such type of construction as he wants, subject of course to the tenant's right to get one tenement in the said building. Of course, no Court will consider his requirements to be reasonable and bona fide if the landlord proceeds to construct palatial flats which in the nature of things will be beyond the reach of the present tenants. But that aspect will be relevant to consider as to whether the landlord's requirements are reasonable and bona fide or not. But as long as his requirements are proved to be reasonable and bon fide and as long as he is shown to possess the necessary finances and has got his plans approved from the local authority, the Bombay Rent Act itself does not proceed to impose any

further restrictions. Question then is, can any owner or landlord be prevented from having one new building in place of two or more existing buildings, merely because, the plan of the new building does not provide for residential quarters, in the identical premises or plans, from which some of the tenants are being evicted, even though he can provide in the new building, accommodation to all the tenants in the existing building in some quarter or the other, and also is in a position to afford not less than two times the number of residential tenements and not less than two times the floor area contained in the two houses by demolishing which he wants to construct one building in accordance with one integrated plan?

15. Of course, the first inherent restriction must flow from the location and situation of such two or more houses. No such one building will be possible if the two or more such houses are not adjacent to each other or are not otherwise connected with each other by any link. In that case, no landlord or no owner can have an integrated plan for one building on two or more of his premises. The second limitation is about his capacity to have the necessary finance. The third limitation is as to whether his plan conforms to the requirements of the rules and regulations of the local authority. But these restrictions have nothing to do with the provisions of the Bombay Rent Act. In case an owner is in a position to cross these limitations and hurdles discussed above and is also in a position to comply with all the requirements of the Bombay Rent Act provided in sub-sections (3A) and (3B) of the Act, and also satisfies the Court that his requirements are reasonable and bona fide, there is nothing in the Act which can prevent the landlord from so planning his construction and so accommodating his tenants, who are housed at present in two or more houses belonging to him and whom he wants to house in only one new building which he proposes to construct in place of the present ones by demolishing them.

16. It is against this background and this context that I have to decide the contention of Mr. Pendse, the contention being that the new building contemplated by the landlord and conforming with the requirements of sub-section (3A) (a) of S. 13 of the Act must necessarily be erected on the identical place where the present structure of house No 1163 is located and if the tenements are erected on some other buildings, that will not be "erecting new building on the premises sought to be demolished" within the meaning of clause (hh) of S. 13(1). Emphasis is laid on the word "premises" for the demolition of which the tenant is to be evicted on the representation that a new building is going to be erected on the same "premises". Now, the word "premises" is defined in S. 5(8) of the Act Sub-clause (a) of the said sub-section has no relevance for deciding the controversy in dispute. Sub-clause (b) defines "premises" to mean "any building or part of a building let separately....." The wording of rest of the sub-clauses is not material. Then the word "tenement" is defined in S. 5(12) to mean "a room or group of rooms rented or offered for rent as a unit". This definition of "tenement" was added by the Amendment Act, Bom 53 of 1950, and was not originally there when the Act was introduced in the year 1948. Now, if

one examines the provisions of S.12 or the several clauses of Section 13(1) of the Act, dealing with some act or other of the tenant which deprives him of the protection of the Act, the word "premises" used therein seems to have been used with reference to the building or part of the building which is actually in occupation of one tenant. In a given case, it is capable of being construed to mean "tenement". But that does not seem to me to be the position with regard to certain other clauses of S. 13(1), such as clauses (g), (hh) and (hhh), where the landlord is enabled to get the possession of the premises either for his own occupation or for construction of new building. The sense in which the word "premises" is used in all these clauses seems to cover not only one tenement or a part of a building or one building alone, but the word is capable of covering more than one tenement or more than one part of the building or even more than one building occupied by more than one tenant. Take, for example, the case contemplated by clause (g) of Section 13(1). One building may consist of more than one flat or more than one block or even more than one room, and all these may be occupied by more than one tenant. The landlord may reasonably and bona fide require the tenements or rooms or buildings so occupied by more than one tenant, and yet all these buildings may come within the definition of "premises" which are reasonably and bona fide required by the landlord for occupation by himself. The same is the case with clause (h) of Section 13(1), where the landlord requires possession of the premises for repairs, which may have been occupied by more than one tenant, and therefore consisting of more than one tenement or even more than one building, depending of course on the nature of the repairs called for. The same is true of clause (hh). Supposing the premises consist of one tenement or one flat in a big building and supposing the landlord established his bona fide and reasonable requirements for the immediate purpose of its demolition and erecting a new building thereon, surely no landlord can contemplate of erecting a new building only in place of one tenement or one block or one flat in the whole building. In the very nature of things, the scheme would be of demolishing the entire building and erecting a new building thereon. The word "premises" used in this clause must therefore necessarily mean not only one tenement or part of a building but the entire building. But then sub-section (3A) (a) requires the landlord to increase the number of residential tenements and also the floor area. One way of complying with this requirement will be by adding more floors than are contained in the present structure. But the other way by which this requirement can be complied with can be by extending the area of the plot, if it is possible for the landlord to do so. In that case, necessarily the landlord will have to acquire more open plots or areas on which such added construction can be raised. The word "premises" therefore, in clause (hh) of Section 13(1) not only means one tenement or only a part of a building or, for that matter, even one building but means something more. The sense in which this word is used in this clause is capable of covering the area of more than one building. In fact the word "premises" in this clause means part of a building or a building or more than one building, by the demolition of which the landlord contemplates erecting a new one building. As

laid down by the Supreme Court in the case reported in *Anand Nivas (Private) Ltd. Vs. Anandji Kalyanji Pedhi and Others*, the sense in which the expression in different sections, and even clauses, is used must be ascertained from the context of the scheme of an Act, the language of the provisions and the object intended to be served thereby. The Supreme Court has held in this case that the word "tenant" used in the different clauses of Section 5(11) of the Bombay Rent Act and Sections 13, 14 and 15 covers both a contractual as well as statutory tenant depending on the context in which the said word has been used in the said clauses of sub-section (11), and other sections. In another judgment of the Supreme Court reported in *Shamarao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others*, it is held that "it is the duty of Courts to give effect to the meaning of an Act when the meaning can be fairly gathered from the words used, that is to say, if one construction will lead to an absurdity while another will give effect to what commonsense would show was obviously intended, the construction which would defeat the ends of the Act must be rejected even if the same words used in the same section, and even the same sentence, have to be construed differently". In *Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate*, the Supreme Court was interpreting the word "person" used in Section 2(k) of the Industrial Disputes Act, 1947. Their Lordships observed that the words of a statute, when there is a doubt about their meaning are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the Legislature has in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use as in the subject or in the occasion on which they are used, and the object to be attained.

17. Having regard to these principles in regard to the interpretation of a word in a statute, and having regard to the object with which Section 13 of the Bombay Rent Act as a whole and Section 13(1)(hh) in particular, is introduced in the scheme of the Act and having regard to the context in which the word "premises" occurs in clause (hh) of Section 13(1) as also sub-sections (3A) and (3B) of Section 13 and the subject-matter with which these sub-sections of Section 13 are dealing, the word "premises" cannot be construed to mean merely a tenement in occupation of a particular tenant or the part of a building or building occupied by one or more than one tenant. The word "premises" is wide enough to include in its sweep building or more than one building occupied by a tenant or more than one tenant, by the demolition of which one new building is sought to be erected by the landlord in accordance with the plan approved by the local authority. In this view of the matter, the contention of Mr. Pendse fails. The "premises" on which the tenements are required to be built by the landlord in terms of the scheme u/s 13(1)(hh) are not necessarily confined to house No. 1163 occupied at present by the respondents in these two Special Civil Applications as tenants but the word "premises" covers both the houses, House No. 1163 as well as house No. 667, which are adjacent to each other and which

belong to the plaintiff owner, by the demolition of which plaintiff seeks to erect one new building. And if the landlord has provided tenements as required under sub-section (3A) (a) in one part of the said building, the same satisfies the requirements of the said sub-section, notwithstanding that the residential tenements are actually located in place of the structure which was standing in house No. 667 and notwithstanding that no residential tenements have been provided in place of the structure now standing in house No.1163. The finding of the learned Assistant Judge on this point deserves to be set aside.

18. Mr. Pendse, the learned advocate also argued that the requirements of the landlord can neither be said to be bonafide or reasonable. The argument is that flow all the tenements contemplated under the plan and intended to be setup in place of the old structure in house No. 667 have already been constructed and even an outlet and passage has been provided to the residents of the said tenements from the side of Maide Ali. Mr. Pendse argues that what the landlord now wants to provide in place of the structure in house No. 1163 is only a passage for the residents of house No.667 for going towards Someshwar Mandir Road and in a part of the said house a shop is being provided by the landlord. The argument is that demolition of the present structure in house No. 1163 is really meant for providing a passage. According to Mr. Pendse, one passage having already been provided on Maide Ali Road, the provision of a further passage from the side of Someshwar Road cannot be said to be reasonable requirement of the landlord. His further argument is that after demolition of the present shop structure existing in house No. 1163 the landlord is trying to construct a new shop which is bound to fetch more rent and which will be beyond the reach of the present tenant and that way the requirements of the landlord are not even bona fide. I do not find any substance in these submissions of Mr. Pendse. The shop and the passage contemplated to be constructed in place of the structure in house No. 1163 is part and parcel of the entire plan that was designed by the landlord when the plan was submitted for approval to the local authority. I do not find any unreasonableness if as a part of the plan of the entire construction one passage is provided for going to Someshwar Mandir Road and other passage is provided for Maide Ali Road. It is an accident in this case that the present proceedings continued to be dragged on and the construction in place of house No. 667 has been completed long ago. It is not proper to consider the reasonableness of the requirement of this passage by relying on the anomalous situation that is the result of dragging of the litigation in the present two cases. In either case there is absolutely no evidence to show that providing for the passage contemplated under the plan is in any manner unreasonable. No material is brought on record to show that the contemplated provision of a shop in place of the present structure in house No. 1163 is mala fide. No material is brought on record to show that the object of it is really to construct the shop in such a manner as to keep it beyond the reach of the present tenant who occupies the said shop. There is accordingly no force in this submission of Mr. Pendse. On the fact established in this case. I do not find that the requirements

of the land-lord are either unreasonable or mala fide.

19. Mr. Pendse then argued that the premises in dispute cannot be said to be consisting of not more than two floors as admittedly there is a loft on the first floor. Mr. Pendse particularly argues that clause (hh) of Section 13(1) of the Bombay Rent Act contemplates that the premises should be "of not more than two floors". He says that this clause does not say that the premises must necessarily consist of three floors. According to Mr. Pendse, once the negative test is established by the tenant that there is something more than two floors in the premises, the landlord's right to get his tenants evicted under this clause (hh) stands defeated. I do not find any substance in this submission also of Mr. Pendse. Admittedly there is one loft on the top of the first floor. Both the Courts have taken the view that, that loft cannot be equated with the existence of the floor. I do not find any error with which this concurrent finding can be said to be suffering from. I may also add that the Explanation added to Section 13(1)(hh) of the Act by Maharashtra Amendment Act No. 13 of 1964 goes a long way to answer this point raised by Mr. Pendse.

20. Mr. Pendse also argued that not the original certificate but only a copy of the certificate of the Tribunal was enclosed at the time of the institution of the plaint and this was no compliance with sub-section (3A) of Section 13. I also do not find any substance in this submission, as this point has been fully dealt with by the two Courts below and the point has been negated.

21. Mr. Pendse lastly argued that this is certainly not a case which warrants interference under Article 227 of the Constitution. Unless some errors apparent on the face of the records are shown, interference in exercise of the extraordinary jurisdiction possessed by this Court under Article 227 is not proper. In my opinion, the learned Assistant Judge has, in the first instance, misread the evidence of the plaintiff in arriving at the conclusion that the two houses, house No.1163 and house No.667, were not adjacent. This finding based on the misreading of the evidence led him further to hold that these two houses were separate entities and all his findings thereafter are based on this erroneous approach based on equally erroneous findings. As stated above, fact is that these two houses are adjacent. Secondly the "premises" contemplated in the several clauses of section 13(1)(hh) and (3A) and (3B) cover not only premises actually rented out to the tenants but also the entire building or the buildings standing on the land or lands owned by the plaintiff, notwithstanding that they are shown as different units in the records of the Municipality. It must follow that the learned Judge's judgment suffers from several errors apparent on the face of the record, which necessarily calls for interference of this Court in exercise of the powers possessed by it under Article 227 of the Constitution.

22. The result is that the rules in both the Special Civil Applications are made absolute. There will, however, be no order as to costs as far as this Court is concerned in both the applications.

23. This decree not to be executed "in both the cases" for three months from today.

24. Rules made absolute.