

(2002) 09 BOM CK 0037

In the Bombay High Court

Case No : Writ Petition No. 4194 of 1989

Bandu Ravji Nikam

APPELLANT

Vs

Acharyaratna Deshbushan Shikshan Prasark Mandal

RESPONDENT

Date of Decision : 12-09-2002

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1), 25

Citation : (2003) 1 ALLMR 198 : (2003) 3 BomCR 210 : (2003) 3 MhLj 472

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : Rege, for the Appellant; Kumbhakoni, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Khanwilkar, J.—This Writ Petition takes exception to the Judgment and decree passed by the 2nd Additional District Judge Kolhapur dated 21-4-1989 in Regular Civil Appeal No. 408 of 1984. The premises in question consists of two rooms out of CTS No. 7 E-Ward, Kolhapur. The said premises were let out to the petitioner as a monthly tenant by the erstwhile landlord. The subject land and structures thereon were purchased by the respondent, which is undisputedly a Public Charitable Trust. The tenancy was attorned in favour of the respondent. The respondent in engaged in espousal of education and is presently running a college in the suit property in the name of "Mahavir College". The respondent trust required the suit premises for occupation for the purposes of the activity of the trust; for which reason, the petitioner was requested to vacate the suit premises. Since the petitioner did not respond to that request, the respondent instituted suit for eviction and possession of the suit premises on the ground u/s 13(1)(g) of the Act, being Regular Civil Suit No. 611 of 1977 in the Court of Civil Judge, Jr. Division at Kolhapur, Besides, this action against the petitioner herein, similar action was initiated against the other tenants of the trust in the suit property. In all, the respondent trust instituted ten suits for possession against the respective tenants in the suit property on the ground u/s 13(1)(g) of the Act.

During the trial, the respondent caused to examine the Secretary of the Trust as PW No. 2 and the Principal of the College as PW No. 4. Both these witnesses have deposed with regard to the requirements of the respondent trust in particular for establishing a students hostel in each of the ten suit premises. On the basis of the evidence which came on record, the trial court answered the issue of requirement in favour of the respondent trust. However, the trial court dismissed the suit against the petitioner herein on the ground that greater hardship would be caused to the petitioner and not the respondent trust, if the decree for possession was to be passed. Against that decision, respondent carried the matter in appeal before the District Judge being Regular Civil Appeal No. 408 of 1984. Even the appellate Court has answered the issue of requirement within the meaning of Section 13(1)(g) of the Act in favour of the respondent trust. In other words, both the courts below have concurrently held that the respondent trust had established its requirement of the suit premises for occupation for the purposes of the activity of the trust. In so far as the issue of comparative hardship is concerned, the Appellate Court held that the respondent trust would suffer greater hardship if the decree was to be refused. Accordingly, the appellate court was pleased to decree the suit for possession and directed the petitioner to hand over possession of the suit premises to the respondent trust. It is this decision which is subject matter of challenge in the present Writ Petition.

2. Mr. Rege for the petitioner argued only three points while assailing the concurrent finding of fact returned by the two courts below on the issue of requirement within the meaning of Section 13(1)(g) of the Act in favour of the respondent trust. According to him, there was absolutely no pleading regarding the purposes of requirement. In such a situation, the Courts could not have examined the matter further and ought to have dismissed the suit. He next contends that in any case, two courts below have answered the issue of requirement in favour of the respondent on the assumption that the respondent trust would require each of the suit premises for running students hostel therein, which finding is neither supported by the pleading nor there is any legal evidence in that behalf. He therefore, submits that the conclusion reached by the two courts below is perverse. The third contention raised by Mr. Rege is that even if the respondent trust has succeeded in establishing the requirement for the students hostel in the suit premises but, that requirement would change the purpose of user of the suit premises from residential into non-residential premises, which is prohibited by virtue of Section 25 of the Act; and, in such a situation, the Court will refuse to pass decree on the ground of requirement established though. Besides the above three contentions, Mr. Rege has also assailed the finding of fact recorded by the appellate court on the issue of comparative hardship. He submits that the appellate court has not addressed itself to the issue as to whether any hardship would be caused to the respondent plaintiff by refusing the decree and has assumed that the respondent plaintiff would suffer hardship. He submits that that approach is impermissible especially

when the Court is obliged to assess the comparative hardship of the landlord as well as the tenant. Therefore, according to him, the finding of fact arrived at by the appellate court on this issue cannot be sustained.

3. On the other hand, Mr. Kumbhakoni for the respondent trust submits that there was clear pleading regarding the requirement of the respondent trust which was fully understood by the petitioner; and in any case, the respondent plaintiff caused to adduce evidence in support of its stated requirement and that evidence was allowed to be let in without any demur by the petitioner defendant. He therefore, contends that in such a situation, even assuming that the pleading as filed by the respondent was vague, the Court would not non-suit the respondent plaintiff at this stage. In support of this submission, reliance is placed on the decision of the Apex Court reported in *Baba Kashinath Bhinge case*, 1994 Supp. 3 SCC 698 . Mr. Kumbhakoni further contends that the respondent is undoubtedly a public charitable trust and the nature of requirement u/s 13(1)(g) of the Act in so far as the public charitable trust is concerned, it is required to plead and establish its requirement differently than that required to be pleaded and proved by any other landlord. He submits that in the present case, the pleading as well as the evidence on record was more than sufficient to accept the case of the respondent plaintiff regarding its requirement set up during the trial; and the two courts below have addressed themselves to that aspect of the matter and have concurrently found in favour of the respondent trust. If that be so, contends Mr. Kumbhakoni that, this Court should be loath to interfere with such finding of fact in exercise of writ jurisdiction under Article 227 of the Constitution of India. Mr. Kumbhakoni has also relied on the decision of the Apex Court reported in *R.C. Tamrakar and Another Vs. Nidi Lekha, and Ragavendra Kumar Vs. Firm Prem Machinery and Co.*, to contend that the landlord is the best judge of his requirement and neither the Court nor the tenant can dictate to the landlord the manner of use of the premises which are owned by him. He therefore, submits that there is not only necessary pleading but also adequate evidence on record to answer the issue of requirement u/s 13(1)(g) in favour of the respondent trust and the two courts below have so answered in favour of the trust. Therefore, there is no substance in the first two points pressed into service on behalf of the petitioner while assailing the finding of fact returned by two courts below in favour of the respondent trust on the issue of requirement u/s 13(1)(g) of the Act. Insofar as the third point raised by the petitioner that the proposed user of suit premises for students hostel would change the nature of user from residential to non-residential and therefore, prohibited by Section 25 of the Act, Mr. Kumbhakoni contends that there is no substance even in this contention for the simple reason that the case made out by respondent plaintiff was very specific that the suit premises were required for establishing students hostel and by the very nature of that use, it is only residential and in such a case, prohibition u/s 25 of the Act would be obviously inapplicable. Insofar as the issue of comparative hardship is concerned, Mr. Kumbhakoni contends that the appellate court has applied the correct tests while answering the said issue. He

further contends that there is no force in the contention of the petitioner that the appellate court has not address itself to the issue of hardship of the respondent plaintiff. Inasmuch as in substance, the appellate court in paragraph Nos. 17 and 18 of the judgment has clearly dealt with the same wherein it has opined that the respondent trust would require the suit premises and there was no other alternate accommodation available to the respondent to achieve the object of the trust which was pressed into service in the suit. He therefore submits that even this contention is devoid of any merits and that the conclusion recorded by the appellate court cannot be taken exception to.

4. Having considered the rival submissions, I shall first deal with the plea that there is no pleading whatsoever with regard to the purpose of requirement of the respondent trust in the plaint. As rightly contended by the respondent, since the respondent is a public charitable trust, the requirement of pleading as well as proof to establish the ground u/s 13(1)(g) of the Act would be different than the one required by any other landlord which is not a public charitable trust. This can be spelt out from the plain language of Section 13(1)(g) of the Act which reads thus: -

"13. When landlord may recover possession. --(1) Notwithstanding anything contained in this Act, a landlord shall be entitled to recover possession of any premises if the Court is satisfied --

(g) that the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held or where the landlord is a trustee of public charitable trust that the premises are required for occupation for the purposes of the trust;

On plain language of this provision, when the landlord is a public charitable trust, what is required to be pleaded and proved so as to succeed on this ground is only that the premises are required for occupation for the purposes of the trust and nothing more. Our High Court in the case of Kishinchand Murjimal and Others Vs. Bal Kalavati and Others, has held thus :

"The second contention of Mr. Chitale is that the finding of the two Courts that the trustees require the premises for their use is contrary to law as they have not recorded a clear finding that the trustees reasonably and bona fide require the premises. This submission is also not tenable because in amending Section 13(1) (g), if the Legislature intended that the requirement of the trustees should also be proved to be bona fide and reasonable they would have stated so. Instead they have merely used the words "or where the landlord is a trustee of a public charitable trust that the premises are required for occupation for the purposes of the trust". It is an alternative ground in respect of premises belonging to public charitable trusts added to the ground which originally stood in Clause (g) of Section 13(1), by Bombay Act 61 of 1953 to advance the cause of public charity by not allowing it to suffer for want of accommodation. The ground merely required the trustees to establish that there is some requirement importing an

element of necessity which compels them to file a suit for eviction. Such a requirement has adequately established in the facts and circumstances of the present case. I do not think that anything more was required by law. The two Courts below are therefore, right in holding that the trustees satisfied the requirement of Section 13(1)(g). 5. Be that as it may, in the present case the respondent has averred in para 3 of the plaint as follows:

"Education is one of the main objectives of this institution. The said institution has the following objectives viz. running an educational institution, and spread education, start schools and colleges, to do research etc. and the plaintiff is working accordingly. The property bearing C. S. No. 7, E-Ward situate at Karvir City is purchased by the plaintiff as they require the same for their own purpose. A well known college viz. Mahavir College run by the plaintiff institution has been started in the same property. The said institution requires the aforesaid property for its bona fide and honest use and hence the said property purchased (by the institution). As the plaintiff institution required the property with the defendant for their own purpose bona fide and honestly, they sent a notice and informed the Defendant to handover the possession of the same. The defendant replied the same notice by making false and wrong statements. And therefore the plaintiff had to initiate the said suit."

A priori, the respondent did aver that its need is reasonable and bona fide for occupation for the purposes of the trust. Accordingly, there is no substance in the first point made by the petitioner that there was no pleading whatsoever regarding the purpose of requirement of the trust. In any case, as rightly contended by the Counsel for the respondent, on the basis of pleadings as presented before the trial court, issue was framed by the trial court. The petitioner tenant - defendant did not make any grievance about the lack of pleading or that no cause of action was made out to institute the suit. The petitioner obviously understood the ground set up by the respondent trust within the meaning of Section 13(1)(g) of the Act. besides during the evidence, the respondent's witnesses clearly deposed the details and particulars about the nature of requirement. Even at that stage, no objection was raised on behalf of the petitioner regarding the adduction of that evidence. In other words, the petitioner allowed the relevant evidence to be let in. If that be so, applying the principle enunciated by the Apex Court in *Baba Kashinath Bhinge v. Samast Lingayat Gavali and Ors.* reported in 7994 Supp (3) SCC 698 the respondent at this stage cannot be non-suited. In that case, the Apex Court was dealing with the case of a public trust having instituted the suit for possession of the premises on same ground. The Apex Court observed as follows :

"Firstly, that the respondent had not pleaded specific requirement to show its bona fides and the courts below ought to have non-suited the landlord for lack of proper pleading. Secondly, he contended that before the decree of eviction was passed in 1980, the respondent-trust had let out in 1979 two shops of the upper portion of the building to new tenants which would show that the need is not

bona fide. Thirdly, he contended that for over 60 years the appellant has been carrying on the sale of sweetmeats business in the demised premises. If a partial eviction is ordered, no undue hardship would be caused either to the respondent or to the appellant and the courts below have not considered this aspect in proper perspective. We find no force in any of the contentions. It is true that the pleading of the respondents' case is not precise and no specific requirement was pleaded but once the parties properly understood the case of each other, issues were framed and evidence was adduced, technicalities of pleadings recede to the background. Admittedly, the respondent is a public trust and its accommodation is meant for pilgrims in Pandharpur which is one of the well known pilgrim centers in Maharashtra. Therefore, in the nature of the service being rendered to the pilgrims, it is not practicable to plead in specific terms the nature of the need of the respondent-landlord except to say that it is a bona fide requirement for pilgrims. On that ground, the respondent cannot be non suited when he succeeded in two courts."

6. In the present case, two courts below have answered the issue of requirement in favour of the respondent trust. What is relevant to note is that the grievance regarding lack of pleading is being raised for the first time before this Court. On the other hand, the ground urged before the two courts below, as can be discerned from the observations of the courts below, was that there was variance in the pleading and evidence. Even that contention has been dealt with by both the courts below and has been answered against the petitioner. That conclusion is not assailed before this court. If that be so, no fault can be found with the approach of the courts below. In any case, the first contention raised on behalf of the petitioner to assail concurrent finding of fact by two courts on the issue of requirement within the meaning of Section 13(1)(g) does not merit interference on this ground.

7. That takes me to the second contention raised on behalf of the petitioner that there was neither pleading nor any evidence adduced with regard to the requirement relating to students hostel which has found favour with the two courts below. This submission is clearly misconceived. Only to reassure myself regarding the correctness of the submission, I have gone through the entire evidence adduced on behalf of the respondent trust. The respondent caused to examine Shri Bhikgonda Babgonda Patil as PW No. 1 who was the then Secretary of the trust. In paragraph No. 3 of his deposition, he has deposed as under:

".....At present, there is only one hostel consisting of 3/4 rooms. We required more premises for this purpose...."

".....In 1981-82 about 80 students have applied for admission in this Hostel. But for want of accommodation, we gave admission only 50 students. I produced the list of applicants who applied for accommodation. The list bears the signature of principal. I know his signature. It is the same. This list is prepared as per the application for hostel accommodation. The contents in list are true and correct. It is at Exhibit 31. This list has been typed on the basis of applications received.

All these students are taking education in our institution. I produced a list of students whose applications are refused for want of accommodation i.e. room. We refused applications of about 75 students. This list bears the signature of principal and rector. I know the signature. It is the same....."

".....The suit premises is required by the institution reasonably and bona fide for the purpose of use and occupation of institution...."

In para-4, this witness has further deposed as follows:

"..... Each year, inspection committee of University visit the college to inspect whether institution complied with rules and resolutions of the University. Due to want of hostel accommodation, we could not get permanent affiliation in University."

8. Another witness examined on behalf of the respondent is Shri Dilip Raghunath Kognur (PW 2) who was the principal of the College run by the respondent at the relevant time when the evidence was being recorded in the year 1982. This witness has deposed in para-1 as under:

".....The majority of student are from outside particularly from rural area. We have not provided necessary residential i.e. Hostel arrangement for such students."

In para-2 of his evidence, he has deposed :

"The students of the college includes boys and girls. Suit premises is behind the college building near the suit premises there is one ladies room, part of the portion of the building of the suit premises is available to us, we keep students i.e. we use it as hostel for the students. Due to the tenant in the compound of the college premises the atmosphere of education college premises is not proper....."

".....If we do not get possession from the tenant we will not be able to implement the progress of the college and the interest of the students."

9. Having seen the evidence as adduced by the respondent, it is not possible to countenance the grievance made on behalf of the petitioner that no iota of evidence with regard to the requirement for students hostel has been adduced on behalf of the respondent. Therefore, that contention will have to be rejected as the same is completely misconceived. It is relevant to note that even this grievance was not made before the Courts below. As observed earlier, the only grievance made before the court below was that there was variance in the pleading and the evidence adduced by the plaintiff and if that be so, the suit ought to be dismissed. That contention has been negated by the courts below. Understood thus, there is no reason to overturn the conclusion reached by the two courts below on the issue of requirement of the trust within the meaning of Section 13(1)(g) of the Act.

10. That takes me to the third contention raised on behalf of the petitioner by Mr.

Rege to assail the conclusion on the issue of requirement u/s 13(1)(g) of the Act. Mr. Rege contends that the nature of the proposed use which has been established during the trial for students hostel would result in putting the suit premises to non-residential use and that would be impermissible by virtue of Section 25 of the Act. This contention has been considered by two courts below and both the courts have found that by the very nature of the use for students hostel, is only residential user. There is no reason to doubt this view taken by the two courts below. Undoubtedly, "hostel" is nothing but a house of residence or lodging for students. Just because the respondent may charge some amount from the students for providing that facility, may not necessarily mean that it is a commercial or non-residential user. Further, there is perceptible difference between "hotel or lodging house" and "student hostel", though in both cases accommodation may be provided on monetary consideration. In the latter, the occupant cannot claim to be a "tenant" or a "licensee" nor can he claim protection of the provisions of the Bombay Rent Act. Whereas, in the case of the former, part III of the Act would apply. Besides, it will be useful to notice the observations of this Court in para 20 of the decision in the case of Kishinchand (supra). This court has held that the word "residence" may receive a liberal meaning, for a man's residence is very often the place where he sleeps at night. This court in the said case adverted to the decision of the Privy Council AIR 1937 46 (Privy Council) , wherein it is observed that there is no reason for assuming that it contemplates only permanent residence and excludes temporary residence. Reference is also made to Sri Sri Sri Kishore Chandra Singh Deo Vs. Babu Ganesh Prasad Bhagat and Others, wherein it is observed that,

"Residence only connotes that a person eats, drinks and sleeps at that place and that it is not necessary that he should own it".

This Court then proceeded to hold that the legislature is using words "non-residential purpose" in Section 25 did not intend to prohibit use of a building containing a residential flat for the purposes of construction of Marriage Halls, Charitable Hospitals and "quarters" and garages for Doctors and Nurses. As in the present case, "Students hostel" was also to be used for sleeping, eating, studies etc. temporarily if not permanently day to day, it cannot be described as "non-residential" use within the meaning of Section 25 of the Act. Accordingly, if the suit premises were to be used as students hostel, then surely it would be for the residential purpose of the students of the College run by the respondent trust. In that case also, the respondent trust would be entitled to claim possession of the suit premises for the requirement of the trust. If this be so, there is no force in the argument pressed into service that no decree could be passed as the nature of req of any expenses incurred by the owner or by the Central Government in connection with the maintenance of the monument;

(g) the proprietary or other rights which are to vest in the Central Government in respect of the monument when any expenses are incurred by the Central Government in connection with the maintenance of the monument;

(h) the appointment of an authority to decide any dispute arising out of the agreement; and

(i) any matter connected with the maintenance of the monument which is a proper subject of agreement between the owner and the Central Government.

(3) The Central Government or the owner may, at any time after the expiration of three years from the date of execution of an agreement under this section, terminate it on giving six months' notice in writing to the other party:

Provided that where the agreement is terminated by the owner, he shall pay to the Central Government the expenses, if any, incurred by it on the maintenance of the monument during the five years immediately preceding the termination of the agreement or, if the agreement has been in force for a shorter period, during the period the agreement was in force.

(4) An agreement under this section shall be binding on any person claiming to be the owner of the monument to which it relates, from, through or under a party by whom or on whose behalf the agreement was executed.