
(1990) 01 BOM CK 0035

In the Bombay High Court

Case No : Writ Petition No. 1608 of 1981

Bhagwant Vishnu Purandare since decd. by his heirs

APPELLANT

Vs

Baldevdas Chhaganlal and Others

RESPONDENT

Date of Decision : 15-01-1990

Acts Referred:

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

Citation : (1990) 1 BomCR 479 : (1990) 92 BOMLR 133

Hon'ble Judges : H.H. Kantharia, J

Bench : Single Bench

Advocate : K.J. Abhyankar, for the Appellant; C.R. Dalvi, for respondents 1 to 4, for the Respondent

Judgement

H.H. Kantharia, J.—The suit premises in this case described as an open space admeasuring 57? x 33? " situate at C.T.S. No. 688/89 in Raviwar Peth, Pune City, were owned by one Bhagwant Vishnu Purandare, now represented by his legal heirs and representatives, out of whom his son Govind Bhagwant Purandare also died and, therefore, represented in turn by his legal heirs and representatives (hereinafter referred to as "the plaintiffs"). The premises were let out originally by Bhagwant to the respondents, respondent No. 1 being a partnership firm and respondent Nos. 2 to 4 being the partners, (hereinafter referred to as "the defendants") under a registered rent note dated October 19, 1931 at yearly rent of Rs. 451/- initially for a period of five years. According to the plaintiffs, the suit premises were open land on which the defendants constructed a temporary shed for a godown and a stable and used the same yearly for the purpose of their business. They also contended that the yearly rent was paid upto the end of 1965 and thereafter as per the agreement entered into in January, 1966, the tenancy was converted into a monthly tenancy at the rate of Rs. 47/- per month. Thereafter, as the originally plaintiff Bhagwant required the suit premises for his reasonable and bona fide use after putting up a new construction, he by a notice dated July 28, 1971 called upon the defendants to deliver possession of the suit premises after removing the temporary shed. As the defendants did not comply

with the said notice, their tenancy was terminated by a notice dated October 7, 1972 with effect from the end of October 1972. On non-compliance with the notice of termination of tenancy, the said Bhagwant filed Civil Suit No. 1135 of 1973 in the Court of Small Causes at Pune.

2. The suit was contested by the defendants. It was their case that what was let out to them was not an open place but there was a constructed area up to the plinth admeasuring 48" x 24" in which the defendants constructed a temporary shed. They also contended that the claim of the plaintiffs for construction of a new building was neither bona fide nor reasonable. They denied that by mutual agreement the tenancy was converted from yearly tenancy to monthly tenancy. According to them ,the notice of termination of the tenancy was invalid. It was also one of the contentions that the rent charged by the plaintiffs was excessive and unreasonable.

3. The suit was tried by the Third Additional Small Causes Judge, Pune. The original plaintiff Bhagwant Purandare adduced his own evidence and examined an Architect by name Ratnakar Shankar Bodhni. In support of his plea of bona fide requirement he examined his grand daughter-in-law, Dr. Vidya Rajaram Purandare, who deposed that she required a new constructed building to start a maternity home and a dispensary. Another witness examined on behalf of the original plaintiff was his grand-son, Shankar Laxman Purandare who deposed that the present accommodation in house No. 690 and 691 where he had his workshop was insufficient and that he had no place for his office and a show-room and he needed additional accommodation in a newly constructed building on the suit premises. Documentary evidence in the nature of plans, sanctions by the authorities and the requisite permission for construction of a new building were also produced by the plaintiffs. On behalf of the defendants, Ramanlal Tulshidas Shah (defendant No. 2) adduced his own evidence and one Ramchandra Narayan Kambli, a clerk in the Rationing Department, "B" Zone, Raviwar Peth, Pune, was also examined. An Engineer by name Arvind Jadhavji Bhayani gave evidence on behalf of the defendants that there was a construction of plinth and the walls on the suit premises.

4. On appreciation of the evidence adduced before him, by both parties, the learned trial Judge by his judgment and order dated July 28, 1977 dismissed the plaintiffs suit holding that what was let to the defendants was an open land with a plinth on all the four sides with a platform of Shahabas flooring and thus the premises let out to the defendants were not only an open land but also a structure. He accordingly held that the provisions of section 13(1)(i) of the Bombay Rents. Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "the Bombay Rent Act") on which the suit was based were not attracted and that the provisions of section 13(1)(g) of the said Act were attracted. He also held that the notice terminating the tenancy of the defendants was illegal. He examined the issue of bona fide and reasonable requirement of the suit premises by the plaintiffs and came to the conclusion that the suit

premises were reasonably and bona fide required by the plaintiffs. He held that the rent charged by the plaintiffs to the defendants was reasonable and not excessive. Thus, although the learned trial Judge that the requirement of the plaintiffs was reasonable and bona fide, he non-suited them because their case was covered by the provisions of section 13(1)(g) of the Bombay Rent Act and not u/s 13(1)(i) of the said Act on which the suit was based by his judgment and decree passed on July 28, 1977.

5. Aggrieved by the said judgment and decree passed by the learned trial Judge, the plaintiffs filed Civil Appeal No. 549 of 1977 in the District Court at Pune. The appeal was heard by the IVth Extra Assistant Judge, Pune who by his judgment and order dated January 17, 1981, dismissed the appeal and confirmed the decision of the learned trial Judge. The learned Appellate Court Judge was also of the view that the premises let out to the defendants were not an open place but consisted of a plinth and walls which could be considered as a part of building and as such the provisions of section 13(1)(i) of the Bombay Rent Act were not attracted. It was urged on behalf of the plaintiffs in the Appeal Court that the case of the plaintiffs should be considered u/s 13(1)(g) of the Bombay Rent Act inasmuch as the plaintiff had led evidence to the effect that a new building to be constructed was required for three purposes, i.e. residence of the family members, providing space for extension of workshop of the grand-son of the originally, plaintiff and starting a maternity home and a dispensary for the grand daughter-in-law of the said plaintiff. The learned Appellate Court judge, however, rejected these contentions raised on behalf of the plaintiffs holding that there was no specific pleading making out a case u/s 13(1)(g) of the Bombay Rent Act and in the absence of amendment to the plaint such a plea was not permissible at the trial and any evidence led in that behalf did not help the plaintiffs. The learned Judge opined that point of validity of a notice of termination did not survive in view of a recent judgment of the Supreme Court.

6. Being dissatisfied with the judgment and order of the learned Judge of the Appellant Court dismissing their appeal the plaintiffs approached this Court invoking writ jurisdiction under Article 227 of the Constitution of India.

7. Mr. Abhyankar, learned Counsel arguing the appeal on behalf of the plaintiffs, urged that what was let out to the defendants was an open place and, therefore, the case of the plaintiffs was covered by the provision of section 13(1)(i) of the company Rent Act but in the alternative the plaintiffs could be given relief under the provisions of section 3(1)(g) of the said Act. Mr. Abhyankar urged that the particulars for covering the case of the plaintiffs section 13(1)(g) of the Bombay Rent Act were not given in the plaint but no prejudice can be said to have been caused to the defendants on that account and no objections were raised at the trial in that behalf when the evidence was led and no particulars were asked for. Mr. Dalvi, learned Counsel appearing on behalf of the defendants pointed out from the material on record that the suit was based and the relief was asked for u/s 13(1)(i) of the Bombay Rent Act as if what was let out to the defendants was

an open place but the evidence conclusively proved that there was a construction of the plinth on which a shed was raised by the defendants and, therefore, the case was covered by section 13(1)(g) of the Bombay Rent Act and accordingly the learned trial Judge correctly non-suited the plaintiffs. Mr. Dalvi also submitted that the finding of fact by the trial Court that what was let out to the defendants by the plaintiffs was a constructed portion of the suit premises which was also confirmed by the learned Judge of the Appellate Court need not be disturbed in the facts and circumstances of this case by this Court while exercising writ jurisdiction under Article 227 of the Constitution. Mr. Dalvi also urged that there was no mention either in the notice or in the plaint or in the appeal memo that the case of the plaintiffs was covered by section 13(1)(g) of the Bombay Rent Act and mere ipse dixit of the plaintiffs is not enough. The case that was not made out need not be considered, further submitted Mr. Dalvi.

8. Now, so long as the first submission of Mr. Abhyankar is concerned that what was let out to the defendants was open place and not a constructed area of the premises, I am of the view that there is a concurrent finding of fact in this regard by the two Courts below that what was let out to the defendants was not an open place but a constructed area amounting to "building" and that there is no need nor a necessity to disturb such a concurrent finding of a fact. This finding of fact recorded by the trial Court and the Appellate Court, in view of the evidence on record, cannot be said by any stretch of imagination as perverse. Such a finding of a fact is based on the evidence on record which was well appreciated by the two Courts below and while exercising powers under Article 227 of the Constitution. It would not be just, fair and proper for this Court to disturb the said concurrent finding of fact as was held by the Supreme Court in the case of *Maruti Bala Raut Vs. Dashrath Babu Wathare and Others*, that High Court while exercising its power under Article 227 was not entitled to discuss the evidence and come to its own conclusion on the evidence. That being so, the case of the plaintiffs was not covered by the provisions of section 13(1)(i) of Bombay Rent Act on which the suit was based and, therefore, the plaintiffs were correctly non-suited by the trial Judge whose judgment was confirmed by the Appellate Court.

9. As regards the second contention of Mr. Abhyankar that in the alternative the plaintiffs should be given relief under the provisions of section 13(1)(g) of the Bombay Rent Act. I am of the view that the plaintiffs had not made out a case that they were entitled to the relief u/s 13(1)(g) of the said Act. Not only no particulars in this regard were furnished either in the notice or in the plaint by the plaintiffs but there was also total absence of material particulars on which the defendants could base their defence and meet the case of the plaintiffs. It was held by this Court in *Sukhadeo Krishnarao Ghatode v. Laxmibai Dattatraya Mohoril* 1979 M L.J. 545 that :

"It is not enough that this can be established by a landlord by adducing evidence. A tenant has to meet such a case, and can only do so provided he is posted in advance as to what he has to meet. Where, therefore, an application

by a landlord is devoid of such particulars and is bald, the tenant is necessarily prejudiced. I may in this connection refer to a decision reported in Ganpat v. Rameshwar 1974 M. L.J. 774. In that case also the landlord had applied for permission on the ground that he required the premises bona fide for his personal occupation. He did not, however, give any details in his application and whether he needed it for the purpose of residence or for the purpose of "his business or for storing". It was observed :

"Unless these details were given the tenant could not be expected to properly meet the case of the landlord. It is the landlord who has to make out a case for his need for bona fide occupation. For this purpose he must put before the Court all the necessary details which are required for granting him relief. On such vague allegation, as made in the present application, the petitioner cannot expect to get relief on the ground of his bona fide occupation."

In that case, the petitioner landlord had besides other houses which he owned. Though that may not be in the present case the position, the present application is also bereft of all details."

Again this Court held in the case of Abdul Samad Makhadum Bakshi Shaikh v. Sudha Akant Parakhe, 1982 M. L.J. 647 that :

"It is quite clear, therefore, that the case on which the plaintiff succeeded in the Court below was never made out on the plaint allegation, in Janba Daulatram v. Rajeshkumar Ramjiwan Agarwal 1975 M. L.J. 147, following the decision in Ganpat v. Rameshwar 1974 M. L.J. 774, it was observed that a plaintiff must place before the Court all necessary details which are required for granting relief. A mere ipse dixit of the landlord that he requires the accommodation for his personal occupation is not enough. Unless the landlord given such details, the tenant cannot be expected to meet the case of the landlord."

10. Mr. Abhyankar then relied on a judgment of the Supreme Court in the case of Ramnikal Pitambardas Mehta Vs. Indradaman Amratlal Sheth, and submitted that plaintiffs could be given relief u/s 13(1)(g) of the Bombay Rent Act. In that case, the Supreme Court point out as to the correct interpretation of the provisions of section 13(1)(g) of the Bombay Rent Act and on facts held that the case was covered by the provisions of section 13(1)(g) of the said Act. In our case, on facts, it is proved and concluded that the case was not covered by the provisions of section 13(1)(i) and no particulars to prove their case under the provisions of section 13(1)(g) were furnished by the plaintiffs and, therefore, the observations made by their Lordships of the Supreme Court in the case before them would not help Mr. Abhyankar. Mr. Abhyankar also relied upon the case of Krishnapasuba Rao Kandapur v. Dattatraya Krishnaji Karani AIR 1966 S.C. 1024. I am afraid, this decision of the Supreme Court again does not help Mr. Abhyankar as on the facts of said case, it was held by the Supreme Court that it retained to an open land covered by section 13(1)(i) of the Bombay Rent Act whereas in the present case there is a concurrent finding of fact of the two Courts below that the

premises here were a building and not an open place and, therefore, the provisions of section 13(1)(i) would not apply. Mr. Abhyankar submitted that the premises in the case before the Supreme Court were an open land with a "Khatta" which was held to be not "building" and in our case there was a constructed portion up to the plinth level which should also not be considered as "building" u/s 5(8) of the Bombay Rent Act. I am not able to persuade myself to agree with this submission of Mr. Abhyankar because in Molesworth's Marathi-English Dictionary at page 127 the meaning of the word "Khatta" is a raised place (of stone or wood) along the side of the road, to help travellers to rest their burdens; also a raised mass (of earth or stones) for a seat". A construction up to the level of plinth on which a temporary shed was erected cannot be compared to Katta.

11. Mr. Abhyankar thereafter brought to my notice a judgment of this Court in Badri Prasad K. Agarwal & others v. The Premier Garage & others 1980 B.C.R. 12. The submission of the learned Counsel here is that in a case based on the provisions of section 13(1)(i) if the facts show that it was covered by the provisions of section 13(1)(g) relief should be granted to the landlord. Such a submission was negated by Jahagirdar, J., and, therefore, this decision does not help Mr. Abhyankar. It may be pertinent to note here that the suit premises in the case of Badri Prasad K. Agarwal & others, were admittedly an open land and no structures were constructed by the landlord and leased out to the tenants. Again, admittedly, the respondents in that case had filed a suit for possession of the suit premises on the ground that it was required for a workshop. Relying on this aspect of the case pleaded by the respondents, his Counsel had submitted that even if the premises leased out were open land, if the same are required by the landlord for his own use and occupation, whether for erecting a building on the same or otherwise, the case must be treated as one u/s 13(1)(g) of the Bombay Rent Act and not u/s 13(1)(i). In support of his argument the Counsel had relied on the judgment of the Supreme Court in the case of Ramniklal Pitambardas Mehta v. Indradaman Amratlal sheth, (supra) and had also invited the attention of the Court to a judgment of the Gujarat High Court in the case of Thakkar Ishwarlal Hargovandas v. Panchal Girdharlal Raichand 1975 (16) G.L.R. 1005 to which my attention is also invited by Mr. Abhyankar. Dealing with this aspect of the matter my learned brother Jahagirdar, J., pointed out that this question had been considered by this Court twice and a view contrary to the one propounded by the learned Counsel was taken. Jahagirdar, J. pointed out that the first case was of Sampat Dharamji Bodke & others v. Krishna Sakharam Zore, & another, Special Civil Application No. 529 of 1973 decided on 6/7-12-1973 by Sapre, J. in which the landlord had filed a suit for possession of the demised premises which were an open site in the town of Wai. It was mentioned by the landlord that he required the premises for erection of a new building which was going to be utilised for the residence of himself and his family members. In that case an argument similar to one advanced here was made before Sapre, J., who rejected the same after considering decision of the Supreme Court in Ramniklal's

case supra. Sapre, J., opined that the reasoning of the Supreme Court in Ramniklal's case was necessarily influenced by the fact that a suit for possession of the premises under Clause (hh) necessarily implies that the landlord was required to let out at least a part of the re-constructed premises after he had obtained possession of the leased premises. Sapre, J., had also held in that case that a suit for possession of an open land for the construction of a building will be governed by the provisions contained in section 13(1)(i) despite the fact that the building so erected would be occupied personally by the landlord and despite the fact that there is a similarity of expressions relating to the requirements of the landlord in the two clauses, viz Clause (g) and Clause (i) of section 13(1) of the Bombay Rent Act. The Second judgment pointed out by Jahagirdar, J. was in Rukminibai Ramvilas Lahoti & others v. Dhanpal Baburao Havale & another, (Special Civil Application No. 2659 of 1973 decided on 7th March, 1978 by Chandurkar, J., who had taken the same view as the one taken by Sapre, J., and had based his judgment essentially on the view that Clause (i) of section 13(1) contains a special provision relating to open land whereas clause (g) may apply to open land as well as premises consisting of constructed buildings and that a special provision excludes the general. Chandurkar, J., also referred to the Supreme Court judgment in Ramniklal's case (supra) and held that judgment was of not much assistance because admittedly in the said case the leased premises were not an open land. Jahagirdar, J., said that he was bound by the view taken in the above two judgments. Even otherwise, in his opinion, the view put forth by the learned Counsel before him, as was done by Mr. Abhyankar before me, cannot be accepted.

12. Mr. Abhyankar then invited my attention to the judgment of the Gujarat High Court in Thakkar Ishwarlal Hargovandas v. Panchal Girdharlal Raichand, (supra) to substantiate his point. In this case, the earlier judgment of the Gujarat High Court in Pathan Bajitkhan Kayamkhan and Another Vs. Shah Maneklal Harilal and Others, was referred to and relied upon. Jahagirdar, J., in the case of Badriprasad (supra) had referred to the Gujarat High Court in Thakkar Ishwarlal Hargovandas (supra) and had not agreed with the view taken by the Gujarat High Court in preference to the view taken by this High Court. I am bound by the consistent view taken by three Judges of this Court, viz., Sapre, J., Chandurkar J. and Jahagirdar, J. That being so, the authorities referred to and relied upon by Mr. Abhyankar, as above, would not go to his case.

13. In this view of the matter, I find no merit in this writ petition which deserves to be rejected. The decision given by the learned trial Judge and confirmed by the IV Extra Assistant Judge, Pune, in Civil Appeal No. 549 of 1977 is upheld. In the result, the writ petition fails and the same is rejected. Rule is accordingly discharged with costs.