
(2004) 11 BOM CK 0025

In the Bombay High Court

Case No : Writ Petition No's. 5917 of 1997, 6993 of 1998 and 1751 of 2001

Bharat Petroleum Corporation Ltd. and Bharat Refineries Ltd. **APPELLANT**

Vs

Anil Noel Rodrigues, Ajit Joseph Rodrigues and Prashant Antony Rodrigues **RESPONDENT**

 Khilanmal Siroomal, a registered partnership firm by partners and Others Vs Shridhar Nilkanth Sabnis
 Shri Kuvarji Dharshi deceased through heirs and legal representatives (Bhupendra Kunverji Motta and Mahendra Kunverji Motta) and Others Vs Shri Nutanlal Pitam Bardas Tanna, Dr. Vasantlal Laxmidas Tanna, Shantaben Laxmidas Tanna, Dr. Vasantkumar Laxmidas Tanna legal representatives of the deceased Laxmidas Haridas Tanna)

Date of Decision : 04-11-2004

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13, 13(1), 13(2), 13(3A), 15
Constitution of India, 1950 — Article 14, 19(1)

Citation : (2005) 2 BomCR 672

Hon'ble Judges : V.M. Kanade, J;V.G. Palshikar, J

Bench : Division Bench

Advocate : S.G. Page, in W.P. No. 1751 of 2001 and S.P. Kanuga, in W.P. No. 5917 of 1997 and R.A. Thorat, in W.P. No. 6993 of 1998, for the Appellant; Nusrut Shah, Pervin Contractor, N.N. Shah, Anita Murgule, Priya Chalke and Eva Almedia for Respondent Nos. 1 to 3 in W.P. No. 1751 of 2001 and R.S. Apte in W.P. No. 5917 of 1997 and G.S. Godbole and Vinod Thaker for Respondent Nos. 1(a)(a) to 4 in Writ Petition No. 6993 of 1998, for the Respondent

Judgement

V.M. Kanade, J.—By order dated 26/04/2001, the learned Single Judge of this Court felt that there was a conflict of decisions between the two learned Single Judges regarding the interpretation of the provisions of Section 13(1)(i) and 13(1)(g) read with section 13(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (For short "Bombay Rent Act"). Therefore, the learned Single Judge by order dated 26/04/2001 directed that the matter be placed before the learned Chief Justice for placing the matter before the appropriate

Division Bench to resolve the conflict in the two decisions of the learned Single Judges of this Court. Accordingly, the matter has been placed before the Division Bench. The other connected matters are also placed along with Writ Petition No. 1751 of 2001. Since the issue involved in both these Petitions is identical, all these matters are decided by a common judgment.

2. The controversy which falls for consideration before this Court is as to which clause of section 13(1) of the Bombay Rent Act is attracted in a case where the premises is an open land and eviction is sought for the construction of the building which is for the occupation of the landlords themselves or otherwise. In one Judgment in the case of Abdul Raheman " Iqbal Faijukhan Pathan since deceased through L.Rs Smt. Saguma and Ors., reported in 1992 (2) M.L.J. 592 the learned Single judge (T. K. Chandrashekhara Das, J.) held that since the landlords needed the premises for their own occupation after completion of the construction of the new building, the case would fall u/s 31(1)(g) and not u/s 13(1)(i). It was further held in the said case that once the case fell under the provisions of section 13(1)(g), it was the duty of the Trial Court to have framed an issue u/s 13(2) to examine the comparative hardship of the landlord and the tenant.

3. On the contrary, in other judgments of this Court viz. in the case of Badriprasad K. Agarwal and Ors. v. The Premier Garage and Ors., reported in 1980 BCR 12 reported in 1980 BCR 12 the learned Single Judge (R.A. Jahagirdar, J.) held that in a case where landlord was seeking possession of the premises of the open land for erection of new building, the case would fall u/s 13(1)(i) irrespective of the fact whether the landlord wants to personally occupy the said building or not. Similar view was taken by the another learned Single Judge (A.P. Shah, J.) of this Court in the case of Vasant Badoo Kulkarni v. Yasin Ahmed Mujawar since deceased by L.Rs. Sharif Yasin and Ors. reported in 1998 (3) MLJ 62 wherein the learned Single Judge took a view that a suit for possession of an open land let out to the tenants claiming eviction for construction of the building would be governed by the provisions contained in section 13(1)(i) of the Act.

4. Petitioners in all these cases are tenants of an open land and the respondents are landlords in whose favour a decree for possession has been passed by the Trial Court and confirmed by the Appellate Court and the respondents - landlords want the open premises for construction of new building.

5. We have heard the learned Counsel appearing on behalf of the petitioners and respondent at length in all the above Writ Petitions.

6. The learned Counsel Shri Kanuga and Shri Page appearing on behalf of the Petitioners submitted that the Trial Court ought to have framed an issue for considering the question of comparative hardship of the petitioners and the respondents. It is submitted that, in the present case, since the requirement of the plaintiff is personal requirement, the provisions of section 13(1)(g) would be attracted and, therefore, question of hardship ought to have been considered by

both the courts. It is submitted that the ratio of the judgment in the case of *Ramniklal Pitambaradas Mehta v. Indradaman Amratlal Sheth* reported in AIR 1964 SC 1677 is squarely applicable to the facts of the present case. The learned Counsel further relied upon the judgment of this Court in the case of *Abdul Raheman " Iqbal Faijukkan Pathan* since deceased through L.Rs. Smt. Aguma and Ors. reported in 1999 (2) M.L.J. 592 and submitted that that the learned Judge had made a distinction between the various clauses of bonafide requirement and had rightly held that the element of personal requirement was to be found in section 13(1)(g) and, therefore, even if the premises which was given on rent was an open land, in the event of personal requirement of the open plot of land, only the provisions of section 13(1)(g) would be attracted and not 13(1)(i). The learned Counsel relied upon the judgment of this Court (T. K. Chandrashekhara Das, J.) in the case of *Abdul Raheman (Supra)*. The learned Counsel submitted that the ratio laid down in *Badriprasad K. Agrawal v. Premier Garage* reported in (1980) 1 RCJ 385 was not applicable to the facts of the present case. The learned Counsel further submitted that since the requirement of the plaintiffs being not bonafide as well as reasonable, they are not entitled for a decree of possession under the provisions of section 31(1)(i) of the Bombay Rent Act. In support of the said submission, the learned Counsel relied upon the judgment of this Court in the case of *Gopal Vishnu Vanarase and Ors. v. Mahadev Govind Khire* since deceased through his L.Rs. and Ors. reported in 2000 (1) M.LJ 143. The learned Counsel further submitted that the judgment of this Court in the case of *Goregaon Malayalee Samaj (Regd) v. M/s Popatlal Prabhudas and Sons and Ors.*, reported in Bom. C.R. 358 is not applicable to the facts of the present case. It is submitted that the provisions of section 13(1)(i) of the Bombay Rent Act was ultravires to the Constitution of India. The learned Counsel submitted that the provisions of New Zealand Rent Control Act are identical to the provisions of the Bombay Rent Act. Mr. Kanuga, learned Counsel relied upon the judgment of the House of Lords in the case of *Matthew James McKenna and Anr. And Potter Motors Ltd* reported in [1956] A.C. 688 and submitted that in the said judgment it was held that in clause (h) and (m) of section 24(1) of the Tenancy Act, the word "premises" meant the subject-matter of the lease nevertheless the landlord required the premises for "his own occupation". Although he was intending to make substantial alterations or to put up a wholly new building, it was held that the scope of clause (m) was limited by clause (h) in cases where landlord required the premises for demolition or reconstruction with a view to letting or selling them or making some use of them other than for his own occupation. The learned Counsel submitted that the ratio of the said judgment in the case of *Matthew James McKenna (Supra)* is squarely applicable to the facts of the present case.

7. The learned Counsel appearing on behalf of the respondents submitted that the ratio of the judgment in the case of *Badriprasad K. Agarwal and Ors. v. The premier Garage and Ors.* reported in 1980 BCR 12 and in the case of *Vasant Badoo Kulkarni v. Yasin Ahmed Mujawar* since deceased by L.Rs. Sharif Yasin

and Ors. reported in 1998 (3) M. LJ 62 is squarely applicable to the facts of the present case. The learned Counsel submitted that the Judgment in the case of Abdul Raheman (Supra) did not take into consideration two judgments of this Court in the case of Badriprasad K. Agarwal (Supra) and in the case of Vasant Badoo Kulkarni (Supra). The learned Counsel submitted that the provisions of substantive right of possession should not be construed so as to defeat the right conferred on the landlord in the absence of any clear indication to that effect in the statute. In support of his submission, he relied upon the judgment in the case of Madhu Gopal Vs. VI Additional District Judge and Others, . The learned Counsel further submitted that while construing the words of statute which are plain and unambiguous, they should be construed in their natural and ordinary sense. In support of the said submission, he relied upon the judgment of the Apex Court in the case of Union of India (UOI) and Another Vs. Hansoli Devi and Others, .

8. In order to decide the said issue, it would be relevant to consider the provisions of section 13(1) and 13(2) of the Bombay Rent Act which reads as under:-

"13(1) Notwithstanding any thing contained in this Act but subject to the provisions of section 15 and 15A, a landlord shall be entitled to recover possession of any premises if the Court is satisfied

(a)..... (b)..... (c)..... (d).....
(e)..... (f)..... (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 a public charitable trust that the premises are required for occupation for the purposes of the trust; or

(h) that the premises are reasonably and bona fide required by the landlord for carrying out repairs which cannot be carried out without the premises being vacated; or

(hh) that the premises consist of not more than two floors and are reasonably and bona fide required by the landlord for the immediate purpose of demolishing them and such demolition is to be made for the purpose of erecting new building on the premises sought to be demolished; or

Explanation-for the purposes of this clause, premises shall not be deemed to consist of more than two floors by reason that on the terrace of a building, there are one or more of the following structures that is to say, tower-rooms, sitting-out-rooms, ornamental structures, architectural features, landings, attics or one or more rooms of whatsoever description (such room or rooms being in the aggregate of an area of not more than one-sixth of the total area of the terrace).

(hhh) that the premises are required for the immediate purposes of demolition ordered by any local authority or other competent authority; or

(i) that where the premises are land, such land is reasonably and bona fide required by the landlord for the erection of a new building ; or

(ii) that where the premises are land in the nature of garden or grounds appurtenant to a building or part of a building, such land is required by the landlord for the erection of a new residential building which a local

(g) of sub-section (1). Legislature, therefore, has while enacting sub-clause (2) has restricted the operation of sub-clause (2) to ground (g) of section 13(1) and, therefore, the question of comparative hardship would arise only in that case and, consequently, the Court has a right to refuse to grant decree of eviction to the landlord even if he proves that his requirement is reasonable and bonafide if the court comes to the conclusion that by passing an order of eviction the greater hardship would be caused to the tenant and not to the landlord. The requirement of the landlord in clauses (g) to (i) of section 13(1) is separate and distinct. In clause (g), the requirement is for occupation of the premises by himself or by any person for whose benefit the premises are held. In clause (h), the requirement is for carrying out repairs. Clause (hh) pertains to requirement for demolishing the premises which consists of not more than two floors and for the purpose of erecting new building on the same premises. The requirement in clause (hhh) is on account of demolition of the premises in view of the order passed by the local authority or other authority has approved or permitted him to build thereon;

(j)..... (k)..... (l)..... (2) No decree for eviction shall be passed on the ground specified in clause (g) of sub-section (1) if the Court is satisfied that, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it....."

From the perusal of the relevant provisions viz. clauses (g), (h), (hh), (i) of section 13(1), it can be seen that the words "reasonably and bonafide required by the landlord" are found in all these clauses. Sub-clause (2) specifically restricts the question of consideration of greater hardship only in cases of the ground specified in clause competent authority and in clause (i) the requirement is in respect of the premises which is a land and it is required for erection of a new building. A distinction, therefore, has been drawn in respect of the requirement of the landlord in all these clauses. The requirement so far as clause (i) is concerned, is specifically restricted to the premises which is a land or, in other words, an open plot of land and it is required for erection of a new building. Legislature, therefore, in its wisdom has excluded clause (i) from the purview and requirement of section 13(2). Thus, in other words, if the landlord of a land requires the land for erection of a new building, he would be entitled to get that land irrespective of the fact whether greater hardship would be caused to the tenant on account of his eviction for the said purpose.

9. It would also be profitable to consider the definition of premises in the Bombay Rent Act. Sub-clause 8 of section 5 defines the word premises which reads as under:-

"(8) "premises" means

(a) any land not being used for agricultural purposes;

(b) any building or part of a building let or given on licence separately other than a farm building including

(i) the garden, grounds, garages and out-houses, if any, appurtenant to such building or part of a building

(ii) any furniture supplied by the landlord for use in such building or part of a building,

(iii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof, but does not include a room or other accommodation in a hotel or lodging house;"

10. From the definition of the word "premises" it is absolutely clear that it includes both, open land as well as the land and building. Clause (i) of section 13(1) is restricted to the premises which are land i.e. an open plot.

11. In the case of Abdul Raheman " Iqbal Faijukkan Pathan since deceased through L.Rs. Smt. Saguma and Ors. reported in 1999 (2) M.L.J. 592, petitioner was the tenant against whom an order of eviction was passed and confirmed by the Courts below in a suit for eviction which was filed by the landlord. The premises was open land bearing CTS No. 5766 admeasuring 113.2 sq.mtrs in village Miraj which was given on monthly rent of Rs 50/-by the landlord. He had constructed a shop in the suit premises. His tenancy was terminated by the landlord on 13/9/1978 on the ground of arrears of rent and also for personal occupation of the landlord. Trial Court decreed the suit on both counts. At the appellate stage, the landlady had given up the ground of default in payment of rent. Both the Courts held that the landlady established reasonable and bonafide requirement. It was argued in the said case by the petitioner-tenant that lower Court had erred in granting decree of eviction against the petitioner u/s 13(1)(i) where, in fact, it has been pleaded and proved that the eviction was sought on the ground of section 13(1)(g). The learned Counsel appearing on behalf of the petitioner relied upon the judgment of the Apex Court in the case of Ramniklal Pitambaradas Mehta v. Indradaman Amratlal Sheth reported in AIR 1964 SC 1677. In the said case, the sole question which was to be determined was: whether the respondent's case came within the provisions of section 13(1)(g) of the Act or fell within the provisions of section 13(1)(hh). The Apex Court, in the said case, came to the conclusion that the respondent's case fell within the provisions of section 13(1)(g). Reliance was also placed by the learned Counsel appearing on behalf of the petitioner in Abdul Raheman's case on the Judgment of the Gujarat High Court in the case of Pathan Bajitkhan Kayamkhan and Anr. v.

Shah Maneklal Harilal and Ors. reported in XII Gujarat Law Reporter 421. The question which was raised in the said case was, when the landlord needed premises without making any alteration in the Building which was occupied by the tenant, in that case, which provision would be applicable and it was held that the provisions of section 13(1)(g) would be applicable. The learned Single Judge on page 595 of the said Judgement in the case of Abdul Raheman (supra) has observed as under:

"As I pointed out earlier, the case u/s 13(1)(g) has been fully and properly established by the landlord. In that circumstances, before passing eviction order, the lower courts ought to have framed the issue u/s 13(2) and examine the comparative hardships of the landlord and tenant. In other words, even if the eviction is sought for construction and the tenancy is for the open land and if the landlord demands that construction is for the purpose of his personal use, though it appears that it has a trapping of section 13(1)(i), the eviction sought really has to be considered u/s 13(1)(g) and consequently sub-section (2) of section will come into play. In fact this contention was raised in the appellate stage on behalf of the tenant but the Lower Appellate Court has brushed aside saying that the eviction is sought only u/s 13(1)(i)."

The learned Single Judge, thereafter, in para 9 and 10 of the said Judgment has observed as under:-

"9. In this context, we have to examine the scheme of the Act particularly section 13. Section 13 of the Act put certain restrictions on the exercising right of the landlord in evicting his tenants. The various circumstances and situation have been taken note of by the legislature under that section. One of the important circumstance is u/s 13(1)(g) where the landlord who let out the building to his tenant requires it back for his bona-fide and reasonable requirement for his own use. The sub-section (2) of section 13 says that before any eviction is ordered under 13(1)(g), the comparative hardships about the availability of the accommodation of the tenant and landlord has to be considered by the court. We notice that section 13(1)(h), 13(1)(hh), 13(1)(hhh) and 13(1)(i) deals with different constructional activities to be carried out in the premises. Section 13(1)(h) deals with a situation where the premises require reasonably and bona fide for carrying out repairs. Section 13(1)(hh) deals with where the premises requires demolition and reconstruction. Section 13(1)(hhh) deals with a circumstance where the premises are required to be demolished by orders of the Local Authority or other Competent Authority and section 13(1)(i) deals with the situation where the landlord requires the land bona fide for the erection of a new building. Looking at these sub-clauses, though the same deals with different facets of constructional activities on the premise, a common factor which is present in all these sub-clauses is that the landlord should establish his reasonable and bonafide requirement for the constructional activities as enumerated in clauses 13(1)(h), (hh), (hhh) and (i). Though these sub-clauses are demonstrably distinct from the wording of section 13(1)(g), it contain a

common feature that is found in all these is feature of reasonable and bonafide requirement of the landlord. But clause 13(1)(g) comes into play only where the eviction is sought for his personal use or occupation. In other words, the personal use or occupation by the landlord which is found in 13(1)(g) is lacking in other sub-clauses. In view of this analysis, Mr. Rege is justified in arguing that wherever eviction is sought for the bona fide and reasonable requirement for personal use even after the constructional activities contemplated in this sub-clauses, it is squarely coming under 13(1)(g) and not under 13(1)(i) or any other clauses."

10. To sum up, even though landlord seeks eviction u/s 13(1)(i) and it has come out in the pleadings as well as in the evidence that the construction proposed to be done in the premises is for the purpose of his own use and occupation, then notwithstanding the claim made by the landlord based on 13(1)(i), sub-section 2 of the of section 13 will come in to play and the court can pass a decree for eviction after establishing the reasonableness and bona fide of the landlord's requirement only after considering the comparative hardship of the landlord and tenant as envisaged u/s 13(2) of the Act. In view of this, it is necessary to send the matter back to the trial court for framing issue based on sub-section (2) of section 13 and decide the same before passing the decree of eviction against the petitioner. The trial Court should complete this exercise within three months from the date of receipt of the judgment. Parties are at liberty to lead evidence on this issue."

We respectfully disagree with the ratio laid down by the learned Single Judge in the case of Abdul Raheman (supra). Attention of the learned Single Judge was first of all not invited to other judgments of this Court which has taken a different view. The first judgment is in the case of Badriprasad K. Agarwal & Badriprasad K. Agarwal and Ors. v. The Premier Garage and Ors., reported in 1980 BCR 12. In the said case, the learned Single Judge (R.A. Jahagirdar, J. as he then was) has held that where the landlord is seeking possession of the premises which are land and it is required by him for erection of a new Building either for his personal occupation or otherwise, the case would necessarily fall u/s 13(1)(i) of the Bombay Rent Act. A similar view has been taken by another learned Single Judge of this Court (A.P. Shah, J) in the case of Vasant Bando Kulkarni v. Yasin Ahmed Mujawar since deceased by L.Rs. Sharif Yasin and Ors. reported in 1998 (3) M.L.J. 62. The learned Single Judge in the said case has also taken a view that the suit for possession of an open land let out to the tenant claiming eviction for construction of building would be governed by the provisions contained in section 13(1)(i) of the Bombay Rent Act, even though the building was erected for the personal occupation by the landlord. We respectfully agree with the view taken by the learned Single Judges of this Court in the case of Badriprasad K. Agarwal (supra) and in the case of Vasant Bando Kulkarni (supra).

12. The learned Single Judge in the case of Abdul Raheman (supra) has clearly overlooked the intention of the legislature in carving out an exception in the case

of section 13(1)(i) and the protection which is given to the tenant in the other provisions is not made available in a case where the landlord needs the premises which is an open land for the purpose of construction of a new building. The intention of the legislature, therefore, obviously, could be seen in not including clause 13(1)(i) in subsection 2 of section 13 of the Bombay Rent Act. Thus the requirement of proving comparative hardship has to be complied in cases u/s 13(1)(g) and not in cases falling u/s 13(1)(i). If the Legislature had intended that even in cases falling u/s 13(1)(i), comparative hardship was required to be examined by the Court, it would certainly have added clause 13(1)(i) in clause 13(2). The fact that clause 13(1)(i) is not included in section 13(2) itself demonstrates the intention of the Legislature. It has been held in various cases by the Apex Court as well as by this Court that the inclusion of clause 13(1)(i) was for the purpose of encouraging new constructions so that open plots of land need not remain unconstructed and the landlord would have the incentive and advantage of evicting the tenant from the open land so that he could utilise that open land for erecting a new building. Thus in cases where open land is given to a tenant on monthly rent and if he constructs a building on the open plot at his own cost, even in such a case, if the landlord required the land for the purpose of erecting new construction, the requirement of proving comparative hardship would not arise in such case and, therefore, the case would not fall u/s 13(1)(g). The observations of the learned Single Judge in the case of Abdul Raheman (supra) is that because the words "personal use or occupation" are found in section 13(1)(g) and are not found in other sub-clauses, whenever landlord wants an open plot of land for personal use, the case would automatically fall u/s 13(1)(g) and not u/s 13(1)(i). We respectfully disagree with this observation of the learned Single Judge.

13. The learned Single Judge in the case of Abdul Raheman (supra) has made a reference to the Judgment of the Apex Court in the case of Ramniklal Pitambaradas Mehta v. Indradaman Amratlal Sheth reported in AIR 1964 SC 1677. In that case, the Apex Court was required to consider whether the provisions of section 13(1)(g) and section 13(1)(hh) were applicable to the facts of the said case and, in the context of the said controversy which was before the Apex Court, the Apex Court has made those observations in para 15 of the said judgment. The Apex Court was not required to consider whether the provisions of section 13(1)(i) were attracted in the said case. Clause (hh) was inserted by amending section 61 of the Amendment Act 53 of 1950. The said clause is applicable in cases where the premises are required for demolishing the existing building and for erecting a new building on the same premises. Section 13(1)(i), on the contrary, contemplates a situation where the landlord seeks eviction of tenant of an open plot of land and requires it for an erection of a new building. The word "residential" which was earlier found in the said section has been deleted by Amendment Act 53 of 1950 vide section 9(1)(c) of the Amendment Act. Thus all that had to be proved by the landlord who had given an open plot of land to the tenant was that he required the land for erection of a new building

irrespective of the fact whether the building was required for residential or commercial occupation. It necessarily follows that, therefore, the only requirement which had to be proved by the landlord in the case u/s 13(1)(i) was that he wanted to construct a new building and he had means and necessary sanction or permission to construct a new building. The moment these facts are proved by the landlord, he would be entitled to evict the tenant. The tenant, on the other hand, was protected by the provisions of section 17. Section 17 of the Bombay Rent Act reads as under:-

"17(1) Where a decree for eviction has been passed by the Court on the ground specified in clause (g) or (i) of sub-section (1) of section 13 and the premises are not occupied or the work of erection is not commenced within a period of one month from the date the landlord recovers possession or the premises are re-let within one year of the said date to any person other than the original tenant, the Court may, on the application of the original tenant made within thirteen months of such date order the landlord to place him in occupation of the premises, on the original terms and conditions, and on such order being made, the landlord and any person who may be in occupation of the premises shall give vacant possession to the original tenant.

(2) Any landlord who recovers possession on the ground specified in clause (g) or (i) of sub-section (1) of section 13 and keeps the premises unoccupied or does not commence the work of erection without reasonable excuse within the period of one month from the date he recovered possession and any landlord or other person in occupation of the premises who fails to comply with the order of the Court under sub-section (1) shall, on conviction, be punishable with imprisonment for a term which may extend to three months or with fine or with both."

In our view, therefore, the observation made by the Court in para 15 of the Judgment in Ramniklal's case (supra) would not be of any assistance to the tenant. We respectfully disagree with the view expressed in Thakkar Ishwarlal Hargovindas v. Panchal Girdharlal Raichand reported in Vol. XVI Gujarat Law Reporter 1005. In the said case, the learned Single Judge of the Gujarat High Court has taken a view that if the landlord seeks possession of his land for constructing a building for his own occupation or occupation of the members of his family, his case will be governed by clause (g). In our view, the learned Single Judge of the Gujarat High Court has not taken into consideration the fact that the word "residential" which occurred in clause (i) of section 13(1) was deleted in 1953 by the amendment. The intention of the legislature, therefore, obviously was that irrespective of the fact whether the landlord wants to construct a Building for residential or non-residential purposes, as long as he could show that he wanted to construct a new Building, his case would fall u/s 13(1)(i).

14. The learned Single Judge in the case of Abdul Raheman (supra) has not taken into consideration the provisions of section 13(3) of the Bombay Rent Act

by which an adequate safeguards have been provided to the tenant facing eviction u/s 13(1)(i). Section 13(3) reads as follows:-

"13(3) The Court may pass the decree on the ground specified in clause (h) or (i) of sub-section (1) only in respect of a part of the premises which in its opinion it is necessary to vacate for carrying out the work or repairs or erection."

From the perusal of the said section, it is clear that the Court can pass a decree u/s 13(1)(i) only in respect of part of the premises which is required to be vacated for carrying out the work of erection of the new Building.

15. It is one of the settled principles of interpretation of statute that the Court cannot interpret the section in a manner which would have the effect of not giving a relief which the Legislature clearly intended to give to the party concerned. In this context, it would be relevant to take into consideration the observations made by the Apex Court as also by this Court when the validity of section 13(1)(i) was upheld. In the case of Goregaon Malayalee Samaj (Regd.) Vs. Popatlal Prabhudas and Sons and Others, , this Court while considering the constitutional validity of clause 13(1)(i) has observed in para 26 as under:-

It is with this background that I will consider the aims and objects of the present Rent Act. It is needless to state that normally the relation of a tenant and a landlord are governed by contract and the provisions of the Transfer of Property Act. It is only on account of the acute scarcity of accommodation which is the very root of the problem, the Rent Control Legislation came to be enacted and if houses were freely available there would hardly be a need for Rent Control Legislation. As a matter of fact the Rent Control Legislation has to serve a dual purpose of balancing the needs and problems of both, the landlords and the tenants. The policy and objects sometimes is wider than some of the key provisions of the Act and the policy and object of the Act generally is mitigation of hardship of tenants, such protection can be attained by several measures one of them being creation of incentive to persons that are otherwise capable, who are otherwise reluctant to invest in the construction of new buildings in view of the chilling effect of the rent control laws. Creation of additional housing accommodation to meet the growing needs of persons who have no accommodation to reside or to carry on business is a relevant object for the purpose of classification. The legislature is free to recognise the degree of harm or evil and to make provision for the same. As stated hereinabove, it is well settled that Courts will not sit as super legislature and strike down a particular classification on the ground that any under-inclusion, namely that some others have been left untouched so long as there is no violation of constitutional restraints. It is also clear that there is no vested right created in the tenant on account of the protection under the laws and the object of incentive to build new construction has been held to be relevant object for classification."

Similarly, in the case of Manoharam Chubarmal v. B.C. Patel, reported in 1971 M.L.J. 869, the learned Single Judge in paras 20 and 21 has observed as under:-

"20. Then there is difference in legislative protection and that is also founded on a rational basis consistent with the known object of the enactment. The landlords of open lands should not find it burdensome when they propose to undertake building activity. Section 13(1)(i), till it was amended by Bombay Rent Act (No. 61 of 1963) allowed the landlord vacant possession of the plot only when he required it for erection of a new residential building. The note on the clause which precedes that amendment justifies the dropping of the word "residential" on this ground. So the amendment was thought necessary to give greater incentive to builders.

21. Mr. Singhvi is right when he submitted that the tenants of lands will suffer hardships similar to those suffered by tenants of buildings. But that was inevitable. The difference, if any, cannot in any manner affect the validity of the classification. As observed by the Supreme Court, the matter cannot be examined scientifically and with meticulous precision. When the legislators undertake to mitigate a major social evil and provide for greater good of the greater number, one cannot adopt a too rigid mathematical test while deciding the validity of a legislative measure. In the words of the Supreme Court, Article 14 of the Constitution does not insist that legislative classification should be scientifically perfect or logically complete. Unless the classification is wholly arbitrary, the Court will not rule it discriminatory merely because it involves hardship or inequality of burden."

In para 27 of the Judgment in the case of Badriprasad K. Agarwal & Ors (supra) the learned Single Judge while considering the Constitutional validity of the provisions contained in section 13(1)(i) of the Bombay Rent Act has observed as under:-

"27. A challenge to the constitutional validity of the provisions contained in section 13(1)(i) of the Bombay Rent Act was then mounted by Mr. Ganatra. His contention was that by not providing a provision similar to section 13(2) in a case governed by section 13(1)(i), there has been discrimination against the tenants of the open pieces of lands and, therefore, section 13(1)(i) suffers from the vice of hostile discrimination against such tenants. That provision must, therefore, be struck down as violative of Article 14 of the Constitution. Here again, Mr. Ganatra was equally fair in pointing out that a single Judge of this Court in Mangharam Chubarmal v. B.C. Patel, LXXIII Bombay Law Reporter, 140, has upheld the Constitutional validity of the impugned provision. I have gone through the said judgment with the assistance of the learned Advocates and do not find any reason to differ from the view taken by Bhasme J., in the said case. The different types of premises which are in possession of the tenants and the different grounds on the basis of which the landlord could recover possession have been dealt with in great details in that judgment and it has been shown that the tenants on open pieces of lands are not similarly situated as those occupying constructed premises. In this view of the matter, the validity of section 13(1)(i) on the ground that it violates Article 14 of the Constitution could not be

challenged. In my opinion, this view is perfectly valid despite certain observations made by Bhagwati J., in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, on which Mr. Ganatra place considerable reliance. I am unable to find that this judgment or the observations made therein by Bhagwati J. are of any assistance to the petitioners. In the petition some grounds have been taken challenging the constitutional validity of section 13(1)(i) as being violative of Article 19(1)(f) and (g) of the Constitution. I have no hesitation in holding that this challenge is wholly misconceived. The provisions which are meant for the protection of the tenants and in the absence of which the tenants would have been evicted by mere termination of the tenancy cannot be said to be violative of any right enjoyed by the tenant in the leased premises. The right to hold premises on lease is a subject matter of a contract of lease and in the absence of the provisions contained in section 13 of the Bombay Rent Act, the landlord would have been free to determine the lease and to evict the tenant. Provisions such as those contained in section 13 of the Bombay Rent Act have imposed restrictions upon the right of the landlord to recover possession from the tenant and do not impose any fetters on the right of the tenant to remain in possession of the leased premises. This challenge has, therefore, no substance."

The learned Single Judge disagreed with the view taken by Gujarat High Court in the case of *Thakkar Ishwarlal Hargovindas (Supra)* and accepted the view taken by two judgments of this Court; one by Sapre J. in the case of *Sampat Dharamji Bodke and Ors. vs. Krishna Sakham Zore and Anr.* in Special Civil Application No. 529 of 1973 decided on 6/7-12-1973 and the second by Chandurkar J., in the case of *Rukminibai Ramvilas Lahoti and Ors. Vs. Dhanpal Baburao Havale and Anr.* in Special Civil Application No. 2659 of 1973 decided on 7/3/1978. In *Rukminibai Ramvilas Lahoti's* case, Chandurkar J. (as he then was) held that clause (i) of section 13(1) contained special provision relating to open land whereas clause (g) could apply to open land as well as premises consisting of constructed building and that the special provision excludes the general provision. The learned Judge also, after referring to the judgment of the Supreme Court in the case of *Ramniklal (Supra)*, came to the conclusion that the observations of the Apex Court in the said case were not of any assistance as, admittedly, in the said case, lease premises were not an open land. In para 14 and 15 of the Judgment in the case of *Badriprasad (Supra)*, the learned Single Judge observed as under:-

"14. Once it is held that the case is governed by section 13(1)(i) of the Bombay Rent Act, the question of considering the comparative hardship of the landlord and tenant does not arise at all on the proper reading of section 13 as a whole. Mr. Ganatra, however, contends that despite the absence of a provision similar to the one contained in sub-section (2) of section 13 relating to a case u/s 13(1)(i), the Courts while interpreting section 13 as a whole must engraft a provision analogous to the one contained in sub-section (2) of section 13 to a case falling u/s 13(1)(i) of the Bombay Rent Act. It is needless to say that it is not open to a Court to add anything which was not inserted by the legislature in its wisdom. It

is not as if the consequences of passing a decree or eviction u/s 13(1)(i) have not been considered by the legislature.

15. For example, sub-section (3) of section 13 is one which deals with the Court's powers to pass decree in respect of the part of the premises only on the ground specified in clause (i) of sub-section (1) of section 13. Section 17 provides for a situation where a decree for eviction passed by the Court on the ground specified in clause (i) of sub-section (1) is executed, but the work of erection contemplated in that clause is not commenced within a period of one month. These two provisions, in my opinion, clearly show that the legislature was fully aware of the consequences of a decree that will be passed under clause (i) of sub-section (1) of section 13 of the Bombay Rent Act and had made a provision for some of the consequences. The legislature has made a specific provision regarding the comparative hardship in sub-section (2) of section 13. If in its wisdom, therefore, the legislature thought it fit, not to apply section 13(2) to a case u/s 13(1)(i), it is impermissible for the Court to fill in what is apparently a lacuna but which on a closer examination is not found to be so. If a meaning is to be read into the refusal of the legislature to make provision on the question of comparative hardship in a case where a decree is passed u/s 13(1)(i), I would read it in this way that the legislature wanted to encourage construction of building on open plot which were in the possession of the tenants."

We respectfully agree with the observations made by the learned Single Judge.

16. The Apex Court in the case of Union of India and Another Vs. Hansoli Devi and Others etc., has observed that the cardinal principle of construction of Statute is that when the language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt an hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. The learned Single Judge in the case of Abdul Raheman (Supra), in our view, has not taken into consideration the plain and unambiguous language of the statute and has tried to adopt hypothetical construction while coming to the conclusion that because the words "personal use or occupation" are found in section 13(1)(g) and are lacking in other sub-clauses and, therefore, whenever landlord needs any premises whether open land or constructed premises for personal use, section 13(1)(g) would be attracted. Such a construction cannot be given to the plain and unambiguous language of section 13(1)(i).

17. In our view, provisions of section 13(1)(g) and 13(1)(i) are mutually exclusive. Though, both the provisions provide for the recovery of the possession by the landlord, the distinguishing feature is that clause 13(1)(i) speaks about the premises which is an open land only. The Apex Court while interpreting similar provisions which are found in the Karnataka Rent Control Act, 1986 in the case of M/s. Modern Tailoring Hall v. H.S. Venkusa and Ors. reported in 1997 (2) AIRCJ 291, has observed that the provisions contained in section 21(1)(h) and

21(1)(j) were mutually exclusive.

18. Similarly, in the case of Vasant Bando Kulkarni (supra) the learned Single Judge of this Court (A.P. Shah, J.) has observed in paragraphs 7 and 8 of the said judgment as under:-

"7. The next argument of Mr. Thorat is that since the petitioner has indicated that he wants to construct a new building for the purpose of his own occupation, the case will have to be treated as one u/s 13(1)(g) and not u/s 13(1)(i). In support of this argument, Mr. Thorat heavily relies upon the judgment of the Supreme Court in Ramniklal Pitambardas Mehta vs. Indradaman Amratlal Sheth (supra). Mr. Thorat contends that if the landlord requires the land 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). I am afraid the submission of Mr. Thorat has been considered by this Court in at least three judgments taking the view which is contrary to the view propounded by Mr. Thorat. The first judgment is by Sapre, J. in Sampat Dhasmaji Bodke vs. Krishna Sakham Zore (Special Civil Application No. 529 of 1973, decided on 7th November, 1973). In that case also the landlord had filed a suit for possession of the demised premises which were an open site in the town of Wai. It had been mentioned by the landlords 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. An argument similar to the one advanced by Mr. Thorat before me was also advanced before Sapre, J., who rejected the same despite the judgment of the Supreme Court in Ramniklal's case, 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 reconstructed premises after he has obtained possession of the leased premises. He noticed the provisions of sub-section (3A) of section 13 in that regard. It was on this ground, said Sapre J., that the Supreme Court found that when the landlord asks for possession of the premises for his own use and occupation despite the fact that he has to demolish the existing building and erect a new one., the case will be governed by section 13(1)(g). In such a case, the obligation to provide accommodation to the tenants who have been thus dispossessed does not arise. Sapre, J., also noticed that if the landlord pleads that the open land is required for erection of a new building and says nothing more, the Court is not required to launch on an inquiry as to whether the landlord is going to use the building newly erected for his own use and occupation or for letting out to the tenants. On these two counts, Sapre, J., held 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 will be occupied personally by the landlord and despite the fact there is a similarity of expressions relating to the requirement of the landlord in the two clauses viz., clause (g) and clause (i) of section 13(1) of the Bombay Rent Act.

8. The second judgment is by Chandurkar, J. (as he then was) in *Rukminibai Ramvilas Lahori vs. Dhanpal Baburao Havale* (Special Civil Application No. 2659 of 1973, decided on 7th March, 1978). Chandurkar, J., who took the same view as the one taken by Sapre, J., rested 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 and held that judgment was of not much assistance because admittedly in that case the leased premises were not an open land. The third judgment is by Justice Jahagirdar in *Badriprasad K. Agarwal Vs. Premier Garage* (1980) 1 RCJ 385. Jahagirdar, J., after considering the earlier judgments of Justice Sapre and Justice Chandurkar, held that the case governed by section 13(1)(i) would be one where the landlord wants to recover possession of any premises which are land and such land is reasonably and bona fide required by the landlord for the erection of a new building. It would be immaterial whether the landlord is, after obtaining possession, going to occupy the premises himself or let them out. I have, therefore, no hesitation in rejecting the argument of Mr. Thorat that the present case would be covered by section 13(1)(g) and not by section 13(1)(i)."

In the said case also, the question which was required to be considered by the Court was: whether in a case where the landlord wanted to construct a new Building for the purpose of his own occupation whether section 13(1)(g) would be attracted or 13(1)(i) would be applicable? The learned Single Judge, relying upon the judgment in the case of *Badriprasad K. Agarwal and Ors.* (supra) and other two judgments referred to in the said case, held that it would be immaterial whether the landlord, after obtaining possession, intended to occupy the premises himself or wanted to let them out. We respectfully agree with the observations made by the learned Single Judge in the said judgment.

19. Under the circumstances, we have no hesitation in holding that the judgment in the case of *Abdul Raheman* (supra) was passed without taking into consideration the earlier judgments of this Court and even otherwise the view taken by the learned Single Judge cannot be accepted for the reasons stated hereinabove. We, therefore, accept the view taken by the two learned Single Judges of this Court in the case of *Badriprasad K. Agarwal and Ors.* (supra) and in the case of *Vasant Badoo Kulkarni* (supra).

20. The Reference is answered accordingly. Since the learned Single Judge had made a reference to the larger Bench to resolve the controversy which had arisen in view of the conflicting judgments of one learned Single Judge on one hand and two judgments by two learned Single Judges of this Court, we have answered the reference. However, since the learned Single Judge did not address himself to the facts of individual case, it is not possible for us to decide the group of petitions though the impugned orders are decided by giving concurrent findings and substantial period is lost in litigation. However, under these

circumstances, we direct the Registry to place the matter before the learned Single Judge in the week commencing 6th December, 2004 taking up the final hearing writ matters for deciding the petitions in accordance with law.