

(1983) 09 BOM CK 0047

In the Bombay High Court

Case No : Writ Petition No. 1827 of 1979

Chandrakant Bhalchandra Nalavadkar and Another

APPELLANT

Vs

Hiralal Mulchand Shah

RESPONDENT

Date of Decision : 15-09-1983

Acts Referred:

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

Citation : (1984) 1 BomCR 480 : (1984) 86 BOMLR 45 : (1983) MhLj 1100

Hon'ble Judges : M.N. Chandurkar, Acting C.J.

Bench : Single Bench

Advocate : C.R. Dalvi, for the Appellant; M.B. Baadkar, for the Respondent

Final Decision : Allowed

Judgement

M.N. Chandurkar, Ag. C.J.

1. The petitioners-plaintiffs Nos. 2 and 3 are owners of an open plot of land which originally belonged to a Hindu Joint family. The respondent-defendant was admittedly a lessee of this piece of land, having taken it on lease for a period of 11 years from 1st June, 1960. Exhibit 55 is the lease. The original landlords asked to return of the plot as they required it for erection of a building thereon by a notice dated 17th February, 1971, as the period of lease was to expire on 31st May, 1971. Exhibit 78 is another notice given on 3rd September, 1971. This is after the period of the lease had expired. The tenant denied that the landlords needed the open plot.

2. The plaintiffs' case is that by virtue of a partition dated 29th January, 1972 the plot in question fell to their share, and after having given a notice dated 31st January, 1972 they filed a suit for possession on 21st March, 1973 in which it was alleged that the plot in question is situated in the midst of the business locality at Pune and the plot was needed bona fide for the business of plaintiffs Nos. 2 and 3 who were the sons of plaintiff No. 1. Plaintiff No. 1, however, died during the pendency of the suit. The suit is, therefore, a simple suit for

possession on the ground of bona fide and reasonable requirement for the erection of a new building as contemplated by section 13(1)(i) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter the Bombay Rent Act). The defendant himself has constructed a structure on the open plot, which according to him cost a sum of Rs. 50,000/-, and he is carrying on business in these premises. The defendant denied that the petitioners bona fide and reasonably required the premises for erecting a new building. According to him, the plaintiffs did not have sufficient funds nor had they submitted any plan to the Municipal Corporation nor had they prepared any estimate of costs. The partition itself was challenged by the defendant.

3. The trial Court held that the plaintiffs bona fide and reasonably required the premises for erection of a new building as the building was necessary for business as well as residential purposes. The trial Court noticed that the permission granted by the Municipal Corporation was not renewed after 1976. It found that by raising a structure on the plot the plaintiffs would be in a position to accommodate other members of the family also and the requirement appeared to be reasonable and bona fide. The business which was intended to be started in the new premises, according to plaintiff No. 1 was their stationery business and the business of a printing press, and though admittedly the petitioners did not have a printing press the trial Court took the view that this did not make the requirement unreasonable or not bona fide. It appears that a part of the plot is occupied by one Mulik against whom also, subsequent to the suit against the defendant, proceedings were taken. The trial Court held that though the plaintiffs would be entitled to get possession of the suit premises u/s 13(1)(i) of the Bombay Rent Act they would not get possession till a decree for possession was obtained against Mulik. The trial Court held that the tenancy had expired by efflux of time and no question of legality of the notice arose. In the suit arrears were claimed. The defence was that amounts were sent from time to time but money orders were refused by the plaintiffs. The trial Court, therefore, held that though the plaintiffs would be entitled to a decree for Rs. 1,555/- they would not be entitled to any costs in respect of this claim. As already observed, a conditional decree for possession was made by the trial Court.

4. Two appeals came to be filed against this decree, one by the tenant and the other by the landlords. The tenant challenged the decree for possession and the landlords challenged the conditional part of the decree. The learned Joint Judge, Poona, negatived the finding of bona fide and reasonable requirement. The reasons given by him were that a plan of the building was prepared one year after the suit and was not renewed after 1976 and that when the suit was filed the plaintiffs had no balance in any bank, though gradually after the suit a sum of Rs. 32,000/- was deposited in bank. Another reason given by trial Court was that there was no evidence to show what would be the cost of the building and that it could not be presumed that the father-in-law of plaintiff No. 2 would be in a position to make available funds to the tune of Rs. 50,000/- to Rs. 60,000/- to the plaintiffs. One additional circumstance which weighed with the learned Joint

Judge was that the defendant would be required to demolish the structure and this would cause him considerable loss. The Appeal Court found that the trial Court was not justified in passing a conditional decree, but it held that since the tenant's appeal was allowed the appeal filed by the landlords would have to be dismissed. The judgment of the learned Joint Judge, Pune, is challenged in this petition.

5. The learned Counsel for the petitioners has now contended that the Appeal Court should not have interfered with the finding on the issue of bona fide and reasonable requirement. According to the learned Counsel, on the plot of land owned by the petitioners they wanted to construct a new building and a plan has already been made and arrangements for money have also been made. According to the learned Counsel, the learned Joint Judge was not justified in reversing the decision of the trial Court.

6. Mr. Baadkar, who appears on behalf of the respondent, has supported the view taken by the learned Joint Judge and according to him the absence of any sanctioned plan of the building at the time when the suit was filed militated against the bona fide of the petitioners. The learned Counsel also pointed out that the plaintiffs had admittedly no bank deposits on the date of the suit and it is improbable that the father-in-law of plaintiff No. 2 would finance the construction of the building which was to be sued for the business of plaintiff No. 1. Now when a claim is made u/s 13(1)(i) of the Bombay Rent Act, undoubtedly before decreeing the claim the Court has to be satisfied that the land is reasonably and bona fide required by the landlord for the erection of a new building. The Court had, therefore, to apply its mind to the question as to whether the reasonableness and the bona fides of the requirement have been sufficiently established. Undoubtedly, making of a building plan before a suit is filed, claiming relief u/s 13(1)(i) of the Bombay Rent Act may be indicative of the bona fides of the landlord. The absence of such a plan on the date of the suit by itself will not, however, militate against the bona fide of the landlords. It is well known that litigations under the Bombay Rent Act take years before they are finally decided and the claim of the landlord is allowed. Even after a long spell of litigation there is always an uncertainty as to whether a landlord is really going to get possession either of the house or of the open plot, and while some landlords may choose to plan well in advance as to the nature of the building which they propose to have, it is quite possible that being uncertain about the final outcome of the litigation, a landlord, in his wisdom, may not want to incur the necessary expenditure of making a plan, or having the estimates made or of keeping a large bank balance to be utilised for the purpose of construction if and when, after a decade, he gets possession of the plot. Therefore, mere absence of a plan at the date of a suit would not necessarily mean that bona fides were wanting on the part of the landlord. So also the absence of sufficient actual balance in bank by itself cannot straightaway lead to inference of want of bona fide. Where bona fides of the claim that a house is to be constructed are to be tested, the proper course would be to see whether constructed are to be tested,

the proper course would be to see whether the landlord is able to satisfy the Court that he has either the necessary funds at this disposal, or he can raise the necessary funds needed for the construction. Thus the mere fact that at the date of the suit he does not possess a sufficient bank balance cannot be used against him and his claim u/s 13(1)(i) of the Bombay Rent Act cannot be rejected on that ground. Same applies to making estimates and other preparations for construction. It is well known that even estimating cost of construction involves cost payable to the architects, and the wisdom of going through all these preparations and incurring the expenditure involved in this, without the certainty forgetting possession of a plot, is open to question. Thus no set criteria or tests can be laid down for ascertaining the bona fides of the landlord's claim u/s 13(1)(i) of the Bombay Rent Act. The bona fides of such a claim have to be decided on the facts and circumstances of each case.

7. So far as the present case is concerned, it is difficult for me to see how the fact that the plan was made one year after the suit, that it was not renewed after 1976, or that on the date of the suit there was no bank balance in the name of any of the plaintiffs could be themselves be used against the plaintiffs. The plaintiffs had shown that they were in possession of about Rs. 32,000/- and they had given evidence of the father-in-law of plaintiff No. 2 who was a fairly well-to-do person and who had promised to make available the necessary funds. Mr. Baadkar argued that it was unusual and unnatural that the father-in-law of plaintiff No. 2 would lend money to provide for accommodation or building for the business of plaintiff No. 1. If the defendant had any doubt as to the reason why the father-in-law of plaintiff No. 2 would oblige plaintiff No. 1, then such a question could have been asked to the father-in-law who had been examined by the plaintiffs, but no such question has been asked, and the evidence of the father-in-law could not have, therefore, been rejected by the learned Joint Judge on the ground that it could not be presumed that he would be in a position to make such large cash available. In the absence of the father-in-law being questioned as to the sources from which he expected these funds to come, an inference against the plaintiffs could not be drawn.

8. It was then contended that the plaintiffs did not have any printing press business at all and it should, therefore, have been held that the need for business premises was neither genuine nor reasonable. The judgment of the Appeal Court does not show that the Joint Judge has disbelieved the case that plaintiff No. 1 wanted to start a new business of a printing press. Plaintiff No. 1, was in the witness-box. He had stated that he wanted to start a printing press. Once again, if this version was doubted, he could have been cross-examined further to test the truth and the genuineness of his version that he wanted to start a printing press. This has not been done. Nothing prevents a person from undertaking a new business. It is not the law that when a landlord wants to start a new business, he is prevented from asking for accommodation, which may be in the possession of a tenant, for the purpose of constructing a new building for his proposed business. I, therefore, fail to see why the need of the plaintiffs for

a new building to be constructed could not be said to be bona fide or reasonable. In my view, the judgement of the learned Joint Judge is vitiated by a wholly erroneous approach to the claim made u/s 13(1)(i) of the Bombay Rent Act.

9. It has to be pointed out that the legislature has sufficiently safeguarded the tenants against whom a decree is passed u/s 13(1)(i) of the Bombay Rent Act. This safeguard is contained in section 17 of the Bombay Rent Act, and under that provision the tenant who has been evicted is entitled to be reinstated in possession if the erection work is not commenced within a period of one month from the date of the landlord recovers possession; or if the premises are re-let, within one year of the said date to any person other than the original tenant. In my view, on the facts established in this case the learned Joint Judge was not justified in reversing the decree for possession made by the trial Court. The learned Counsel for the petitioners has asked for restoration of the decree passed by the trial Court.

10. In the view which I have taken that the learned Joint Judge was not justified in setting aside the decree of the trial Court, this petition must be allowed, the decree passed by the learned Joint Judge dismissing the plaintiffs' suit is set aside and the decree passed by the trial Court is restored. The petitioners to get the costs of this petition.