

(1970) 07 GUJ CK 0016
In the Gujarat High Court

Chandrakant Madhavrao Bhaiber

APPELLANT

Vs

Gajendrakumar Sunderlal Shah

RESPONDENT

Date of Decision : 13-07-1970

Acts Referred:

Citation : (1971) 12 GLR 551

Hon'ble Judges : D.A. Desai, J

Bench : Single Bench

Judgement

A.D. Desai, J.—The petitioner is the owner of the house known as Killeder's Haveli, situated on the Gendi Gate Road at Baroda. The house consists of ground-floor, first-floor and second floor. There are two tenants on each of the floors. The tenants of the ground floor have a separate common latrine and bath-room for their use. The tenants on the first and second floor have a common latrine and bath room on the first floor for their use. The opponent was the tenant in respect of one room on the second floor. This room was rented by the petitioner to the opponent for his residence. In the beginning of the tenancy the opponent stayed with his mother who resided therein for 3 or 3A month. The opponent is a bachelor and carried on the business of taking contract for doing printing work for the cotton mills at Baroda. The opponent started this business some time after he came to reside in the premises. The other tenants on the first and second floors have in all 15 members in their family. The opponent had to pay Rs. 50/- as rent for the suit premises. The premises was taken on rent on September 5, 1963 and the opponent paid the rent of the first month. He did not pay rent thereafter and, therefore the petitioner gave a notice on March 18, 1964 terminating the tenancy of the opponent on the ground of non-payment of rent. The opponent did not pay arrears of rent and, therefore, the petitioner filed Regular Civil Suit No. 782 of 1964 in the Court of the Civil Judge, Senior Division, Baroda. During the course of the trial the petitioner amended the plaint and contended that he was entitled to possession of the suit premises from the defendant as the defendant was using the premises for the purpose other than the residence, that the opponent was guilty of conduct which was a nuisance to

the adjoining neighbours or occupiers, and that the opponent had given the whole or a part of the premises on licence for monetary considerations without the permission of the landlord. The allegation of the plaintiff in the plaint was also that the suit premises was let to the opponent for personal residence but he was using the said premises for boarding his workers. It was further alleged that these workers were brought from Ahmedabad for his business purposes and the opponent had to bear their boarding and lodging expenses at Baroda. Giving shelter to his workers and using the property for their lodging and boarding purposes amounted to a change of user. The opponent also gained monetarily because he had not to pay the workers their lodging and boarding charges as he used to shelter his workers in the suit premises. It was further alleged that there was only one bath room and latrine for the use of the tenants on the first and second floors and as the opponent allowed these workers to reside in the suit premises, they were using the bath room and latrine which caused inconvenience to adjoining tenants. The defendant resisted the suit and denied that there was a change in the user of the premises or that he was making monetary gain by giving premises on license to his workers or that inconvenience or annoyance was caused to the adjoining neighbours because he permitted his workers to reside in the premises.

2. The trial Court held that the allegation of the plaintiff that the opponent was in arrears of rent for more than 6 months was not proved. In respect of other grounds of the eviction the learned trial Judge accepted the evidence of the plaintiff and passed a decree of eviction against the defendant. Being aggrieved by the said judgment and decree the defendant preferred Civil Appeal No. 156 of 1965 in the Court of the District Judge, Baroda. The learned appellate Judge came to the conclusion that the defendant was not in arrears of rent for more than 6 months. With respect to other grounds of eviction pleaded by the plaintiff the learned appellate Judge came to the conclusion that the evidence on the record was not sufficient to prove the same. The learned appellate Judge, therefore, dismissed the suit of the plaintiff. It is against this judgment and decree that this revision application has been filed by the plaintiff.

3. The facts which are not disputed are that in all there are 4 tenants residing on the first and second floors of the suit premises. The total number of family members of the tenant other than the opponent is 15. There is one common bath room and a latrine for the use of tenants on the first and second floors. The premises was let to the opponent for his residence and initially he and his mother resided in the premises. The mother of the opponent left the premises 31A months thereafter. The opponent carried on business of keeping contracts of printing works in the cotton mills and for that purpose he used to bring workers from Ahmedabad and they were kept in the premises. The opponent was under the obligation to provide for the boarding charges of these workers. If those workers were not allowed to stay in the suit premises the opponent had to pay boarding charges to the workers or had to take or rent some suitable premises for their residence. It is necessary to refer to the finding of facts arrived at by

the lower Courts. The first and most relevant finding is that the opponent was using the suit premises for keeping his 15 workers and thus providing boarding facilities to them. The opponent provided this facility for a continuous period of 2 or 3 weeks at a stretch in one month. The number of family members of the tenants, other than the opponent, came to about 15. There was only one privy and bath-room for the tenants and occupiers of the first and second floors of the suit premises. These are the findings of fact based on the evidence on record and, therefore, binding on this Court.

4. It was lastly contended by Mr. Karlekar that the opponent was guilty of conduct which caused annoyance to the adjoining neighbours and the petitioner was entitled to a decree of eviction u/s 13(1)(c) of the Act. In order to determine whether the petitioner is entitled to the benefit of the said provisions it is necessary to refer to the material part of the section. Section 13(1) so far material for our case reads as under:

13(1): Notwithstanding anything contained in this Act (but subject to the provisions of Section 15), a landlord shall be entitled to recover possession of any premises if the Court is satisfied-

(c): that the tenant or any person residing with the tenant has been guilty of conduct which is a nuisance or annoyance to the adjoining or neighbouring occupiers, or has been convicted of using the premises or allowing the premises to be used for immoral or illegal purposes.

In order to attract this clause the plaintiff has to establish first a conduct of the tenant, secondly that the said conduct is a nuisance or annoyance and thirdly, that the nuisance or annoyance is caused to the adjoining neighbours or occupiers of the premises. In this clause the Legislature has used the words "nuisance" or "annoyance", meaning thereby, that the word "annoyance" has a different meaning than the word "nuisance" as the Legislature would not ordinarily use the same expression twice over. The meaning of the word "annoy" as stated in the Shorter Oxford English Dictionary, third Edition, is "to be odious, or a cause of trouble; to affect so as to ruffle, trouble, vex; to molest, injure : to derange, affect injuriously". The word "annoyance" is stated to mean an action of annoying, molestation or state of feeling caused by what annoys. The meaning of word "annoy" as given in the Webster's New Twentieth Century Dictionary, second Edition, is "to irritate, to bother or vex, as by continued or repeated acts or to harm, injure, or molest, to make angry" and the word "annoyance" is stated to mean that which annoys. The word "annoyance", therefore, indicates such conduct of a person which would harm, injure or irritate other persons or to make them angry. The word "annoyance" as used in Clause (c) of Sub-section (1) of Section 13 of the Act includes an act which interferes with the peaceful and reasonable enjoyment of the premises by the adjoining or neighbouring occupiers. In *Tok-Healty v. Benhan*, 40, Chancery Divisions page 80, the Court had to consider the meaning of the word "annoyance" as used in a covenant of lease. The facts of the case were that a dwelling-house was rented out. The

premises were used for keeping outdoor patients for the treatment of throat, nose, ear, skin eye, fistula and other diseases, and the question which arose for consideration of the Court was whether the use of the premises for the aforesaid purposes caused annoyance to the neighbours. Lindley L.J. made the following observations:

Now what Is the meaning of "annoyance"? The meaning is that which annoys, that which raises objections and unpleasant feelings. Anything which raises an objection in the minds of reasonable men may be an annoyance within the meaning of the covenant.

Having thus determined the meaning of word annoyance, let us consider the facts of the present case. There is no dispute that the suit property was rented to the opponent for his residence and it was so used for some time. The finding of the Courts below is that the defendant was using the premises for boarding his 15 workers. The number of family members of the tenants other than the opponent and residing in the premises came to about 15 in number. So the total number of persons residing on the first and second floors came to about 30 persons. Amongst these 30 occupiers, there was only one common latrine and bath room. According to the finding of the Courts below the workers of the opponent come to the first floor for using the common privy and for cleaning their teeth. The family members of the tenants included females. The lower Courts found that there was only one common privy and bath room and there was a great rush for the use of privy and bathroom and the family members of the tenants had to stand in que for having their turn to the privy. Now the evidence on record clearly establishes that the premises were let out to the opponent for his residence. The evidence on record is sufficient to prove that the premises were used by the opponent for boarding his workers, that is, to provide his workers with a sheller as a part of his business activities. This conduct of the opponent, therefore, is such that it cannot be said that the tenant made a reasonable ,use of the premises. The question, then is, whether this guilty conduct of the opponent caused nuisance to the adjoining x neighbours or occupiers. The evidence on the record indicates that there were 30 persons using one common latrine and bath room with the result that the family members of the tenants including the females had to stand in a queue which caused inconvenience to the tenants residing on the first and second floors. The conduct of the opponent in allowing his workers to stay in the suit premises, abridged and Diminished seriously and materially the ordinary comforts to which the occupiers of the premises were entitled to. The evidence on the record is sufficient to establish that the persons in the neighbourhood suffered annoyance, inconvenience and injury because the opponent allowed the workers to board in the suit premises. The conclusion of the learned trial Judge that the opponent was guilty of the conduct which caused annoyance to the neighbouring occupiers was a correct one. The appellate Court observed that the conduct of the opponent was such that some inconvenience might be felt by the neighbouring occupiers but the said conduct was not sufficient to establish "annoyance." The

reason for this view was that the opponent used the premises for his residence as well as that of his workers and if the opponent's family-consisted of more than 12 persons, it would not have been open to contend that the aforesaid persons could not make use of the privy and bath room. "Whether a particular conduct amounts to annoyance or not depends on various factors and must vary from fact to fact. In the present case the premises were let out for the residence of the opponent. The opponent allowed his workers to reside in the suit premises and to make use of the common latrine and bath room with the result that the members of the family of other tenants suffered inconvenience in their reasonable enjoyment of the suit premises. The workers who were permitted to reside in the suit premises were absolutely strangers to the opponent. The workers were not the members of the family of the opponent. Therefore, in peculiar circumstances of the present case, the use of the suit premises by the opponent, caused inconvenience to or interference with the reasonable enjoyment of the premises by other tenants.

The result is that the decree of the appellate Court dismissing the suit of the plaintiff is set aside and the decree of the trial Court evicting the tenant is restored. The opponent to pay the costs of the petitioner throughout. Rule made absolute.