
(1970) 07 GUJ CK 0003
In the Gujarat High Court

Chimanlal Maganlal Shah

APPELLANT

Vs

Shantilal Chhaganlal Shah

RESPONDENT

Date of Decision : 21-07-1970

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1) , 13(1)(g), 13(1)(hh), 13(1)(hh) , 13(3A)

Citation : (1971) 12 GLR 229

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

Bench : Single Bench

Judgement

A.D. Desai, J.—This revision application raises an interesting question of construction of Section 13(1)(hh) read with Sub-section (3-A) of the said section of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the Act). The opponent-original plaintiff was the owner of two shops bearing Gram Panchayat Nos. 630 and 631, situated in village Thasra (Shethwada), District Kaira. The plaintiff was doing business in the shop bearing Gram Panchayat No. 630. The shop bearing Gram Panchayat No. 631 was rented by the plaintiff to the defendant. The plaintiff was residing as a lessee in a house owned by one Chimanlal Acharatlal. The plaintiff received a notice from his landlord asking him to vacate the premises. The plaintiff, therefore, wanted to demolish both the shops and reconstruct a new building for the purpose of his residence. The plaintiff gave notice to the defendant that he required the suit premises reasonably and bona fide for the immediate purpose of demolition for erecting a new building thereon. As the defendant did not part with the possession of the suit premises, the plaintiff filed Regular Civil Suit No. 48 of 1967 in the Court of the Civil Judge, Junior Division, Dakor, for possession of the suit premises on various grounds including the ground that he bona fide required the premises for demolition and erection of a new building with a story for his residence. The suit was resisted by the defendant who denied that the plaintiff required the shop for the purpose of reconstruction and for his residence. He contended that the suit was filed for harassing and preventing him from doing

his business. Various other contentions were raised but we are not concerned with those contentions in this revision application. The trial Court came to the conclusion that the case of the plaintiff was governed by the provisions of Section 13(1)(g) of the Act and as the plaintiff purchased the suit property in 1966, he was not entitled to a decree under the provisions of Section 13(1)(g) of the Act. The learned trial Judge, therefore, dismissed the suit of the plaintiff. Being aggrieved by the said judgment and decree the plaintiff filed Civil Appeal No. 289 of 1968 in the District Court at Nadiad. The appeal was heard by the learned District Judge, Nadiad, who came to the conclusion that the case was governed by the provisions of Section 13(1) of the Act and as the plaintiff satisfied the provisions of Sub-section (3-A) of Section 13 of the Act, he was entitled to a decree and decreed the suit of the plaintiff. It is against this judgment and decree that this revision application has been filed.

2. Now there is no dispute before me that the case of the plaintiff falls under the provisions of Section 13(1)(hh) of the Act. The finding of the appellate Judge that the case of the plaintiff is governed by the provisions of Section 13(1)(hh) of the Act is rightly not challenged before me. Mr. Jani, appearing for the petitioner, contended that the suit premises consist of shop only, that is, a business premises and the provisions of Section 13(1)(hh) read with Sub-section (3-A) of the Act cannot apply to premises entirely used for business purposes and the plaintiff, therefore, was not entitled to a decree of possession on this ground. The argument of Mr. Jani was that under the provisions of Sub-section 3-A of Section 13(1) of the Act the landlord has to give an undertaking that the new building to be erected by him shall contain not less than two times the number of the residential tenements, and not less than two times the floor area, contained in the premises sought to be demolished. This particular condition requires that the landlord should erect a new building in such a manner that it shall contain not less than two times the number of residential tenements. In the present case, the premises is entirely a business premises and, therefore, the undertaking requiring that the new building must contain not less than two times the number of the residential tenements could never be fulfilled. The argument was that if this condition could not be fulfilled, the proper interpretation of the provisions of Section 13(1)(hh) read with Sub-section (3-A) is that the said provisions do not apply to the premises, the use of which is made entirely for business purposes.

3. In order to appreciate this argument it is necessary to note that under the ordinary law of landlord and tenant, as soon as a landlord terminates the tenancy by one of the modes available to him u/s 111 of the Transfer of Property Act except by forfeiture, he becomes entitled to recover possession and the tenant has no right to resist the claim for possession. Due to the shortage of accommodation, the legislature passed the Bombay Rents, Hotel and Lodging House Rates Control Act of 1947. Section 13(1) restricts the ordinary rights of the landlord to recover possession of the premises let by him to the tenant. Section 13 of the Act provides the grounds on which a landlord can eject a tenant. The various grounds for ejectment mentioned in the section are such

which reasonably justify the ejectment of a tenant in the exercise of general right to eject his tenant. There is, therefore, no reason why the restrictions not mentioned in the ground be read into them.

4. Bearing this principle in mind, let us consider the provisions of Section 13 of the Act. The relevant part of Section 13(1) reads as under:

Section 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-

(hh): that the premises consist of 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.

There is a proviso to this clause but in the instant case we are not concerned with it and hence not reproduced. Sub-section (3-A) of Section 13 of the Act is as follows:

(3-A): No decree for eviction shall be passed on the ground specified in Clause (hh) of Sub-Section (1), unless the landlord produces at the time of the institution of the suit a certificate granted by the Tribunal under Sub-section (3-B) and gives an undertaking-

(a): that the new building to be erected by him shall subject to the provisions of any rules, by laws or regulations made by a local authority, contain not less than two times the number of residential tenements, and not less than two times the floor area, contained in the premises sought to be demolished;

(b): that the work of demolishing the premises shall be commenced by him not later than one month, and shall be completed not later than three months, from the date he recovers possession of the entire premises: and

(c): that the work of erection of the new building shall be completed by him not later than fifteen months from the said date:

Provided that, where the Court is satisfied that the work of demolishing the premises could not be commenced or completed, or the work of erection of the new building could not be completed, within time for reasons beyond the control of the landlord, the Court may by order extend the period by such further periods, not exceeding three months at a time, as may, from time to time, be specified.

5. Now the provisions of Section 13(1)(hh) of the Act refer to all types of premises. The word "premises" has been defined in the Act and there is no dispute that the said word includes premises used for residential purposes or business purposes or residential cum business purposes. That being so, there is nothing in the provisions of Section 13(1)(hh) of the Act to indicate that the said provisions cannot apply to the premises entirely used for the business purposes.

Much reliance was placed on the provisions of Sub-section (3-A) of Section 13 of the Act. Now the provisions of this Sub-section put a restriction and the restriction is that no decree shall be passed on the ground specified in Clause (hh) of Section (1) unless the landlord satisfies certain condition and gives certain undertakings. The provisions of Sub-section (3-A) are a sort of proviso laying down that although a decree of eviction is asked for by the landlord under the provisions of Section 13(1)(hh) of the Act, the relief shall not be granted unless certain condition is fulfilled or certain undertakings are given. The principles as to how a proviso is to be construed are well settled. A proviso cannot be interpreted so as to nullify or destroy the main provision. The territory of a proviso is to carve out an exception to the main enactment and excludes something which otherwise would be in the main enactment. The Court generally does not read a proviso as a substantive enactment unless the language of the proviso is such that it cannot be read as discharging its usual function. The Court does not construe a section in the light of a proviso. It construes the proviso in the light of the section. Bearing these cardinal principles of interpretation, let us consider the effect to the Sub-Section (3-A) of Section 13 of the Act. Under the provisions of Section 13(1)(hh) of the Act a landlord is entitled to recover possession of the premises including the premises entirely used for business purposes, on satisfying the ingredients of the said clause. Once the ingredients of Section 13(1)(hh) of the Act are satisfied by the landlord, the Court has to refer to Sub-section (3-A) of the section. The provisions of Sub-section (3-A) put a restriction on the power of the Court to pass a decree of eviction in cases falling in Section 13(1)(hh) Before the Court passes the decree under the said provisions, the landlord has to give undertakings mentioned in Sub-clauses (a), (b) and (c) of Sub-section (3-A) of Section 13 of the Act. In the present case we are concerned with undertaking (a) of Sub-section (3-A) of Section 13 of the Act. There cannot be any dispute that said provision requires the landlord to give an under taking that the building to be erected by him shall contain not less than two times the number of residential tenements. There is no dispute and cannot be disputed that provision cannot apply to a case where entire premises are used only for the purposes of business. In such a case there is no question of the new premises containing not less than two times the number of residential premises because the entire premises are used for business purposes and as there is no residential premises. The consequence is that in a case in which the landlord asks possession of premises used entirely for business on the ground falling u/s 13(1)(hh) of the Act, the undertaking mentioned in Clause (a) of Sub-Section (3-A) cannot apply, meaning thereby, that there is no restriction to the landlord to recover the possession of such premises. The undertaking mentioned in Clause (a) of Sub-section (3-A) cannot be read, as argued by Mr. Jani, to destroy what a landlord is entitled to under the provisions of Section 13(1)(hh) of the Act. The reason being that the interpretation of the section in that manner amounts to reading the section in the light of proviso and this method of interpretation is opposed to the well-established canon of construction. The proviso restricts the power of the Court to pass a decree if certain undertakings are not satisfied. The

proper way to interpret the proviso is to read the same in the light of the section and if read in that manner, the true construction of the provisions is that where entire premises are used purely for business premises, there is no restriction on the Court for passing a decree of eviction on the grounds specified in Clause (hh) of Sub-section (1). For the aforesaid reasons the argument of Mr. Jani that the provisions of Section 13(1)(hh) of the Act are inapplicable to the premises used entirely for the business purposes cannot be accepted. It is necessary to refer to the provisions of Section 17-B of the Act which provides that where a decree for eviction has been passed by the Court on the ground specified in Clause (hh) of Sub-section (1) of Section 13 of the Act and the work of demolishing the premises and of the erection of a new building has been commenced by the landlord, the tenant may, within six months from the date on which he delivered vacant possession of the premises to the landlord give notice to the landlord of his intention to occupy a tenement in the new building on its completion on the condition that he shall pay to the landlord the standard rent in respect of the tenement. The word "tenement" used in this part of the section includes residential, business or residential cum business premises and this provision of the section applies to them. There is a proviso to the section; which says that in respect of a residential tenement, the tenant concerned shall not be required to pay rent in relation to the area at more than double the rate at which he paid rent for his former premises immediately before his eviction under the decree, unless the landlord obtains an order of the Court fixing the standard rent in respect of the tenement at a higher rate. The provisions of the proviso put an obligation on the tenant to pay at the most double the old rent in respect of the new residential tenement. The phrase "in respect of a residential tenement" is indicative and restricts the provisions of the proviso only in respect of the residential tenement indicating thereby that the provisions of Section 13(1)(hh) of the Act applies to all types of premises to which the Act is made applicable.

6. In the present case the trial Court dismissed the suit of the plaintiff (V) and, therefore, there was no occasion for him to consider whether the undertaking contained in Clauses (b) and (c) of Sub-Section (3-A) were satisfied or not. In the appellate Court the landlord filed an application Ex. 17 stating that he would construct a new premises and complete the construction of the premises as provided by law. It is also stated that after construction of new premises he would hand over possession of the premises as may be ordered by the Court. The landlord undertook to carry out all the directions of the Court. The landlord has given his evidence to that effect. It was in pursuance of these factors that the learned appellate Judge came to the conclusion that the landlord had specifically given the undertaking as required by Clauses (b) and (c) of Sub-section (3-A) of Section 13 of the Act. The learned appellate Judge while decreeing the suit of the plaintiff ordered the defendant to hand over possession of the suit shop to the appellant within one month from the date of the Court's decree. He further ordered that on the possession being received by the plaintiff he should start its demolition within 15 days and completely demolish the same

within one month. The landlord was required to erect a new building within 12 months after the premises were demolished and he was ordered to hand over the newly constructed suit shop to the defendant on the same rent which the tenant was paying before the construction. The result is that the order passed by the learned appellate Judge cannot be said to be not in accordance with law. As the time fixed by the learned appellate Judge for various stages of delivery of possession of the old shop and the shop to be constructed has now expired as no action could be taken due to interim order given by this Court pending this revision application. I shall therefore, modify the order of the learned appellate judge in respect thereto. It is ordered that the petitioner do hand over the possession of the suit shop to the opponent within one month from to day. On possession being received by the opponent, he should start its demolition within a period not less than 3 months from the date of receiving the possession. The opponent should erect a new building Within 12 months after the premises" the opponent shall hand over possession of the newly constructed shop on the old rent i.e. Rs. 22-08 P. per month The rule issued on the petition is discharged with no order as to costs.