

(1993) 02 SC CK 0004

In the Supreme Court Of India

Case No : Civil Appeal No 2208 of 1985

Dashrath Baburao Sangale and others

APPELLANT

Vs

Kashimath Bhaskar Data

RESPONDENT

Date of Decision : 10-02-1993

Acts Referred:

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

Citation : AIR 1993 SC 2646 : (1993) JT 506 Supp : (1994) 1 SCC 504 Supp

Hon'ble Judges : B.P. Jeevan Reddy, J;A. S. Anand, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal is preferred by the tenant against the judgment and order of the Bombay High Court dismissing Writ Petition No. 1794 of 1984, filed by him, on 19-2-1985. The matter arises under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 hereinafter referred. In as the Bombay Rent Act

2. The respondent-landlord leased out a piece of open land to the first appellant on 1-1-1953. The appellant executed a rent note on that date. It is in Marathi, Clause 3 of the Rent note, mentions the purpose for which the said piece of land was leased out. As translated by the parties, the clause reads: "We have taken on rent the said premise with the help of an ox for our sugarcane crushing and for the shop thereof and we shall get constructed thereon a temporary shed of timesheet at our own costs " ...The period of lease was stated to be six months. However, the tenant continued in occupation of the said land even thereafter. He had put up a tin shed on the said land for carrying on his business.

3. In the year 1978, the landlord instituted proceedings for eviction on the ground that the tenant has been using the said premises for a purpose other than the one for which it was leased out. Instead of sugarcane juice business, he alleged, the tenant was using the premises for selling cloth and readymade clothes. The appellants denied the allegation. Their case was that since the

sugarcane juice business is a seasonal one, it cannot be carried on throughout the year. During the off season, he pleaded, he was doing the cloth business in the premises, which he was entitled to. The trial Judge accepted the landlord's case and directed eviction against which an appeal was preferred which too was dismissed. It is then that the tenant filed the writ petition in the High Court which too met the same fate.

4. Section 13(1)(a) of the Bombay Rent Act provides that "if the tenant has committed any act contrary to the provision of Clause (0) of Section 108 of the Transfer of Property Act, he renders himself liable for eviction." Clause 108(o) of the Transfer of Property Act inter alia says that the lessee "must not use or permit another to use, the property for a purpose other than that for which it was leased." The finding of both trial Court and the Appellate Court is that the tenant has been using the premises for a purpose other than the one for which he had taken the said premises on lease. Indeed the stand of the tenant before the Appellate Court as well as the High Court was that having taken the said premises on lease for doing business, he was entitled to do such business as he chose. In the face of the clear stipulation in the lease deed, the Courts below as well as the High Court refused to countenance the said plea. Even on the question of acquiescence of landlord in the said change of user-the other plea raised by the appellants-the finding is against them. The High Court too has accepted the said finding. We see no reason to disturb the findings of the Courts below under the Act. The appeal is accordingly dismissed. No costs.