

(1999) 02 BOM CK 0025

In the Bombay High Court

Case No : Writ Petition No. 4832 of 1989

Dhanpal Bharmappa Gudale

APPELLANT

Vs

Appasaheb Balkrishna Malge since deceased by his heirs and
L.Rs.

RESPONDENT

Date of Decision : 26-02-1999

Acts Referred:

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

Citation : (1999) 2 ALLMR 363 : (2000) 1 BomCR 184

Hon'ble Judges : T.K. Chandrashekara Das, J

Bench : Single Bench

**Advocate : Tejpal S. Ingale, for the Appellant; V.B. Rajure and S.D.
Dharmadhikari, for the Respondent**

Judgement

T.K. Chandrashekara Das, J.—This writ petition is filed by the tenant petitioner, challenging the order of the lower Appellate Court, whereby the petitioner - tenant was sought to be evicted. The controversy arise in this writ petition is that the landlord - respondent sought eviction of the petitioner for his own occupation, as contemplated u/s 13(1)(g) of the Bombay Rent Act. The contention of the respondent landlord is that the eviction is sought for construction of the building as envisaged u/s 13(1)(i) of the Act. The lower Appellate Court proceeded on the basis that this case squarely falls u/s 13(1)(i) and therefore, having proved the reasonable and bona fide requirement of the landlord, the trial Court ought to have decreed the suit in favour of the respondent landlord u/s 13(1)(i) of the Act. The learned Counsel for the petitioner-tenant, however, submits that assuming that the claim of the respondent for eviction is sought u/s 13(1)(i) of the Act and not u/s 13(1)(g), the lower Appellate Court ought to have considered the matter in the light of sub-section (3) of section 13 of the Bombay Rent Act. In order to appreciate the contention of the learned Counsel for the petitioner, it is necessary to refer to sub-section (3) of section 13 of the Act, which reads as follows:-

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

The aforesaid section says, that an eviction from the suit premises can be sought on the ground specified in Clause (h) - for repairs or clause (i) for construction of a new building. It is laid down in the proviso, that if eviction can be ordered in respect of the part of the premises, the Court shall pass decree accordingly. In other words, if we read sub-section in negative sense, it brings forth that the Court may not pass the decree on the ground specified under clause (h) or (i) of sub-section (1), of section 13 of the Act, if in respect of the part premises which in its opinion, it is not necessary to vacate for carrying out the work of repairs or erection. In short it is only when the construction could not be commenced or completed or cannot be carried on, according to the plan, with the remaining open space or it could be done only after demolishing the part of the existing building then the Court may order eviction from the part of the premises. In this context, the learned Counsel for the petitioner pointed out the observations made by the trial Court in paragraph 18 of its judgment. The trial Court in that paragraph has observed thus:-

"I find that plaintiff is seeking for possession of the suit premises in order to build a new building and progress in his agricultural profession. Where as it is clear from the evidence on the record that plaintiff can erect the building in the open space which is already in his possession and can solve his difficulty."

Even though this finding has been entered by the trial Court for deciding the reasonableness and bona fide requirement of the landlord, the said observation is quite relevant in the circumstances of the case which comes under sub-section (3) of section 13 of the Act. The lower Appellate Court has not considered this aspect of the matter while setting aside the trial Court's judgment. In view of this, I think that the matter has to be remanded back to the lower appellate Court, to examine this case in the light of sub-section (3) of section 13 of the Bombay Rent Act. I make it clear that the petitioner has not agitated the matter on the ground specified u/s 13(1)(g) of the Act. Therefore, the lower Appellate Court should proceed in the matter on the basis of the ground specified u/s 13(1)(i). The lower Appellate Court should frame an appropriate issue and enter its finding in the light of subsection (3) of section 13 of the Act, within 4 months from the date of receipt of this order.

2. In the result, the writ petition is allowed. Impugned order is hereby set aside. Rule is made absolute in the above terms. No order as to costs.

3. Certified copy expedited.

4. Petition allowed.