

**(1994) 01 SC CK 0131**

**In the Supreme Court Of India**

**Case No : Civil Appeals Nos. 4412-13 Of 1990**

Fatmabibi Usmal Patel and Others

APPELLANT

Vs

Manguben Pranbhai Thakkar and Others

RESPONDENT

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**Date of Decision :** 18-01-1994

**Acts Referred:**

Constitution of India, 1950 — Article 227

**Citation :** (1995) 3 SCC 214 Supp

**Hon'ble Judges :** S. Mohan, J; M. K. Mukherjee, J

**Bench :** Division Bench

**Final Decision :** Disposed Of

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## **Judgement**

1. The landlord is the appellant before us. He obtained a decree for eviction in a suit for possession and compensation in the trial court. That success was confirmed in the court of appeal. The writ petition under Article 227 the concurrent findings of the courts below were set aside, consequently the decree was set aside. Therefore, he has come up in appeal.

2. The grounds of eviction were two (i) under Section 13( 1 )(b) and (ii) for personal use. We may at once state that the latter ground came in after the present landlord came to purchase the property from the previous landlord under whom the appellants were themselves tenants. Presently Mr V.M. Tarkunde submits under Article 227 that the High court was not empowered to upset the factual findings. Such a jurisdiction could be exercised only if there was an error apparent on the record not even the error of fact but an error of law. That is not so here. In this case the tenant has put up permanent structures that too without the consent of the landlord. If that be so, it should entail eviction under Section 13(1)(6) unless there is a valid defence. Such a defence had been negatived by the trial court as well as the first appellate court. The High court held that the previous landlord ought to have been examined to know the nature of the permanent structure. That was not even the plea of the tenant. Therefore, the High court was not justified in making out a special case for the tenant.

3. As regards the bona fide need having regard to the fact that the members of the family, all of them wanted to start a business, that plea was made out. Though the previous landlord did not ask for such a relief having regard to the fact that the property came to be purchased by the present landlord, such a plea ought to have been entertained by the High court.

4. In opposition to this Mr Bhasme, learned counsel for the respondent tenants submits that it is not every structure which could be characterised as permanent. Having regard to the nature of structure they cannot be called permanent. Even otherwise, if by reason of those structures the value of the property gets enhanced and ultimately it is for the beneficial enjoyment of the landlord there cannot be an eviction under Section 13(1(b) of the Act. From this aspect of the matter the High court examined and found that the evidence was lacking. In such a case it was justified to interfere with the findings though concurrent under Article 227.

5. In relation to the bona fide need no evidence had been let in as to the volume of business or the need for more accommodation. Here again evidence is lacking. If it is well settled in law a mere desire cannot tantamount to personal need.

6. On a careful consideration, we are of the view that the landlord is entitled to succeed under Section 13(1(b) of the Act. Our reasons are as follows: Here is a case where the tenant has admittedly put up these permanent structures:

"(i) Raised the front portion of the roof for fixing a heavy decorative sign- board by cutting or removing the wooden rafters and purlin of the roof and had diverted the original flow of rainwater.

(ii) Removed the original plaster of the walls of the premises and had replastered the walls with heavy cement plaster and had covered the original wooden posts with such plaster.

(iii) Damaged the walls while making false ceiling and while covering the walls with timber-paneling.

(iv) Damaged the foundation while removing the original I.P.S. flooring of the premises and had replaced the original flooring by heavy stone polished tiles.

(v) Constructed a twin-partition in the premises by damaging the walls of the premises.

(vi) Constructed a drain underneath the floor and had fixed water pipes, wash basin and other kitchen fittings by damaging the walls of the premises. (vii) Removed the original wooden front door and replaced the same with heavy steel rolling shutters. (viii) Removed wooden shutters of the rear door and had replaced the same with collapsible steel door."

7. The evidence of the landlord Public Witness 1 is that these are the permanent structures and they have been put up by the tenant without the consent of the landlord. His evidence is: The defendants had carried out the changes in the suit

premises without the oral or written consent of Vasant V. Godbole the predecessor entitled to ours. The defendant cut the original board of the shop/suit premises, and put heavy board therein, therefore, the height of roof raised. Therefore, in the rainy season water from the roof diverted in the walls and caused damage. The defendants removed the cement cobo (sic cover) of the flooring of the shop and put heavy stone tiles due to this foundation and walls are damaged. The defendants removed the plaster of the walls and put wooden plywood covers. The defendants also dug the floor and made a channel for drainage water and put one wash basin in the suit premises. The defendants removed the original wooden door of front side and placed therein heavy iron shutters. The defendants put heavy false ceilings to the roof. Therefore, walls are damaged. While putting the false ceiling the walls are dug for putting wooden poles in it. The defendants also made a kitchen in the suit premises. Before carrying out the abovementioned additions in the suit premises there was medical shop. Thereafter medical shop was closed and cold drink house was started. Previous to alteration there was wooden plank folding door to the front side of the suit-shop. The defendants also removed old back side wooden door of the suit premises and put a steel collapsible door. Due to putting back side door the wall is damaged. The defendants constructed behind the suit-shop by encroaching upon the open space of the original plaintiff and now belonging to us. The said construction is one cabin shed. The defendants have not obtained oral or written permission of original landlord Shri Godbole. Therefore, we filed Civil Suit No. 13 of 1979 against the defendants, for removing the encroachment of cabin shed and getting its vacant possession. Due to construction of the cabin shed the defendants have committed the breach of the terms of the condition of the tenancy.

8. It is not the case of the tenant that these structures were put up with the consent. However, what is stated by him as Public Witness 1 is as follows: The roof of the suit-shop was of Mangalore tiles. At present we put the cement sheets on the eastern slope of the suit-shop. We put the cement sheets on the front slope of the shop upon the previous Mangalore tiles. Previously the rainwater from the roof of the suit-shop on the eastern side was falling directly in front of the shop. Now the rainwater from the front slope of the roof of the shop is not falling directly in front of the shop. There is a channel now behind the signboard of the suit-shop for the flow of rainwater from the roof of the suit-shop. We prepared and fixed the said channel behind the signboard for the flow of rainwater before 1975. It is true that we put two brick constructions with cement and increased the height of the suit-shop on front side. It is not true to say that we removed the old Mangalore tiles from the front roof of the suit-shop and also cut down the old roof and constructed new roof by raising height of the suit-shop, it was done by us at the time of conducting the business of Badri Cold-Drink House. It is true that at the time of fixing the rolling shutters we removed the old wooden door of the suit shop which was made of planks. I do not remember that the planks of the previous wooden door were of teak wood. As

the planks of the wooden door were rotten, therefore we destroyed the said planks. We used some of the planks of the door which were better and rotten planks were destroyed by us. Previously the height of the suit-shop from front side was about 7 feet. It is not true to say that at the time of fixing the rolling-shutters, we increased the height of suit-shop up to 10 ft. from front side by cutting the portion of the roof. We increased the height of the suit-shop 2 ft. more above the height of the rolling-shutters mentioned at Exbt. 130.

9. Therefore, the tenant would give his own version. But the material point is that these are structures which are permanent in nature. There is no gainsay in this. If that is the case we do not know why the High court should have commented upon the non-examination of the previous landlord. It is not even the case of the tenant that these structures or at least most of them, were there even at the time of the previous landlord. In such a situation, the High court was not justified in insisting upon the previous landlord being examined and on that ground set aside the factual Findings. This is a case of High court exercising jurisdiction under Article 227 which only conferred a power of superintendence. If that be so, unless there was an error of law apparent on the case, there was no justification to interfere with the concurrent findings of the fact. Therefore, the High court has gone wrong moving to the bona fide need to agree with Mr. Bhasme. The evidence merely discloses a mere desire. On the contrary it does not establish a need, much less a bona fide need. In the result, we allow the appeal and set aside the judgment of the High court and restore the decree passed by the trial court maintained by the first appellate court. There will be no orders as to costs.