

(1977) 06 GUJ CK 0005

In the Gujarat High Court

Case No : Civil Revision Application No. 81 of 1975

Gaurishankar

APPELLANT

Vs

Bhikhalal Chhaganlal and Others

RESPONDENT

Date of Decision : 23-06-1977

Acts Referred:

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

Citation : AIR 1978 Guj 72 : (1977) GLR 805

Hon'ble Judges : M.P. Thakkar, J

Bench : Single Bench

Advocate : K.L. Abichandani, for the Appellant; S.M. Shah, for the Respondent

Judgement

1. This revision application under S. 29(2) of the Bombay Rents, Hotel & Lodging House Rates Control Act illustrates how the provisions of the Rent Act are misused, how poor tenants are harassed, and how lightly eviction decrees are passed in total disregard of their impact and consequences. It becomes a matter of greater concern when it is realised that such a decree has been passed in this case against a poor tenant who is occupying one small room on a rent of Rs. 5/ per month in the town of Jetpur and who may not be able to procure a roof over his head if "he were turned out.

2. The petitioner was inducted as a tenant in the suit room in about 1958. In 1963 his brother died and his widow (Kalaben) came to live with the petitioner, as there was nowhere else she could go. In course of time, according to the petitioner he entered into a Natta marriage with her. Thereafter they had three sons one in 1966, one in 1968 and another in 1969. The suit -giving rise to the present petition was instituted on July 13, 1971 on the ground that the petitioner was using the premises as a brothel and for immoral purposes. The allegation was that the petitioner was living on the earnings of his sister-in-law Kalaben. It was alleged that there were quarrels between Kalaben and the wife of the petitioner Girjaben and on that account nuisance was caused to the other tenants and neighbours. On these premises eviction was sought against the

petitioner. The trial Court recorded a clear finding on evidence that the allegation that the petitioner was running a brothel or using the premises for immoral purposes was false. However, the trial Court came to the conclusion that as the petitioner was living with his sister-in-law in adultery, he had lost the protection of the Rent Act. He also recorded a finding to the effect that there were quarrels between Kalaben and Girjaben and that it amounted to nuisance within the meaning of S. 13(1)(c) of the Rent Act. On this ground a decree for eviction was passed against the petitioner. The appellate Court accepted the contention of the petitioner that even assuming that the finding that the petitioner was living in adultery with his sister-in-law was true, that was no ground for eviction under Sec. 13(1)(c). The learned Appellate Judge, therefore, reversed the finding recorded by the trial Court on this aspect. -However, the learned Appellate Judge confirmed the finding that there were quarrels between Kalaben and Girjaben and they had constituted nuisance within the meaning of S. 13(1)(c) which renders the petitioner liable to eviction under S. 13(1)(c).

3. Section 13(1)(c) of the Rent Act provides that if a tenant or any person residing with him is guilty of conduct which constitutes nuisance or annoyance to the adjoining or neighbouring occupiers or has been convicted for using the premises or allowing the premises to be Used for immoral or illegal purposes, he can be evicted. Now, the learned Appellate Judge has recorded a finding to the effect that the Natra marriage between the petitioner and his sister-in-law was illegal. We, are not concerned with the question as to whether or not the marriage was legal. Even assuming that Kalaben was residing with the petitioner as his mistress, it cannot be said that the premises were used for immoral or illegal purposes and in any case as it is an admitted position that there has been no conviction recorded against the petitioner, decree for eviction cannot be passed against him under the second part of S. 13(1)(c) which clearly provides that a decree can be passed only in the case of conviction for using the premises for illegal or immoral purposes, The only question that now survives is whether a decree for eviction can be passed on the ground that the conduct of the petitioner or any person residing with him constituted nuisance or annoyance to the adjoining or neighbouring occupiers so as to attract the first part of S, 13(1) (c). It appears that both the Courts were extremely prejudiced against the petitioner on account of the fact that he was living with his sister-in-law as husband and wife under the cover of Natra marriage. The approach of both the Courts was an approach of hostility and revulsion towards the petitioner on this account. An absolutely unrealistic view was taken by the learned Appellate Judge as is evidenced by the following passage from Para. 16 of his Judgment:-

"A Hindu widow residing in the family of married man giving birth to children would certainly spoil moral atmosphere of the neighbouring occupiers. It creates an adverse effect on the mind of children growing up in the neighbourhood. This very act of keeping a mistress and the said mistress repeatedly giving birth to children amounts to annoyance to the neighbouring occupiers." -

The learned Appellate Judge failed to realise that even assuming that Kalaben was living as the mistress of the petitioner, by itself it would never amount to annoyance to neighbours. How does the learned Judge know that the private life and character of all the residents of that locality is unimpeachable? One cannot peep into the private life of citizens in order to find out their sexual mores. For aught we know, many other owners of the Property and many other residents of the locality might be living their own private lives which may not be beyond reproach. If nothing can be done about it, how can a tenant be thrown out on the ground that his sexual mores are not to the liking of the neighbours. The approach evidenced by the aforesaid passage clearly shows that both the Judges of the lower Courts have completely lost objectivity and decided the matter on extreme Prejudice." Of course the decree is ostensibly based on the finding that there were quarrels between Kalaben and Giriaben and that it amounted to nuisance. Now, it is difficult to visualize a house where there are no quarrels in families. Sometimes the quarrels are between brothers. Sometimes the quarrels are between mother-in-law and daughter-in-law. Sometimes quarrels are between the wives of two brothers. If eviction decree were to be passed merely because there are quarrels in the domestic household of a tenant, no tenant would be safe and it would amount, to virtually repealing the Rent Act for all intents and purposes. One cannot conceive of a law where a landlord cannot get 2 or 3 witnesses who would depose that there were quarrels in the household of a tenant even if there were no quarrels. Assuming that there were quarrels even that would not constitute a ground for eviction Nuisance or annoyance to the adjoining or neighbouring occupiers which is contemplated by S. 13(1)(c) must be of a very serious character in (1) nature, (2) intensity as also (3) in frequency. It would not be possible to exhaustively enumerate the nature of the nuisance or annoyance which would attract the provisions of S. 13(1)(e). But the following tests must invariably be satisfied:-

(1) It must be of a gross character. (2) it must be of an unusual character. (3) It must be frequent and persistent. (4) It must be such that one cannot ordinarily expect in a household. (5) It must be such that it would not be possible for the neighbours to lead a normal life which one can hope to live in a busy town or City-

At any rate, quarrels in the household of a tenant can never constitute nuisance or annoyance within the meaning of S. 13(1)(c) of the Rent Act - Quarrels and even frequent quarrels, the domestic household of citizens are a part of the social life. It cannot be made a ground for eviction for even those who are so unfortunate that they have domestic quarrels amongst their households have to live and have to have roofs over their heads. And what tenant do to ensure that his family members never quarrel? Quarrels amongst households is not an unusual or abnormal phenomenon and it would be unreasonable to believe that the Legislature which in its compassionate wisdom was enacting a legislation to protect the tenants, contemplated to punish them as such misfortunes. In my opinion, moreover, the evidence of the four witnesses who

ham deposed to the quarrels does not inspire confidence. But assuming that one agrees with the assessment of the evidence made by the learned Appellate Judge and one confirms the finding that there were quarrels in the household of the tenant that would not amount to a conduct which in nuisance or annoyance to the neighbouring occupiers.

4. The petition must, therefore, be allowed. The decree for possession passed by the trial Court as confirmed by the lower appellate Court directing the petitioner to vacate and hand over possession of the suit premises to the opponents is reversed and set aside with costs throughout. The suit of the opponents in so far as the decree for possession is claimed will stand dismissed. The decree for rent and notice charges (a total sum of Rs.136/- is awarded to the opponents) is not disturbed. Rule is made absolute to the aforesaid extent.

5. Petition allowed.