

(1983) 12 BOM CK 0002
In the Bombay High Court
Case No : Writ Petition No. 975 of 1982

Gulam Husain Mirza

APPELLANT

Vs

Laxmidas Premji alias Sagar Premji and Another

RESPONDENT

Date of Decision : 15-12-1983

Acts Referred:

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

Citation : (1984) 1 BomCR 520 : (1984) MhLj 215

Hon'ble Judges : B.A. Masodkar, J

Bench : Single Bench

Advocate : C.R. Dalvi, for the Appellant; A.J. Abhyarkar, instructed by Mansukhalal Hiralal and Co., for the Respondent

Judgement

B.A. Masodkar, J.—The petitioner is the tenant. He has been subjected to a decree for possession u/s 13(1)(c) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "the Act") by the trial Court and that decree has been affirmed by the Appeal Court. The petitioner-tenant questions that decree in this writ petition.

2. The landlords, who are the respondents, are the purchasers of this property. They became owners by reason of their purchase on December 26, 1968. The respondents-landlords are the occupants of the second floor premises in the same building. The petitioner tenant who was inducted as the tenant prior to the purchase by the predecessors of the landlords, is the tenant with regard to three rooms on the third floor and one room called a "terrace room" on the top floor, which is the terrace floor. The respondents landlords served a notice as per Ex. 184 complaining of the conduct of the petitioner-tenant that he had trespassed on the terrace of the top floor of the building and had appropriated a major portion of the terrace by putting flower pots and further he was excluding everyone, including the respondents-landlords, to the use of the said terrace. He was using water from the water tank on the top floor directly for the purpose of maintaining a garden of flower pots to the detriment of other occupiers. He was

using the entire terrace as the part of his exclusive property by putting stones, and all that was necessary to keep up the flower plants and for nursing and tending the flower plants. Eventually, the suit was filed that all these amounted to nuisance and annoyance. The petitioner-tenant took the stand that the entire terrace was part of his tenement and that he was exclusively entitled to use the same to the exclusion of others. He further asserted that he was justified in putting the flower pots in a part of the area of the terrace. That terrace admeasures 90" x 50".

3. Both the courts below concurrently found in favour of the respondents-landlords and against the petitioner-tenant's claim that the terrace was the part of his tenement. Further, they found that the acts of the petitioner-tenant with regard to the said terrace in appropriating the same for putting the flower pots, though large in number, excluding others from its use and also taking water directly for watering the flower plant all constituted together the acts of nuisance and annoyance. Even during the course of the trial the petitioner-tenant categorically stated on oath that he would not allow the respondent-landlords to use the terrace as of right. Having taken that oath into account, both the courts below have found that the provisions of section 13(1)(c) were squarely attracted.

4. Considerable arguments were advanced by the learned Counsel for the petitioner-tenant by Mr. Dalvi to submit that the petitioner-tenant could not be held guilty of nuisance or annoyance by reason of his hobby and an assertion of title to the entire terrace. The learned Counsel submitted that the approach of the courts below had not been fair and is affected by technical considerations. Only because the petitioner-tenant failed to establish his right of the terrace, if did not follow that he caused nuisance or annoyance to the respondents-landlords. Who are the immediate occupiers of the property.

5. As against this, Mr. Abhyankar supported the decree by pointing out that the conduct of the petitioner-tenant was highly objectionable, irritating and annoying as without entitlement he appropriated the terrace which was the property of the respondents-landlords and to which the respondents-landlord were, as of right, entitled. In the city like Pune, a terrace at the top floor is a place which affords a facility of reasonable comfort and pleasure and here was the tenant who not only appropriated it to his own use by putting several pots of roses but expressed on oath that he would exclude everyone from the a enjoyment of the terrace. The learned Counsel further pointed out that, admittedly, he had kept flower pots in a considerable portion of the terrace and, in fact, converted the terrace into a flower-pots garden at the cost of the reasonable comfort and pleasure of the other occupiers and also has used the water facility directly from the overhead water tank.

6. Now, it is abundantly clear that the findings recorded by the courts below are justified, and as far act of the petitioner-tenant concerned those are findings of fact. The petitioner-tenant had been setting up a claim to the entire terrace. That terrace is large one and can be reached by a staircase and it can reasonably, if

such a claim were not there, be the property available to the respondents-landlord for use and occupation. It can be a place for comfortable use and pleasurable enjoyment to them in a city like Pune. The terrace is a large one, being 90" x 50", and no reasonable standard could be so included as to form part of the tenement of the petitioner-tenant. By reason of having one terrace room. The maximum that the petitioner-tenant would be entitled was a passage to this room and nothing more, but the petitioner-tenant claimed the entire terrace and specifically asserted exclusion of the respondents landlords. The photographs at Exs. 226 and 227 of well as other photographs clearly go to show that he put several rose flower pots of fairly big size and also had dumped the material necessary for tending and cultivating the rose plants. These acts, undoubtedly, show that the petitioner-tenant appropriated major portion of the terrace to the exclusion of others. He had stated on oath that he was not willing to allow the respondent-landlords to use their terrace for any purpose. All this shows that the conduct alleged has been established beyond doubt. That conduct constitutes, if the terrace be not the property falling in the tenement, a clear case of trespass on the property of the respondents-landlords and further the respondents-landlords' exclusion from reasonable entitlement of any comfort with regard to the property.

7. Then, the question is, whether the conduct is within the mischief of the words "nuisance or annoyance"? These are the words of no fixed connotation and, in fact, have a very wide import. The Legislature also has not defined the same.

8. Halsbury's treatise on Laws of England, Second Edition, Volume 24, para 30 states :

"The term "nuisance" as used in law is not a term capable of exact definition. It has been used with meanings varying in extent, by the old writers, and even at the present day there is not entire agreement as to whether certain acts or omissions shall be classed as nuisance or whether they do not rather fall under other divisions of the law of tort."

The treatise further points out :

"Nuisance may be broadly divided into (a) acts not warranted by law or omission to discharge a legal duty, which acts or omissions obstruct or cause inconvenience or damage to the public in the exercise of rights common to all His Majesty's subjects, (2) acts or omissions which have been designated or treated as nuisances by statute, (3) acts or omissions connected with the user or occupants of land which cause damage to another person in connection with the latter's user or occupation of land."

This third division includes many acts or omissions of different kinds, including interference with the specific right of property as well as user of the property in such a way that may be injurious to individuals who are entitled to exercise those rights. The acts complained of would squarely fall within the third category of divisions so pointed out by Halsbury.

9. The words used by section 13(1)(c) of the Act are English words. It is logical, therefore, to turn to the interpretation of those words as is available in English juristic language. In several ways and in differing contexts, these terms i.e., "nuisance or annoyance" have been considered. Their meaning has been gathered in the context of the statute as well as in the context of the social facts available in a given society; and so also the mischief that given law wants to avoid. "Annoyance" suggests vexation or disgust while "annoy" itself means irritate or harass. While "nuisance" is a word that can notes anything that is injurious or obnoxious either to the community or to the members thereon. In the context of Clause (c) of sub-section (1) of section 13 of the Act, emphasis is on the conduct of the tenant which is either by itself a nuisance or amounts to annoyance. The terms suggests behaviour and has relations to the action or omission on the part of the tenant as affecting the neighbouring occupiers. There is, of course, no fixed, static or straitjacket formula to find out with all exactitude the effect of such a conduct and the matter will have to be appreciated fairly apply ordinary standards of good behaviour in the light of all relative circumstances available in each case.

10. Effort has been made to separate the conceptual comprehension of nuisance from annoyance and also find out the overlapping field, which will be covered by both the terms.

11. In *Banford v. Turnley* 31 L.J.Q.B. 292, Pollock, C.B., observed that the Court did not think that the nuisance for which an action will lie is capable of any legal definition, which will be applicable to all actions and be useful in deciding them. The question so entirely depended on the surrounding circumstances and must necessarily be an actionable nuisance. The judgment further illustrates the relative significance of the act of omission which may be nuisance at one place and under given circumstances but would not be so elsewhere. While illustrating, the judgment records :---

"A clock striking the hour, or a bell ringing for some domestic purpose, may be a nuisance if unreasonably loud and discordant, of which the jury alone must judge; but although not unreasonably loud, if the owner, from some whim or caprice, made the clock strike the hour every ten minutes, or the bell ring continually, I think that the jury would be justified in considering it to be a very great nuisance. In general, a kitchen chimney, suitable to the establishment to which it belonged, could not be deemed a nuisance; but if build in an inconvenient place or manner, or purpose of annoy the neighbour, it might very properly be treated as one. The compromises that belong to social life, and upon which the peace and comfort of it mainly depend, will furnish an indefinite number of examples in which some apparent natural right is invaded, or some enjoyment abridged to provide for the more general convenience or necessities of the whole community."

In *Walter v. Selfe* 20 L.J.Ch. 435, Knight-Bruce V.C. observed that the nuisance is an inconvenience materially interfering with the ordinarily comfort physically of

human existence, not merely according to elegant or dainty modes and habits of living, but according to plain and sober simple notions among the English people. This test was approved in the case of *Tod-Heatley v. Benham* 40 Ch.D. 80, Talbot, J., in *Cunard and Wife v. Antifyre Ltd.* (1983)¹ K.B. 555 observed that private nuisance could be confined to that which is injurious to property. In *Reaid v. Lyons & Co. Ltd.* (1945) K.B. 216. Winifields's proposition that the nuisance is the unlawful interference with a person's use of enjoyment of land, or some right over or in connection with it was cited with approval and was further affirmed in other cases, such as *Howard v. Walker* (1947)² All.E.R. 197, and *Newcastle Under Lyne Corporation v. Wolstanton Ltd.* (1947) Ch. 92 in *Buller v. Standard Telephones and Cables Ltd.* (1940)¹ K.B. 399 injurious encroachment by the roots of a tree going underneath a house was treated to be an actionable nuisance. In *Harrison v. Good* L.R. 11 Eq. 338. Becon V.C. observed that unless the nuisance complained of is one for which an indictment would lie, or an action could be maintained, it is no nuisance within the terms of the convenient which was being considered and further found that the establishment of a national school with playground for boys in the vicinity of a residential property would not be a nuisance, though it would be an annoyance. Lindley L.J. in *Tod-Heatley v. Benham*, 40 Ch.D. 80, referring to those cases thought that the term appeared to be restrictively interrupted while Bowen L.J. doubted the correctness of the interpreted. The decision of the learned Lord Justice in *Tod-Heatley v. Benhman* 40 Ch.D. 80, goes to show that the term "annoyance" is also of very side applitude. Cotton, Lord Justice asked now what is the meaning of annoyance? The meaning is that which annoys, that which raises objection after and unpleasant feeling. Anything which raises an objection, in the minds of reasonable men may be an annoyance within the meaning of the covenant, while Bowen Lord Justice observed that it implies more, as it seems, then nuisance and further stated that it was clear that if annoyance and nuisance were put together in a convenient of the kind which was being considered, it should mean something different from each other. The learned Lord Justice further on served :

"Any material interference with the ordinary comfort of existence; that would be a nuisance... "Annoyance" is a wider term than nuisance, and if you find a thing which reasonably troubles the mind and pleasure, not of a fanciful person or of a skilled person who knows the truth, but of the ordinary sensible English inhabitant of a house-if you find there is anything which disturbs his reasonable peace of mind, that seems to me to be annoyance although it may not appear to amount to physical detriment to comfort."

Therefore, whatever causes material interference with the ordinary comfort of existence would be nuisance and anything that disturbs the reasonable peace of ordinary person and leads to un-pleasurable feeling, would be annoyance. Jessel M.R. In *Watson v. Lamington College*, 25 S.J. 30, said that it might perhaps be difficult to appreciate the difference between "nuisance" and "annoyance", but as both words were used, "annoyance," evidently meant something less than "nuisance", while *Tod-Heatley v. Benham* 40 Ch. D. 80 , "annoyance" was treated

to have a wider meaning than "nuisance".

12. In the light of these juridical contemplations, often the English Courts have answered the questions in the context of the given facts. A high trellis work fence which substantially interfered with one's access of light was treated as nuisance. See *Wood v. Copper* (1984) 3 Ch. 671. The burning of refuse which would cause material discomfort and annoyance and treated to be the finding of fact in *Fleming v. Hislop*, 11 app. Cas. 686. Annoyance could be caused by singing, or piano lessons in an adjoining house and also by making noises. (See cases referred to on page 135 of Stroud's Judicial Dictionary, Fourth Edition, Vol. 1.).

13. Thus, the legal comprehension that encompasses these terms appears to be well-settled. Though the terms are of very wide amplitude covering variety of circumstances and cannot be fenced by any definite meaning, whatever causes material interference with the ordinary comfort of human existence would, surely be the nuisance, while that which annoys, irritates or is offensive and has tendency that would evoke reasonable objection and leading to unpleasant feeling amongst persons, would be annoyance.

14. This position drawn from the English decisions appears to have been consistently applied by Indian Courts. In *Ram Labhya v. Dhani Ram* AIR 1947, Lah 296, it was found by the Lahore High Court while considering the provisions of the Punjab Urban Rent Restrictions Act that encroachment by a tenant could be the conduct which would amount to nuisance and or annoyance to the adjoining or neighbouring occupier. That is a clear authority that encroachment in given circumstances could be enough to make out the charge of nuisance as well as involving results such as that of annoyance. /The Gujarat High Court in the case of *Chandrakant v. Gajendrakumar* 12 G L R 551, following the test laid down by Lindley L.J. in *Tod-Heatley v. Benham* 40 Ch.D. 80 held that the act of the tenant with regard to the residential premises in boarding his worker as a part of his business activity would be within the section 13(1)(c) of the Act, because that reasonably abridges and diminished the ordinary comfort to which the occupiers of the premises were entitled to. The Punjab High Court in the case of *Niader Mal Vs. Ugar Sain Jain and Another*, while considering the act of that tenant against the provisions of the Delhi and Ajmer Rent Control Act available in section 13(1)(j) thereof, found the tenant to be guilty of causing nuisance and/or annoyance when he prevented other occupants of the premises from using the bathroom and the latrine, which the other occupants were entitled to use as the tenant. A person beating on a railway platform was held to cause nuisance to other person by the Rajasthan High Court in the case of *Durga Prasad and Others Vs. State*, where the Court ruled that nuisance ordinarily means that which annoys or hurts or that which is offensive. The Mysore High Court in the case of *D.B. Godase v. K.S. Ramchandra Iyer* AIR 1955 Mysore 107, pointed out that what may be an annoyance or nuisance in one situation may not be so in another and each has to be decided on its own facts. If the landlord were ailing, the making of loud noise and disturbing the peace would be annoyance or nuisance.

In *Kanchanmala Dassi Vs. Sm. Lilabati Debi*, the Calcutta High Court observed that though it might be difficult to appreciate the difference between those two terms, whatever reasonably troubles the mind and pleasure, not of a fanciful person but of an ordinary sensible inhabitant of a house would be an annoyance.

15. Those judgments and the principles available in those precedents make out a workable applicative formula. As stated earlier, to be a nuisance, an act or omission must be such a that unlawful interferes with other persons' use, enjoyment or entitlement of the property or rights therein. Such interference would have an annoying result, for that would affect the ordinary pleasure of men and trouble their minds. Annoyance in a given case would thus, be a result of nuisance. By itself "Annoyance", therefore, in a term of wider amplitude and would include all that is disagreeable to good sense and against fair and just habitation. All that is disagreeable and interfering with the pleasurable enjoyment of the ordinary occupants of their premises would be within its ambit. Annoying conduct is irritative conduct. It gives rise to discomfort and displeasure and affects the reasonable peace of mind. It also gives rise to unpleasant feeling amount men and also gives occasion to raise objections. In short, whenever there is a civil trespass upon and with regard to the use and enjoyment of the property of others, nuisance would be answered and whenever such a trespass results in irritable and disagreeable situation annoyance an be found. So stated, nuisance could be treated as a specie of annoyance. Therefore, all nuisance may be "annoyance" but all the acts of annoyance may not amount to nuisances. Actionable or not annoyance could be established by reason of the fact that the given conduct interfere with the ordinary comfort and pleasures of person.

16. As the section itself shows, it is the conduct that thereunder comes in issue. While considering nuisance and annoyance, that conduct on behaviour complained of will have to be objectively appreciated. It may have relation either to the rights and enjoyment of the property or other rights and entitlements of persons who, as ordinary men, are entitled to have peaceful, trouble free and ordinarily comfortable situation. These entitlements are basic in human society. These are to be judged by the given standard or norms available in such society, a given conduct adversely affects such entitlement or encroaches there upon, then the conduct would be within the mischief of the clause. One must hasten to add that the phrase employed by the statute being of wider amplitude, there is always a possibility of overstraining the meaning so as to include even the trifle and trivial matters. That is why every conduct should be judged in the context, and fairly. Without being elaborate and exhaustive, it can safely be said that all that conduct which is offensive, quarrelsome or violent, unethical in just a position of peaceful, civil and by ordinary standard unethical would be within the mischief. Matters of physical assaults by one against other would attract squarely the clause so also to other types of subtle assaults that offend human senses. Such acts may affect the peace and interfere with the pleasurable enjoyment of the property and, consequently, be within them mischief. Similarly, cases where property is trespassed upon and appropriated to one's own use to the exclusion

of others" entitlement would be within the mischief of nuisance. Whenever question arises under the clause, first the conduct or behaviour that is in issue should be fairly and objectively ascertained and then, secondly, its effect in relation either to the property or the persons occupying the property should be taken into account. All this should be done in keeping with the social background of the given society, having norms of reasonable peace, comfort and enjoyment as well as in the light of the entitlements of the occupiers regarding the specific property. Having considered all these three aspects, if the conclusion is reached that the conduct was such which affected or tended to affect the reasonable entitlements of ordinary normal expectations of life, then all that this clause intends would be clearly answered.

17. Law would surely look loathsome as if leaves were to be sacrificed at the altar of love of roses, or for tending and culturing rose plants. But the law is not such a loaded ass. Law is a protector of balance between fair and unfair, just and unjust, reasonable and unreasonable, entitlement and non-entitlement. Not the love of roses, but the appropriation of others' property and trespass on others' entitlement by keeping rose-pots and occupying the property that is in issue. Such a conduct by itself is objectionable and is fraught with challenges and conflicts. It also interferes with the reasonable comfort and entitlements of other occupiers to use the given species of the property. It cannot be forgotten even in the background of roses, that one man's hobby may be another man's taboo; one man's medicine another man's poison and one man's joy another man's annoyance. By proving this clause, the law strikes balance. It promotes peace and furthers good sense and fair behaviour. These are the normative pivots on which co-habitation in society rests. In law, there is always scope for defence of justification and so also for setting up of claims to property. But when along with these somethings more exists, such as unilateral appropriation in utter disregard of their comfort or entitlement, such a defence can hardly be enough.

18. Furthermore, if the two courts below have reasonably considered these acts as constituting nuisance or annoyance, it will not be appropriate of this Court, while exercising writ jurisdiction, to put a different comprehension on those acts, particularly when this happens to be an extra-ordinary jurisdiction. It is not as if that there is divergence of view by the courts below on this aspect.

19. Then, Mr. Dalvi the learned Counsel, submitted and also put forth a photograph to show that the petitioner-tenant has cleared all the terrace of all the pots or roses and that the terrace is now clear and available without any objection from the petitioner-tenant to its use by the respondents-landlords. He posed a question, where then is the cause of annoyance? According to Mr. Dalvi, if the cause of nuisance or annoyance has become non-existent by positive conduct of the petitioner-tenant, then the clause should not be applied.

20. This submission of the learned Counsel is fallacious. It is not only a continuing nuisance or annoyance that can be in issue under that provision. The

language employed by section 13(1)(c) of the Act clearly shows that it has a reference to the conduct which may be past, present or continuing. The words used are "has been guilty of conduct" and these words do not admit the acceptance of the submission that when the matter goes to Court, the conduct must be continuing. In the very nature of things, this could not be so. All competed acts of indecent and un-pleasurable behaviour could be put in issue under the clause.

21. In the result, it has to be concluded that the findings recorded concurrently do not call for any interference. Rule discharged with no order as to costs.