

(2000) 07 BOM CK 0078

In the Bombay High Court

Case No : Writ Petition No. 5937 of 1988

Kashinath Shankar Gambhire

APPELLANT

Vs

Sou. Sudha Gopal Patil and Others

RESPONDENT

Date of Decision : 27-07-2000

Acts Referred:

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

Citation : AIR 2000 Bom 493 : (2000) 4 ALLMR 344 : (2001) 2 BomCR 210 : (2001) 1 MhLj 672

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : K.S. Bhadti, for the Appellant; M.D. Hombalkar, for the Respondent

Final Decision : Allowed

Judgement

R.M. Lodha, J.—The petitioner who has suffered decree for eviction for causing nuisance and annoyance to the landlord and neighbouring occupiers at the hands of the Courts below has preferred this petition under Article 227 of the Constitution of India.

2. The respondent Nos. 1 to 3 herein are original plaintiffs and they filed suit for eviction against the petitioner (original defendant). The eviction was sought on two grounds viz., (i) that the suit premises were in dilapidated condition and it was dangerous for the personal safety and the safety of the property and since the local authority has directed the landlord to demolish the said building, the premises are required u/s 13(1)(hh) of the Bombay Rent Control Act, and (ii) that the defendant was guilty of causing nuisance to the adjoining occupiers of the suit premises. The suit was contested by the defendant and after recording the evidence, the trial Court negatived plaintiffs case for eviction u/s 13(1)(hh) but granted the decree for eviction u/s 13(1)(c) that is the defendant was guilty of causing nuisance to the adjoining occupiers. The defendant preferred appeal but was unsuccessful since the IIIrd Addl. District Judge, Solapur who heard the appeal dismissed the same on 16-11-88.

3. Both the Courts below have held the defendant guilty of causing nuisance and annoyance on two counts viz. that the defendant has been unnecessarily litigating against the plaintiffs in civil matters and also by launching criminal case and secondly, that the defendant by his behaviour and conduct by frequently quarrelling, assaulting and abusing the neighbouring occupiers is guilty of nuisance.

4. The appeal Court in para 9 has dealt with civil suits pending between the parties and the criminal case initiated by defendant against the plaintiffs and held that by such litigation and the conduct, the defendant is guilty of nuisance since he has made plaintiffs' life uncomfortable. The trial Court in paras 11 and 12 has dealt with the litigation between the parties and concluded that such litigation between the parties was an act of nuisance. The first question that arises for consideration is whether civil litigation between the parties and a criminal case launched by the defendant against the plaintiffs would furnish a ground for eviction u/s 13(1)(c) of the Bombay Rent Control Act. Earlier a civil suit bearing Regular Civil Suit No. 249 of 1976 was filed by the plaintiffs for possession against the defendant. In that suit, standard rent was fixed by compromise of the parties. Thereafter, the plaintiffs filed the present suit bearing Regular Civil Suit No. 306 of 1982 for possession. In this suit the defendant again applied fixation of standard rent. It appears that one suit was filed by the petitioner for specific performance of agreement for sale and for Injunction against the respondents and ultimately, the said suit was dismissed. The petitioner preferred appeal against the dismissal of his suit for specific performance and injunction and further Letters Patent Appeal but was unsuccessful. One more suit was filed by the petitioner for injunction restraining the respondents from selling the suit premises to any third party which was registered as Regular Civil Suit No. 484 of 1981 and the said suit was also ultimately dismissed as not maintainable. Yet, another suit was filed by the petitioner against the respondents seeking permanent injunction restraining them from interfering with his right of repairing the suit premises but the said suit was ultimately withdrawn. An application was made by the petitioner to the Corporation in which it was stated that some water was leaking in the bathroom on the basis of which a case was initiated by the Municipal Corporation against the respondents u/s 184(1) of B.M.C. Act. Can it be said that by making application for fixation of standard rent in the present suit, filing of various suits which were dismissed on one ground or the other and complaint to the Municipal Corporation against the respondents amount to nuisance or annoyance within the meaning of Section 13(1)(c).

5. Section 13(1)(c) of the Bombay Rent Control Act provides ground for eviction to landlord where the tenant has been guilty of conduct which is nuisance or annoyance. Section 13(1)(c) reads thus --

"13(1)(c). That the tenant or any person residing with the tenant has been guilty of conduct which is a nuisance or annoyance to the adjoining or neighbouring

occupiers, or has been convicted of using the premises or allowing the premises to be used (for immoral or illegal purposes; or that the tenant has in respect of the premises been convicted of an offence of contravention of any provisions of Clause (a) of Sub-section (1) of Section 394 or of Section 394-A of the Bombay Municipal Corporation Act."

6. The nuisance for which an action would lie u/s 13(1)(c) is incapable of any legal definition. Nuisance ordinarily means that which annoys or hurts or that which is offensive. It includes any act, omission or conduct which causes or is likely to cause inconvenience, hurt, damage or which may Interfere with the enjoyment of the life or property. Anything done which unwarrantably affects the rights of others, endangers life or health, gives offence to the senses, violates the law of decency or obstructs the comfortable and reasonable use of property amounts to nuisance. The question whether a particular act, omission or thing is nuisance or annoyance actionable in law depends on surrounding circumstances. The alleged act or omission, the mode of committing it and the consequences flowing therefrom, amount to nuisance or not at all times would be the question dependent on facts and circumstances of the case. However, one thing is certain that in order to attract the ground of eviction u/s 13(1)(c) invariably it needs to be satisfied that the alleged nuisance is of gross and unusual character, frequent and persistent and that it would not be possible for the affected person or persons to lead normal life and it is such that one cannot ordinarily expect in household. Initiating legal process by filing suits or defending the litigation by a party cannot amount to a nuisance or annoyance, a ground for eviction contemplated u/s 13(1)(c). It is always open to a party to assert and vindicate his right in the competent Court though he may succeed or fail in such litigation. A party who pursues his remedy through legal process or defend himself by opposing the litigation initiated against him, cannot by any stretch of imagination be blamed to be guilty of an act which may be covered by expression "nuisance or annoyance" within the meaning of Section 13(1)(c). The Courts below thus, committed serious error of law in relying upon the civil litigation between the parties and a criminal case initiated against the respondent at the instance of the petitioner as an act of nuisance u/s 13(1)(c) of the Bombay Rent Act. Moreover, it would be seen that issue before the trial Court in relation to the ground for eviction u/s 13(1)(c) was to the effect. "Do the plaintiffs prove that the defendant is guilty of causing nuisance to the adjoining occupiers of the suit premises?" The issue was not framed by the trial Court to the effect whether by filing various suits and making some applications in the suit filed by the landlords, the tenant was guilty of nuisance or annoyance. In the light of the controversy which was crystallized in the form of the issue, the Courts below were only called upon to decide whether the defendant was guilty of causing nuisance to the adjoining occupiers of the suit premises and it was not open to the Courts below to examine the ground of nuisance on the basis of various litigations between the parties which was not subject-matter of issue. Thus, the approach of the Courts below which was erroneous, while considering the issue

relating to the ground of nuisance vitiates their findings on that issue. Besides it would be hazardous to guess that if the Courts below had not considered the litigation between the parties as an act of nuisance caused by the tenant. What would have been its finding in respect of the alleged conduct of the petitioner towards his neighbours as alleged by the two witnesses viz. Bhagwan Vithal Deshpande and Eknath Bapuji Kulkarni. Moreover, the evidence led by the plaintiffs does not prove that the defendant was guilty of causing nuisance to his neighbouring occupiers. The finding recorded by two Courts below in this connection is totally unsustainable. It would be seen that heavy reliance has been placed by the plaintiffs-landlords on Exhibit 45, the letter said to have been received from five neighbours which sets out the conduct of the tenant with his neighbouring occupiers. In the letter Exhibit 45, the tenant has been alleged of looking on women folk in adjoining neighbour houses with bad intention; making abusive remarks while passing, trespass and causing obstruction in the construction of plots purchased by others. The said letter is signed by five persons. Out of these five persons, four have not entered the witness box and only Bhagwan Vithal Deshpande has been examined as P.W. 2. In his deposition, he does not utter a word about tenant's looking on women folk in their houses with bad intention, making abusive remarks about their parents, forcibly trespassing and causing obstruction in the construction of their plots. This witness only has vaguely deposed that the tenant was giving troubles to them in all respects. The tenant would contract persons who visited them; he would chase and abuse them. The tenant would quarrel with them and lifted this witness and fell, him. He has not given details of any of the incidence. He has not named any person who visited him and was contacted by the tenant. He has not given details of quarrels and the incident when this witness was allegedly lifted, in his cross-examination, he admitted that he was not in a position to give dates of incidents. I am afraid such evidence cannot prove the ground for eviction based on nuisance and annoyance to neighbours u/s 13(1)(c). The deposition of another witness Eknath Bapuji Kulkarni is no better. His deposition is as vague as that of Bhagwan Vithal Deshpande. He has deposed that the conduct of the tenant was suspicious and mischievous. The tenant used to contact the persons who used to visit them. The tenant used to abuse, quarrel and fell them. He, however, admitted that he has not filed any complaint. In the cross-examination, he admitted that the defendant quarrelled with him only two times during the period of more than two decades. Such evidence is no evidence in the eye of law for proving nuisance u/s 13(1)(c) since the evidence must be able to satisfy frequent, persistent, gross and unusual act or omission of nuisance. The nuisance or annoyance to the adjoining or neighbouring occupiers which is contemplated u/s 13(1)(c) must be of serious nature, intensity and frequency. The evidence which has been led by the plaintiff miserably fails to satisfy the said test and, therefore, the Courts below seriously erred in holding that the plaintiffs have been able to prove that defendant was guilty of causing nuisance to the adjoining occupiers of the suit premises.

7. Since the learned counsel for the respondents heavily relied upon the two judgments, one of the Apex Court and the other of this Court, it would be proper for me to deal with the said decisions now. In the case of *Narpatchand A. Bhandari Vs. Shantilal Moolshankar Jani and another*, upon which the strong reliance has been placed by the learned counsel for the respondents, it would be seen that in that case the appeal Court found as a fact that the tenant erected a Textile Printing Mill on the terrace of storeyed building and ran it during nights so as to make the occupiers of the adjoining and neighbouring tenements in the storeyed residential building suffer the vibrations and noise in the building arising on account of the running of the mill and lose their quiet and sleep during nights. The appeal Court also found in that case that the tenant unauthorisedly was utilizing water stored in the common overhead tanks on the terrace, meant for domestic use of all the occupiers of the tenements, for running his mill. It was also the finding of the appeal Court in that matter that the tenant and the persons residing with him in the premises had often removed the radio aerials and T.V. antennas of the occupiers of the adjoining and neighbouring tenements and the tenant and the persons residing with him were wrongly preventing the landlords and the workers in reaching the common terrace for repairs of radio aerials, T.V. antennas, telephone lines and the like of the occupiers of the neighbouring tenements by locking staircase. On the facts so found, the Apex Court held that ground of nuisance and annoyance was made out. The said judgment, therefore, has no application since in the present case, there is no legal evidence to prove that defendant is guilty of causing nuisance to the adjoining neighbours. The judgment of this Court in *Gulam Husain Mirza v. Laxmidas Premji* 1984 M.LJ 215, upon which reliance has been placed by the learned counsel for the respondents also cannot be applied in the present facts and circumstances. In *Gulam Husain Mirza's* case, the tenant was inducted as tenant with regard to three rooms on the third floor and one room with a terrace room on the top floor. The tenant trespassed on the entire terrace on the top floor of the building and appropriated major portion of the terrace by putting flowerpots and further he was excluding everyone including the landlords to use the said terrace. The tenant was using water from the water tank on the top floor directly for the purpose of maintaining garden of flowerpots to the detriment of other occupiers. He was using the entire portion of terrace by putting stones, mud and all that was necessary to keep up the flowerpots and for nursing and tending the flowerpots. In the light of the said facts which were found proved, the conduct of the tenant was held amounting to nuisance and annoyance covered u/s 13(1)(c) of the Bombay Rent Control Act. *Gulam Husain Mirza's* case also, therefore, has no application in the present case.

8. In view of the foregoing reasons, I am satisfied that case for interference is made out in the judgment and decree for eviction passed by the Courts below.

9. Consequently, writ petition is allowed. The judgment and decree dated 16th November, 1988 passed by the Hind Addl. District Judge, Solapur confirming the judgment and decree dated 15-7-1985 passed by the IIrd Joint Civil Judge,

Junior Division, Solapur is quashed and set aside. The plaintiffs' suit for eviction stands dismissed. Rule is made absolute in the aforesaid terms. No costs.

Certified copy expedited.