

(1968) 11 GUJ CK 0014
In the Gujarat High Court

Khubchandani Meherchand K.

APPELLANT

Vs

Hiralal Dayalal

RESPONDENT

Date of Decision : 26-11-1968

Acts Referred:

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 29
Saurashtra Rent Control Act, 1951 — Section 13(1)(g), 13(1)(g)

Citation : (1970) 11 GLR 66

Hon'ble Judges : A.D. Desai, J

Bench : Single Bench

Judgement

A.D. Desai, J.—The appellant was a tenant of the respondent in respect of the suit premises. The respondent-plaintiff filed Civil Suit No. 85 of 1964 in the Court of the Civil Judge, Junior Division, Visavadar, to recover possession of the suit premises on the ground that he required the suit premises for his bona fide and reasonable use. It was the case of the plaintiff that he purchased the suit premises from the auction purchaser by a registered sale deed dated September 19, 1962 for Rs. 18000/-, that he had a large family and hence he purchased the suit premises for his personal occupation. The defendant contended that the plaintiff did not require the suit premises bona fide and reasonably for his personal use and greater hardship would be caused to him if a decree of eviction was to be passed against him. In the trial Court, on the basis of the pleadings of the parties, an issue was raised whether the suit was maintainable u/s 29 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and the trial Court came to the conclusion that the suit was not maintainable. The trial Court, therefore, did not record its findings on various other issues including the one relating to reasonable and bona fide requirement of the plaintiff. Being aggrieved by the judgment and decree passed by the learned trial Judge dismissing the suit of the plaintiff, the plaintiff filed Civil Appeal No. 129 of 1964 in the Court of the Assistant Judge, Porbandar. The learned Assistant Judge held that the suit was maintainable, that the plaintiff required the suit premises for his bona fide and reasonable use and directed the defendant to give peaceful and vacant

possession of a portion of the suit premises. It is against this judgment and decree that the original defendant has filed this appeal in this Court.

2. Mr. Mehta appearing for the appellant contended that the finding of the learned appellate Judge that the plaintiff required the suit premises reasonably and bona fide for his personal use was the result of his erroneous approach in law as well as in fact and was not supported by any evidence on record. The learned appellate Judge while considering the issue of bona fide and reasonable requirement has observed as under:

The plaintiff was residing in a rented house belonging to Hasrmukhlal Kantilal and managed by his uncle Trambaklal Choksi, Ex. 25. He was paying a monthly rent of Rs. 25/- for the same as against Rs. 20/- realised by him from the defendant. The plaintiff was a telephone controller in the Railways and was transferred from Junagadh to Bhavnagar some six months back. Yet, his two sons were residing with their families in Junagadh. One of them was a municipal servant and other a railway servant. The plaintiff claimed that his family had 12 members. The bona fide and reasonable necessity of his two sons, who were residing with the plaintiff, can be said to be that of himself. The families of his sons were included in the family of the plaintiff and hence his bona fide and reasonable need for the disputed premises was amply proved. His witness Trambaklal Ex. 25, and Bhupendrakumar Ex. 32 corroborated him. It was then said that the plaintiff did not complain that he had insufficient or inadequate accommodation in the rented premises, or that he was compelled by his landlord to evict them. That was not quite necessary to prove the requirement of the plaintiff. I do not consider the claim of the plaintiff as his mere "fancy" or "desire". I think that his claim involved an element of need to some extent, at least, although it was not an absolute necessity. The plaintiff need not prove the latter feature. The owner of the property was entitled to live in his own premises and cannot be compelled to stay in his rented premises. It was for him to specify that portion of his house would suit his purpose. I am satisfied that the plaintiff had proved bona fide and reasonable requirement of the part of the suit property, when he proved that he was residing in the rented premises and when he insisted that he wanted to stay in his own property. He had also proved that he was paying Rs. 5/- more rent than what he realized from the defendant. The suit premises were needed for the residence of his two sons and their families, who were residing in Junagadh with him, although he himself was transferred to Bhavnagar. The requirement of members of the plaintiff's family constituted his requirement and, therefore, a suitable decree can be passed in his favour.

Now the learned appellate Judge came to the conclusion that the plaintiff required the suit premises reasonably and bona fide for himself on the ground that the plaintiff was residing in the rented premises and when he insisted to stay in his own property it amounted to bona fide and reasonable requirements. The Saurashtra Rent Control Act (hereinafter referred to as the Act) was passed in order to protect the tenant and Section 13(1)(g) of the Act provides that a

landlord shall be entitled to recover possession of the premises if the Court is satisfied that the premises are reasonably and bona fide required by the landlord for the occupation by himself or for any person for whose benefit the premises are held. These provisions of the Act place restriction on the power of the landlord to recover possession of the premises and the landlord satisfies the Court that he reasonably and bona fide requires the premises for his occupation. What is necessary to be proved is bona fide and reasonable requirement of the landlord. In the present case the premises were purchased by the plaintiff and there is no allegation that the plaintiff desired to evict the defendant as he wanted more rent. So it can be said that the plaintiff has proved that his intention to have the suit premises for his residence was bona fide. The question is whether the plaintiff, reasonably required the suit premises for his personal use and occupation. The word "requirement" has been construed by this Court in *Kasturbhai Ramchand Panchal and Bros. v. The firm of Mohanlal Nathubhai and ors.* 9 G.L.R. 729, where it has been observed as under:

Mr. Vakil is right in his contention that the expression "require" could not be equated with a mere demand or claim. The expression "require" has, in the context, the element of a genuine present need. For the application of Section 13(1)(g), the present need which the landlord must show, must both be genuine or honest and reasonable in the circumstances. The whole emphasis of the requirement is on the element of the need which has to be established, which is always something more than a mere desire or a claim or a demand, but which is surely less than a compelling or absolute necessity. In *Naresh Vs. Kanai Lal Roy Chowdhury*, , the expression "require" in a similar context under the West Bengal Premises Rent Control (Temporary Provisions) Act, 1948, had been interpreted by Chunder J. in the following words:

"The word "require" is something more than the word "desire". Although the element of need is present in both the cases, the real distinction between "desire" and "require" lies in the instance of that need. There is an element of "must have" in the case of "require" which is not present in the case of mere "desire". What has got to be seen is that there must be a sort of "must have" element in the need of the landlord and also that his want or need of the house must be honestly felt by him. Where both the elements are satisfied, the Court would be justified in granting a decree for ejectment".

The distinction which has been brought out in the Calcutta case between "desire" and "require" is quite correct.

It is absolutely necessary for the landlord in order to prove that he reasonably requires the property, to establish by leading necessary evidence that he needs the premises for his personal use. The element of need must be established. The learned appellate Judge had observed that it was not necessary for the plaintiff to prove that the premises he was occupying as tenant was insufficient or inadequate or that he was compelled by his landlord to vacate the rented premises. In my opinion the learned appellate Judge was not right in making the

aforesaid observations. It is necessary for the landlord to prove his requirement and he can satisfy the Court on that issue by showing that the place which he was occupying as tenant was insufficient to accommodate his family or that he was under threat of eviction or that it was inconvenient for him to reside in the premises for any other reasons. Mere fact that the plaintiff had purchased the property, that he wants to reside in the premises or his insistence to reside in his own property cannot be said to be sufficient to prove the requirement as contemplated by the provisions of Section 13(1)(g) of the Act. The plaintiff has to prove his need and the need can be proved either by satisfying the Court that the place which he was occupying was insufficient or that he was under the threat of eviction by his landlord or the rented premises are in any other manner inconvenient to him.

3. Mr. Sompura relied on the judgment of Miabhoy J. (as he then was) in Second Appeal No. 380 of 1960 decided on December 12, 1964, wherein the learned Judge has observed as under:

In my judgment, an intention entertained by a landlord to occupy his own premises for himself and his family, unless there are other factors negating the same, is a requirement within the meaning of the statute and must be attributed to a reasonable and bona fide need on his part.

The aforesaid passage is to be read in light of the facts and findings of the Court in that case. The Supreme Court has observed in *The State of Orissa Vs. Sudhansu Sekhar Misra and Others*, as under:

A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic this is what Earl of Halbray LC. said in *Quinn v. Leathern* 1901 AC 495:

"Now before discussing the case of *Allen v. Flood* (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all".

It is not a profitable task to extract a sentence here and there from a judgment and to build upon it.

In the above cited case of this Court it was alleged by the plaintiff in the notice

and in the plaint and it was deposed to by him that he was under the threat of eviction. This evidence was not rejected by the learned Judge. It was in the light of this evidence that the learned Judge had made the aforesaid observations. To construe the said observations in any other manner would be contrary to the provisions Section 13(1)(g) of the Act. The said observations, therefore, cannot be of much assistance in deciding the present case.

4. Mr. Sompura then strongly relied on the case of *Rustomji Dinshow Billimoria v. Dosibai Rustomji Master* 23 B.L.R. 850, and particularly on the following passage:

However, the Court is not concerned with hard cases, and the only question is whether the plaintiff requires the premises in the suit reasonably and bona fide for his use and occupation. Ordinarily speaking, an owner of premises, if he says he wishes to use them for his own purpose, is entitled to do so. What the Rent Act endeavours to provide for is the case of a landlord who evicts the existing tenants in order that he may let them to another tenant at a higher rent, or exact a higher rent from the tenant on a threat of eviction. It seems to me that the question in this case whether the plaintiff was reasonably dissatisfied with the premises which he rented in Girgaum is irrelevant, because in any event the plaintiff was entitled to live in his own premises. He was not bound to continue in rented premises with all the uncertainties of that tenure. So that a great deal of irrelevant matter has been introduced into these suits, because the plaintiff is obviously entitled to live in any portion of his own house which he chooses, provided he does not seek to occupy more space than is reasonably required for himself and family.

Now it is to be noted that the Act has been enacted not only to prevent a landlord from charging excessive rent but also to protect the possession of a tenant. Under the ordinary law a landlord has a right to take possession of the rented premises on the termination of tenancy. This right of the landlord is restricted by the provisions of the Act and the landlord can obtain possession provided he brings his case within any of the clauses of Section 13(1) of the Act. The provisions of Section 13 Sub-section (2) of the Act requires the Court to consider the hardship of the parties before a decree of eviction is to be passed. Thus the Act has wider object and the observations made in *Rustamji's* case cannot help us in considering the provisions of Section 13(1)(g) of the Act.

5. Mr. Sompura then relied on the decision in *Govind Ram Vs. Abdul Wahab*, , where it has been laid down as under;

While on the one hand, the requirement of "reasonable and bona fide personal necessity" does not merely mean a mere wish or desire on the part of the landlord to go into occupation of his own property whenever it suits his sweet will or pleasure to do so, on the other hand, it does not also mean that the plaintiff must establish absolute or "dire" necessity, for the occupation of the property in dispute for his own or his family purpose. What he has to prove is that he has a present reasonable need for occupying the property in connection with which the

suit has been brought and that his need is not motivated by any extraneous considerations of greed or any other similar factor. I have no dispute with the propositions laid down therein.

6. Mr. Sompura took me through the evidence in this case. The plaintiff had not stated in his evidence that the premises in his occupation as tenant were insufficient to accommodate his family. The plaintiff had not stated that he was under threat of eviction by his landlord or that the premises in his possession were in any way inconvenient to him. The plaintiff stated that he purchased the property for his use, that he was residing in the rented premises and that he now wants the suit premises for residence. This can hardly be sufficient to prove that the plaintiff requires the suit premises for his personal use as required by the provisions of Section 13(1)(g) of the Act. The plaintiff had examined Trambaklal Ex. 25, Bhupendrakumar Ex. 32 and Madhabhai Ex. 30 as his witnesses but none of them say that premises wherein the plaintiff was residing were insufficient to accommodate him or that the plaintiff was under the threat of eviction from the said premises. There is no evidence to prove that the plaintiff was not in financial conditio-- to pay the rent of Rs. 25/- per. month in respect of the rented premises.

7. Thus the evidence of the plaintiff is insufficient to prove that he required the suit premises for his reasonable per sonal use. The learned appellate Judge, therefore, was in error in holding that the plaintiff required the suit premises reasonably for his personal use and passing a decree of possession of the suit premises in his favour. The result is that I set aside the decree passed by the learned appellate Judge requiring the defendant to hand over possession of apart of the suit premises to the plaintiff, and restore the decree passed by the trial Court. The appeal of the defendant is allowed with costs throughout.