
(1972) 03 BOM CK 0002

In the Bombay High Court

Case No : Special Civil Application No's. 2185, 2187 and 2194 of 1969

Kishinchand Murjimal and Others

APPELLANT

Vs

Bal Kalavati and Others

RESPONDENT

Date of Decision : 14-03-1972

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1), 13(2), 29, 5(1), 6
Constitution of India, 1950 — Article 227

Citation : AIR 1973 Bom 46 : (1972) 74 BOMLR 623 : (1972) MhLj 822

Hon'ble Judges : Vaidya, J

Bench : Single Bench

Advocate : K.J. Abhyankar and S.R. Chitnis, for the Appellant; Y.S. Chitale, M.R. Kotwal and Ashok A. Desai, for the Respondent

Judgement

1. These three Special Civil Applications under Article 227 of the Constitution of India are filed by the Trustees of a Public Charitable Trust known as "Manikram Menghraj Trust." It is trust registered under the Bombay Public Trusts Act, 1950. The trustees filed three suits. R.A.E. Suit No. 4497 of 1963, R. A. E. Suit No. 782/6191 of 1963 against respective tenants who are the respective respondents in the three petitions. The suits were decreed by the trial Court and the decrees for eviction u/s 13(1)(g) read with Section 13(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, in all the three suits were set aside in the three appeals filed by the respective tenants before the Appellate Bench of the Court of Small Causes on the ground that greater hardship would be caused to the tenants if a decree for eviction is passed. The said decision of the Small Causes Court is challenged in all the above petitions; and the principal question which arises for determination in these three petitions is as to whether the Appellate Bench was right whether the Appellate Bench was right in refusing to pass a decree in the facts and circumstances of the case on the ground that no other "suitable" accommodation was available for the tenants in the city of Bombay.

2. In R. A. E. Suit No. 782/6191 of 1963, in which Special Civil Application No. 2185 of 1969 is filed, the allegations made by the trustees in the plaint may be briefly stated as under : That (the husband of respondent No.1 and father of respondents Nos. 2, 3 and 4. Hansraj admittedly died during the pendency of the appeal before the Appellate Bench). The trustees claimed the suit property at 2. Chowpatty Road, Bombay, bearing C. S. No. 423 of Malabar Hill and Cumbala Hill Division. The defendant Hansraj was the monthly tenant in respect of the premises on the first floor of the main building standing on the said property.

3. By an order made by the Bombay City Civil Court, Bombay, in Charity Application No.1 19 of 1957 on July 1, 1957, directions were given to the trustees for utilizing a sum of Rupees one lac and fifty thousand out of the trust fund for purchasing a plot of land and for constructing thereon a marriage hall somewhere in the suburbs of Bombay to commemorate the memory of the executor of the will, Nanikram Neghraj, as mentioned in the said will. It was also ordered that ***** thousand and Rupees two lacs and twenty five thousand should be applied cy press for construction and maintenance of a Tuberculosis Clinic in Bombay. By another order dated May 1, 1959, made by the Bombay City Civil Court, Bombay, In Charity Application No. 18 of 1959, the trustees were given liberty to set up a marriage hall on the said premises purchased by the plaintiffs at 2. Chowpatty Road, instead of in the suburbs of Bombay and also to establish a clinic of all clinical examinations and a maternity hospital, nursing home, mobile hospital and garages for mobile vans, doctors' cars, servants' quarters and other necessary structures. The trustees were also authorised by the said order to take all steps to eject the tenants in the premises at 2, Chowpatty Road and demolish the structures on the plot and to construct thereon a marriage hall, a clinic, maternity and nursing home and a charitable hospital including equipment and office premises, garages for mobile vans, doctors' cars, servants' quarters and other necessary structures and to expend for the said purpose a sum of Rupees four lacs and forty-five thousand.

4. The trustees thereafter informed the defendant Hansraj that if he agreed to vacate the suit premises, there were prepared to purchase on ownership basis suitable premises for a value not exceeding Rs.50,000/- which premises the plaintiffs were prepared to let to the defendants on standard rent. Even in the plaint it was alleged that the trustees were ready and willing to abide by that offer. On August 25, 1962, the trustees through their attorney's tenancy on the ground that the suit premises were required by the trustees for occupation for the purpose of the trust. The defendant, however, did not vacate the premises and in the course of the correspondence refused to do so. The trustees, therefore, filed the suit on December 18, 1963 for recovering possession of the suit premises from the said defendant.

5. The suit was resisted by Hansraj on the ground that the premises were not reasonably and bona fide required by the trustees for the occupation for the purpose of the trust and that greater hardship would be caused by passing a

decree for possession that by refusing to pass it. The suit was tried along with other two suits from which the other two Special Civil Applications arise. On considering the oral and documentary evidence in the case the learned Judge of the Small Causes held that the trustees proved that they were the trustees entitled to sue the defendants, that the tenancy of the defendants was duly terminated by legal and valid notice, that ***** required the premises for their occupation for the purpose of the trust, that Section 13(2) did not apply to a suit by trustees u/s 13(1)(g), that even if it applied, greater hardship would be caused by refusing to pass the decree than by passing the decree for possession. Similar decrees on identical grounds were passed against the order tenants-defendants.

6. The defendants carried appeals against the said decision. The Appellate Bench found that the trustees required the premises for the purpose of the trust and their requirement was genuine, but reversed the finding of the trial Court with regard to hardship. So far as Hansraj was concerned the Appellate Court did not agree with the trial Court that Section 13(2) of the Rent Act did not apply to the case of a trust; but on merits found that Hansraj could not obtain "suitable accommodation" in spite of the efforts made in that behalf and held that greater hardship would be caused to him and his family if a decree for eviction was passed. As it is stated by the counsel appearing for the other tenants that the matters are settled, it is unnecessary to refer to the facts of the other suits.

7. So far as the suit against Hansraj, who as stated above died during the pendency of the appeal, is concerned, it is urged by Mr. Abhyankar, the learned counsel for the petitioners, that the Appellate Bench erred in law in reversing the finding of the trial Court with regard to applicability of Section 13(2) and with regard to the comparative hardship. He submitted that the approach of the Appellate Bench to the question of hardship was erroneous firstly because there was no basis for holding that Hansraj had made efforts; and even if he made it erred in holding that even if he made efforts, the same are insufficient; secondly, it erred in holding that even the hardship to the son-in-law of Hansraj who is alleged to have been residing with Hansraj was hardship which was relevant u/s 13(2); and thirdly it erred in assuming that it was necessary for the trustees to establish that the tenant could secure alternative accommodation at the same rent and of the same area and in ignoring the hardship to the trustees. I do not find much substance in any of these contentions except the one relating to consideration of hardship u/s 13(2).

8. Section 13(2) applies generally to all suits for eviction filed u/s 13(1)(g). No exception is made in respect of suits filed by trustees of a charitable trust. Therefore it is the duty of the Court to consider all the circumstances relating to hardship of both the plaintiff and the defendant as required by Section 13(2).

9. So far as the other contentions raised by Mr. Abhyankar are concerned the Appellate Bench had a discretion to consider all the relevant circumstances and a duty to consider the reasons and findings of the trial Court. It believed the efforts

made by Hansraj. It had also power to believe or disbelieve the defence that son-in-law of Hansraj lived with the family of Hansraj and believed the defence. It referred to the hardship to the public and to the trustees and found that the hardship to defendants is greater if they are evicted. These findings are based on appreciation of evidence and normally they cannot be challenged in this Court in a petition under Art, 227 of the Constitution of India.

10. However, the trustees must succeed on the ground that the Appellate Bench failed to consider provisions of Section 13(2); the hardship to the trustees and the effect of refusing to pass a decree in the facts and circumstances of the case, which are not uncommon in Bombay and which would practically wipe out Section 13(1)(g) so far as premises in Greater Bombay are concerned. It is common knowledge that anybody who wants rented or other premises in Bombay has to invest heavily. The trustees themselves fairly and reasonably offered to buy premises on ownership basis for Rs.50,000/- in the event of the tenant proposing to buy the premises on ownership basis. The words of Section 13(2) are : -

".....if the Court is satisfied that, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it."

The onus of proof of hardship lies, having regard to these provisions, both on the tenant and the landlord with regard to their respective hardships.

11. The Court must consider hardship to all who may be affected by the grant or refusal of an order for possession - relatives, dependents, lodgers, guests, and the stranger within the gates - but should weigh such hardship with due regard to the status of the persons affected and their proximity to the tenant or landlord and the extent to which consequently, hardship to them would be hardship to him. The circumstances to be considered are those existing at the time of the hearings. AS stated above the suit was filed in 1963. It would be unreasonable to hold that though 9 years have passed and the trustees offered and still offer Rs.50,000/- either for purchasing an ownership flat or financing the purchase of the ownership flat by the tenant, the tenant or his heirs were unable to secure alternative accommodation in Greater Bombay.

12. Although the question of other available accommodation is normally the most important of the circumstances to be considered, there is no rule that an order for possession cannot be made unless other accommodation equal in area and equally protected by the Acts, is available for the tenant. See *Sims v. Wilson*. (1946) 2 All ER 261. In weighing the greater hardship, the Court should consider whether or not any other reasonable accommodation is available to the tenant and also any offer by the landlord of accommodation or finance for purchasing or providing accommodation.

13. In the present case the trial Court had considered all these aspects. The trial

Court observed :

"Mr.Naronha argued that greater hardship would be caused by refusing to pass the decree for eviction because in that event the object of the trust would be frustrated for want of accommodation and the large income accumulated so far and that which would accumulate in future to the extent of Rs. 55,000/- per year would lie idle and the public at large who is to be benefited under the objects of the trust would suffer great hardships by being deprived of the Medical aid which is so essential in Bombay. Especially the poor section of the public would be a great suffer. It is in evidence that a sum of Rupees 5,45,000/- has already accumulated so far under the head of the medical relief fund and this amount would augment by Rs.65,000/- per year in future. The trustees under the permission of the City Civil Court. Bombay have invested a sum of Rs. 1,50,000/- in purchasing the suit property in the year 1953. The intention in purchasing this property was not to profiteer out of its use but is to construct a new building suitable for the object of the trust on demolition of the suit premises after obtaining their possession. If the decree for eviction is refused, the Trustees would not be in a position to carry out the objects of the trust; because there is no other accommodation available for the purposes " The learned Judge further held,

".....As against this, the hardship which would be caused to the defendants would be comparatively less in that they would be deprived of the premises only. Mr.Chandan contended that the hardship which would be caused to the defendants would be greater with the result that the defendants would be on the streets in view of the present acute shortage of the residential and business premises. The plaintiff-trustees with a view to ameliorate the conditions of the defendants on eviction informed the defendants from time to time that on the defendants agreeing to vacate the suit premises, they are prepared to purchase on ownership basis suitable premises which would be let to the defendants on standard rent. The plaintiff trustees showed their willingness to purchase premises for value not exceeding Rupees 50,000/- for Mr.Hansraj and Rs. 7,500/- each for Mr.Ganpat Gopal and Kashinath Balkrishna. These offers were made even prior to the present suits. The same offers are also made in the plaints and even at the stage of the trial of the suits. x x x x x x The defendants have rejected the above offers on the ground that they are neither reasonable nor suitable to them "

The learned Judge considered the reasons for the rejection of the offers and found that they were not valid. In paragraph 15. he observed as follows :

".....Lastly as regards the comparative hardship of Hansraj it is an admitted position that he has not other accommodation where he can shift after eviction. In his case, the plaintiff trustees have offered to purchase suitable premises for the value not exceeding Rs.50,000/- on ownership basis which would be let to him on standard rent. Mr.Kishinchand the plaintiff No.1 has offered in his evidence to lend the above amount to Mr. Hansraj on such terms

and conditions as this Court may deem fit. These offers are rejected by Mr.Hansraj mainly on the ground that it would not be possible for him to acquire adequate premises for the value not exceeding Rs.50,000/-. He has admitted in his evidence that he is ready and willing to shift to the premises in any other part of Greater Bombay provided they are suitable to him. He has examined Mr.R. G.Kapadia as his witness. Mr.Kapadia is practising as an architect. His evidence is that his firm has supervised the construction of about 8 to 10 residential buildings during the last 3 years. Out of them two were in the area of Malabar Hill and the remaining at Santa Cruz and Vile Parele. The flats in these buildings are disposed of both on rental and ownership basis. The rates of ownership premises were Rs.100/- to Rs. 125/- and Rs. 70/- to Rs. 75/- per sq.ft. in the area of Malabar Hill and Santa Cruz and Vile Parle respectively. The tenancy of Mr.Hansraj has been terminated in August 1962. Had he really made any bona fide efforts to find out alternative accommodation since then, he would have in all probability succeeded in acquiring the same? His evidence shows that he had made some inquiries in 1962 about the residential premises situate in the neighborhood of Malabar Hill through some estate brokers. Admittedly no inquiries are made about the premises in other parts of Bombay. Further he has not himself seen any premises. On reading his evidence his grievance appears to be not that of nay residential premises are not available but that he is not in a position to acquire them on his own income."

14. The learned Judge, then considered the income of Hansraj, the area which he was personally occupying and the number of members of his family, although the learned Judge excluded from consideration the grand-daughter of Hansraj on the ground that his son-in-law was residing in a separate flat in Morarji Mansion and was working as an agent in the Bank of India Ltd. Cumbala Hill Branch and that he was in a position to maintain his wife and his daughter and it was inconceivable that Hansraj would desire his grand-daughter not to reside with his son-in-law. The other son-in-law was residing in the suit premises with his wife and one child and was serving as the Reservation Officer in the Indian Airlines Corporation on a monthly salary of Rs.1,000/-. The learned Judge found that it was difficult to believe that he would not find out some other accommodation because the defendant did not even care to examine as a witness. He considered in detail the portions of the suit flat used and occupied by the various members of the family as well as the servants and found that the claim of Hansraj that his minimum requirement was 3000 sq.ft. was clearly exaggerated and dishonest. He considered his income and ultimately found.

"In view of his aforesaid financial position, it would not be difficult for him to acquire suitable alternative accommodation. Consequently no greater hardship would be caused to him if decree for eviction is passed....."

15. It is well settled that an Appeal Court will be ordinarily slow to interfere with the decision of the trial Judge on questions like the balance of hardship, for this is primarily a question of fact. To succeed, the appellant must show that the trial

Judge misdirected himself on a question of law or that he based his judgment on some finding of fact on which there was no evidence. If in drawing up the statutory balance sheet of hardship u/s 13(2), there is some evidence of hardship on each side the decision of the trial Judge must be normally final. The appellate Court can interfere in certain circumstance, for instance, if there is no evidence of hardship on one side or if the trial Judge has held to be relevant some matter which in law is not relevant such as the absence of a view of a neighbouring hill, river, tree or something pleasant of that kind.

16. Turning now to the judgment of the Appellate Bench, I find that it has reversed the finding of the trial Court, in a manner which would render Section 13(1)(g) nugatory, so far as Greater Bombay is concerned. After merely summarising the contentions of Hansraj in his evidence, the Appellate Bench went on to observe.

".....According to Mr.Khambatta, the requirements of Hansraj can be satisfactorily met by a flat of 1200 sq.ft. The learned trial Judge has observed that the family of Hansraj can be suitably accommodated in a flat of 1000 sq.ft. In our opinion there is no warrant for this observation. As pointed out by the learned trial Judge, the area of the premises in the occupation of Hansraj is 4730 sq.ft. Hansraj has been living in these premises with his family for a number of years. In considering what is suitable alternative accommodation for a tenant, the mode of living he is used to is a material factor.....In our view, therefore, the whole family of Hansraj must be taken into account in deciding the question of hardship. The learned trial Judge has remarked in his judgment that on his inspection of the premises, he found that the entire premises were not really needed by Hansraj. In our opinion, the learned trial Judge was wrong in allowing his judgment to be influenced by the impression which was made on him when he saw the premises. There is nothing to show whether that impression was correct or not. The question must be decided on the evidence on record. It can be argued that the alternative accommodation for Hansraj need not be of the same size as the premises in question viz. 4730 sq.ft. Even so, we do not think that an area of 1000 sq.ft. or 1200 sq.ft. can be considered suitable for Hansraj and his family who have been accustomed to live in larger premises for a long period.....In our view he was not expected to make efforts in this behalf in every part of the city. It cannot be urged that he must take up his residence wherever he could get it within his means. It also cannot be urged that he should secure a flat on lease even by paying premium for it. Another factor which must be taken notice of is the extreme difficulty of securing accommodation in the city. In these circumstances, we are satisfied that Hansraj could not obtain suitable alternative accommodation in spite of efforts made in that behalf."

This conclusion of the Appellate Bench, in my judgment, is a total distortion of the requirement of Section 13(2). The section does not require "suitable accommodation" to be available to the tenant. It requires "reasonable accommodation" to be available to the tenant.

17. What is reasonable will depend on the circumstances of each case. Reasonable cannot mean equally convenient or luxurious, though it may not necessarily exclude ideas of convenience and comfort. The expression used in Section 13(2) is "hardship" and not "inconvenience" or "unsuitability." The Appellate Bench has assumed that Section 13(2) refers to "suitability." The said assumption is, in my opinion, patently illegal. The Appellate Bench has further ignored the detailed, relevant and cogent reasons given by the trial Court (including that was observed at personal inspection of the said premises) for holding that greater hardship would be caused to the trustees by refusing to pass a decree. It ought to have properly considered the fair and reasonable offer made by the trustees to Hansraj. On these grounds alone the finding recorded by the Appellate Bench must be set aside. The Appellate Bench misdirected itself on law, illegally ignored the reasons given by the trial Judge and erroneously reversed the correct findings of the trial Court u/s 13(2).

18. Mr.Chitale, the learned counsel for the respondents sought to support the decree passed by the Appellate Court by arguing firstly that the requirement of the trustees for constructing marriage hall, clinic and hospital etc. is not requirement for residential purposes and hence, any decree that would be passed on that ground evicting the tenant would be contrary to Section 25(1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 which prohibits conversion of residential purpose to non-residential purpose. The trial Court has rightly negated this contention on the ground that the requirement, cannot be considered to be for non-residential purpose because a large portion of the construction will be used by the doctors, nurses and patients who would be residing therein although for different times and sometime temporarily and the present use of the building itself is not wholly for residential purposes.

19. Moreover, the word "residence" must be understood in the context of the Act as used in Section 6. The words "residential use" as opposed to "non-residential use" must, therefore, be used not for education, business trade or storage within the meaning of S. 5 (1). It cannot be said that the construction of a marriage hall or a charitable hospital by a charitable trust would be putting the premises to use for education business, trade or storage within the meaning of Section 6.

20. "Residence" has no doubt, a variety of meanings according to the Statute or document in which it is used. It is an "ambiguous word" and may receive a different meaning according to the position in which it is found. The word may receive a larger or more restricted meaning according to what the Court believes the intention of the Legislature to have been, in framing the particular provision in which the word occurs. A man's residence is very often the place where he sleeps at night. (See Blackburn. J.Oldham, I. O'M & H. 158. citing R. v. Norwood, (1867) 2 QB 457. Sometimes it is described as the place where he and his family sleep or eat though he carries on his business in that very place (See Lakshman v. Balkrishna, 27 BomLR 937 : AIR 1925 Bom 398 . In AIR 1937 46 (Privy Council) the Privy Council considered the meaning of the expression

"resides" in Section 33 of the Indian Registration Act and observed that "there is no reason for assuming that it contemplates only permanent residence and excludes temporary residence." In *Sri Sri Sri Kishore Chandra Singh Deo Vs. Babu Ganesh Prasad Bhagat and Others*, again in the context of Section 33 the Supreme Court laid down that "Resident only connotes that a person eats, drinks and sleeps at that place and that it is not necessary that he should own it." Having regard to these various meanings of the word "residence" and the scheme of the Rent Act as indicated in the Section 6, it must be held that the legislature in used the words "non-residential purpose" in Section 25 did not intend to prohibit use of a building like the suit building containing a residential flat like the suit flat and the land on which such a building stands for purposes of construction of Marriage Halls. Charitable Hospital and quarters and garages for Doctors and Nurses as in the present case. The said Marriage Halls, Hospitals etc. are like to be used for sleeping, eating, drinking etc. temporarily if not permanently from day-day particularly in a crowded city like Bombay. The use of the same cannot be described, the facts and circumstances established in the case, as "non-residential" use within the meaning of even Section 25.

21. The second contention of Mr.Chitale is that the finding of the two Courts that the trustees require the premises for the use is contrary to law as they have not recorded a clear finding that the trustees reasonably and bona fide require the premises. This submission is also not tenable because is amending Section 13(1)(g), if the Legislature intended that the requirement of the trustees should also be proved to be bona fide and reasonable they would have stated so. Instead they have merely used the words, "or where the landlord is a trustee of a public charitable trust that the premises are required for occupation for the purposes of the trust." It is an alternative ground in respect of premises belonging to public charitable trusts added to the ground which originally stood in Clause (g) of Section 13(1), by Bombay Act 61 of 1953 to advance the cause of public charity by not allowing it to suffer for want of accommodation. The ground merely requires the trustees to establish that there is some requirement importing an element of necessity which compels them to file a suit for eviction. Such a requirement has been adequately established in the facts and circumstances of the present case. I do not think that anything more was required by law. The holding that the trustees satisfied the requirement of Section 13(1)(g).

22. Lastly, Mr.Chitale submitted that it was the duty of the Appellate Bench to record a clear finding that hardship that would be caused to the tenant would be less than hardship that would be caused to the trustees and in the absence of such finding no decree for eviction could be passed u/s 13(1)(g). This contention is to be mentioned only to be rejected. The findings of the trial Court, referred to above, sufficiently discuss the hardships both to the trustees and the tenant and clearly indicate that greater hardship would be caused to the trustees by refusing to pass a decree than to the tenant by passing a decree against him. Mr.Chitale referred in this connection to a decision of the Gujarat High Court in *Kanasara Abudulrehman Sadruddin Vs. Trustees of the Maniar Jamat Ahmedabad, Musaji*

Abdulkarim and Others, , which merely lays down that the claim of the trustees under S. 13(1)(g) is also subject to the restriction u/s 13(2). With respect I agree with the view and it is unnecessary to discuss the matter any further as I hold for reasons already stated that the finding of the trial Court under S. 13(2) is illegally reversed by the Appellate Bench on this point.

23. At this stage consent terms are filed in Special Civil Application No. 2187 of 1969 and Special Civil Application No. 2194 of 1969 and in those matters all that requires to be done is to pass orders in accordance with the said consent terms. Order accordingly in those matters.

24. In view of the findings recorded above, rule in Special Civil Application No. 2185 of 1969 shall be made absolute. The decree passed by the Appellate Bench is set aside and the decree passed by the trial Court is restored, subject to the following modifications--

"Provided that the decree shall be suspended till the petitioners offer Rupees 50,000/- with interest at 6 per cent, per annum on that amount from the date of the suit till the date of the offer for financing the purchase of a block by the respondents on the terms proposed by the petitioners in the plaint or as a loan to the respondents as stated at the trial. If the petitioners or any one on behalf of the trustees make such an offer and the respondents refuse to accept the offer or refuse to reply to the offer made by the petitioners within one month from the date of the offer the decree shall be executable at once by the petitioners.

Provided further that for purposes of execution of the decree as modified herein, the petitioners shall address notices making the offer referred to above to the address of the respondents 1 to 4 given in Special Civil Application No. 2185 of 1969 and post them by registered post, acknowledgment due. On such posting in any post office in Bombay the period of one month referred to above shall commence to run from 8 days after such posting; and the said respondents shall be deemed to be served with the notices. The trustees shall thereafter be entitled to execute the decree on the expiry of the said period of one month even if some or all of the said respondents claim that they were not served with the notice or even if any or all of them were not in fact served with the notices."

25. The respondents 1 to 4 to pay the costs of the petitioners in Special Civil Application No. 2185 of 1969 throughout.

26. Rule made absolute.