

(1965) 06 BOM CK 0011

In the Bombay High Court

Case No : Special Civil Application No. 371 of 1965

Krishnaji Dattatraya Bapat

APPELLANT

Vs

Dr. Shankar Ramchandra Abhyankar

RESPONDENT

Date of Decision : 14-06-1965

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13, 15

Citation : (1965) 67 BOMLR 690 : (1966) MhLj 65

Hon'ble Judges : Patel, J; Bal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

This Judgment has been overruled by : Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat, AIR 1970 SC 1 : (1969) 2 SCC 74 : (1970) 1 SCR 322

Patel, J.—[His Lordship after setting out the facts and considering a point not material to this report, proceeded.] The respondent relied for relief in the present case on Section 13(1), Clause (1) of the Bombay Rent Act. So far as relevant, the section reads:

Notwithstanding anything contained in this Act (but subject to the provisions of Section 15), a landlord shall be entitled to recover possession of any premises if the Court is satisfied?

(1) that the tenant after coming into operation of this Act has built, acquired vacant possession of or been allotted a suitable residence.

The question is whether the petitioner had acquired vacant possession of a suitable residence. If he had, then the landlord is entitled to possession of the premises; but if he had not, then the landlord would not be entitled to possession of the premises.

2. Mr. Paranjpe contends that the Courts below have not considered the question as to what the phrase "acquired vacant possession of a suitable residence"

means, and, secondly, that the Court had no jurisdiction to award half the premises to the landlord, in any event. So far as the second contention is concerned, the finding on the first point being against him, it is in his favour, and it is impossible in the present application to interfere with that part of the order if that finding is to be retained.

3. What "suitable residence" means has not been defined in the Act itself. The words must be given their natural meaning, and the Court would not be entitled to impose limitation on their meaning. The section requires that the tenant must acquire "suitable residence." He should acquire residence, and it must be suitable. Suitability cannot be only for one purpose. It must be suitability for his reasonable needs. In order, therefore, to decide suitability of the residence for the tenant, the Court has to consider the needs of the tenant and his family and consider whether or not the other accommodation that has been acquired by the tenant is suitable for his needs.

4. In the present case, the petitioner was a teacher in a secondary school of a private educational society. His salary, therefore, must necessarily be very limited. He was transferred to Wai as Superintendent of a school at that place. But there is nothing to show that his salary had increased considerably. His son who was dependent upon him was at the time studying accountancy. Again, there is nothing to show that there was any institution of accountancy in Wai which he could join and where he could pursue his studies. Again, there is nothing to show that he could have conveniently stayed at Wai and prosecuted his studies in Poona. The finding of both the Courts is that the petitioner's son continued to stay in the premises and pursue his studies, in Poona. The question is, merely because he acquired some premises at Wai, can it be said that he had (acquired suitable residence at another place land, therefore, the landlord was entitled to possession? The appellate Court in its judgment observes that the suitability of a place is inherent in itself and does not depend upon surrounding circumstances. It is difficult to appreciate what is intended to be conveyed by this observation. The learned Judge probably meant to say that as soon as a residential place was acquired by the tenant, the Court must for that very reason hold that "suitable residence" has been inquired .The words used in the statute are not "has acquired a residence", but they are "has acquired suitable residence", the emphasis being on the word "suitable". It is wrong, therefore, to hold that circumstances of the tenant have not to be considered while applying this clause.

5. Having regard to the facts found in the case and the facts apparent on the record, it is impossible to say that the petitioner had acquired an alternative suitable residence for his purposes. If his son was required to stay in Poona for prosecuting his studies, it must mean that the accommodation at Wai was not suitable for all his purposes, though it may be suitable only for the purpose of his service. The lower Court was, therefore, wrong in holding that the petitioner had acquired suitable residence merely on the basis that he had acquired some place

to reside at Wai. In view of this, the petitioner is entitled to succeed.

6. [The rest of the judgment is not material to this report].