
(1979) 07 BOM CK 0014

In the Bombay High Court

Case No : Special Civil Application No. 2081 of 1976

Madhukar Sadashiv Parkhi

APPELLANT

Vs

Satyabhamabai Ganesh Sakrikar and Others

RESPONDENT

Date of Decision : 10-07-1979

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 113(1)(I), 13(1)

Citation : (1979) 07 BOM CK 0014

Hon'ble Judges : C.S. Dharmadhikari, J

Bench : Single Bench

Advocate : S.G. Mandrekar, for the Appellant; V.H. Gumaste, for the Respondent

Final Decision : Allowed

Judgement

C.S. Dharamadhikari, J.—The petitioner in this petition was a tenant of three rooms belonging to the respondents-landlords situated at Budhwar Peth, Pune. By a notice dated 4th July, 1971 his tenancy was sought to be terminated on the grounds that he has not been observing the terms and conditions of the rent note and that he was occupying more space than that was given to him on rent and further he was causing nuisance and annoyance by keeping certain articles in the stair case. It was also alleged in the notice as well as in the suit that was transferred to Bhimanagar Ujani Project where he was allotted suitable accomodation and for more than one year before filing of the suit, he has not used the premises leased out to him and has kept it closed without any reasonable cause. A claim was also made in the notice as well as in the suit that the landlords require the suit premises reasonably and bona fide for their own occupation.

2. In his written statement, the tenant denied the allegations made in the suit. He also contended that the rent charged was excessive and therefore, standard rent should be fixed. He denied the allegation that he has acquired suitable residential quarters at the Bhimanagar project permanently and according to him

his transfer was temporary and he was likely to be retransferred to Pune. He also contended that his wife was ailing and required medical help which was not available at Ujani and, therefore, he required the suit premises at Pune for the use of his wife. He also contended that he was also using the suit premises all along.

3. In support of their case plaintiffs examined Shridhar-Plaintiff No. 6, Suman-plaintiff No. 2, Damodar Devare-the Deputy Engineer from the Public works Department, whereas the defendant examined himself. After framing the necessary issues and appreciating the evidence on record the learned Judge of the trial Court came to the conclusion that the plaintiffs have proved that they required the suit premises reasonably and bona fide for their own use and occupation. The trial Court also found that the plaintiffs have proved their case about the nuisance and annoyance. It further recorded a finding that the defendant is not using the suit premises for over 6 months before filing of the suit and he has also acquired suitable alternate accommodation at the place of his work and, therefore, he does not require the suit premises any longer. In view of these findings, the learned Judge of the Court of Small Causes, Pune ultimately decreed the suit filed by the plaintiffs.

4. Being aggrieved by this judgment and decree the petitioner-tenant filed an appeal which was heard and decided by the Extra Assistant Judge, at Pune. The learned Judge of the appellate Court did not accept the case of the landlords that the defendant has kept the suit premises un-used and locked for a period of 6 months or more immediately prior to the filing of the suit. He also reversed the finding recorded by the trial Court that the conduct of the defendant or his family members amounted to nuisance and or annoyance. The learned Judge also found that the plaintiffs do not require the suit premises reasonably and bona fide for their occupation nor the defendant tenant has committed any breach of the terms and conditions of the lease. However, he recorded a finding in favour of the landlords that the defendant tenant has been allotted a suitable residence at Bhimanagar, and therefore, landlords are entitled to seek possession of house u/s 13(1)(I) of the Rent Act. Therefore, ultimately the Appellate Court sustained the decree passed by the trial Court on that account and, therefore, dismissed the appeal filed by the tenant. Against these orders present writ-petition is filed by the petitioner-tenant.

5. Shri Mandrekar, the learned Counsel appearing for the petitioner-tenant contended before me that the learned Judges of the commits below have committed an error, apparent on the face of record, in construing the provisions of section 13(1)(I) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, hereinafter referred to as the Rent Act. According to Shri Mandrekar, petitioner-tenant was transferred to Bhimanagar on temporary basis and the house allotted to him at Bhimanagar was not suitable for his residence. He further contended that the wife of the petitioner-tenant was ailing and in view of her indifferent health, it was necessary for her to stay at Pune itself. Moreover,

the petitioner-tenant was also going to Pune off and on and was using the suit premises for his residence. According to Shri Mandrekar allotment of residence as contemplated in section 13(1)(I) of the Rent Act should be not only suitable for the residence of the tenant and his family members but it should also be within the same local area. In this particular case an alternate accommodation which was allotted to the petitioner-tenant was at Bhimanagar which is about 100 miles away from Pune. The said accommodation was also not suitable for his residence because of the ill health of his wife. Having recorded a finding that the plaintiffs have failed to prove that the petitioner-tenant has not used without a reasonable cause the suit premises for a continuous period of 6 months immediately preceding the date of the suit, according to the learned Counsel the courts below have committed an error in holding in favour of the plaintiffs on, ground that the tenant has been allotted a suitable residence within the meaning of section 13(1)(I) of the Rent Act.

6. On the other hand according to Shri Gumaste as soon as an alternate accommodation which is suitable for residence is allotted to the tenant, the landlord is entitled to get to the possession of his premises u/s 13(1)(I) of the Rent Act. According to the learned Counsel, the construction sought to be placed by the learned Counsel for the petitioner upon the provisions of section 13(1)(I) is not correct as section 13(1)(I) does not require that the allotment of the suitable residence should be within the same local area. Shri Gumaste, then contended that the courts below were right in coming to the conclusion that suitable residential accommodation was allotted to the petitioner-tenant at Bhimanagar and, therefore, the case is covered by section 13(1)(I) of the Rent Act. Shri Gumaste argued that the Appellate Court has committed an error in reversing the finding of fact recorded by the trial Court that the conduct of the tenant and his family members amounted to nuisance and annoyance. Therefore, it is contended by Shri Gumaste that on that count also the plaintiffs are entitled to get a decree for possession in support of this contention Shri Gumaste strongly relied upon a decision of this Court in Civil Revision Application No. 1060 of 1962, decided on 21st September, 1962 by S.M. Shah J.

7. As already observed, the learned Judge of the Appellate Court has sustained the decree passed by the trial Court only on the ground that the defendant-tenant has acquired suitable residence at Bhimanagar and, therefore, plaintiffs-landlords were entitled to a decree for possession u/s 13(1)(I) of the Rent Act. On all other counts the learned Judge of the appellate Court has reversed the finding recorded by the trial Court. However, it was contended by Shri Gumaste before me that the contrary finding recorded by the Appellate Court on point No. 3 i.e. whether the conduct of the defendant or his family members amounts to nuisance and annoyance to the plaintiffs and other neighbouring occupiers, is not warranted by the evidence on record. It is not possible for me to accept this contention of Shri Gumaste. In paragraph 17 of his judgment the learned II Extra Assistant Judge, Pune has considered the evidence in this behalf. After considering the evidence adduced by both the parties the learned Judge came to

the conclusion that the plaintiffs have failed to prove that the conduct of the defendant-tenant amounted to nuisance or annoyance to the plaintiffs. This is obviously a finding of fact based on appreciation of evidence and, therefore, is not liable to be challenged or interfered with in the extra ordinary jurisdiction of this Court under Article 227 of the Constitution of India. Therefore, in my opinion there is no substance in this contention of Shri Gumaste.

8. Therefore, the only question which requires consideration in the present case is to find out as to what is the true scope and meaning of section 13(1)(I) of the Rent Act. Section 13(1)(I) of the Rent Act reads as under :

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

According to Shri Mandrekar, the learned Counsel appearing for the petitioner-tenant the protection which is given to the tenant by the Rent Act can be taken away only if the tenant is allotted a suitable residence within the local area in which the suit premises are situated. In support of this contention Shri Mandrekar strongly relied upon the two decisions of the Gujarat High Court i.e. Ramgauri Girdharlal v. Narottam Narandas, 16 GujLR 1975 and Nathani Shivankumar Ghanshyamdas v. Shah Dhanalal Maneklal, 16 GujLR 1975. He also contended that the petitioner alone had shifted to Bhimanagar which was his place of occupation on temporary basis and had no intention either to settle down or reside there permanently. He further contended that during this period also petitioner was coming to Pune off and on and was residing in suit premises.

9. As already observed on the other hand it is contended by Shri Gumaste that both the courts below have recorded concurrent finding of fact that the wife of the petitioner-tenant was not ill as contended by the tenant, therefore, it was not necessary for her to stay at Pune. He also contended that the petitioner-tenant was transferred to Bhimanagar in December 1970 and was therefore about 4 years and was retransferred to Pune after the decree of the trial Court was passed and that too on his own request. In these circumstances according to Shri Gumaste, the courts below were right in coming to the conclusion that the petitioner-tenant has been allotted suitable residence and hence is not entitled to the protection of the Rent Act.

10. For deciding these rival contentions raised before me, it will have to be seen as to what is the true scope and import of section 13(1)(I) of the Rent Act. In my opinion said provision cannot stand in insulation by itself and will have to be harmoniously construed as part and parcel of the scheme incorporated in Part II of the Rent Act. It is well settled that a sub-section of section must be read as part of integral whole, all the sub-sections being inter dependent. When a section is sub-divided in sub-sections it will have to be read or construed as a whole, each portion throwing light, if need be, on the rest. Section 13(1) deals with the circumstances in which the landlord is entitled to recover possession of his property. One of the grounds stated in the sub-section (I) of section 13(1) is that

if after coming into force of the Act, tenant has acquired vacant possession of or has been allotted suitable residence then landlord is entitled to recover possession of his premises. Section 13 in itself is part and parcel of part II of the Rent Act which deals with the residential and other premises. Sub-section 2 of section 2 of the Rent provides that parts II and III of the Act shall extend respectively to the area specified in Schedule I and II of the Act and shall continue to extend to any such area notwithstanding that the area ceases to be of the description therein specified. Schedules I and II deals with the area to which parts II and III are extended. The reference made in the Schedule I and II is to, "an area" and, therefore, while construing parts II of the Act and particularly section 13 of the Rent Act, it will have to be construed in the context of sub-section 2 of the section 2 of the Act and the Schedules. This position is made further cleared by the Legislature by Maharashtra Act 52 of 1975 whereby section 13-41 was inserted in the Statute book. Section 13-41 uses the expression as under :

"He does not possess any other suitable residence in the local area where he or the members of his family can reside".

Therefore, obviously expression used in section 13 will have to be construed in this light. However, it is neither possible nor it is desirable to lay down any general rule in this behalf and to some extent the question will depend upon the facts and circumstances of each case.

11. It is no doubt true that while construing the said provision, the Single Judge of the Gujarat High Court in Ramagauri Ghirdharilal v. Narottam Narandas has taken a view that section 13(1)(I) of the Rent Act cannot apply to the tenant who acquires or is allotted vacant possession of premises in different town. However, it is interesting to note that another Judge of the same High Court in the case of Dahyabhai Motiram and another v. Nathubhai Bhimbhai Naik, 16 GujLR 404 has held that even if the tenant has not constructed his bungalow in the town proper and if the said bungalow is situated on the outskirts of the town, only because the technical situation of the bungalow is in different area, it cannot be said that it cannot be taken into consideration for the purpose of considering the question as to whether the tenant has acquired a suitable residence within the meaning of the Rent Act. From the decision of the Gujarat High Court in Dahyabhai Motiram and another v. Nathubhai Bhimbhai Naik, it is quite obvious that to some extent the question must depend upon the facts and circumstances of the each case including topography of the area and the situation of the alternate accomodation. Therefore, proximity of place of the alternate accomodation or building is relevant while deciding the question contemplated by section 13(1)(I) of the Rent Act. In my opinion the whole thing must depend, firstly upon the question as to whether the alternate accomodation allotted to a tenant could be suitably used for the purpose of residence or was actually used as residence by the tenant and members of family, and secondly, new residence must be such that by its acquisition or allotment, the protection afforded to the tenant from the eviction

by the Rent Act should stand forfeited so far as house in dispute is concerned. If various sub-sections including sub-section (k) of section 13(1) are read together and harmoniously it is quite clear that the protection could stand forfeited only in those circumstances where it would make unnecessary for the Act to protect his possession over the premises in suit, because of acquisition or allotment of suitable alternative residence. If it is proved that the premises let out are not necessary for the residence of the tenant as the tenant has shifted to his alternate accommodation with his whole family and bag and baggage then in that case even without waiting for the period specified in section 13(1)(k), the landlord may approach the Court for getting possession of his premises, u/s 13(1)(l) of the Act. Normally acquisition or allotment of the residential premises outside the local area in question may not automatically forfeit the protection given by the Rent Act. In any case it can safely be said that in majority of the cases new residence should be within local area or near-about it, because ordinarily it is only in those cases, it will be unnecessary for the Act to protect the possession of the tenant over the premises in dispute. In other cases it could be said that the provisions of section 13(1)(l) would be attracted in cases of acquisition by or allotment of alternate residence to the tenant as would serve same need and purpose as is presently being served by the occupation of the house in dispute. This is nothing but the fact of suitability of the residence. If it is shown that the tenant has shifted with bag and baggage to the newly allotted premises and he does not require the premises in question any more for the purpose of his residence or the residence of his family members then in a given case, depending upon the facts of the case, irrespective of the fact whether the alternate accommodation is within the local area or not, recourse could be taken to the provisions of section 13(1)(l) of Rent Act. However, ultimately question will have to be decided having regard to the facts and circumstances of the particular case. It appears that somewhat similar view has been taken by the Delhi Court in *Govindji Khera Vs. Padma Bhatia*, while construing somewhat similar provision.

12. Therefore it will have to be seen, having regard to the facts and circumstances of the present case, as to whether the Petitioner-tenant was allotted suitable residence at Bhimanagar, a place which is 100 miles away from Pune and therefore, he did not require the suit premises at Pune for his residence or for residence of his family members. It is an admitted position that the petitioner-tenant who is a Government Servant was allotted a residential accommodation at Bhimanagar which is a place of his work. It is also an admitted position, that the tenant, who was working in Public Works Department, was transferred to Bhimanagar where a Dam was being constructed. From the findings recorded by the courts below it is clear that the plaintiffs have failed to prove that even after the transfer of the petitioner-tenant to Bhimanagar in the year 1970 the suit premises remained closed or unused for a period of 6 months or more immediately prior to the filing of the suit. The suit in the present case was filed on 21st September, 1971. Further from the evidence on record it is clear that the petitioner-tenant had transferred only essential kit to Bhimanagar

quarters and his remaining goods remained in the suit premises. From the observations of the learned Judge of the appellate Court it is also clear that the petitioner-tenant never wanted to vacate the suit premises. Even though initially his wife had gone to reside in the quarters at Bhimanagar, she again came back and is residing in the suit premises at Pune at least from September 1971. Therefore, in substance in this particular case it is not shown that the suit premises were either not used by the tenant or the tenant had shifted to Bhimanagar with bag and baggage with his family for good, and was not using the suit premises for his residential purpose. It has also come on record that after his transfer to Bhimanagar at a place of the Project, Petitioner-tenant was trying to get him retransferred to Pune and according to him, his wife who was ailing still continued to occupy the suit premises throughout.

13. At the appellate stage additional evidence was adduced by the tenant showing that the petitioner-tenant was in fact retransferred to Pune in June, 1975 and since then he is occupying the suit premises. Therefore, if the evidence adduced by the tenant is read as a whole, it cannot be said that the tenant was allotted a suitable residence at Bhimanagar and in fact he had shifted his residence with all his bag and baggage as well as members of the family. On the other hand the suit house was being used by him off and on as well as by his wife. It is also held by the Appellate Court that the plaintiffs have failed to prove that the premises were not in use without any reasonable cause for the period specified in section 13(1)(k). In this case it appears from record that the tenant had to go to Bhimanagar as he was transferred there. It is also clear that he was trying to get himself retransferred at Pune he was in fact so transferred during the pendency of appeal. Further in para 15 of the judgment the Appellate Court has further observed that the tenant had transported only essential kit to his Bhimanagar quarter and the remaining kit or goods remained in suit premises. The learned Judge has also observed that at least after September, 1971 his wife again went to live in suit premises. In these circumstances it cannot be said that the tenant had left the suit house with his family and with bag and baggage for good. It cannot also be said that the quarter at Bhimanagar that is at the place of Dam was suitable as contemplated by section 13(1)(l) of the Act, as according to tenant his wife was ailing and therefore, had to reside at Pune. Therefore, in my opinion having regard to the facts and circumstances of the present case it cannot be said that the plaintiffs have proved their case even u/s 13(1)(l) of the Rent Act.

14. In this context reference could safely be made to a decision of this Court in Prabhakar Raghunath Dixit v. B.S. Kothore, 76 BomLR 240. In this decision a reference is also made to the decision of this Court in Krishnaji Dattatraya Bapat v. Dr. Shankar Ramchandra Abhyankar, (1965) BomLR 690 and particularly to the following observations.

"...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."

After making a reference to these observations it was held in *Prabhakar vs B.S. Kothare* that as to whether a particular alternative accommodation is suitable or not must necessarily depend partly on the facts of each case and partly on the legal test of suitability viz. reasonable needs of the tenant and his family.

15. In *Achut Pandurang Kulkarni v. Sadashiv Ganesh Phulambrikar*, 75 BomLR 21, while interpreting section 13(1)(k) this Court held that if it is established by the tenant that he was forced to stay at the place of his transfer, but had a real intention to return, coupled with some formal, outward and visible sign of occupation indicative of his ultimate desire of home coming, then also the case is not covered by section 13(1)(k) of the Act.

16. In the case before me in view of the facts proved it is clear that the wife of tenant continued to stay in suit premises and his house hold goods were also lying there, because according to him the home at Bhimanagar was not suitable and he had so desire to return back to Pune for residing in the suit house. It has also come in his evidence that the ration card of his wife continued to be at Pune and he was living alone in the Colony at Bhimanagar, and used to come to Pune on every holiday. Although his wife was residing in the suit house in these circumstances, coupled with facts that he was trying for his retransfer, and in fact was transferred during the pendency of appeal, it cannot be said that a quarter allotted to him at Bhimanagar hundred miles away from Pune, where he had no intention to live with family or shift with bag and baggage, is also covered by section 13(1)(l) of the Act.

17. The decision on which reliance is placed by *Shri Gumaste* in (Civil Revision Application No. 1060 of 1962, decided on 21-9-1962)¹, is of little assistance as it is distinguishable on facts. From the tenor of the judgment it appears that in that case the house allotted to the tenant was in the same town, and the tenant had shifted to those quarters, and had not continued to reside in the old premises.

18. Further it cannot be forgotten that the Rent Act is a legislation which is intended to protect the tenant against unreasonable evictions. Therefore these provisions will have to be construed in such a way as to cut as little as possible into the protection afforded to the tenant. If the language of the section is susceptible of two interpretation we will have to prefer that which enlarges the protection of the tenant rather than which restricts it. See *Mohd. Shafi Vs. Additional District and Sessions Judge (VII), Allahabad and Others*, .

19. Normally this Court does not interfere with the concurrent findings of facts, but as both the courts below have made a legally wrong approach to the facts of the case, and have committed a grave and patent error of law in interpreting the scope and ambit of the provisions of section 13(1)(l) of Rent Act, and have thus misapplied the law, in order to prevent grave and substantial injustice being done

to the tenant this Court was constrained to reconsider the whole matter. Therefore, the decree passed by the courts below on the ground covered by section 13(1)(i) of the Rent Act will have to be set-aside.

20. This was the only ground on which the Appellate Court had sustained the decree for possession. In the result, therefore, the writ petition is allowed. The Rule is made absolute. The judgment and decree passed by both the courts below are set aside and the suit filed by the respondents-landlords for possession of the suit premises is dismissed. However, in the circumstances of the case, there will be no orders as to the costs.