

(2025) 10 BOM CK 1095
In the Bombay High Court
Case No : Writ Petition No. 5205 Of 2002

Milind Rajkumar Wagholikar

APPELLANT

Vs

Shankar Ramchandra Kirve

RESPONDENT

Date of Decision : 14-10-2025

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Bombay Rent Act, 1947 — Section 13(1)

Citation : (2025) 10 BOM CK 1095

Hon'ble Judges : M.M. Sathaye, J

Bench : Single Bench

Advocate : Abhijit Kulkarni, Abhishek Roy, Sweta Shah, G.N. Salunke, P. A. Pol, Sharad Suryawanshi

Final Decision : Disposed Of

Judgement

M.M. Sathaye, J

1. Heard learned Counsel for the parties. Rule was granted on 16.09.2002.
2. In this judgment, for convenience and brevity, Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 is referred to as 'the Bombay Rent Act' and the words 'under section' are referred to as 'u/s.'
3. This petition under Article 226 and 227 of the Constitution of India, takes exception to the impugned common Judgment and Decree/Order dated 06.02.2002 passed by the 2nd Additional District Judge, Baramati passed in Civil Appeal No. 88/1997, by which the Appeal filed by the Petitioner and Civil Revision Application No. 1 of 1998 filed by the present Respondent No.1 were dismissed by common judgment.
4. The Petitioner is original Plaintiff/landlord in respect of a land bearing CTS No. 506/34, new CTS No. 866 admeasuring about 7500 sq. ft. at ward No.4, Baramati which is the 'suit property'. The Petitioner filed Regular Civil Suit No. 152 of 1994 for recovery of possession and arrears of rent against present

Respondents under provisions of Bombay Rent Act on the ground of illegal sub-letting, bona-fide requirement and default. The said suit was dismissed on 14.03.1997 by Joint Civil Judge, Junior Division, Baramati. Along with the said suit, the application for fixing standard rent was also heard (CMA 25/1993) and standard rent was fixed at Rs.100/- per month, excluding taxes. The Petitioner filed Civil Appeal No. 88/1997 challenging dismissal of the suit. The Respondent No. 1 filed Civil Revision Application No. 1/1998 challenging the order of fixing standard rent. Learned 2nd Additional District Judge, Baramati, dismissed both the appeal and revision under common impugned Judgment dated 06.02.2002.

5. The case of the Petitioner, in short is as under. That after the demise of the father of Respondent No.1, the tenancy devolved upon Respondent No.1, who stopped the dairy business of his father and illegally sublet the suit property to Respondent Nos. 2 and 3 who are operating garage in the suit property. That Respondent No.1 is collecting exorbitant rent from Respondent nos. 2 and 3. That the Petitioner, who is a Civil Engineer, wants to construct ownership apartment scheme on suit property. That he has prepared plans and got it sanctioned from the municipal authority and the Petitioner also has sufficient funds for making construction. That the Plaintiff requires the suit property as per provisions of Section 13(1)(i) of the Bombay Rent Act. That despite the suit notice being issued, Respondent No.1 did not comply and he is in arrears.

6. The Respondent No. 1 filed written statement (Exh. 11) which was adopted by Respondent Nos. 2 & 3 by purshis (Exh. 12). They contended inter alia that suit property was obtained on monthly lease at rent of Rs.40/- for business purpose. That Respondent No.1 is owner of the garage on the suit property and Respondent Nos. 2 and 3 are mere servants. That rent was increased from Rs.40/- per month to Rs.100/-per month which rent is paid regularly. That rent receipts are not issued since June 1991. That amount was sent with notice reply under a cheque, but the Petitioner avoided the same. That the Petitioner has many plots at Baramati and does not require the suit property. That Respondent No.1 needs the suit property for himself and his family and he would face hardship, if evicted.

SUBMISSIONS

7. Mr. Kulkarni, learned counsel for the Petitioner submitted that plaint has been amended and provisions of Section 13(1)(i) of the Bombay Rent Act, has been incorporated and suit property is a piece of land which was leased in favour of the father of Respondent No.1. The defence taken by Respondent No.1 is that suit property was leased for business purposes in general and they have denied the case of carrying out permanent construction. He submitted that evidence on record clearly indicates that there has been breach of provisions of Bombay Rent Act, because without the permission of landlord, the tenant has carried out construction which is permanent in nature. He submitted that the rent receipt sought to be produced in this Court during the course of hearing cannot be considered as it is not clear whether it was produced during the trial. He

submitted that if the case of the Respondent No. 1 that he has not carried out any permanent structure is to be accepted and shed was constructed as temporary structure, then Respondents cannot contend that suit property was leased along with structure and they will have to show that this structure was constructed with the permission of the landlord. In the absence of such evidence, the case of the landlord about construction without permission stands proved. He submitted that if it is presumed that the structure was subject matter of tenancy then there has to be evidence to show such tenancy. He submitted that conjoint reading of the pleadings and evidence clearly shows that open plot was given on lease and Respondent No.1 has erected a shed on the suit property without permission of the landlord or permission of the municipal authority. He submitted that when the requirement was pleaded u/s. 13(1)(i), there was no question of considering comparative hardship and suit is apparently dismissed on the said ground. He submitted that for last about 80 years, the Respondent No.1 is enjoying the property at paltry sum of rent and some day, landlord must get his property back. He relied upon the following Judgments in support of his case:

- (i) Vasant Shankar Choudhari v/s Laxman Balaji Ambore [1996 (1) Mh. L.J.41].
- (ii) Nidhi v/s. Ram Kripal Sharma (D) through LRs. (Civil Appeal No. 1008 of 2017, arising out of SLP(C) No. 19117 of 2013).
- (ii) Balwant P. Doshi v/s. Shantaben Dhirajlal Shah and another [2002 SCC Online Bom 585 : (2002) 4 Mh.L.J. 473].
- (iii) Suhasini Atmaram Parab and others v/s. B.H. Khatu and orthers, 2002 SCC Online Bom 855 : (2003) 1 Bom CR 733.
- (iv) Chotumal Bhiramal Sindho v/s. Baburao Vinayak Mohadkar [2009 SCC Online Bom 355 : (2009) 4 Mh. LJ 131].
- (v) Bega Begum and others v/s. Abdul Ahad Khan [(1979) 1 SCC 273].
- (vi) Mangalserry S/o. Ouseph Kochupoila (dead) Through its Legal Representatives v/s. Sukumar s/o D. Sarkar (Dead) Legal Representative of Deceased [WP/715/2018, High Court of Judicature At Bombay (Nagpur Bench)].

8. On the other hand, learned counsel Mr. Salunke, appearing for the Respondents made following submissions. That the petition is filed against concurrent findings of fact. That the aspect of arrears of rent and sub-letting has not been pressed by the Petitioner. That initially open land was given for tethering cattle and doing milk business. However, there is no tenancy agreement and rent receipt was not issued for specific purpose. That the rent receipt dated 26.10.1981 clearly shows reference to House No. 4/221 - two rooms and northern side open land. That therefore, no specific purpose can be concluded. That open piece of land was given on rent admeasuring 5800 sq. ft. on which Respondent No.1 constructed a shed and is doing garage business. That the Petitioner has admitted in cross-examination that he attained majority in 1981 and suit is filed in 1994. That both Trial Court and Appellate Court have

held that there are no pleadings of the Plaintiff that suit property is required for reasonable and bona-fide requirement and therefore, evidence in that regard has to be rejected, being beyond pleadings. That there are no pleadings about change of user and hence, even if garage is being run on the suit property, decree on that ground cannot be granted, also for the reason that, the tenancy was not created for specific purpose. That even on ground of Section 13(1)(i) of Bombay Rent Act, since it is held that suit property is not open land and existence of shed and garage is not disputed and since it is also not open land as per rent receipt, provisions of Section 13(1)(i) cannot be applied. He submitted that in the absence of pleadings, financial capacity to construct building is not enough and therefore, relief has been rightly rejected by the Courts below. He fairly conceded that comparative hardship u/s. 13(2) may not be a relevant consideration here. He relied upon the Judgment of Vasant Badoo Kulkarni v/s. Yasin Ahmed Mujawar [(1998) 3 Mh. L.J. 62] in support of his case.

REASONS AND CONCLUSIONS

9. I have carefully considered the submissions. For objective satisfaction, I have perused the record and proceedings.

10. Admittedly, the parties have proceeded with the suit on understanding each other's case, as that of default, sub-letting and bonafide requirement u/s. 13(1)(i), which is clear from the issues and points framed for consideration. In that view of the matter, the hints of arguments found in Mr. Kulkarni's submissions about 'change of user u/s. 13(1)(k)' and 'erection of permanent structure u/s. 13(1)(b)' can not be considered for the first time in writ petition. For this reason, the judgment of Vasant Shankar Choudhari (supra) considering eviction u/s. 13(1)(b) of the Bombay Rent Act will not help the Petitioner.

11. So far as grounds of sub-letting and default are concerned, having gone through the record and impugned judgment, I find that the Trial Court and Appellate Court, after considering the demand of arrears in suit notice, its period, tender of amount by Respondent No. 1 alongwith notice reply and deposit in Court, have concluded that there is no default. Also, after considering the garage bill books, its name and record standing in the name of Respondent No. 1 as well as nature of possession of Respondent Nos. 2 & 3, have concluded that illegal sub-letting is not proved. Therefore, these concurrent findings on issues of default and sub-letting, need no interference.

12. However, the ground of bona-fide requirement has altogether a different story. In the plaint paragraph No.1, it is clearly pleaded that the property as described in the schedule was an open plot owned by the Plaintiff. The Plaintiff has also clearly pleaded in paragraph 3 as under:

"(3) The Plaintiff intends to make and complete an ownership Apartment scheme on the said plot, for which he has drawn necessary plans of the proposed building and got them sanctioned from the Competent Authority. The Plaintiff humbly submits that he has ample and sufficient funds with him to carry out the

proposed construction and complete the scheme.

The Plaintiff submits that for the reasons and grounds stated in section 13(1)(I) of the Bombay Rent Act, the Plaintiff requires the suit property for constructing a building thereon for which the Plaintiff issued a notice dt. 28-6-1993 to the Defendant. However, the defendant did not comply with the notice. Hence the present suit for possession of the suit property."

[emphasis supplied]

13. The case under Section 13(1)(i) has been pleaded by amendment, allowed per the order below Exh.128, carried out on 16.01.1997.

14. Perusal of the written statement indicates that a stand is taken that the suit property was taken on lease for business purpose without any specification about 'which business' can be carried out. So far as the case of bona-fide requirement u/s. 13(1)(i) is concerned, the only denial is in paragraph No.6 of the written statement which reads, as under :

"6. The contents in para 3 of the plaint starting from, "The Plaintiff intends", till the end of para "of the suit property" are false & are not admitted by defendant."

15. The defence in support of comparative hardship is seen in paragraph No.16 of the written statement which reads as under:

"16. The Plf. & his family members own & posses plenty of open plots in and around Baramati City, they have sold some of the land, to a void liability of ceiling Act so they are not in need of suit plot. Their requirement is not bonafide. On the contrary the def. has got a big family with 4 sons & has no source of income except a traditional retail shop of edible oil and the garage run in the suit premises. These are, the only two sources of income to the def. As against this the plf & his family members have many many shops which can not be counted & the turn over of the entire family is in crores. So if the eviction decree is passed more hardship will be caused to the def. but if the eviction decree is refused no hardship will be caused to the plf."

16. It is therefore clear that the averment of the Plaintiff about bona-fide requirement u/s. 13(1)(i) is only generally denied. In the aforesaid situation of pleadings, in my view, when section 13(1)(i) is clearly referred by the Petitioner, it cannot be said that there is no pleading about suit property being reasonably and bona-fide required by the landlord for erection of new building. There is no bar from pleading law (such as mentioning a section) thought it is not required. Therefore, there is no merit in the argument of the learned counsel for the Respondents that in the absence of pleadings about requirement, the evidence in support of the same cannot be considered. Therefore the finding of the Appellate Court in paragraph 26 of the impugned Judgment about lack of pleading is perverse and requires interference.

17. Record shows that the Plaintiff has produced commencement certificates

dated 13.03.1987 and 20.04.1992 of Baramati Municipal Corporation along with sanctioned plan of the proposed development. He has also produced application for extension of permission. Perusal of the suit notice dated 28.06.1993 indicates that delivery of the vacant possession was demanded.

18. The Plaintiff has entered witness box and has led oral evidence and has stated as follows.

(a) That suit property is owned by him.

(b) That suit property is open piece of land which was given to father of Respondent No.1 for milk business of which cattle used to be tethered.

(c) That when the suit property was given on rent there was no construction thereon.

(d) That the father of Respondent No.1 paid rent up to 1981 and no rent is paid thereafter.

(e) That he is working as promoter builder engaged in the business of building construction.

(f) That he wishes to construct on the suit property which is required for use for himself and others.

(g) That he has taken permission from local authority and he has made financial arrangement for the proposed construction. That he has produced necessary sanctioned plan and commencement certificate. That he has also made necessary arrangement for raising money for expenses from the bank. That he has produced balance certificate from the bank.

(h) That Respondent No.1 has started garage who is helped by Respondent Nos.2 to 3.

(i) That Respondents do not conduct milk business anymore in the suit property.

(j) That he wants possession of the suit property from Respondents for the purpose of construction.

(k) He has denied the suggestion that the Respondent will suffer great loss if they are required to vacate the suit property.

(l) A suggestion seems to have been given to the Petitioner in the cross-examination about certificate required u/s. 13(1)(h) of the Bombay Rent Act. It is material to note that Section 13(1)(h), is a ground for eviction when the premises are reasonably and bonafide required by landlord 'for carrying out repairs which cannot be carried out without premises being vacated'. This ground has no relevance in the present case, as the case pleaded by the Petitioner landlord is specifically u/s. 13(1)(i) of the Bombay Rent Act.

19. It is therefore seen that the basic case of bona-fide requirement of suit

property which is a piece of open land, reasonably and bona-fide for erection of new building, has not been shaken fatally. I wonder what more a landlord is required to plead or state in the witness box? If this is not sufficient, then what is ? It has been held dozens of time by this Court and Hon'ble Supreme Court that landlord is the best judge of his requirement. Neither the Court nor the tenant can dictate terms to the landlord.

20. In view of the aforesaid, it is necessary to see now how the Appellate Court, which is a last fact finding Court, has dealt with the eviction on that ground.

21. In paragraph No.25 of the impugned judgment of the Appeal Court, the argument advanced on behalf of the Petitioner is recorded. So far as requirement u/s. 13(1)(i) is concerned it is observed by the Appellate Court that in the absence of pleading, evidence cannot be considered and parties cannot be permitted to travel beyond its pleading. The Appeal Court has held that "nowhere it is pleaded that the Plaintiff needs possession of plot for his own purpose". Here, the Appellate Court has seemingly confused between bona-fide requirement u/s. 13(1)(g) and 13(1)(i) of the Bombay Rent Act. The Appellate Court has then held that "explanations reasonable and bonafide do not mean that the landlord has to prove mere financial capacity and sanction of the authorities".

22. Surprisingly at the end of paragraph No.26, the Appellate Court simply stated that the Petitioner has failed to make out a case u/s. 13(1)(i) of the Bombay Rent Act.

23. The Appellate Court has, in fact, at the end of paragraph No.28 (which is a very long paragraph) accepted by stating "No doubt, Plaintiff has stated that he want possession of plot for his own use and further also it would be beneficial for others. Whatever it may be, the case under Section 13(1)(i) is not proved".

24. It will have to be borne in mind that the first appellate Court is the last fact finding court. In the teeth of pleading and evidence of Petitioner landlord as explained above, it could not have been held that the requirement is not proved. As already held above, there are sufficient pleadings to make out the case u/s. 13(1)(i) of the Bombay Rent Act. Therefore, in my view, the Appellate Court has not given any clear reason for rejecting the case u/s. Section 13(1)(i) of the Bombay Rent Act and therefore appreciation of the evidence is perverse. Hence, interference under Article 226 and 227, as invoked, is necessary.

25. So far as the argument of the Respondents that the Petitioner became major in 1981, is concerned, it can have some bearing on the events prior to 1981. However, the same can have no bearing on the aspect of requirement pleaded in the plaint filed in April 1994 and duly supported in oral evidence by entering into witness box.

26. So far as the xerox copy of rent receipt dated 26.10.1981 sought to be produced before this Court is concerned, it is material to note that DW1-

Respondent No. 1 in his cross examination (paragraph 10) has admitted that he has no rent receipt or other documentary evidence about rent paid after 31.05.1981. Therefore it is clear that above xerox copy of rent receipt was not produced before the Courts below. Even then, said xerox copy only suggests house numbers mentioned along with open place on the norther side. Based on this xerox copy, it is contended by the learned counsel for the Respondents that it is not an open plot of land and therefore, decree u/s. 13(1)(i) of the Bombay Rent Act cannot be granted. In this respect, it is material to note that DW1 - Respondent No.1 has clearly admitted in the cross-examination (paragraph 8) that initially when the suit property was let out to his father, it was 'open piece of land' and they constructed 4 to 5 thousand square feet shed thereon, in which garage is present and cattle is also tethered. In view of this clear admission, the Respondents cannot argue that section 13(1)(i) of the Bombay Rent Act will not apply, as admittedly the suit property was let out as open piece of land.

27. Lastly, so far as the judgment of Vasant Badoo (supra) relied upon by the learned counsel for the Respondent is concerned, in that case, this Court dealt with difference between case made out u/s. 13(1)

(g) and case made out u/s. 13(1)(i) of the Bombay Rent Act. It is held therein that "suit for possession of open land let out to a tenant claiming his eviction for the construction of a building will be governed by the provisions contained in section 13(1)(i) of the Bombay Rent Act despite the fact that building so erected will be occupied personally by the landlord and despite the fact that there is a similarity of expressions relating to the requirements of the landlord in two clauses i.e. clause (g) and clause (i) of section 13(1) of the Bombay Rent Act." It is further held that "landlord's claim under section 13(1)(i) cannot be rejected merely on the ground that on the date of filing of the suit, building plan was not ready or that he did not possess sufficient bank balance." It is also held that "absence of sufficient actual balance in Bank by itself cannot straight-away lead to inference of want of bona-fides." It is also held that "there is no such criteria for ascertaining bona-fides of the landlord's claim under section 13(1)(i) of the Bombay Rent Act. Bona-fides of such claim have to be decided on the facts and circumstances of each case". It is also held that "in order to succeed under section 13(1) (i) the landlord has to establish reasonable and bona-fide requirements irrespective of the fact that he has obtained sanction from the Municipal Authorities and is in possession of necessary funds."

28. In the present case, as explained above, the Petitioner landlord has met with more than what is required as per above judgment. Apart from proving his bona-fide requirement, it is additionally proved that he has financial capacity as well as necessary permissions by producing commencement certificate and sanctioned plan as well as deposing about sufficient bank balance. Therefore the said judgment does not help the Respondents at all.

29. Although consideration u/s. 13(2) of the Bombay Rent Act may not be required as eviction is not sought u/s. 13(1)(g) thereof, it may be just noted that

DW1- Respondent No.1 has also admitted in his cross-examination that he has a two storey building in Bigwan Chowk at Baramati in which backside open place has been given for development. He has admitted that it was 1300 sq. ft. space out of which 1000 sq. ft. area has been constructed on.

30. Rest of the case-law relied upon by the Petitioner is about bona-fide requirement u/s. 13(1)(g) and comparative hardship u/s. 13(2) of the Bombay Rent Act. Since those issues are not directly involved in the present case, it is not necessary to discuss them and burden the present judgment any further.

31. In the net result, the petition succeeds partly, only to the extent of bona-fide requirement u/s. 13(1)(i) of the Bombay Rent Act. The impugned judgment and decree dated 06.02.2002 is quashed and set aside and Civil Appeal No. 88 of 1997 is allowed, only to the extent of decree under u/s. 13(1)(i) of the Bombay Rent Act. Reg. Civil Suit No. 152 of 1994 is decreed only on the ground u/s. 13(1)(i) of the Bombay Rent Act and Respondents are directed to hand over vacant and peaceful possession of the suit property to Petitioner, within a period of 6 weeks from today.

32. Rule is made partly absolute and writ petition is disposed of in above terms. No order as to costs.

33. All concerned to act on duly authenticated or digitally signed copy of this order.