

**(2003) 02 BOM CK 0089**

**In the Bombay High Court**

**Case No : Writ Petition No. 7416 of 2002**

Mudhusudan R. Talathi and Gulabchand R. Talathi APPELLANT

Vs

Nandkumar Chintaman Kane and Dilip alias Dhananjay C. Kane RESPONDENT

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**Date of Decision : 24-02-2003**

**Acts Referred:**

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1), 13(2), 13(3A), 13(3B), 17

**Citation : AIR 2003 Bom 404 : (2003) 3 ALLMR 683 : (2003) 5 BomCR 782**

**Hon'ble Judges : R.M.S. Khandeparkar, J**

**Bench : Single Bench**

**Advocate : K.S. Shreepad Murthy, for the Appellant; G.S. Godbole, for the Respondent**

**Final Decision : Dismissed**

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## Judgement

1. Heard the learned Advocates for the parties. Perused the records. Rule. By consent, the rule is made returnable forthwith.
2. The petitioners are challenging the order dated 29-11-2002 passed by the Court below on an application filed by the respondents for delivery of possession of the newly built premises in terms of the compromise decree dated 9-6-1998 passed by the Court below in Reg. Civil Suit No. 60 of 1997.
3. Placing reliance upon the decision of the Apex Court in the matter of Ram Nath and Another Vs. Ram Nath Chhittar Mal and Others, and an unreported decision of the learned single Judge of this Court delivered on 29-1-2000 in Writ Petition No. 1048 of 1987 Prabhakar Raghunath Sansare and Ors. v. Laxmibai Gopal Shere and Ors., it is sought to be contended on behalf of the petitioners that the rented premises in possession of the respondents was not delivered to the petitioners on or before 9-6-1998, as was agreed upon between the parties and as was also directed by the Court below in the consent decree and thereafter the premises collapsed on 1-7-1998 while it was in possession of the

respondents and therefore the application u/s 17B of the Bombay Rents, Hotel and Lodging Rates (Control) Act, 1947 (hereinafter referred to as "the said Act") was not maintainable and the Court below having passed the order in contravention of the said provisions of law, the same is illegal. On the other hand, referring to the scheme relating to delivery of possession of the rented premises by the tenant to the landlord for the purpose of reconstruction, as disclosed from the provisions of Section 13(1)(hh) r/w Sections 17, 17A, 17B and 17C of the said Act, and drawing attention to the decision of the Apex Court in Smt. Parvatibai Subhanrao Nalawade v. Anwarali Hasanali Makani and Ors., reported in 1993 Bom. R.C. 404, it was sought to be contended that the records apparently disclose that the construction, including that of the premises, had commenced by the petitioners before 31-7-1998 without any grievance regarding non-compliance of any of the provisions of law and even the purshis filed by the parties on 23-6-1998 did not disclose any grievance of the petitioners for non-delivery of the possession on 9-6-1998, as was otherwise required to be delivered under the consent decree, and it is not the case of the petitioners that the construction of the new premises was delayed or withheld on account of the delay on the part of the respondents for delivery of the possession and hence no fault can be found with the impugned order.

4. Undisputedly, the parties arrived at settlement as regards the need for construction of the new premises at the site of the leased premises and accordingly the consent decree was obtained on 9-6-1998. Under the said decree, the possession of the rented premises was required to be delivered on the very day. In fact, necessary settlement in that regard was arrived at between the parties on 27-4-1998. However, it is also a matter of record that the respondents/tenants did not deliver the possession of the leased premises to the petitioners on 9-6-1998. Their own statement in the application filed for the recovery of the premises disclose that they were removing their belongings and articles from the leased premises till 30-6-1998. It is also a matter of record that the old premises collapsed on 1-7-1998. Further facts on record disclose that the construction of the new premises began prior to 31-7-1998. Meanwhile, the parties also filed purshis on 23-6-1998 confining the settlement arrived at between themselves.

5. From the facts on record, it is apparent that there was no grievance made by the petitioners at any point of time that on account of the delay in delivery of the rented premises to the petitioners by the respondents, there was any sort of hindrance or obstruction caused to the petitioners in carrying out the construction of the new building. On the contrary, the construction of the new building had admittedly commenced immediately after 1-7-1998 and prior to 31-7-1998. As rightly submitted by the learned Advocate for the respondents, no grievance was made by the petitioners even on 23-6-1998, delaying the delivery of possession of the suit premises and this is apparent from the pursis filed by the parties in the Court on 23-6-1998. Even in the letters addressed by the petitioners to the respondents on 31-7-1998, apart from some loss having been

caused to the petitioners on account of delay in delivery of possession, no grievance is made about any obstruction having been caused or any prejudice having been caused in the matter of construction of the new premises to the petitioners. In the back ground of these facts, it is necessary to ascertain from the provisions of law contained in the said Act whether the respondents have lost their right to approach the Court below to seek recovery of possession of the new premises in terms of the consent decree dated 9-6-1998.

6. Section 13(1)(hh) of the said Act provides that when the premises consist of not more than two floors and are reasonably and bona fide required by the landlord for the immediate purpose of demolishing them and such demolition is to be made for the purpose of erecting new building in place of the premises sought to be demolished, the landlord is entitled to recover the possession of the leased premises, on the Court being satisfied about the existence of the circumstances disclosed in the said provisions of law. Section 13(3A) of the said Act provides that no decree for eviction shall be passed on the ground specified in Clause (hh) of Sub-section (1), unless the landlord produces at the time of the institution of the suit a certificate granted by the Tribunal under Sub-section (3B) and gives an undertaking that the new building to be erected shall, subject to the provisions of any rules, by-laws or regulations made by a local authority, contain not less than two times the number of residential tenements, and not less than two times the floor area, contained in the premises sought to be demolished, that the work of demolishing the premises shall be commenced by him not later than one month, and shall be completed not later than three months, from the date of recovery of possession of the entire premises, that the work of erection of the new building shall be completed by him not later than fifteen months from the said date, provided that, where the Court is satisfied that the work of demolishing the premises could not be commenced or completed, or the work of erection, of the new building could not be completed, within time for reasons beyond the control of the landlord, the Court may by order for reasons to be recorded extend the periods by such further periods, not exceeding three months at a time as may, from time to time, be specified by it, so however that the extended period shall in each case not to exceed twelve months in aggregate. Section 17A(1) provides that where a decree for eviction has been passed by the Court on the ground specified in Clause (hh) of Sub-section (1) of Section 13 and the work of demolishing the premises has not been commenced by the landlord within the period specified in Clause (b) of Sub-section (3A) of the said section, the tenant may give the landlord a notice of his intention to occupy the premises from which he has been evicted and if the landlord does not forthwith deliver to him the vacant possession of the premises on the same terms and conditions on which he occupied them immediately before the eviction, the tenant may make an application to the Court within six weeks of the date on which he delivered vacant possession of the premises to the landlord. Sub-section (2) provides that if the Court is satisfied that the landlord has not substantially commenced the work of demolishing the premises within the period of one month in accordance

with his undertaking, the Court shall order the landlord to deliver to the tenant vacant possession of the premises on the terms and conditions on which he occupied them immediately before the eviction. On such order being made the landlord shall forthwith deliver vacant possession of the premises to the tenant. Sub-section (3) provides that any landlord who recovers possession on the ground specified in Clause (hh) of Sub-section (1) of Section 13, and fails to carry out any undertaking referred to in Clause (a), (b) or (c) of Sub-section (3A) of the said Section without any reasonable excuse or fails to comply with the order of the Court under Sub-section (1) shall, without prejudice to his liability in execution of the order under Sub-section (2), on conviction be punishable with imprisonment for a term which may extend to three months or with fine or with both.

7. Section 17B of the said Act provides that where a decree for eviction has been passed by the Court on the ground specified in Clause (hh) of Sub-section (1) of Section 13 and the work of demolishing the premises and of the erection of a new building has been commenced by the landlord, the tenant may, within six months from the date on which he delivered vacant possession of the premises to the landlord, give notice to the landlord of his intention to occupy a tenant in the new building on its completion on the conditions, that he shall pay to the landlord the standard rent in respect of the tenement, and that his occupation of the tenement shall, save as provided in condition (a) above, be on the same terms and conditions as the terms and conditions on which he occupied the premises immediately before the eviction. As regard the standard rent, the proviso to Section 17B specifies that in respect of residential tenement, the tenant concerned shall not be required to pay rent in relation to the area at more than double that rate at which he paid rent for his former premises, immediately before his eviction under the decree unless the landlord obtains an order of the Court fixing the standard rent in respect of the tenement at a higher rate.

8. Section 17C of the said Act provides that on receipt of notice from the tenant u/s 17B, the landlord shall, not less than three months before the date on which the erection of the new building is likely to be completed, intimate to the tenant the date on which the said erection shall be completed and on the said date the tenant shall be entitled to occupy the tenement assigned to him by the landlord. Sub-section (2) of the said Section provides that if the tenant fails to occupy the tenement within a period of one month from the date on which he is entitled to occupy it under Sub-section (1), the tenant's right to occupy the said tenement under the said sub-section shall terminate and the landlord shall be entitled to recover from the tenant a sum equal to three times the amount of the monthly standard rent in respect of the tenement. It further provides that if the landlord fails to comply with the provisions of Sub-section (1) or to place the tenant in occupation of the tenement, he shall, without prejudice to his liability to place the tenant in vacant possession of the tenement, on conviction, be punishable with imprisonment for a term which may extend to three months or with fine or with both.

9. From a perusal of the provisions of law relating to delivery of possession of the tenement or the premises for the purpose of reconstruction thereof construction of a new premises in place of the old premises and the right of the tenant to recover possession in the newly built building in place of the old tenement pursuant to the delivery thereof in terms of the provisions of law contained in Section 13(1)(hh) of the said Act, it is apparent that though certain time limits are prescribed for different stages in the process of delivery of possession of the old premises, the construction of the new premises and to claim possession of the newly built tenement as well as to occupy the same, the entire scheme in that regard apparently disclose that certain amount of discretion is left to the Court to decide in a given case to extend such periods when difficulties in complying with the stages and the periods fixed under the said Act is brought to the notice of the Court and justifiable grounds are disclosed for the same. Apparently, therefore, the provisions regarding the fixation of time limits for such different stages cannot be said to be mandatory in nature but the provisions are to be applied in each case depending upon the facts of each case brought to the notice of the Court and after considering the circumstances which may warrant the extension of the period for all or any one of such stages.

10. Undoubtedly, Section 17B speaks of time limit of six months for the purpose of application by the tenant from the date of delivery of possession of the premises to the landlord. However, it does not specify that in case the possession of the old premises is received by the landlord otherwise than the actual physical delivery of the premises by the tenant that it will debar the tenant from approaching the Court u/s 17B. The section in fact speaks about the rights of the tenant to claim delivery of the new premises. The factum of delivery of possession of the old premises has been referred to in Section 17B not as a basis to claim right to recover the new premises but in order to specify the period of limitation to make the claim for delivery of the new premises. In fact, the right to recover possession of the new premises on its completion is assured to the tenant in Section 13(1)(hh) itself, apart from Section 13(3A) r/w Section 17C of the said Act. Being so, the provisions in Section 17B wherein it makes a reference to the factum of delivery of vacant possession of the leased premises by the tenant to the landlord cannot be made a condition precedent for the tenant to claim of delivery of the new premises in the new building. The statutory assurance given to the tenant under the provisions contained in Section 13(1)(hh) r/w Sections 13(3A) and 17C of the said Act cannot be denied to the tenant by interpreting Section 17B to the benefit of the landlord merely on the basis of failure on the part of the tenant to delivery the possession of the tenanted premises in terms of the decree of eviction u/s 13(1)(hh). Such an interpretation would in fact amount to defeating the very purpose of the provisions of law contained in Section 13(1)(hh) r/w Sections 13(3A) and 17C, besides being contrary to the basic principles of law of interpretation as these provisions are essentially for the benefit of the tenants and to ensure that they are not evicted otherwise than following the provisions of law contained in the said Act.

11. Section 13(3A) of the said Act does not permit the landlord to get a decree for eviction of the tenant on the ground mentioned in Section 13(1)(hh) unless certain preconditions specified therein are satisfied. It clearly requires the Court to get satisfied about the fact that the landlord would commence the work of demolition of the old premises within one month from the date of recovery of possession of the old premises and completes the demolition within a period of three months and thereafter would complete the construction of the new building within a period of fifteen months. Not only that the Court should be satisfied about these facts but the landlord has to furnish necessary undertaking in that regard to the Court before being armed with the decree of eviction of the tenant. Further, in case the landlord finds it difficult to complete the construction within the specified period, undoubtedly, the landlord can seek extension of the period of fifteen months on satisfying the Court about the need for such extension of the period and the Court passing an order in that regard for the reasons to be recorded by the Court. The matter does not end there. The provisions in Section 17A, as noted above, entitles the tenant to seek re-delivery of the possession of the old premises in case the landlord fails to comply with his undertaking and to carry out the demolition and construction of the new premises in place of the old premises within the specified period. In addition to that, the landlord may also face criminal prosecution for non-compliance of his obligation under the provisions of law relating to construction of the new premises.

12. The Legislature in its wisdom also has taken care to ensure that in case of failure on the part of the tenant to occupy the new tenement offered to him within the specified period, the tenant would loose the right to occupy the premises and consequently the tenancy rights to the benefit of the landlord and the provisions of law in that regard have been incorporated in Section 1709 of the said Act. Being so, a complete scheme in relation to the right of the landlord and the tenant pertaining to demolition of the old premises, and construction of the new premises as well as right of the parties to occupy the newly built premises is to be found in the above referred provisions of law in the said Act. The scheme also includes the right of the party to seek intervention of the Court for extension of the period specified for different stages in the process of demolition of the old building as well as construction of the new building and the delivery of the new premises.

13. Perusal of the impugned order as well as the various documents placed on record apparently disclose that the delay in delivery of possession of the old premises by the respondents to the petitioners was not without any justification and it was to the knowledge of the petitioners and even there was no grievance made by the petitioners in that regard, as rightly submitted by the learned Advocate for the respondents, and that is apparent from the pursis filed by the parties before the Court below on 23-6-1998 as well as from the letter dated 31-7-1998, addressed by the petitioners to the respondents. Only grievance made by the petitioners on account of such delay in delivery of possession was about the loss of Rs. 8200/-. Whether the petitioners would be entitled to claim

the same or not is totally an independent issue and not required to be gone into in this petition. However, the fact remains that the petitioners had commenced the construction of the new premises after obtaining the decree for eviction of the respondents from the premises in terms of the provisions of Section 13(1) (hh) and therefore the provisions relating to recovery of possession of the premises in the new building would apply to the respondents and mere delay in delivery of the possession which was apparently impliedly condoned by the petitioners cannot be a justification to deny such right to the respondents which has been specifically assured to them under the statutory provisions.

14. In Ram Nath's case (supra), the Apex Court has held that the tenant was not entitled to seek relief u/s 15(3) of the Delhi and Ajmer Rent Control Act, 1952. The judgment of the Apex Court transcribes the provisions of Section 15 of the Delhi and Ajmer Rent Control Act, 1952 and Sub-section (1) of Section 15 thereof reads thus:

"The Court shall, when passing any decree or order on the grounds specified in Clause (f) or Clause (g) of the proviso to Sub-section (1) of Section 13 ascertain from the tenant whether he elects to be placed in occupation of the premises or part thereof from which he is to be evicted and if the tenant so elects, shall record the fact of the election in the decree or order and specify therein the date on or before which he shall deliver possession so as to enable the landlord to commence the work of repairs or building or rebuilding, as the case may be.

Clause (g) of Section 13(1) of the Delhi and Ajmer Rent Control Act, 1952, on which the eviction of the tenant in the said case was sought for, provided that the landlord can obtain a decree for recovery of possession of the tenanted premises on the Court being satisfied that the premises are bona fide required by the landlord for the purpose of rebuilding the premises or for replacement of the premises by any building or for erection of other building and that such building or rebuilding cannot be carried out without the premises being vacated. Once such possession of the tenanted premises is obtained in terms of the provisions of Section 13(1)(g) of the Delhi and Ajmer Rent Control Act, 1952, in terms of Section 15(3) a tenant who has delivered on or before the date specified in the decree or order and the landlord fails to commence the work of repair or building or rebuilding within one month of the specified date or fails to complete the work in a reasonable time or having completed the work, fails to place the tenant in occupation of the premises in accordance with Sub-section (2), the Court may, on the application of the tenant made within one year from the specified date, order the landlord to place the tenant in occupation of the premises or part thereof on the original terms and conditions or to pay to such tenant such compensation as may be fixed by the Court. Sub-section (2) of Section 15 provides that if the tenant delivers possession on or before the date specified in the decree or order, the landlord shall, on the completion of the work of repairs or building or rebuilding place the tenant in occupation of the premises or part thereof. Apparently, Section 15(2) clearly provides that in order to claim the

benefit of the provisions of law entitling the tenant to seek recovery of possession of the newly built premises, the tenant has to deliver the possession of the old tenanted premises on or before the date specified in the decree and only thereupon the landlord on completion of the work of repairs or building or rebuilding place the tenant in occupation of the newly built premises. Considering this provision and the provisions in Sub-sections (2) and (3) of Section 15, the Apex Court in the said decision has observed that admittedly the tenant therein had not delivered the possession of the tenanted premises on or before the specified date and that therefore the tenant could not have filed the application u/s 15(3). However, the decision is not on the point of loss of right of the tenant to claim recovery of possession of the tenement in the new building. On the contrary, such right has been specifically reserved to be dealt with in a suit which may be filed. In any case, it has not been brought to the notice of this Court that the said Act has provisions of law in pari materia with the provisions of law contained in Section 15 of the Delhi and Ajmer Rent Control Act, 1952. The decision given by the Apex Court specify the provisions contained in Section 15. In the absence of similar provision in the said Act, the said decision can be of no help to the petitioners to justify the challenge to the right of recovery of possession in the new building to the respondents which is otherwise specifically assured under the provisions of the said Act. Being so, the decision of the Apex Court in Ram Nath's case is of no help in the matter in hand.

15. As regards the decision in Writ Petition No. 1048 of 1987 (*supra*), it was in the facts of that case and it does not lay down any proposition of law as such and therefore can be of no help in the matter.

16. For the reasons stated above, no fault can be found with the impugned order passed by the Court below and therefore does not warrant any interference and on the contrary, considering the provisions of law contained in the said Act, the petitioners are not entitled to deny the right for recovery of possession in the new premises which is otherwise assured to the respondents under the provisions of the said Act. Hence the writ petition is dismissed and the rule discharged with no order as to costs.

17. At this stage, the learned Advocate for the petitioners requested for continuation of the interim relief. Considering the provisions of law and the facts and circumstances of the case, I am not inclined to grant any relief in the nature of continuation of the interim stay. Hence the request for continuation of the interim relief is rejected.

Certified copy expedited.