

(1980) 03 BOM CK 0026

In the Bombay High Court

Case No : Writ Petition No. 1637 of 1979

Nanlal Goverdhandas and Co. and Others

APPELLANT

Vs

Samratbai Lilachand Shah

RESPONDENT

Date of Decision : 18-03-1980

Acts Referred:

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

Citation : AIR 1981 Bom 1 : (1981) 83 BOMLR 6 : (1980) MhLj 867

Hon'ble Judges : Jahagirdar, J

Bench : Single Bench

Advocate : M.V. Paranjpe and Sudhir Shah, for the Appellant; K.J. Abhyankar, for the Respondent

Judgement

1. A question of law which has become interesting on the peculiar facts of this case has been raised in this petition. This is a petition under Article 227 of the Constitution of India arising out of proceedings initiated by the respondent in this petition under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, hereinafter referred to as "the Bombay Rent Act". The respondent is the landlady of a building bearing House No. 859 and situated at Budhwar Peth at Pune. The petitioners are the tenants of two rooms bearing blocks Nos. 2 and 8 which were subsequently amalgamated. Block No. 2 was taken on lease in the year 1933 and block No. 3 was taken on lease in the year 1943. The first petitioner is a partnership firm of which the other petitioners are the partners.

2. The building was originally owned by the husband of the respondent who during his lifetime on 31st of January, 1944 executed a will bequeathing the house, in which the premises tenanted by the petitioners (hereinafter referred to as "the suit premises") are situated, in favour of the respondent. This was one only of the other properties which were bequeathed by the respondent's husband to the respondent. In the year 1949 the respondent's husband died and

therefore the respondent became the full owner of the property.

3. At this stage it may be mentioned that apart from the widow-respondent, Lilachand -- the respondent's husband--left behind him two sons and two daughters. Two daughters are married and are not in the picture as far as this litigation is concerned. Similarly, one son also does not figure in this litigation. The other son called Ramanlal, who was 10 years old at the time when the respondent's husband executed the will, is the central figure in this litigation.

4. The respondent filed a suit, being Regular Civil Suit No. 3146 of 1974, against the petitioners for possession of the suit premises on various grounds. It is unnecessary to refer to the grounds other than the one which ultimately prevailed with the final Court of facts namely, the appeal Court below, that is what is mentioned as reasonable and bona fide requirement of the suit premises by the landlord for his own use and occupation as is mentioned in Section 13(1) (g) of the Bombay Rent Act. It was the case of the respondent as set out in the plaint and as deposed to by Ramanlal, her son, in the Court of first instance that the suit premises were required for the expanding business of Ramanlal who had in his possession small premises regarded as insufficient by him for the expanding business.

5. The petitioners resisted the suit by denying the reasonable and the bona fide character of the requirement of the respondent. It was also contended by them that if a decree for possession were passed, greater hardship would be caused to them than the hardship that would be caused to the respondent if a decree for possession were refused.

6. The learned trial Judge by his judgment and order dated 16th of November, 1976 dismissed the respondent's suit for possession holding that the respondent has failed to prove that there was on her part bona fide or reasonable requirement of the suit premises for her own use and occupation. While coming to this conclusion the learned trial Judge took into consideration the accommodation that was available to Ramanlal for his business. The learned trial Judge also held that greater hardship would be caused to the petitioners if a decree for possession were passed.

7. This order of the learned trial Judge was challenged by the respondent in Civil Appeal No. 19 of 1977 which was heard and partly allowed by the learned 2nd Extra Joint Judge of Pune by his judgment and order dated 20th of April, 1979. It had been contended before the learned appellate Judge that the requirement of the suit premises for, the expanding business of Ramanlal was not tantamount to the requirement of the same by the respondent who is the landlady of the suit premises. The respondent herself had not stepped into the witness box in the trial Court and thus there was an infirmity in the evidence led on behalf of the respondent. This infirmity was sought to be corrected to some extent at least by examining Ramanlal himself for whose benefit ultimately the possession of the suit premises was being sought. The learned 2nd Extra Joint Judge, after

considering a couple of authorities which were cited before him and after examining the provisions of Section 13(1)(g) of the Bombay Rent Act, formed an opinion that the requirement of the suit premises for the business of the son was covered by the said legal provisions. On facts he differed with the learned trial Judge and came to the conclusion that the premises which were in the occupation of Ramanlal were insufficient for his expanding business. While weighing comparative hardship that would be caused to the parties, the learned Judge came to the conclusion that the hardship that could be caused to the petitioners could be reduced by passing a decree for part only of the premises. This he did obviously under the second part of Sub-section (2) of Section 13 of the Bombay Rent Act. Aggrieved by the aforesaid order of the learned appellate Judge the petitioners have approached this Court under Article 227 of the Constitution.

8. Mr. Paranjpe, the learned Advocate appearing for the petitioners, has canvassed a view that the requirement of the suit premises for the business of the son by the respondent who is not dependent upon her, cannot be regarded as the requirement of the respondent u/s 13(1)(g) of the Bombay Rent Act. He has also not failed to mention that the bone fide and reasonable requirement of the landlady has to be proved by the landlady herself and admittedly in this case the landlady has neither stepped into the witness-box nor has got herself examined on commission. This also, according to Mr. Paranjpe, is a fatal defect in the case of the respondent.

9. Mr. Abhyankar, the learned Advocate appearing for the respondent, has taken me through several decisions not only of this Court but also of other High Courts which, according to him, lay down a proposition that the requirement by a landlord of suit premises for the purpose of any member of the family must be regarded as the requirement by the landlord himself. Mr. Abhyankar also mentioned that though the normal rule is that the landlord should examine himself to prove his bona fide and reasonable requirement, on the facts and circumstances of this case, it should be held that there is enough material before the Court to establish the fact of her reasonable and bona fide requirement

10. Before I proceed to consider the legal submissions and to examine the authorities cited before me some facts which are relevant to the determination of the question involved in this case must be mentioned. I have already mentioned earlier that the building in which the suit premises are situated has come to the respondent under a will made by her husband. The building is the absolute property of the respondent. Though Ramanlal was only 10 years old at the time when this will was made, he has since grown into an enterprising young man who has started business on his own. The evidence discloses that he deals in electric motors and water pumps. He got some selling agency and he is conducting the business in one of the rooms in the building in which the suit premises are situated. The trial Court itself has mentioned that Ramanlal has two rooms but having seen the discussion of the evidence by the learned Appellate

Judge, I am inclined to agree with Mr. Abhyankar that that finding is incorrect. Ramanlal has only one room and this can be taken as an established fact. It can also be taken as an admitted position that Ramanlal has his residence elsewhere and is not staying in the suit building either separately or with his mother. It has not been brought on record that Ramanlal is economically dependent upon his mother nor vice versa. The will under which the respondent inherited the property imposes upon her certain obligations. In the first place, it obliges the respondent to give education to Ramanlal who at the time of the will was only 10 years old. The respondent was also directed by her testator husband that she should get him married. Thereafter the will proceeds to give the following direction:--

"If he desires to do independent business Rs. 10,000 should be paid to him as capital for his business."

By way of clarification I may mention that the will itself does not say that the respondent should provide Ramanlal with any accommodation either for residence or for business in the building in which the suit premises are situated.

11. A bare analysis of the relevant legal provision may precede the examination of the authorities cited before me. Section 13 of the Bombay Rent Act in so far as it is relevant for the disposal of this petition, is in the following terms:--

"13 (1) Notwithstanding anything contained in this Act. a landlord shall be entitled to recover possession of any premises if the Court is satisfied-

(a) to (f)

(g) that the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held.".

The words used in the Act itself indicate that the requirement must be by the landlord for occupation by himself. The question that has often arisen in the past and has not failed to arise even presently is whether the requirement by the landlord of the premises to be occupied or used by persons other than himself should be covered by the words "by himself". It could not have been, as has been pointed out by some decisions, that the intention of the Legislature was to restrict the recovery of the premises by the landlord when he alone was to use the same. If the landlord, for example, desires that his widowed daughter should occupy the premises owned by him, it would be for occupation by himself as mentioned in Clause (g). This is so because the words to be found in Clause (g) of Section 13(1) properly interpreted must mean that the requirement of the premises by the landlord's daughter is the requirement by the landlord and not by the daughter. It is the requirement by the landlord that his daughter should occupy the premises and in that sense the requirement is said to be by the landlord. Though the words used in Section 13(1)(g) "for occupation by himself" are apparently restrictive, they in fact, if properly interpreted in the context of

the scheme of the Act, indicate that when a landlord requires the premises for occupation by members of his family or persons who are otherwise dependent upon him, it must mean that it is for occupation by himself. This in fact is the result of several decisions to which I will make a brief reference.

12. One of the earliest judgments which was cited was *Institute of Radio Technology v. Pandurang Baburao* 47 Bom LR 825 : AIR 1946 Bom 212. That was a case under the Bombay Rent Restriction Act, 1939 Section 11 of which is similar to the provisions contained in Section 13(1)(g) of the Bombay Rent Act with which we are now concerned. It was contended before the Division Bench which decided in that case that the words in that section were that the premises must be required by the landlord for his own occupation, that the first plaintiff was dead and the second plaintiff, who was his son, did not require those blocks for his own occupation. It was found on the evidence led that the first plaintiff, when he was alive, had gone into the witness-box and stated that his family consisted of his son, his widowed sister and others. Thereafter the Division Bench expressed its opinion in the following terms:--

"The learned Judge was presumably satisfied with the evidence that those persons were the plaintiffs dependents, and that therefore they were entitled to live along with the plaintiff. In my opinion, the words "his own occupation" mean occupation of himself and all persons who are dependent on him."

This case, therefore, must be taken as an authority for the proposition that if the landlord requires the premises even for the occupation of the members of his family it should be regarded as the requirement for occupation by himself.

13. This decision was approvingly cited by the Division Bench of the Nagpur High Court in *Balbhadra Beharilal v. Premchand Lalchand* AIR 1953 Nag 144. In that case it was held that the need of the widowed daughter and her children must be deemed to be the need of the landlord. The facts of this case show that persons for whose benefit the possession was being sought by the landlord were his dependents. This was obviously held to be covered by the expression "landlord's requirement" to be found in C. P. and Berar Letting of Houses and Rent Control Order, 1949. In the same judgment a reference was made to an unreported judgment of Chagla C. J. in *Parikh v. Occhalal Parikh* to which I will presently make a detailed reference. Mr. Abhyankar, the learned Advocate appearing for the respondent, has placed, not unjustifiably, great reliance upon that unreported judgment. Before I do that, however, I will briefly make a reference to two more judgments cited by Mr. Abhyankar. One is another judgment of the Nagpur High Court in *Shankarlal Shionarayan Rathi v. Additional Deputy Commissioner* AIR 1951 Nag 22. It was also a case arising under the C. P. and Berar Letting of Houses and Rent Control Order and it was held in that case that the provisions of the C. P. and Berar Letting of Houses and Rent Control Order did not effect any change in the personal law of the landlord. It was further held:

"Where he is governed by the Hindu law the needs of the son who though

separate in residence is yet joint in estate to occupy the family house cannot be brushed aside as the needs of a mere relation."

14. The two decisions to which I have made a reference earlier lay down that the requirement for the occupation of the dependents was the requirement by the landlord for occupation by himself. Shankarlal's case goes further and says that the requirement of a son who is a member of the joint family but who is staying separately should be construed as the requirement by the landlord for himself. In the same volume, namely AIR 1951 Nag 51 is another judgment V.M. Deshmukh v. K.M. Kothari. The facts of this case disclose that the landlord who sought possession of the premises from his tenant sought them on the ground that his wife, who was a doctor, wanted to start maternity home in those premises. It was held as follows:

"Though the word is used in the last part of the clause in conjunction with the word "own", it does not show that the "business" must be one which the landlord himself is carrying on. Such interpretation would be in conflict with the meaning accorded to the word his in the clause. Thus what is meant by the word "own" is something in which the landlord or his family have pecuniary interest and looked at this way the business of running Maternity Home by the landlord's wife would clearly fall within Sub-clause (vi) of Clause 13 of the Order."

From this it may be deduced that if there is any inter-relationship between the interests of the landlord and of the person for whose benefit the possession of the premises is being sought it would be covered by the expression "of the requirement by the landlord for occupation by himself."

15. In Bidhubhusan Sen Vs. Commissioner, Patna Division and Another, the provisions of the Bihar Buildings (Lease, Rent and Eviction) Control Act. 1947, fell for interpretation. In Section 11(3)(a) a phrase analogous to the phrase to be found in our Act was used. The relevant phrase was "his own occupation" Interpreting this phrase the Division Bench of Patna High Court held as follows:--

"The expression "his own occupation" in Section 11 (3) (a) cannot be restricted only to the occupation of the landlord himself but should be given the wider and liberal meaning so as to include the occupation of persons who are living with the landlord and are economically dependent on him. Hence where the landlord requires the premises for establishing his nephew (sister's son) who is living with him and dependent on him, in business we would be entitled to an order in his favour".

This proposition again is similar to the one which has been laid down by two of the decisions to which I have made a reference earlier that the requirement of the dependent would be the requirement by the landlord for occupation by himself. It may not be out of place to mention that in Bidubhusan's case the Patna High Court referred to two decisions of the Nagpur High Court in B.M. Deshmukh v. K.M. Kothari AIR 1951 Nag 51 and Balbhadra Beharilal v. Premchand Lalchand AIR 1953 Nag 144 among others and agreed with the same

Indeed the proposition which they laid down was regarded as a part of the consensus of the judicial opinion in the country on the basis of the decisions examined by them.

16. There is another judgment to which also I must refer and that is the judgment of the single Judge of the Gujarat High Court in Mohanlal Narottamdas v. Bechardas (1967) 8 Guj LR 620. The learned single Judge in that case has held as follows:--

"When members of a family live together and look upon themselves as a unit, the Court is entitled to consider the requirement of any one or more of such members as that of the landlord who is ejecting the tenant. It will in such a case make no difference whether such requirement is for the purpose of residence or of business."

The learned Judge then proceeded to refer to the decision of Chagla C. J. in Jayantilal Muljibhai v. Ochhavlal Vithaldas Parikh (Civil Revision Application No. 751 of 1950 decided on 23rd November 1950).

It may incidentally be mentioned that this decision of Chagla C. J. is an unreported decision and a copy of the same is not available in the record of this Court though it was a decision of this Court. The reason seems to be that the civil revision application must have arisen from a matter in one of the districts which have now gone to the State of Gujarat and the record of the case must have been sent to Gujarat High Court. In Mohanlal Narottamdas's case the facts of Jayantilal's case have been set out in detail and extracts from the judgment of Chagla C. J. have been reproduced. I am depending upon the extracts of the judgment reproduced in Mohanlal's case. The learned Chief Justice has observed in that judgment that he did not think that it was the intention of the Rent Restriction Act to disrupt a family and to drive members of the family out because they started earning and were not dependent upon a member who paid the rent and in whose name the premises stood.

17. Strong reliance has been placed by Mr. Abhyankar on the following part of the judgment of Chagla C. J. It is as follows:--

"It is immaterial whether they were members of a joint family or not. But if members of a family live together, mess together and look upon themselves as a unit, the Court is entitled to consider their requirements as requirements of the landlord who is seeking to eject the tenant."

It is not possible for me to say that Shri Abhyankar can derive any support from those observations because on the facts of our case, as I will show presently, the law laid down in the judgment of Jayantilal's case is not applicable. Besides, it has been mentioned in the said judgment that there was evidence in that case that the plaintiff and his brothers, his father and his grandfather were all living together. The fact they were messing together and were also living together weighed with the learned Chief Justice, despite the fact that they were not joint

in estate. The requirement of one should be regarded as the requirement of the other. It would be fruitful to reproduce another paragraph from the same judgment which is as follows:

"The position might have been different if a member of the family who is not a dependent wanted for the first time to come and stay with the plaintiff and if the plaintiff wanted additional accommodation for the benefit of the member of the family. But when we have a case as we have here of all the members staying together, then the members of the family are in the same position as the dependents of the landlord."

While one may agree without reservation with the observations made by Chagla C. J. in that case, as I will show presently, the proposition which is deducible from the said judgment is not the one that has been formulated by Mr. Abhyankar.

18. Before I proceed to enumerate the propositions which have emerged from the various decisions so far considered. I must make a brief reference to the judgment of the Supreme Court in *Shantilal Thakordas and Others Vs. Chimanlal Maganlal Telwala*, . A careful reading of this judgment which distinguished *Phul Rani and Others Vs. Sh. Naubat Rai Ahluwalia*, shows that the need of the two of the three heirs of the original landlord who died pending the suit was not regarded as the need u/s 13(1)(g) of the Bombay Rent Act. In *Shantilal Thakordas*'s case the plaintiff filed a suit against the respondent in the Supreme Court for the latter's eviction from the premises on several grounds. Only one ground which remained to be considered for the disposal of the appeal before the Supreme Court was the claim of Thakordas that he required the premises reasonably and bona fide for occupation by himself within the meaning of Section 13(1)(g) of the Bombay Rent Act. It was noticed that in the pleadings it had been contended by Thakordas that he required the premises for the use of the partnership firm of which he was a partner. In the said partnership the son of Thakordas who was appellant before the Supreme Court was a partner while two others were outsiders. During the pendency of the suit Thakordas died. The trial Court had passed a decree for eviction for a part of the premises only. Both sides went in appeal. The appeal Court maintained the partial decree made by the trial Court with slight modification. Both the parties went in revision and the Gujarat High Court set aside the decree and remanded the case to the appeal Court for fresh disposal of the appeal after trying an additional issue of comparative hardship. The appeal Court after remand again passed a decree for eviction for a portion only of the suit premises. This order was again challenged in two revision applications before the Gujarat High Court which allowed the revision application of the tenant and dismissed the one by the heirs of the original landlord. The judgment of the Supreme Court in *Phool Rani*'s case was cited before the Supreme Court. The Supreme Court noticed that the language of the Delhi Act under which *Phool Rani*'s case fell to be decided had words which were different from the words contained in Section 13(1)(g) of the Bombay Rent Act. The

relevant words of personal requirement of the premises in Section 14(1)(e) of the Delhi Act are as follows:

"for occupation as a residence for himself and members of his family".

19. After noticing the provisions of the Delhi Act the Supreme Court then proceeded to mention as follows:--

"In our considered opinion in face of the wordings of Section 14(1)(e) of the Delhi Act, the view expressed in Phool Rani's case as stated above, is not correct."

After examining the facts in Shantilal's case the Supreme Court then found that the partnership which was reconstituted after the death of Thakordas did not include Harish Thakordas who was the minor son of Thakordas. It was also noted that Harish had not been admitted to the benefits of the partnership. He had, therefore, no interest in the partnership firm. On this ground the Supreme Court dismissed the appeal preferred by the heirs of the original landlord by holding that:--

"this in no sense could be the requirement of appellant Harish even assuming that it could be said to be the requirement of his two elder brothers, appellants 1 and 2."

20. u/s 13(1)(g) of the Bombay Rent Act, it is now well settled that if premises are required by a landlord for occupation by members of his family or other persons who are dependent upon him then that occupation is regarded as the occupation by the landlord. But one must remember that the requirement must be by the landlord though it may be for occupation by himself or by members of his family. If the requirement of the landlord is not proved, whether for himself or for the members of his family, then the condition mentioned in Section 18(1)(g) is not satisfied.

21. I must now proceed to enumerate the propositions which can be said to have been established by the various decisions which I have taken the opportunity of reviewing so far:

(1) The requirement mentioned in Section 13(1)(g) must be the requirement by the landlord and not the requirement by somebody else.

(2) The words "for occupation by himself" do not restrict the proposed occupation to the occupation of landlord alone but may include the occupation by members of his family.

(3) When there is a dependant of the landlord the requirement for his occupation may be the requirement by the landlord.

(4) In a given case members of the family of the landlord may not be joint in residence but the condition of the requirement for occupation by himself is satisfied if the members are joint in estate.

(5) In a given case the landlord may be dependent upon a person for whose use and occupation the premises are sought to be recovered. In such a case the condition in Section 13(1)(g) can be said to be satisfied if it could be shown that it was necessary for the landlord that the other person should occupy the premises. Implicit in this proposition is the case of an old person requiring the presence of some person in or near the premises which is occupied.

(6) Even if emotionally the landlord feels that a relation of his, such as his daughter or son-in-law, should stay with him, it can be regarded as the requirement by the landlord of the premises for occupation by himself.

(7) In case of non-residential premises if the landlord's interests are shown to be linked with the occupation of those premises by some one, for whom he is seeking the possession of the suit premises, such as a partner, then it can be said that the requirement of the landlord for occupation by himself is established within the meaning of Section 13(1)(g).

(8) If there is a moral or legal obligation on the landlord to provide accommodation to a particular person then the requirement by the landlord for occupation of that person may squarely fall u/s 13(1)(g) of the Bombay Rent Act.

22. Underlying the above propositions is the basic fact that the requirement is by the landlord and not by somebody else on his behalf. It may be the requirement for somebody else but not by somebody else, In all cases the requirement must be by the landlord himself. It is also implicit in the above propositions which have emerged from the examination of the various cases that there must be a nexus between the interests of the landlord and the occupation of the premises by himself or by somebody else. If there is no nexus of the interests of the landlord with the occupation of the premises, then the condition mentioned in Section 13(1)(g) cannot be said to have been fulfilled. Section 13(1)(g) says that the premises must be reasonably and bona fide required by the landlord. The bona fide requirement is in the first place a state of mind though it may be something more. It must, therefore, be deposed to by the person who is requiring the premises u/s 13(1)(g) namely, the landlord. If the landlord does not step into the witness-box to bring before the Court legal evidence for proving his requirement, then it cannot be said that he reasonably and bona fide requires the premises as mentioned in Section 13(1)(g) The landlord can delegate the authority to conduct a case but he cannot delegate the duty to depose. 23. While examining the rival contentions of the parties. I have mentioned in sufficient detail the evidence that has come on record in this case. However, it would be useful if I enumerate again the facts which have been established. The respondent, who is the landlady, has not been examined in support of her case nor has she been examined as a witness on commission. On this ground alone the suit of the respondent ought to have been dismissed because the bona fide requirement which, as I have mentioned above is a state of mind and something more must be proved in this case. Ramanlal, the respondent's son, is said to be her constituted attorney but that could only be for the purpose of conducting the

case but his evidence cannot be substituted for the legal evidence of the landlady herself.

24. Even if the material which has been brought on record by the examination of Ramanlal in support of the respondent's case is considered, it does not show that;

(a) the respondent is a dependent on Ramanlal or on his business or that Ramanlal is depending on the respondent for his livelihood or on any part of her income;

(b) any interrelationship between the interests of the respondent and the occupation of the suit premises by Ramanlal exists;

(c) that there is any obligation on the part of the respondent to provide accommodation to Ramanlal (the will at the most speaks of provision of certain monetary assistance).

Considering all the facts and circumstances which have been brought on record in legal evidence I am satisfied that the case of the respondent does not fall under one or the other of propositions enumerated by me above. I have, therefore, no hesitation in holding that the respondent has failed to prove the bona fide and reasonable requirement of the suit premises for occupation by herself or for any other person within the meaning of Section 13(1)(g) of the Bombay Rent Act. Therefore, the suit will have to be dismissed.

25. In view of the fact that the suit is liable to be dismissed, it becomes unnecessary to refer to the question of comparative hardship. If, however, that question is to be decided, I am inclined to agree with the finding of the learned appellate Judge who has by decreeing the suit for part of the premises only struck a just balance between the hardship that may be caused to Ramanlal and to the petitioners.

26. In the result, this petition must succeed. The decree passed by the learned 2nd Extra Joint Judge, of Pune in Civil Appeal No. 19 of 1977 is set aside and the decree passed by the Additional Judge of the Court of Small Causes in Regular Civil Suit No. 3146 of 1974 is restored. On the facts and circumstances of the case, however, the parties shall bear their own costs in all the Courts.

27. Petition allowed.