
(1993) 03 SC CK 0092

In the Supreme Court Of India

Case No : Civil Appeal No. 447 of 1982

Narpatchand A. Bhandari

APPELLANT

Vs

Shantilal Moolshankar Jani and another

RESPONDENT

Date of Decision : 18-03-1993

Acts Referred:

Constitution of India, 1950 — Article 136, 227

Karnataka Rent Control Act, 1961 — Section 21(1), 3

Transfer of Property Act, 1882 — Section 106, 109, 15A, 58, 76

Citation : AIR 1993 SC 1712 : (1993) 4 JT 510 : (1993) 2 SCALE 103 : (1993) 3 SCC 351 : (1993) 2 SCR 471

Hon'ble Judges : N.M. Kasliwal, J;N. Venkatachala, J

Bench : Division Bench

Final Decision : dismissed

Judgement

N. Venkatachala, J.—In this appeal by special leave, the summary rejection by the Bombay High Court of an application filed under Article 227 of the Constitution, for setting aside an eviction order made by the Court of Small Causes at Bombay - the trial court, under Clause (c) of Sub-section (1) of Section 13 of the Bombay Rents Hotel and Lodging House Rates Control Act, 1947, to be referred to as 'the Act' and upheld by the appellate Division Bench of the same court - the appellate court, is questioned.

2. Sudarshan Building No. 2, Shivaji Park Road No. 3, Bombay-28 is a storeyed building comprised of a large number of flats occupied by dif-'ferent tenants. Flat No. 10 in the Second Floor of that building (to be referred to as 'the premises') was in occupation of the appellant-defendant ever since the year 1952 as its tenant under Kherodkar, the owner of the whole of that building. In the year 1958, when Kherodkar mortgaged with possession the said building in favour of respondents-plaintiffs, the defendant and other tenants in different flats of that building became tenants under plaintiffs (usufructuary mortgages) and continued as such tenants on payment of monthly rents to them. But, by a quit notice dated July 3, 1967 the plaintiffs determined the monthly tenancy of the

defendant respecting the premises in his occupation and sought to recover from him the possession of the premises by instituting a suit in the court of Small Causes at Bombay on the very ground on which his tenancy was terminated, that is, that the defendant had been guilty of conduct which was a nuisance or annoyance to the adjoining or neighbouring occupiers. That was a ground which entitled the landlord under Clause (c) of Sub-section (1) of Section 13 of the Act, to recover possession of the premises from the tenant. That ground had been based on plaintiffs' allegations of threats of murder posed by the defendant to the neighbouring occupiers; abuses hurled at neighbouring occupiers by his sons; whistling at neighbouring occupiers by the defendant's sons; spitting against the walls and in the common staircase area of the building by the defendant's sons; obstructions offered by the defendant, his wife, sons and servants to the neighbouring occupiers to reach the common terrace of the building by a staircase and removal by them of aërials of radios of the tenants in the other flats of the building, which had been fixed above the common terrace; obstructions offered to the landlords and their workers to inspect the common terrace; unauthorised erection by the defendant in the common terrace area certain machinery and running it during nights causing disturbance to sleep of neighbouring occupiers and also unauthorised use by the defendant of the water in common over-head storage tanks in the common terrace area for his business purposes depriving other tenants of the normal use of such water. The defendant, however, resisted the claim for recovery of possession of the premises, made in that suit filing a written statement thereto, denying the allegations of nuisance and annoyance levelled against him, his wife, sons and servants and urging that those allegations, even if established, did not constitute the ground of nuisance or annoyance envisaged under Clause (c) of Sub-section (1) of Section 13 of the Act, as a ground for recovery of possession of premises from a tenant. It was also urged therein by the defendant that the ground for recovery of possession of premises from a tenant under Clause (c) thereof was not available to plaintiffs, for they being usufructuary mortgagees of the building were not 'landlord' within the meaning of that expression in Sub-section (1) of Section 13 of the Act as would entitle them to recover possession of premises from a tenant. In so far as the common terrace, the defendant's unauthorised use of which was complained of by the plaintiffs, the defendant urged therein that he being a tenant of that terrace in addition to the premises, was entitled to put it for the use of his choice and prevent other tenants in the building from its common use. It was further urged therein that the suit having been instituted by the plaintiffs to pressurise the defendant and extract from him higher rent for the premises was vitiated by malafides. The trial court which tried the suit, on an appraisal of the oral and documentary evidence adduced by the parties, recorded its findings on issues arising for its determination in that suit in favour of the plaintiffs and against the defendant. Consequently, it decreed the suit of the plaintiffs for recovery of possession of the premises from the defendant. The appellate court before which the decree of the trial court was appealed against by the defendant, on its re-appraisal of the evidence, affirmed the findings of the

trial court and dismissed the appeal. Feeling aggrieved by the decree of the trial court and its affirmation by the appellate court, the defendant impugned the same by filing a writ petition under Article 227 of the Constitution before the High Court of Bombay, but that writ petition was rejected by the High Court in limine. The defendant has questioned in this appeal by special leave, the correctness of the decree of the trial court made against him for recovery of possession of the premises by the plaintiff, the decree of the appellate court affirming the decree of the trial court and the order of the High Court rejecting his writ petition.

3. In support of the appeal, three contentions were raised before us by Shri B.K. Mehta, the learned senior counsel for the appellant-defendant. But those contentions were strongly refuted by Shri U.R. Lalit, the learned senior counsel for respondents-plaintiffs. Taking into consideration the serious nature of the contest, we shall examine the merit in every-one of the contentions, rather in detail.

4. First of the said contentions which was urged as a legal contention by the learned Counsel for the appellant, was that an usufructuary mortgagee was not entitled to recover possession of a premises from a tenant u/s 13(1)(c) of the Act pleading the ground that the tenant or any person residing with him in such premises was guilty of conduct which is a nuisance or annoyance to the adjoining and neighbouring occupiers, when the expression 'Land-lord' in Section 13 of the Act cannot be said to include an usufructuary mortgagee. Provisions in the Act in so far as they become necessary for a proper appreciation of the said contention could be excerpted at the outset.

Section 13(1) of the Act :

13. When landlord may recover possession.

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

(a) ...

(b) ...

(c) that the tenant or any person residing with the tenant has been guilty of conduct which is a nuisance or annoyance to the adjoining or neighbouring occupiers....

(d) ...

(e) ...

(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 (or where the landlord is a trustee of public charitable trust that the premises are

required for occupation for the purposes of the trust; or)

(h) ...

(hh) ...

(hhh) ...

(2) No decree for eviction shall be passed on the ground specified in Clause (g) of Sub-section (1) if the Court is satisfied that, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it.

Where the court is satisfied that no hardship would be caused either to the tenant or to the landlord by passing the decree in respect of a part of the premises, the Court shall pass the decree in respect of such part only.

Explanation - For the purposes of Clause (g) of Sub-section (1), -

(a) ...

(b) the expression "landlord" shall not include a rent-farmer or rent-collector or estate-manager;

Section 5(3) of the Act :

5. Definitions. In this Act unless there is anything repugnant to the subject or context, -

...

(3) "landlord" means any person who is for the time being, receiving, or entitled to receive, rent in respect of any premises whether on his own account or on account, or on behalf, or for the benefit of any other person or as a trustee, guardian, or receiver for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant, and includes any person not being a tenant who from time to time derives title under a landlord and further includes in respect of his sub-tenant, a tenant who has sub-let any premises; (and also includes in respect of a licensee deemed to be a tenant by Section 15A, the licensor who has given such licence;)

5. Whether the expression 'landlord' in Sub-section (1) of Section 13 of the Act cannot be said to include 'an usufructuary mortgagee' where the tenanted premises is the subject of usufructuary mortgage, is the question which requires our answer in the light of the provisions of the Act. As could be seen from the definition of 'usufructuary mortgage' in Clause (d) of Section 58 of the Transfer of Property Act, 1882 - the T.P. Act, an usufructuary mortgagee is a transferee of a right to possession of the mortgaged property and the right to receive the rents and profits accruing from such property. When a lessor of a leased property creates an usufructuary mortgage in respect of such property what he transfers

u/s 109 of the T.P. Act as a mortgagor in favour of the usufructuary mortgagee includes his right to possession of such property and the right to receive the rents and profits accruing from it. Thus Section 109 of the T.P. Act entitles the usufructuary mortgagee from the lessor, as against the lessee, for all rights which the lessor had against such lessee. From this, it follows that tenanted premises, if is mortgage by the landlord by way of usufructuary mortgage, the usufructuary mortgagee thereunder would become entitled to receive the rents and profits accruing from such property in his own right and on his own account. Clause (3) of Section 5 of the Act which contains the definition of 'landlord', states that under the Act 'landlord' means any person who is for the time being receiving or entitled to receive rent in respect of any premises on his own account and includes any person not being a tenant who from time to time derives title under a landlord, unless (here is anything repugnant to the subject or context. There, comes Section 13(1) of the Act entitling landlord to recover possession of any premises from his tenant on the ground envisaged under Clause (c) thereof, that is, the tenant or any person residing with the tenant being guilty of conduct which is a nuisance or annoyance to the adjoining or neighbouring occupiers, and that Section 13(1) contains nothing repugnant in its subject or context which would disentitle an usufructuary mortgagee, as a landlord of the tenanted premises to recover its possession from the tenant on the said ground. Further, if the legislative intendment was that the usufructuary mortgagee was not to be regarded as a landlord for recovering possession of a tenanted premises on any of the grounds envisaged under Sub-section (1) of Section 13 of the Act, it would not have omitted to state so, expressly, particularly when it had been so stated in Clause (b) of the explanation to Sub-section (2) of Section 13 of the Act, as regards 'rent farmer' or a 'rent collector' or an 'estate manager' who would have been otherwise a landlord entitled to recover possession of a tenanted premises from the tenant under Clause (g) of Sub-section (1) of that section.

6. Indeed, the decision of this Court in S.B. Abdul Azeez (By Lrs.) Vs. M. Maniyappa Setty and Others, , throws full light on the question under consideration, for the question decided there, is virtually identical. That question was whether an usufructuary mortgagee was entitled to recover possession of a premises u/s 21(1) proviso (h) of the Karnataka Rent Control Act, 1961 - the K.R.C. Act, as a landlord envisaged therein. In deciding that question with reference to the expression 'landlord' found in Section 21(1) proviso (h) of K.R.C. Act, the definition of that expression 'landlord' found in Section 3(h) of the K.R.C. Act and (he explanation to Clause (4) found in Section 21(1) proviso of K.R.C. Act excluding a rent farmer, a rent collector and an estate manager from being a landlord for recovery of possession of a premises from a tenant on the ground of bona fide use and occupation and certain provisions of the T.P. Act, this Court stated thus:

It, therefore, follows that the Legislature if wanted that a mortgagee with possession should not be equated with the owner of the premises and should be

denied the benefit of seeking a tenant's eviction u/s 21(1)(h), the legislature would have undoubtedly categorised a mortgagee with possession also as one of the excluded class of landlords for the purposes of Section 21(1)(h) of the Act. Obviously therefore the legislature has not wanted a mortgagee with possession to be excluded of his right to seek eviction of a tenant from the mortgaged premises u/s 21(1)(h) of the Act. Thirdly, a mortgagee with possession is enjoined by Section 76(a) of the Transfer of Property Act to manage the property as a man of ordinary prudence would manage it if it were his own. As such the mortgagee's acts, if prudently done, could bind the mortgagor even after the redemption of the mortgage. A mortgagee with possession, steps into the shoes of the mortgagor and becomes entitled to all the rights of the mortgagor and the only right left with the mortgagor is the right of redemption. A mortgagee with possession is entitled to be in possession of the mortgage property as long as it is not redeemed. If the mortgagee with possession leases back the property to the mortgagor, he acquires the rights of a lessor and is entitled to enforce the terms of the lease against the mortgagor (vide *Mathuralal v. Keshar Bai*). On account of all these factors there can be no doubt that a mortgagee with possession stands very differently from other kinds of landlords envisaged u/s 3(h) of the Act. He is therefore entitled, as much as the owner himself, to seek recovery of possession of the leased premises from a tenant for his own bona fide requirements of use.

7. What is said by this Court in the above decision as regards the right of the usufructuary mortgagee to recover possession of a premises from a tenant as a landlord envisaged therein u/s 21(1) proviso (h), in our view, must necessarily apply to a landlord envisaged in Section 13(1) of the Act. It 'Would be so because (i) that the expression 'landlord' in Section 13(1)(C) of the Act is not used in a context different from the one in which the expression 'landlord' is used in Section 21(1) proviso (h) of the K.R.C. Act, (ii) that the definition of 'landlord' and explanation as to who is not the 'landlord' are common to both the Acts and (iii) that the legal position of an usufructuary mortgagee under the K.R.C. Act is not different from the legal position of an usufructuary mortgagee under the Act since the rights and liabilities of an usufructuary mortgagee concerned in both Acts are governed by the provisions of T.P. Act. Thus it becomes clear that the expression 'landlord' in Sub-section (1) of Section 13 of the Act includes an usufructuary mortgagee where the tenanted premises is the subject of usufructuary mortgage.

8. The decision in *Nanlal Girdharlal and Anr. v. Gulamnabi Jamalbhai Motorwala and Ors.* 1972 (13) G LR 880 relied upon by leaned counsel for the appellant in support of the first contention, does not lend such support. One of the questions with which the Gujarat High Court was concerned in that decision was whether one out of several co- owners was entitled to maintain a suit for eviction against the tenant under the Act. In considering that question the Court took the view that the landlord referred to in Section 12 and Section 13(1) of the Act was not a landlord as defined in Section 5(3) but was a landlord who was entitled to

possession of the premises on a determination of the tenancy under the ordinary law of landlord and tenant, that is, u/s 106 of the T.P. Act. It is this view which was sought to be made use of by learned Counsel for the appellant to contend that the landlord u/s 13(1) of the Act cannot be an usufructuary mortgagee. But, the said View of the High Court that a landlord referred to under sections 12 and 13(1) of the Act is a landlord who is entitled to possession of premises on determination of the tenancy u/s 106 of the T.P. Act, itself cannot now be good law because of the nine-Judges' Bench decision of this Court in V. Dhanapal Chettiar Vs. Yesodai Ammal, , where the scope of the provisions of sections 5, 12 and 13 of the Act in the context of Section 106 of the T.P. Act is considered and held otherwise, thus :

Adverting to the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 it would be found from the definition of Section 5 that any person remaining in the building after the determination of the lease is a tenant within the meaning of Clause (11). Section 12 of the Bombay Act says that the landlord shall not be entitled to the recovery of possession of any premises so as long as the conditions mentioned in Sub-section (1) are fulfilled nor any suit for recovery of possession shall be instituted by a landlord against a tenant on the happening of the event mentioned in Sub-section (2) until the expiration of one month next after the notice is served on the tenant in the manner provided in Section 106 of the Transfer of Property Act, as required by the said Sub-section. Section 13 provides that a landlord may recover possession on certain grounds. Is it not plain then that on the happenings of the events or on the fulfilment of the conditions mentioned in sections 12 and 13 etc. the landlord becomes entitled to recover possession from the tenant, otherwise not. It will bear repetition to say that under the Transfer of Property Act in order to entitle the landlord to recover possession determination of the lease is necessary as during its continuance he could not recover possession while under the State Rent Act the landlord becomes entitled to recover possession only on the fulfilment of the rigour of law provided therein. Otherwise not. He cannot recover possession merely by determination of tenancy. Nor can he be stopped from doing so on the ground that he has not terminated the contractual tenancy.

9. The first contention urged in support of the appeal that an usufructuary mortgagee of tenanted premises cannot file a suit for recovery of its possession from the tenant u/s 13(1)(c) of the Act does not, therefore, merit acceptance and is rejected.

10. The second contention of the learned Counsel for the appellant-defendant relates of correctness of the findings of the appellate court recorded respecting acts of nuisance and annoyance constituting the ground for recovery of possession of premises by the plaintiffs from the defendants. According to the learned Counsel, those findings, not having been based on the evidence on record, become unsustainable. We are unable to find any merit in this contention. The findings as to the acts of nuisance and annoyance attributable to

the defendant and the persons who were residing in the premises are (i) that the defendant, who was a tenant in a premises (tenement) in the storeyed building, erected a Rangeen Mill (Textile Printing Mill) on the terrace of the storeyed and ran it during nights so as to make the occupiers of the adjoining and neighbouring tenements in the storeyed residential building suffer the vibrations and noise in the building arising on account of the running of the Mill and lose their quiet and sleep during night; (ii) that the defendant unauthorisedly utilised the water stored in the common over-head tanks on the terrace, meant for domestic use of all the occupiers of the tenements in the building, for running his run Rangeen Mill - a non-domestic purpose; (iii) that the defendant and the persons residing with him in the premises had often removed the radio aerials and T.V. antennas of the occupiers of the adjoining and neighbouring tenements which had been fixed above the common terrace of the building; (iv) that the defendant and the persons residing in the premises were wrongly preventing the plaintiffs and their workers in reaching the common terrace for repairs of radio aerials, T.V. antennas, telephone lines and the like of the occupiers of the neighbouring tenements in the building by blocking its staircase.

11. These findings of the lower appellate court, it cannot be said, are not supported by the evidence on record of the case. In fact, some of the findings are, to a great extent, based on the facts which were admitted by the defendant himself. Besides, the findings receive support from the evidence given in the case by the occupiers of the adjoining and neighbouring tenements of the same building. The defendant and the persons residing with him in the premises have committed some of the acts respecting which the aforesaid findings are recorded by the appellate court because of the defendant's unfounded claim that he had taken the terrace on lease independently of the premises in which he was an occupant and as such was not only entitled to its exclusive use but also had the right to prevent the neighbouring occupiers of the tenements in the building from its use. The trial Court as well as the appellate court, on examining the claim put forth by the defendant, have found on the basis of material on record, that it was a false claim and the defendant had not taken on lease the disputed terrace, as was pleaded by him. Therefore, as seen from the judgment of the appellate court, its findings in relation to the aforesaid acts of the defendant and persons residing with him in the premises are based on appreciation of ample evidence that was on record and the same cannot be said to have been based on no evidence, or even improper appreciation of evidence as contended for. Thus, we are unable to see any justification in this Appeal by Special Leave, to interfere with such findings of facts recorded by the appellate court virtually affirming the findings of fact recorded by the trial court. The second contention raised in support of the appeal must, therefore, fail. It is accordingly rejected.

12. The third and the last contention urged in support of the appeal was that the acts found to have been committed by the appellant-defendant and the persons residing with him in the premises, even if true, they could not have been regarded as acts amounting to nuisance or annoyance forming a ground for

recovery of possession of a premises from the tenant u/s 13(1)(c) of the Act. In support of the said contention, reliance was placed on decisions of the Gujarat High Court in *Dhabhi Lalji Kalidas v. Ramniklal Somchand Mehta* 1975 (16) G L R, 824 and *Gaurishanker @ Babulal Govindji v. Bhikhalal Chhaganlal and Ors.* 1977 (18) G L R 805. This contention, in our view, again, is devoid of merit. The decisions relied upon also do not support the contention.

13. There are no statutory definitions of 'nuisance' or 'annoyance' which u/s 13(1)(c) of the Act constitute a ground for recovery of possession by landlord of a premises in the occupation of tenant. In the case with which we are concerned, the acts of nuisance or annoyance complained of are committed by the tenant and persons residing with him in the premises which is a tenement (flat) lying amidst other tenements (flats) of the one and same storeyed building. The acts of the defendant or persons residing with him in the tenanted premises which are found as acts causing nuisance or annoyance to adjoining or neighbouring occupiers, cannot fall short of being acts of nuisance or annoyance if regard is had to their nature, intensity and duration and the consequential ill-effects which might have been produced by them on the normal living of such occupiers. Further, when the particular acts of the defendant or persons residing with him in the premises (flat) of a storeyed building, said to have caused nuisance or annoyance to the occupiers of adjoining or neighbouring occupiers of tenements (flats) in the very same storeyed building are seen, they cannot make us think that they were not clear acts of nuisance or annoyance envisaged u/s 13(1)(c) of the Act because of the intolerable inconveniences, sufferings, humiliations which must have been caused to the adjoining or neighbouring occupiers, due regard being given to the locality of the storeyed building, the class of the people living in the tenements of the storeyed building and the nature of living to which they were accustomed. Even otherwise the acts, said to have been committed by the defendant and persons residing with him in the premises when are, as stated, found by the fact finding courts to have amounted to acts of nuisance or annoyance entitling the plaintiff u/s 13(1)(c) of the Act to recover possession of the premises from the defendant and when the High Court has refused to interfere with such finding in exercise of its writ jurisdiction there could be no justification whatever for us to interfere with the same in this appeal under Article 136 of the Constitution.

14. The decision in *Dhabhi Lalji Kalidas v. Ramniklal Somchand Mehta*, (supra) relied upon to support the third contention is a case decided by Single Judge of the Gujarat High Court. The learned Single Judge who examined in that case the question whether the use by washerman, who was tenant of a premises, some chemicals for washing clothes in a tenanted premises could have amounted to act of nuisance or annoyance to adjoining or neighbouring occupiers as entitling the landlord to recover possession of tenanted premises u/s 13(1)(c) of the Act, held that the ill-effects produced on adjoining or neighbouring occupants cannot be found out in the absence of evidence of chemical experts and therefore, the ground for recovery of possession of tenanted premises u/s 13(1)(c) of the Act,

was unavailable. We are unable to see, how this decision could help the contention of the appellant under our consideration. The decision in Gaurishanker (supra) relied upon to support the third contention is again that of a Single Judge of the Gujarat High Court. It was a case where the learned Judge was concerned with the question whether a quarrel in the household of a tenant could be a ground for eviction of a tenant u/s 13(1)(c) of the Act. The learned Judge, who held that quarrels in a domestic household of a tenant can never constitute a nuisance or annoyance within Section 13(1)(c) of the Act pointed out that nuisance or annoyance contemplated u/s 13(1)(c) of the Act as ground for eviction of tenant from a premises must be of a serious character in nature, intensity and frequency. We do not see how this decision could advance the contention of the appellant now under consideration. In fact, in the case on hand, we have held that the courts below, having regard to the nature, intensity and duration of the acts complained of and their ill-effects on the normal living of adjoining or neighbouring occupiers have rightly found them as acts of nuisance or annoyance envisaged u/s 13(1)(c) of the Act.

15. Hence, the third and the last contention urged in support of the appeal, being also devoid of merit, is rejected.

16. In the result, this Appeal fails and is dismissed with costs. The advocate's fee payable by the appellant-defendant to respondents-plaintiffs is fixed at Rs. 2,000.