
(1970) 12 GUJ CK 0005
In the Gujarat High Court

Pathan Bajitkhan Kayamkhan and Another	APPELLANT
Vs	
Shah Maneklal Harilal and Others	RESPONDENT

Date of Decision : 09-12-1970

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1), 13(1)(g), 13(1)(i), 29(2), 29(2)

Citation : (1971) 12 GLR 421

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

Bench : Single Bench

Judgement

J.M. Sheth, J.—This is a revision petition filed by the original defendants u/s 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (which will be hereinafter referred to as "the Act").

2. The facts leading rise to this revision petition, briefly stated are as under:

The opponents-landlords filed Civil Suit No. 488 of 1962 against the petitioners in the Court of the Civil Judge, Junior Division, Petlad, for recovery of arrears of rent and possession of the suit premises. The suit premises consist of an open land bearing City Tika No. 10/1 and Survey No. 116 and a part of survey No. 123, situate near Kasyabhai,s Utara in Petlad, District Kaira. The opponents' case was that they want the suit premises for their personal use and occupation. They required the suit premises reasonably and bona fide for their personal use and occupation. They are doing business in Petlad under the name and style of Harilal Bhikhabhai & Co. They have got business also at Ahmedabad, Ranoli, Navli, etc. They are purchasing goods at Petiad for those businesses and consequently, they are required to be stored at Petiad They have also got cars ard consequently, a garage is necessary for keeping those cars, some of which are kept at Petlad. They, therefore, require the suit premises which consist of an open land for constructing a godown and a garage for the aforesaid purposes and thereby they want to occupy them for themselves.

3. The petitioners challenged the aforesaid material facts. Their version was that

the landlords did not require the suit premises reasonably and bona fide for the aforesaid purposes. They also contended that greater hardship would be caused to them by passing a decree for eviction than the hardship that would be caused to the opponents by refusing to pass a decree for eviction.

4. Issues were framed at Ex. 10 by the trial Court. Issues Nos. 2 and 3 which are material for our purposes, were:

(2) Whether plaintiffs prove that they require the suit premises bona fide for their reasonable requirement?

(3) If yes, whether greater hardship would be caused to the tenant by passing the decree for possession than to the landlords by refusing the decree for possession for the whole or part of the suit premises?

Issue No. 2 was decided against the plaintiffs-landlords. In view of that finding, the learned trial Judge found that issue No. 3 did not survive. If that question arose for decision, the area for one garage may be given to the plaintiffs-landlords as mentioned in para 15 of the judgment. The learned trial Judge, in view of his findings, dismissed the plaintiffs' suit for possession. A decree for arrears of rent was passed. Rs. 141/- per year were fixed to be the standard rent for the suit land.

5. Against that judgment and decree, the plaintiffs-landlords filed Appeal No. 289 of 1964 in the District Court at Nadiad. The defendants-tenants filed cross-objections. The learned Extra Assistant Judge, Nadiad, who heard this appeal, also recorded a finding that the plaintiffs-landlords did not require the suit premises reasonably and bona fide for their personal use and occupation. The trial Court's finding in that behalf has been confirmed by the learned Extra Assistant Judge. In view of that finding, he found that point No. 2 for determination, viz. whether greater hardship would be caused to the tenants by passing a decree for eviction than the hardship that would be caused to the landlords by refusing to pass it, did not arise. He raised point No. 3 for determination, viz. whether the plaintiffs-landlords required the suit premises reasonably and bona fide for erection of a new building? He answered this point for determination in favour of the landlords and decreed the suit for possession and directed the defendants to hand over possession of the suit land to the plaintiffs-landlords on or before 30th April, 1967. The decree regarding arrears of rent was confirmed. The defendants-tenants were further directed to pay mesne profits at the rate of Rs. 141/- per year from the date of the suit till the possession is handed-over. Cross-objections were dismissed with costs. Each party was ordered to bear its own costs in the appeal.

6. Being dissatisfied with that judgment and decree, the original defendants have preferred the present revision petition to this Court.

7. Mr. C.T. Daru, appearing for the petitioners, contended that the learned appellate Judge was in error in making out a new case at the appellate stage in

regard to seeking a relief for possession under Clause 13(1)(i) of the Act. He urged that the learned trial Judge had correctly construed the plaint and had rightly recorded a finding that the plaintiffs had sought for recovery of possession of the suit premises under Clause (g) of Section 13(1) of the Act. There was no prayer made for recovery of possession of the suit premises under Clause (i) of Section 13(1) of the Act. Both the Courts below have decided against the plaintiffs in regard to the relief sought regarding possession under Clause (g) of Section 13(1) of the Act. It was further contended by Mr. Daru that the fact that the trial Court had raised an issue regarding comparative hardships and parties had led evidence in that behalf, was indicative of the position that the plaintiffs were really claiming this relief regarding recovery of possession from the tenants under Clause (g) of Section 13(1) of the Act. No specific issue was raised in the trial Court for seeking any relief under Clause (i) of Section 13(1) of the Act. During the trial, no such issue was sought for, on behalf of the plaintiffs. It was only at the stage of arguments in the trial Court, a feeble attempt was made to seek relief on this ground. It was urged by Mr. Daru that different considerations would arise when one is considering a case under Clause (g) of Section 13(1) of the Act and when one is considering it under Clause (i) of Section 13(1) of the Act. He invited my pointed attention to Sub-section (3) of Section 13 of the Act which read:

The Court may pass the decree on the ground specified in Clause (h) or (i) of Sub-section (i) only in respect of a part of the premises which in its opinion it is necessary to vacate for carrying out the work of repairs or erection.

No such issue was raised. No evidence was led on this point, as the parties never contemplated that the present case was a case under Clause (i) or Section 13(1) of the Act. It was a new case sought to be made out, finding that the plaintiffs are not likely to succeed to get possession under Clause (g) of Section 13(1) of the Act and in view of the evidence brought on the record.

8. In reply to these arguments, Mr. M. C. Shah, appearing for the plaintiffs-landlords, urged that really the present case was a case where the landlords have sought for possession under Clause (i) of Section 13(1) of the Act, and not under Clause (g) of Section 13(1) of the Act. Alternatively, he urged that possession was sought on both these grounds and in case the Court finds that the defendants-tenants did not get an opportunity to meet with the case under Clause (i) of Section 13(1) of the Act, the matter should be remanded to the trial Court for giving an opportunity to the parties to adduce evidence in regard to this issue. It was also urged by him that when the suit premises consist of an open land and the landlords want to use it for his own purposes after constructing a building thereon, the case would never fall under Clause (g) of Section 13(1) of the Act, but would fall only under Clause (1) of Section 13(1) of the Act.

9. In my opinion, the arguments advanced by Mr. Daru are well-founded. If we refer to the plaint, para 3, it is evident that what was let to the defendants-

tenants (originally there was only one defendant. Defendant No. 2 has been added subsequently by the amendment of the plaint) was an open land. It is stated therein that land has been taken on lease by the defendant for the purposes of his business of selling fuel and charcoal at an annual rent of Rs. 141/-, In para 4, which is very material for our purposes, it is stated that the plaintiffs required that land for their personal use and occupation. Thereafter, they give the particulars of their requirement by stating that they are doing business under the name and style of Harilal Bhikhabhai & Co. at Petlad. Besides that business, they have got businesses at several places like Ahmedabad, Ranoli, Navli, etc. For the purposes of those businesses they have to purchase goods at Petlad and have to store them. They have also got cars, some of which are kept at Petlad. For keeping those cars, they require a garage. For storing those goods, they require godowns and for those purposes, i.e. for storing goods and keeping cars in the suit land, they want to construct godowns and a garage. The space for keeping cars with them is insufficient. The owner of the said premises also makes a demand in respect of those premises. It is thus evident that the averments made in the plaint indicate that the plaintiffs claim possession from the tenant under Clause (g) of Section 13(1) of the Act. There is nothing to indicate therein that they claim possession also under Clause (1) of Section 13(1) of the Act.

10. Section 13(1)(g) of the Act reads:

13(1) Notwithstanding anything contained in this Act, but subject to the provisions of Section 15, a landlord shall be entitled to recover possession of any premises if the Court is satisfied-

(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 a public charitable trust that the premises are required for occupation for the purposes of the trust.

Clause (i) of Section 13(1) of the Act reads:

(i) that where the premises are land, such land is reasonably and bona fide required by the landlord for the erection of a new building.

Section 13(1) mentions several grounds under which the landlord would be entitled to take possession from the tenant.

11. It is significant to note that the word "premises" has been defined in Section 5(8) of the Act as under:

In this Act unless there is anything repugnant to the subject or context "premises" means-

(a) any land not being used for agricultural purposes.

Admittedly, the land in question was not being used for agricultural purposes. It was being used for business purposes. It is thus evident that the word

"premises" would include any land not being used for agricultural purposes.

12. Clauses (b) of Section 5(8) of the Act reads:

(b) any building or part of a building let separately (other than a farm building), including-

(i) the garden, grounds, garages and outhouses, if any, appurtenant to such building or part of a building,

(ii) any furniture supplied by the landlord for use in such building or part of a building,

(iii) any fittings affixed to such building or part of a building for the more beneficial enjoyment hereof,

but does not include a room or other accommodation in a hotel or lodging house.

In the instant case, we are not concerned with the premises contemplated under Clause (b). We are concerned with the premises contemplated under Clause (a) of Section 5(8) of the Act.

13. In Clause (g) of Section 13(1) of the Act, the words used are "the premises". The word "premises" would include open land. It is, therefore, evident that if the premises consist of land and they are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held...they are entitled to recover possession of such premises from the tenant. The words used are "for occupation by himself or by any person for whose benefit the premises are held." No restricted meaning can be given to the word "occupation". One may occupy such land for his own self by using the land in that very condition or may occupy it by constructing a building thereon and occupy that building. Clause (g) of Section 13(1) of the Act contemplates recovery of possession by the landlord when the premises are reasonably and bonafide required by him for occupation by himself or by any person for whose benefit the premises are held. This ground will be available in both the cases, viz., if the premises consist of open land or even if the premises consist of a building. There is one additional ground under Clause (i) of Section 13(i) of the Act which would be available to the landlord in case the premises are "land". For getting possession under that clause, he has to prove that such land is reasonably and bona fide required by the landlord for erection of a new building. It is not necessary for him to prove that he wants a new building to be enacted for occupying by himself or by any person for whose benefit the premises are held. The Legislature has probably mentioned this ground to encourage construction of new buildings on open lands for solving the problem of acute shortage of buildings. There would be different considerations in each case, i.e. one considering the case under Clause (g) and the other under Clause (i). So far as Clause (i) is concerned, the tenant will be able to press into service the provisions of Sub-section (3) of Section 13 of the Act. So far as Clause (g) is concerned, the Court has to consider the provisions of Sub-section (2) of Section

13 of the Act. So far as Clause (g) is concerned, the expression "landlord" shall not include "rent farmer" or "rent collector". Furthermore, in view of the explanation for the purposes of Clause (g) of Sub-section (1), a person would not be deemed to be a landlord unless he has acquired his interest in the premises at a date prior to the beginning of the tenancy or the first day of January, 1954, whichever is later, or if the interest has devolved on him by inheritance or succession, his predecessor-in-title had acquired the interest at a date prior to the beginning of the tenancy or the first day of January, 1964, whichever is later. There is no such restricted meaning given to the word "landlord" when one has to consider the case of a landlord claiming possession of the leased premises under Clause (i) of Section 13(i) of the Act.

14. Section 17 of the Act reads:

(1) Where a decree for eviction has been passed by the Court on the ground specified in Clause (g) or (i) of Sub-section (1) of Section 13 and the premises are not occupied or the work of erection is not commenced within a period of one month from the date the landlord recovers possession or the premises are re-let within one year of the said date to any person other than the original tenant, the Court may, on the application of the original tenant made within thirteen months of such date, order the landlord to place in occupation of the premises on the original terms and conditions, and, on such order being made, the landlord and any person who may be in occupation of the premises shall give vacant possession to the original tenant.

(2) Any landlord who recovers possession on the ground specified in Clause (g) or (i) of Sub-section (1) of Section 13 and keeps the premises unoccupied or does not commence the work of erection without reasonable excuse within the period of one month from the date he recovered possession and any landlord or other person in occupation of the premises who fails to comply with the order of the Court under Sub-section (i) shall, on conviction, be punishable with imprisonment for a term which may extend to three months or with fine or with both.

This section also indicates that these two clauses operate in different fields.

15. Mr. Shah for the plaintiffs-landlords invited my attention to the decision of the Supreme Court in *Krishnapasuba Rao Kundapur v. Dattatraya* AIR 1966 SC 1924, in support of his arguments. In my opinion that decision does not enunciate any proposition of law which could help the plaintiffs' case in this regard. The only question before the Supreme Court was whether the subject-matter of the lease was an open plot of land or was a land appurtenant to a building as the building had been constructed in a portion of the land leased by the tenant during the time of the predecessor-in-title of the lessor and subsequently lease was taken of that portion of the land from the lessor. The Supreme Court has observed in this decision:

The problem in the present case is not whether an open plot of land can be let

for residence, education, business, trade or storage, but whether an open plot of land only has been let by the landlord to the tenant.

16. Decision of the Supreme Court in *Ramnikal Pitambardas Mehta Vs. Indradaman Amratlal Sheth*, , throws some light on the problem that is posed before me. A contention was raised in that case that Clause (g) will apply only when the landlord bona fide needs to occupy the premises without making any alteration in them, i.e. to occupy the identical building which the tenant occupies. That contention was negatived observing that there is no justification to give such a narrow construction either to the word "premises" or to the word "occupies" in Clause (g) of Section 13(1) of the Act.

17. It was further observed that the provisions of Clause (hh) cannot possibly apply to the case where a landlord reasonably and bona fide requires the premises for his own occupation even if he had to demolish premises and to erect a new building on them. The provisions of Clause (hh) apply to cases where the landlord does not require the premises for his own occupation but requires them for erecting a new building which is to be let out to tenants. It is, therefore, clear that once the landlord establishes that he bona fide requires the premises for his occupation, he is entitled to recover possession of it from tenant in view of the provisions of Sub-clause (g) of Section 13(1) irrespective of the fact whether he would occupy the premise without making any alteration in them or after making the necessary alterations.

18. It is further observed that the occupation of the premises in Clause (g) does not necessarily refer to occupation as residence. The owner can occupy a place by making use of it in any manner. In a case like the present, if the landlords on getting possession start their work of demolition within the prescribed period, they would have occupied the premises in order to erect a building fit for their occupation.

19. The ratio of this decision, in my opinion, lends support to my conclusion. In the instant case, the landlords, instead of using the open land as it is, for the purposes of their business, want to use it for storing their materials and for keeping their cars by construction of godowns and a garage thereon. It is also one of the modes of use of the land in question. I am, therefore, of opinion that in the instant case the landlords had claimed possession under Clause (g) of Section 13(1) of the Act and they had not claimed possession under Clause (i) of Section 13(1) of the Act. It is not correct to say that they had claimed possession under Clause (i) of Section 13(1) of the Act and not under Clause (g) of Section 13(1) of the Act. Looking to the conduct of the parties at the trial, it is too late for the plaintiffs-landlords to suggest that they had claimed possession not under Clause (g) of Section 13(1) but under Clause (i) of Section 13(1) of the Act. It is also not possible to interpret the plaint in the manner that possession was also sought under Clause (i) of Section 13(1) of the Act. The learned trial Judge has, in my opinion, rightly construed this plaint. The appellate Judge has committed an error in interpreting or construing the plaint and in making out a new case u/s

13(1)(i) of the Act.

20. It need not be emphasised that the plaintiffs-landlords would be at liberty to file a fresh suit, if so advised, to recover possession from the defendants-tenants, basing their suit under Clause (i) of Section 13(1) of the Act. It is made clear that in this proceeding the case has been dealt with as if the plaintiffs have claimed possession u/s 13(1)(g) of the Act and had not made the claim regarding possession u/s 13(1)(i) of the Act. The appellate Court's decree, therefore, for possession and mesne profits cannot be substsined.

21. The revision petition succeeds. The revision petition is allowed. The appellate Court's decree for eviction and mesne profits is reversed and the trial Court's decree, viz., dismissing the suit for possession, is restored. Taking into consideration the peculiar circumstances of the case, each party is ordered to bear its own costs throughout. Rule is made absolute.