

(1998) 07 GUJ CK 0020
In the Gujarat High Court

P.D. Trivedi

APPELLANT

Vs

Chandanben M. Shah

RESPONDENT

Date of Decision : 29-07-1998

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12, 13, 13(1), 13(1)(c), 29(2)

Citation : (1999) 1 GLR 355

Hon'ble Judges : D.C. Srivastava, J

Bench : Single Bench

Judgement

D.C. Srivastava, J.—This is tenant's revision u/s 29(2) of the Bombay Rent Act.

The brief facts giving rise to this revision are that the disputed premises was let out by the respondent to the revisionist on monthly rent of Rs. 150/- besides taxes. The tenant fell in arrears of rent exceeding six months. Hence, notice of demand u/s 12 of the Act was served on 28-9-1982. Neither the notice was complied with nor any reply was given. Hence, suit for eviction was filed. During the pendency of the suit amendment was sought in the plaint and eviction was sought on additional ground u/s 13(1)(c) of the Act alleging that by the conduct of the tenant in usurping possession of one room illegally and forcing the landlady to face litigation upto the Apex Court for getting the said room vacated from the tenant amounted to annoyance and nuisance to the landlady.

2. The trial Court dismissed the suit for eviction but granted decree for arrears of rent and also fixed the standard rent at Rs. 150/- p.m.

3. An appeal was filed by the landlady and also a revision by tenant fixing standard rent. The revision was dismissed by the lower Court. The appeal was against the order of the trial Court refusing to grant decree for eviction which was filed by the landlady. The appeal was allowed and on ground of nuisance and annoyance to the landlady decree for possession was granted. It is, therefore, this revision.

4. It will be necessary to mention that the suit was filed on 4-12-1982. Initially, in the plaint no allegation was made regarding nuisance and eviction was not sought u/s 13(1)(c) of the Act. Subsequently, by getting the plaint amended this ground was also taken as ground for eviction of the tenant. In short, the allegations constituting nuisance are that the revisionist has forcibly taken possession of one northern room kept reserved for personal use and occupation of the landlady. Lock was broken and the room was forcibly occupied by the tenant. Belongings of the landlady were already there in this room. F.I.R. was attempted to be lodged but the police did not register any F.I.R. and directed the respondent to settle the issue amicably. Thereafter, complaint was filed by the landlady in competent Criminal Court but there the tenant-revisionist was acquitted. Suit No. 237 of 1981 was filed by the landlady for the recovery of possession of this room alleging that the tenant committed trespass therein illegally. The suit was decreed by the trial Court. Appeal was also dismissed. The matter was taken up to Apex Court. There also decree of the trial Court was maintained. This act of the tenant, viz., committing trespass and forcing the landlady to face litigation upto Apex Court caused annoyance to her which was ground for tenant's eviction.

5. The revisionist resisted the suit denying these allegations.

The only point for consideration is whether this act of the revisionist amounted to nuisance or annoyance within the meaning of Section 13(1)(c) of the Bombay Rent Act. This section provides that the landlady shall be entitled to recover possession of any premises if the Court is satisfied 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, or has been convicted of using the premises or allowing the premises to be used for immoral or illegal purposes.

6. The suit for eviction of tenant under this provision could be filed only on the allegation that the tenant or any person residing with him has been guilty of conduct which is nuisance or annoyance to the adjoining or neighbouring occupiers. Likewise, if the tenant has been convicted for using the premises or allowing the same to be used for illegal or immoral purposes then also he can be evicted under this section.

7. The case of the landlady is that the conduct of the tenant amounts to nuisance or annoyance to the adjoining or neighbouring occupiers. The question for consideration is whether an act of the tenant committing trespass in one of the rooms amounts to annoyance or nuisance to the landlady who is not residing in the locality or in the premises itself rather she is residing at Bombay. There is also no allegation that this act of the tenant amounted to nuisance or annoyance to the neighbouring occupiers or to the adjoining occupiers. Only thing is that according to the landlady because the room was forcibly occupied by the tenant in her absence by breaking open lock and she had to face the litigation in the Criminal Court, Civil Court and upto the Apex Court this amounted to nuisance

and annoyance to the landlady.

8. Learned Counsel for the revisionist contended that nuisance or annoyance used in this section is in relation to the adjoining or neighbouring occupiers and not to the landlady. I am unable to accept this contention. Literally speaking section says so but situation cannot be overlooked where the landlord or the landlady is also residing in a portion of the same building where the tenant is residing in adjoining portion of the same building. If tenant commits nuisance or causes annoyance to the landlady that may also be a ground for tenant's eviction.

9. What amounts to nuisance or annoyance has been considered in three cases decided by this Court. In *Gaurishanker v. Bhikhalal* 1977 (18) GLR 805 while dealing with the ambit of Section 13(1)(c) of the Act, it was observed that following points must exist to hold the action of the tenant as causing annoyance or nuisance:

- (1) It must be of a gross character.
- (2) It must be of an unusual character.
- (3) It must be frequent and persistent.
- (4) It must be such that one cannot ordinarily expect in a household.
- (5) It must be such that it would not be possible for the neighbours to lead a normal life which one can hope to live in a busy town or city.

Thus, in this case the emphasis on one of the factors was that such conduct of the tenant must be frequent and persistent meaning thereby single and isolated act of the tenant would not amount to nuisance or annoyance within the meaning of Section 13(1)(c) of the Act.

10. Learned Counsel for the respondent, however, placed reliance upon two other cases of this Court. The first is *Chandrakant Madhavrao Bhaiber Vs. Gajendrakumar Sunderlal Shah*, . It was laid down in this case as follows:

In order to attract Clause (c) of Section 13(1) of the Bombay Rent Control Act, the landlord has to establish first, a conduct of the tenant, secondly, that the said conduct is a nuisance or annoyance and thirdly that the nuisance or annoyance is caused to the adjoining neighbours or occupiers of the premises. In this Clause the Legislature has used the words "nuisance" or "annoyance" meaning thereby, that the word "annoyance" has a different meaning than the word "nuisance" as the Legislature would not ordinarily use the same expression twice over. The word "annoyance" indicates such conduct of a person which would harm, injure or irritate other persons or to make them angry. The word "annoyance" as used in Clause (c) of Sub-section (1) of Section 13 of the Act includes an act which interferes with the peaceful and reasonable enjoyment of the premises by the adjoining or neighbouring occupiers....

11. On the basis of annoyance used in this section, Mr. D.D. Vyas contended that nuisance and annoyance have different meaning and if the act of the tenant causes annoyance to the landlady or causes irritation to the landlady it will be sufficient ground for eviction of the tenant. The facts of this case were different. Here the premises was let out to the tenant for residence. He used the premises for boarding his workers. There was one common latrine and bathroom which was to be used by other tenants and their family members. The result was that other tenants and family members had to stand in queue which caused inconvenience to the tenants, residing on the first and second floors. On these facts it was held that the conduct of the tenant in allowing his labourers to stay in the suit premises, abridged and diminished seriously and materially the ordinary comforts to which the occupiers of the premises were entitled to. However, it was not argued in this case nor considered whether single act of the tenant committing trespass or as a result of the said trespass inconvenience caused to the landlady in facing civil and criminal litigation amounts to nuisance or annoyance to the landlady.

12. The second case referred by Mr. Vyas was of *Zenolia Nair v. Hasmukhrai Harjivan Biboi* and Anr. 1975 (16) GLR 709. The following proposition was laid down by this Court in this case:

The object of Section 13(1)(c) is to see that tenant forfeits protection granted to him by the Act, if he has been guilty of a conduct which is a nuisance or annoyance. The phrase "has been guilty of conduct" indicates existence of the conduct at a particular period of time before the institution of the suit. The phrase refers to conduct in the past which has continued upto the date of the filing of the suit or till a reasonable period before the filing of the suit. The protection given to the tenant by the Act is made subject to his obligation towards his fellow beings in the neighbourhood; and that obligation is that he must behave in a decent manner in the sense that he should not be guilty of a conduct which may amount to material interference with the ordinary comfort of human existence or which reasonably troubles the mind and pleasure of ordinary sensible inhabitants of the adjoining or neighbouring premises - a conduct which brings about disturbance of reasonable peace of mind of such adjoining or neighbouring occupiers.

13. On the basis of this case *Shri D.D. Vyas* contended that since the annoyance to landlady was caused before institution of the suit and it was continuing this is sufficient compliance of the requirement of Section 13(1)(c) of the Act.

14. However, considering this case and facts of the case before me and also considering the judgment of the lower Appellate Court laying down the philosophy of nuisance and annoyance I am of the view that single act of the tenant in committing trespass over one room owned and possessed by the landlady could not amount to annoyance to the adjoining occupiers or neighbouring occupiers. Occupiers of adjoining building or neighbouring building have no concern with such activity of the tenant nor their personal life is

disturbed by alleged and proved trespass committed by the tenant. Obviously, the landlady is not permanently residing in the adjoining portion of the suit accommodation or in any other building adjoining the disputed building. On the other hand, she is residing at Bombay and she casually comes to the locality where the disputed building is situated. Such casual visit cannot be treated as occupation of the landlady in a portion of the disputed building or of any adjoining building. As such the alleged trespass might have caused irritation to the landlady but it does not amount to nuisance on which tenant can be evicted.

15. Facing litigation on account of alleged trespass is also not annoyance or nuisance to the landlady. If trespass was committed litigation was not initiated by the tenant for declaration that he is tenant of the said room also. On the other hand, the landlady initiated criminal proceedings by filing complaint in the Criminal Court, ultimately the tenant was acquitted and trespass was not upheld by the Criminal Court. Finding of the Criminal Court is not binding upon the Civil Court. As mentioned earlier the landlady filed Civil Suit No. 237 of 1981 for possession of the alleged room from the revisionist. The said suit was decreed. Naturally the tenant had to file appeal which was dismissed. He took the matter upto the Apex Court. There also he remained unsuccessful. Thus, a person vindicating his right in competent Court through litigation cannot be blamed to be guilty of an act which may cause annoyance or irritation to the landlady or which may cause nuisance to the landlady. There is no allegation that the activities of the revisionist in the suit premises are obnoxious and causing nuisance to the landlady. It is also no case where the tenant has been alleged to be guilty of committing frequent trespass in various portions of the building owned by the landlady. Thus, single act of trespass in view of the pronouncement in Gaurishanker "s case (supra) which lacks frequency and persistency may not amount to annoyance or nuisance to the landlady.

16. For determining whether the act and conduct of the tenant amounts to nuisance or annoyance to the landlord or landlady the test should be whether a reasonable man in the circumstances of the case would feel annoyed or irritated from the conduct of the tenant. It is not fanciful desire of the" landlord or the landlady which is to be taken into consideration. A reasonable lady who herself initiated Civil and Criminal litigation cannot complain that by pursuing such litigation she has been annoyed because the tenant committed trespass. Every person has right to defend his case. Case may be false or true. Ultimately, if the Court finds that the stand of the tenant was incorrect or false this may also not amount to an act of the tenant causing nuisance or annoyance to the landlady. Hyper-sensitivity has no place in determining annoyance or irritation to the landlord or to the landlady. The only thing is whether by such act and conduct of the tenant reasonable man could be seriously and really annoyed. In every litigation some annoyance is bound to be caused because of the lengthy litigation and time taken in finalising the litigation but this by itself is not a ground to my mind for passing decree for eviction of the tenant.

17. Considering the entire material on record I am of the view that the philosophy about nuisance enunciated by the lower Appellate Court in its lengthy judgment is contrary to law hence, the judgment itself becomes contrary to law. Consequently, the revision has to be allowed.

The revision is accordingly allowed. Judgment and Decree of the lower Appellate Court granting decree for possession against the revisionist are set aside.

18. Since nothing was argued on the orders of the two Courts below regarding fixation of standard rent the said order has to be confirmed and is hereby confirmed. Remaining portion of the decree of the trial Court is also confirmed. In the circumstances of the case the parties shall bear their own costs in this case.