

(1982) 09 GUJ CK 0009
In the Gujarat High Court

R.A. Maskati and Others

APPELLANT

Vs

Fakirchand Maganlal

RESPONDENT

Date of Decision : 22-09-1982

Acts Referred:

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

Citation : (1982) 2 GLR 702

Hon'ble Judges : N.H. Bhatt, J

Bench : Single Bench

Judgement

N.H. Bhatt, J.—These 15 civil revision applications are preferred by the original plaintiffs-landlords u/s 29(2) of the Bombay Rent Act

because both the trial court i.e. the court of Small Causes Ahmedabad in the respective suits and the appellate Bench of the Court of Small Causes

in the respective appeals held that the plaintiffs' suits for possession u/s 13(1) (hh) of the rented premises from the respective defendant tenant were

not competent, because as required u/s 13(3A) and 13(3B) of the Bombay Rent Act, the certificate of the Tribunal constituted u/s 13(3B) was not

produced at the time of institution of those suits or even thereafter. Being aggrieved by the said dismissal of those suits, the common plaintiffs of

those 15 suits and, therefore, the common petitioners in these 15 civil revision applications have filed these 15 revision applications.

2. The Special Civil Application in question has been filed by those petitioners, who were the plaintiffs in those 15 suits, and the respondents are

the State of Gujarat and the Tribunal constituted by the State Government u/s 13(3B) of the Bombay Rent Act. This petition is necessitated

because the Tribunal, which is none other than the Housing Commissioner of the

Gujarat Housing Board, appointed as the Tribunal by the State

Govt. u/s 13(3B) of the Rent Act, refused to grant the certificates prayed for on the ground that, according to the Tribunal, it could issue

certificates under sec, 13(3A) and 13(3B) only in respect of residential premises. The petitioners, that is the landlords, have, therefore, sought for a

writ of mandamus, directing the Tribunal to entertain and dispose of the applications of the petitioners for a certificate even in respect of the commercial premises.

3. As far as the 15 revision applications are concerned, they are being rejected by me because I confirm the view of the courts below that the

procurement of a certificate from the Tribunal is mandatory for the purpose of instituting suits u/s 13(1)(hh) of the Bombay Rent Act, and that

having not been done in these cases, the suits were rightly dismissed by the courts below. 30 rule is discharged in all these 15 revision applications

with no order as to costs.

4. This brings to the surviving matter, namely, the special civil application no. 2348 of 1979. The relevant provisions from the Bombay Rent Act

are reproduced below:

13(3). The court may pass the decree on the ground specified in Clause (h) or (i) of Sub-section (1) 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. (3A). No decree for eviction shall be passed on the ground

specified in Clause (hh) of Sub-section (1), unless the landlord produces at the time of the institution of the suit a certificate granted by the Tribunal

under Sub-section (3B) and gives an undertaking-(a) that the new building to be erected by him shall (subject to the provisions of any rules, by-

laws or regulations, made by a local authority) contain not less than (two) times the number of residential tenements, and not less than (two) times

the floor area, contained in the premises sought to be demolished

(b) That the work of demolishing the premises shall be commenced by him not later than one month, and shall be completed not later than three

months, from the date he recovers possession of the entire premises; and

(e) that the work of erection of the new building shall be completed by him not later than fifteen months from the said date;

(Provided that where the court is satisfied that the work of demolishing the premises could not be commenced or completed, or the work of

erection of the new building could not be completed, within time for reasons beyond the control of the landlord, the court may by order extend the

period by such further period, not exceeding three months at a time, as may, from time to time, be specified). (3B) (a) for the purposes of Sub-

section (3A)N, the State Govt. may from time to time constitute a Tribunal consisting of such persons and for such local area as it thinks fit.

(a) The Tribunal constituted under clause

(b) may grant a certificate after being satisfied that:

(i) the plans and estimates for the new building have been properly prepared;

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(iii) the necessary funds for the purpose of the perfection of the new building are available with the landlord; and

(iv) such other conditions as the State Govt. may by general or special order specify have been satisfied.

(c) the proceedings before the Tribunal shall be in the manner as may be prescribed by rules made by the State Govt. in this behalf).

The Tribunal, that is the respondent No. 1 in the petition, refused to give the certificate because it thought that provisions of Section 13(3A) lay

down that Section 13(1)(hh) itself, because of the provisions of Clause (a) of Section 13(3A), are confined to residential premises. This is gross

misconception of law on the part of the Tribunal.

5. There is a judgment of this High Court in the case of Chimanlal Maganlal Shah v. Shantilal Chhaganlal Shah 12 G.L.R. 229. A.D. Desai J., as he

then was, has clearly held there that "in a case in which the landlord asks possession of premises used entirely for business on the ground falling u/s

13(1)(bh) of the Act, the undertaking mentioned in Clause (a) to Sub-section (3A) cannot apply, meaning thereby that there is no restriction to the

landlord to recover the possession of such premises". I, on my own also, confirm the view of A.D. Desai J, which is commendable even on first

principles.

6. The right given to a landlord for getting possession from the tenants u/s 13(1)(hh) does not envisage of any smaller category of premises. All that

the section requires is that landlord can get possession of the premises consisting of not more than two floors, if they are reasonably and bona fide required by the landlord for the immediate purpose of demolishing them and such demolition is to be made for the purpose of erecting a new building on the premises sought to be demolished. This is the basic right acknowledged by the Legislature and unless there are other clear contrary indications, this right recognised by the Legislature is to be given its full scope and amplitude. Section 13(3 A) refers to the undertaking and also inter alia provides that the new building to be erected by the landlord must contain not less than two times the number of residential tenements, if at the time of the suit there are residential tenements at all. The said Clause (a) further requires that the floor area of the new purposed building should be double the floor area of the premises sought to be demolished. Simply because an undertaking is to be given by the landlord that the new building shall contain two times the number of residential tenements, it cannot be held that the whole substantive provision, namely, Section 13(1) (hh) is confined to residential premises. What is a sort of a condition to be fulfilled, if applicable, cannot be put on the pedestal of the main principle itself and for the reasons that found favour with A.D. Desai J. in Chimanlal's case (Supra), I hold that Section 13(1)(hh) is not confined in any way to the premises consisting only of residential tenements and no other.

7. Apart from this general principle, there is a clear indication in the statute itself supporting the above mentioned conclusion reached by A.D.

Desai J. in that Chimanlal's case (supra). Section 17B deals with certain contingencies. Where a decree for eviction has already been procured by

the landlord on the ground specified in Clause (hh) of Sub-section (1) of Section 13 and the work of demolishing the premises and of the erection

of a new building has been commenced by the landlord, it is open to the tenant within six months from the date on which he delivered vacant

possession to give notice to the landlord of his intention to occupy a tenement in the new building on its completion. While giving such a notice, the

tenant is to abide by certain conditions. The first condition is that he should offer to pay to the landlord the standard rent in respect of the new

tenement. The proviso appended to this Clause (a) is very material. It is set out below:

Provided that, in respect of a residential tenement, the tenant concerned shall not be required to pay rent in relation to the area at more than double

the rate at which he paid rent for his former premises. Immediately before his eviction under the decree (unless the landlord obtains an order of the

court fixing the standard rent in respect of the tenement at a higher rate).

8. The affect of the, proviso is that if the new tenement sought to be occupied by the tenant in the new building is a residential tenement, the tenant

concerned cannot be required to pay the rent in relation to the area at more than double the rate at which he paid rent for his former premises.

There is implicit, but clear acknowledgment of the situation by the Legislature in this proviso appended to Clause (a) of Section 17B of the Act that

the premises dealt with by Section 13(1)(hh) can well be residential premises as well as non-residential premises. If these provisions of the proviso

are then projected into Section 13(1)(hh) and also to Section 13(3A), and 13(3B), it is evident that the scope of Section 13(1)(hh) is not limited to

residential premises alone when all the provisions are there and when there is some apparent conflict, a sincere attempt is to be made to reconcile

those provisions rather than frustratingly declare that the substantive provision is confined to or limited to only one class of property. This latter

resort would fly in the face of the above-quoted proviso appended to Clause (a) of Section 17B of the Bombay Rent Act and would render the

said proviso to some extent nugatory. It is one of the cardinal principles of interpretation to assume that the Legislature does not undertake any

futile exercise. In order to reconcile these apparent conflicts, certain art of interpretation is to be employed. The simple, and in my view, the only

way to interpret the question of undertaking relating to residential premises is that it is confined to the premises sought to be demolished as

residential ones, if there are at all residential premises wholly or partly in the building sought to be demolished. This interpretation presents a

coherent and homogeneous picture and saves the charge of unnecessary restricting the substantive provision of Section 13(1)(hh) and also renders

meaningful the proviso appended to Section 17B (a) of the Act.

9. In above view of the matter, I allow this special civil application and direct the respondent no. I- the Tribunal-cum-Housing Commissioner of the

Gujarat Housing Board that he shall entertain and dispose of the application or

applications of the petitioners for a certificate even for commercial structures as required of him u/s 13(3B) of the Bombay Rent Act without in any way being obsessed by the idea that he can function only if the premises sought to be demolished u/s 13(1)(hh) are residential premises. Rule is accordingly made absolute with no order as to costs.