
(1985) 11 BOM CK 0033

In the Bombay High Court

Case No : Writ Petition No. 1220 of 1981

Rampyari Surajbali since decd. by her heirs and legal representatives

APPELLANT

Vs

K.C. Borkar and Another

RESPONDENT

Date of Decision : 01-11-1985

Acts Referred:

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

Citation : (1986) 1 BomCR 393

Hon'ble Judges : S.K. Desai, J

Bench : Single Bench

Advocate : C.R. Dalvi, for the Appellant; V.A. Thorat, instructed by A.P. Nagvekar and Co., for the Respondent

Judgement

S.K. Desai, J.—One K.V. Borkar owner of certain land at Borkar Wadi, Ranade Road, Dadar, Bombay-28, filed two suits. Both were eviction suits. One of them being RAE Suit No. 4563 of 1966. This was against two defendants viz., the tenant and the occupant. Both suits were decreed and respective appeals were also dismissed. The heirs of original defendant No. 2 in RAE Suit No. 4563 of 1966 have preferred this writ petition.

2. In RAE Suit No. 4563 of 1966 eviction of the defendant and the occupant was sought from an open plot of land admeasuring 10" X 25" on the basis that the plaintiff required the said open plot for erection of a new building. In other words, the landlord sought eviction under the provisions contained in section 13(1)(i) of the Bombay Rent Act. It was agreed that evidence in both the suits, namely Suit No. 4563/66 and Suit No. 4562/66 would be taken together. Evidence was thereafter led by the parties and a common judgment was given on 28th February, 1975 in both the suits. The landlord's averment that he required the land for the purpose of erection of a new building was accepted and eviction decrees passed. Possession was directed to be handed over on or before 1st May, 1975. The matters were carried higher and a number of appeals were filed

principally by the different occupants. The appeals filed by the 1st and the 2nd defendants respectively in Suit Nos. 4563/66 were numbered as Appeal Nos. 266 and 278 of 1975. The latter appeal is the one filed by the original 2nd defendant. These two as well as two other appeals were disposed of by Division Bench of the Court of Small Causes by a common judgment delivered on 20th November, 1980. Though upholding the eviction decree and the conclusion of the trial Court regarding the acceptance of the landlord's case u/s 13(1)(i) the appeal Court made the decree passed in RAE Suit No. 4563 of 1966 conditional and the condition as well as the reason for imposing the condition is to be found in para 19 of the appellate judgment.

3. It may be mentioned here that the appellate judgment is well reasoned, logical and exhaustive and ordinarily interference under Article 227 with such a judgment ought not to be considered.

4. Mr. Dalvi on behalf of the petitioners however contended that the landlord was not entitled to claim eviction of the tenant u/s 13(1)(i) of the Bombay Rent Act but could have sought eviction only u/s 13(1)(hh). Even before the Appellate Court a similar contention has been raised but the same was negated.

5. Mr. Dalvi has strenuously argued that the express phraseology employed by section 13(1)(i) would clearly indicate that the said provisions were not available where the premises in respect of which eviction of the tenant was sought was not open land but land together with some structure thereon which structure or portion thereof was occupied by the tenant or any person induced by the tenant.

6. It thus becomes necessary to examine the said provisions and to consider Mr. Dalvi's argument. Section 13(1)(i) reads as follows :

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

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

If the statutory provision is required to be considered and interpreted for the first time the submission that section 13(1)(i) would be available only in case of vacant land would be required to be considered as fairly attractive. Two rival interpretations are possible. One is that the premises whose possession is sought to be recovered must be land on the date on which the suit is filed without any structure thereon irrespective of whose structure it is. The alternative construction is that the premises originally let out were land which the owner seeks to recover from the tenant although the tenant may have put a structure on the said land after the lease and may have induced his tenants in the structure. Now, the use of the adjective "new" before the word "building" may seem to suggest that section 13(1)(i) would cover the case of land fully or partially occupied by a building. However, it is to be noted that this expression

"new building" occurs both in section 13(1)(hh) as well as 13(1)(ii) and whilst its use is appropriate for the former provision, it is totally inappropriate for the latter provision. If that be so, then much cannot be read in the adjective "new" and it may not be proper to deduce therefrom that section 13(1)(i) would be available where the landlord who was only leased out his land seeks to recover possession thereof in order to pull down or have removed an existing or old structure belonging to the tenant and thereafter construct his new building thereon. The difficulty is however caused by the fact that the question of interpretation is not *res integra* and has been decided against the construction which *prima facie* seems attractive. This has been done both by the Supreme Court and by Single Judges of the Court. Reference may now be made to the judgments which have dealt with this aspect of the matter.

7. In *Krishnapasuba Rao Kundapur & another v. Dattatraya Krishnaji Karani*, AIR 1966 S.C. 1024 a three Judge Bench, of the Supreme Court had occasion to consider in a case arising from Mysore the very statutory provision. In the view of the Supreme Court, though I do not find in the said decision any discussion of the statutory provisions or interpretation thereof by only the application, section 13(1)(i) would be available when an open plot or piece of land has been let out by the landlord to the tenant although the tenant may then have put up a structure or structures thereon and inducted tenants therein. Irrespective of whether there is any discussion or not, this decision will be binding on subordinate courts.

8. The aforesaid Supreme Court decision was followed and applied by a Single Judge of this Court in *Sohansingh Bharatsingh v. Narhar Narayan Godbole*, 73 Bom.L.R. 282 . According to the learned Single Judge, the word "land" in both Clauses (i) and (ii) must be construed to mean only "open land without any structure of the landlord thereon". The question came to be considered once again by a Single Judge of the Bombay High Court in *Shantinath J. Upadhyaya and Another Vs. Ajit N. Upadhyaya*, and the learned Single Judge has observed in para 12 of the aforesaid judgment as under :

"What has to be seen under Clause (i) of sub-section (1) of section 13 is (sic) the state of premises when they were let and not the state in which they were, when the suit for possession was filed."

This is just the *ipse dixit* of the Single Judge and no cogent reason is given by him for this view.

9. My attention was also drawn to *Badrinarayan Ramsukh Rathi v. Nichaldas Tejbhandas Sindhi*, 70 Bom.L.R. 481. In my opinion, however, the discussion in the said case is not very germane or relevant for our purpose. In another case *Badriprasad K. Agarwal & others v. The Premier Garage and others*, 1980 Bom.C.R. 12, the learned Single Judge was really concerned with discussing whether the facts of the case before him were covered by section 13(1)(i) of 13(1)(g) and he held that the former provisions were applicable. The precise

point under consideration by me was not at issue in the said case where it was observed that if the landlord wished to secure possession of open land to be used as open land the case would be covered by section 13(1)(g). where possession is sought to be recovered for construction of a building, the case would be covered by section 13(1)(i). No light is thrown on the question under consideration by the said judgment.

10. As stated earlier in the absence of a Supreme Court decision, which by the Constitution is the law laid down and binding on all courts. I would have been inclined to differ from the two decisions of the Single Judges in 73 Bom.L.R. 282 and Shantinath J. Upadhyaya and Another Vs. Ajit N. Upadhyaya, . This might have required a reference to a Division Bench. However, such reference is unnecessary since the law has been laid down by the Supreme Court, however, sketchy may appear to be the discussion of the statutory provision therein. If the said Supreme Court decision is to be reconsidered it is for the aggrieved party to take the matter before the Supreme Court and ask for reconsideration of the said decision by a larger Bench if so advised.

11. In view of the Supreme Court decision in AIR 1966 S.C. 1024 which I am bound to follow, I must hold that the landlord's eviction suit u/s 13(1)(i) was maintainable and that the landlord was not required to comply with the conditions imposed u/s 13(1)(hh).

12. A very attractive argument was advanced both before me and the Appeal Court which was to the effect that since the building was to be constructed on the entire piece of land including the two pieces which were subject matters of the two eviction suits, and since the landlord could not obtain possession of the land over which his own structure was constructed without carrying out the requirements imposed by section 13(1)(hh), these were required to be impliedly proved in these two suits also. Now, as a matter of law, the argument was required to be rejected. However, there was and is substance as a matter of equitable consideration in the argument this argument as a matter of equitable consideration has been met by the Appellate Court by passing a conditional decree. In fact, there was some logical infirmity in the bald eviction decree passed by the Single Judge which infirmity was corrected by the conditional decree passed by the Appellate Court which directed the decree holder not to execute the decree passed in the suit until and unless he recovered possession of the adjoining property in possession of his eight tenants. It may be mentioned in passing that the landlord had obtained agreements from these eight tenants though it would seem that subsequently some of these tenants resiled from these agreements which they had earlier entered into.

13. It may be mentioned before concluding this judgment that the eviction decree obtained by the landlord and the possession recovered in pursuance thereof would also be subject to the provisions contained in section 17 of the Bombay Rent Act. I however, refrain from giving any firm or final decision on whether the provisions contained in section 17 would be available to the

occupants or only to the direct tenant of the landlord (i.e. defendant No. 1 in the eviction suit).

14. On a number of occasions the provisions of section 13(1)(i) as interpreted by the Supreme Court have come up for application and Courts have found certain difficulties resulting from this interpretation. The Rent Act which is meant for protection of tenants, really fails to protect them with this interpretation of section 13(1)(i). Hence, in my view, the said provisions as interpreted is required to be suitably amended. In the alternative the interpretation will be required to be revised. This however, is a question to be considered in other forums.

15. In the result, this is not a fit matter calling for interference under Article 227 of the Constitution of India and the rule will accordingly stand discharged. Stay granted on usual terms at the time of admission to stand vacated with effect from 31st January, 1986. Parties to bear their own costs of the writ petition.