
(1980) 11 BOM CK 0008
In the Bombay High Court
Case No : Writ Petition No. 550 of 1980

Shakharam Keshav Yadav

APPELLANT

Vs

Rajaram Ranglal Sarda

RESPONDENT

Date of Decision : 10-11-1980

Acts Referred:

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

Citation : (1982) 2 BomCR 484

Hon'ble Judges : R.A. Jahagirdar, J

Bench : Single Bench

Advocate : K.J. Abhyankar and S.G. Page, for the Appellant; M.V. Paranjpe and Niteen V. Pradhan, for the Respondent

Judgement

R.A. Jahagirdar, J.—By this petition under Article 227 of the Constitution of India the petitioner seeks to challenge a decree passed by the learned Extra Assistant Judge of Sangli in Civil Appeal No. 98 of 1978 by which the learned Extra Assistant Judge reversed the decree of the dismissal of the suit passed by the Court of the first instance which was the Court of the Civil Judge (Junior Division) of Sangli. The facts are very few and may be mentioned. It may also be stated that the relevant facts, which I now proceed to mention, are not in dispute.

2. The petitioner is a tenant of five rooms in a building bearing City Survey No. 937/B and situated at Sangli which is a district place. Of the five rooms, four are situated on the first floor of the building while one room is on the ground floor. All these five rooms are admittedly used for residence by the petitioner and the members of his family. From the rent which is being paid by the petitioner, that is Rs. 24/- per month, it is clear that the premises must be somewhat old. The petitioner is a businessman carrying on the business of lodging and boarding house which carries the name of Alpana, in another building.

3. On 12th of May, 1972, the petitioner purchased a building bearing City Survey No. 158 which is a multistoried building. When the petitioner purchased the said building it was occupied by the Post and Telegraph Department and it has also

come on record that one part at least of the said building was used for residence by an employee of the Post and Telegraph Department. After purchasing the said building and after making some alterations and renovations the petitioner has started the business of a restaurant in the said building. The restaurant bears the name of Parihar.

4. On 11th of April, 1975, respondent No. 1, hereinafter referred to as the respondent, served a notice upon the petitioner asking him to vacate the premises which were in his possession as a tenant, namely the five rooms in City Survey No. 937/B. the respondent is the landlord of the said building. The provocation for this notice was obviously the acquisition of City Survey No. 158 by the petitioner. The petitioner sent a reply to this notice on 13th of May, 1975 and in that reply he has specifically stated that he has purchased the said City Survey No. 158 for the purpose of starting a hotel therein. He has further mentioned that the business of hotel is his business.

5. The respondent thereafter proceeded to file a suit, being Regular Suit No. 283 of 1975, in the Court of the Civil Judge (Junior Division), Sangli for possession of the five rooms in City Survey No. 937/B, hereinafter referred to as the suit premises. The main ground urged in support of the claim for possession of the suit premises was that the petitioner had acquired a suitable residence within the meaning of section 13(1)(I) of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, hereinafter referred to as "the Bombay Rent Act." The learned trial Judge by his judgment and order dated 29th of April, 1978 dismissed the suit. The reasons given by the learned trial Judge for dismissing the suit of the respondent need not be mentioned here because ultimately, as I will show presently, only a very short question will have to be decided in this petition.

6. Aggrieved by the aforesaid order of the learned trial Judge the respondent preferred an appeal, being Civil Appeal No. 98 of 1978, which was heard and allowed by the learned Extra Assistant Judge of Sangli by his judgment and order dated 3rd December, 1979. The effect of this order was that the suit filed by the respondent came to be decreed. While thus decreeing the suit the learned Extra Assistant Judge addressed himself to the following question :--

"They only question will be if it (City Survey No. 158) is a suitable residence ?".

Proceeding further, the learned Extra Assistant Judge has held that it is no where stated in section 13(1)(I) of the Bombay Rent Act that the intention of the tenant while purchasing a new premises should be taken into consideration. He has further proceeded to mention that if it is proved by the plaintiff that the defendant has acquired vacant possession and the premises are suitable for residence, then the plaintiff would be entitled to the possession of the suit premises. In other words, the learned Extra Assistant Judge thought that if the tenant has acquired any premises and if those premises are capable of being used for residence, then the tenant must be deemed to have acquired residence within the meaning of section 13(1)(I) of the Bombay Rent Act. This

interpretation of the law is the subject matter of challenge in this petition supported before me by the learned Advocate Mr. K.J. Abhyankar.

7. The provision of section 13(1)(I) of the Bombay Rent Act must now be noticed. They are in the following terms :---

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

(I) that the tenant after the coming into operation of this Act has built, acquired vacant possession of or been allotted a suitable residence."

The question in this petition is whether by purchasing City Survey No. 158 the petitioner has acquired vacant possession of a suitable residence. The question of the suitability of the residence is not being discussed by me because on the question which arises at the threshold itself, namely whether the petitioner has acquired residence, the petitioner must, in my opinion, succeed. Mr. Abhyankar has pointed out, and in my opinion rightly, that the learned Extra Assistant Judge as committed a patent error of law in holding on reading the provisions of section 13(1)(I) of the Bombay Rent Act that mere acquisition of premises which are capable of being used as a residence is tantamount to acquisition of a residence. By saying so the learned Extra Assistant Judge has introduced words into a section which he is not, on any rule of interpretation of statute, entitled to do.

8. "Residence" means the place of a person's home or habitation; the place where he abides; (see Concise Law Dictionary by Osborn, 6th Edition). It is not the case of the respondent, and it is definitely not the finding of either of the two courts below, that after acquiring City Survey No. 158 the petitioner has at any time resided therein. The admitted fact is that the said building is being utilised by the petitioner for the purpose of conducting a restaurant under the name of Parihar. On these facts and circumstances can it be said that the petitioner has acquired residence, within the meaning of section 13(1)(I) of the Bombay Rent Act? The answer, in my opinion must be an emphatic "No" because the petitioner has not shifted his residence from the suit premises; the petitioner has not acquired City Survey No. 158 for the purpose of residing therein. If the petitioner has acquired accommodation which is capable of being used for residential purpose but which he has acquired a residence, acquisition of residence must necessarily mean acquisition of accommodation for the purpose of residing therein.

9. The learned Extra Assistant Judge is thus found to have committed a patent error of law when he says the acquisition of premises which are capable of being used for residence means acquisition of residence. Unfortunately he held so partly by using deflected by a judgment of the Gujarat High Court which was cited before him. That judgment is Shrinivas Vaman Karve and Another Vs. Chandanben Jayantilal Dalal and Others, The facts of that case disclosed that the first defendant had purchased two galas in the name of the second defendant

who was his son. On the question as to whether he had acquired suitable residence, it was contended on behalf of the defendants that the intention of the first defendant was to acquire accommodation benami in the name of the second defendant. It was held by the Gujarat High Court that the intention of the tenant was immaterial if he had acquired residence. The learned Extra Assistant Judge has thought that the ratio of that decision was applicable to the facts of the present case which it is patently not. The question of intention does not arise on the facts of this case. The question is very narrow one and that is whether the petitioner has acquired residence. The stark facts which are before the Court show clearly that the petitioner has not acquired residence at all. On the other hand, he has acquired business premises.

10. Mr. Paranjpe, the learned Counsel appearing for the respondent, sought to place reliance upon a judgment of the Supreme Court in *Jivram Ranchhoddas Thakkar and Another Vs. Tulshiram Ratanchand Mantri and Others*, for the purpose of asking me not to interfere with the findings recorded and the decree passed by the learned Extra Assistant Judge. I do not find any warrant for such abstinence on my part in the judgment cited by Mr. Paranjpe. On the facts of the case in *Jivram v. Tulshiram*, the Supreme Court found that in the interests of justice it would be expedient to divide the suit premises and allow the tenant to continue with half of the premises for some time. It also appears from the concluding part of the said judgment that the directions ultimately given by the Court were based upon mutual consent and undertaking given by the respective Counsels on behalf of their parties.

11. Mr. Paranjape also contended that there is no error apparent in the Judgment of the learned Extra Assistant Judge warranting an interference from this Court under Article 227 of the Constitution. I have already shown above how the learned Extra Assistant Judge has by importing words into the section misconstrued the relevant provision. There is, in my opinion, a patent error of law requiring correction by this Court under Article 227 of the Constitution.

12. Mr. Paranjape then proceeded to say that the evidence shows that City Survey No. 158 is large in area and the petitioner can accommodate himself in the said building even if he continues to conduct his restaurant business therein. This is not a question which can be decided in this petition. Merely because City Survey No. 158 is spacious one, if at all it is so, a decree for possession cannot be passed unless that decree is supportable on one or the other of the grounds mentioned in the Bombay Rent Act.

13. A new controversy was sought to be injected into the arguments before me by the respondent by certain affidavits filed on his behalf. In the affidavit dated 19th of February, 1980 the respondent has mentioned that the petitioner along with his son has purchased residential premises bearing the City Survey numbers mentioned in paragraph 3 of the affidavit. In reply, the petitioner has mentioned that the said building is in a dilapidated condition and the front portion of the said property is shop premises. He has also mentioned that back portion area

has completely fallen down and it is not useful for any purpose. Even if it is permissible for me to exercise my jurisdiction under Article 227 of the Constitution by taking into consideration subsequent events, I cannot take into consideration facts which are disputed. Apart from the question whether the entire building acquired by the petitioner and his son is residential or not, the further question also whether the building is suitable or not will also have to be decided. Such disputed questions cannot for the first time be raised or decided in a petition under Article 227 of the Constitution merely on the basis of affidavits filed by the parties.

14. In the result, this petition must succeed. The decree passed by the learned Extra Assistant Judge of Sangli in Civil Appeal No. 98 of 1978 is set aside and the decree of dismissal of the suit passed by the learned Civil Judge (Junior Division), of Sangli in Regular Civil Suit No. 283 of 1975 is restored.

15. The respondent shall pay the costs of the petition.