

(1984) 09 BOM CK 0040

In the Bombay High Court

Case No : Writ Petition No. 3193 of 1984

Shankar Nana Waychal and Others

APPELLANT

Vs

Mohan Ganesh Date and Another

RESPONDENT

Date of Decision : 03-09-1984

Acts Referred:

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

Citation : (1985) 1 BomCR 100 : (1984) 86 BOMLR 483 : (1984) MhLj 834

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

Bench : Single Bench

Advocate : C.R. Dalvi, for the Appellant;

Final Decision : Dismissed

Judgement

R.A. Jahagirdar, J.—This is the landlords petition against the decree of the Appeal Court below refusing to grant them a decree for possession of the premises which are tenanted by respondents Nos. 1 and 2 in this petition. The grounds which were urged in support of the prayer for decree for eviction were that the respondents were guilty of an act of nuisance, that the landlords required the suit premises reasonably and bona fide for their own use and occupation and that the second respondent has acquired after the coming into operation and of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the "Bombay Rent Act") vacant possession of a suitable residence. These grounds are covered by Clauses (c), (g) and (l) of section 13(1) of the Bombay Rent Act. On questions arising under Clauses (c) and (g) the Court below has recorded findings, which are essentially findings of facts. Therefore, this Court under Article 227 of the Constitution will not entertain any complaint against the same.

2. On the ground under Cause (i) of section 13(1) of the Bombay Rent Act, however, it has been urged by Mr. Dalvi appearing for the petitioners that the two sons of the second respondent have admittedly acquired accommodation elsewhere and this is tantamount to the second respondent himself acquiring

suitable residence as mentioned in Cause (I) of section 13(1) of the Bombay Rent Act.

3. It is impossible to accept this suggestion. What section 13(1)(i) requires is that "the tenant after the coming into operation of this Act has built, acquired vacant possession of or been allotted a suitable residence". The acquisition of a suitable residence must necessarily be by the tenant and not any other person who is related to the tenant. In the instant case, if accommodation has been acquired by the sons of the tenant, that cannot be made a ground for evicting the tenant u/s 13(1)(i) of the Bombay Rent Act. It is common knowledge that when the family grows some of the members of the family naturally leave the original premises and acquire other accommodation. The provision contained in section 13(1)(i) of the Bombay Rent Act is not meant to cover such a situation. In my opinion, it is only when the tenant himself builds or acquires vacant possession or is allotted a suitable residence after the coming into operation of the Bombay Rent Act that the landlord can legitimately urge it as a ground for possession of the premises.

4. Reliance has been placed by Mr. Dalvi, on a judgment in B.R. Trivedi v. Kantilal Hiranman Pawar and others, Writ Petition No. 1899 of 1979 decided on 19th September, 1983 by Chandurkar, acting C.J. Going through the said judgment with the assistance of Mr. Dalvi, I find that in that case the accommodation had been acquired in the name of the wife of the tenant, but as a finding of fact the District Court had recorded that the tenant himself "had built or acquired suitable premises". This finding was arrived at, as mentioned in paragraph 4 of the aforesaid judgment, by the Appeal Court on a fresh review of evidence. Decree passed on that ground was naturally supportable because the finding was that the tenant had himself acquired alternative suitable residence. In my opinion, this judgment is of no assistance to the petitioners before me.

5. Petition is rejected.