

(1998) 09 BOM CK 0044

In the Bombay High Court

Case No : Writ Petition No. 5745 of 1987

Shankarrao Dattatraya Kalyankar

APPELLANT

Vs

Vishwasrao Dadasaheb Patil

RESPONDENT

Date of Decision : 07-09-1998

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1), 15

Citation : (1998) 4 ALLMR 409 : (1999) 1 BomCR 161 : (1998) 3 MhLj 722

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : D.S. Sawant, for the Appellant; Vineet B. Naik, for the Respondent

Judgement

R.M. Lodha, J.—The concurrent judgment and decree passed by the two Courts below granting tenant's eviction from the disputed premises on the ground that he had acquired vacant possession of a suitable accommodation is under challenge by the tenant.

2. For the sake of convenience, I intend to refer hereinafter the petitioner as tenant and the respondent as landlord. The landlord let out the premises in question which comprise of 3 rooms on the ground floor of S.T. No. 1272 in "D" Ward of Kolhapur Municipal Corporation on a monthly rent of Rs. 35/-. Accordingly to the landlord, the tenant was liable to pay the electricity charges at the rate of Rs. 7/- per month. The tenant did not pay the rent for the months from September 1975 to 1977 and also did not pay the electricity charges. According to the landlord, the tenant also did not pay permitted increases for 3 years and therefore the tenant's tenancy was terminated and the tenant was asked to make the payment of arrears of rent, electricity charges and permitted increases within one month. The landlord thereafter was constrained to file the suit for eviction. The eviction was sought in addition to the ground of default also on the ground that the tenant has acquired vacant suitable accommodation. It was pleaded that the tenant has purchased the property C.S.T. No. 2005/1-2-A of "E" Ward, Kolhapur. After the purchase of the said property, the tenant filed a

suit for eviction against his tenant in the said premises and obtained possession of the said purchased property. The landlord also sought eviction on the ground of reasonable and bona fide necessity and it was pleaded that the premises in his occupation are not sufficient to meet his requirement. The tenant resisted the suit filed by the landlord and set up the case that he was not defaulter in payment of rent. The tenant denied that the rent of the disputed premises was Rs. 35/- p.m. or that he was required to pay separate electricity charges. As regards the property purchased by the tenant, he pleaded in the written statement that after the purchase of the said property, he filed a suit for eviction against his tenant and the tenant surrendered the possession of that property. The tenant set up the case that he had sold away the said property due to financial constraint. He also set up the case that the said property was not fit for his residence. The tenant denied the landlord's need of the premises in question.

3. The trial Court framed 11 issues and, after recording the evidence of the parties, held that in view of its finding that the landlord has failed to prove his necessity of the premises in question, the finding on the question of hardship is not required to be given. The trial Court found that the tenant was defaulter in payment of rent and that he had acquired alternative accommodation. Thus the trial Court vide its judgment and decree dated 11th November, 1982 decreed the plaintiffs suit on the ground of default and acquisition of suitable residence by the tenant. The judgment and decree passed by the trial Court was challenged by the tenant in appeal. The Second Additional District Judge, Kolhapur heard the appeal and vide its judgment and decree dated 28th September, 1987 reversed the finding of the trial Court relating to ground of default. The Appeal Court held that the tenant was not defaulter. However, as regards the ground u/s 13(1)(1) of the Rent Control Act, the Appeal Court held that the landlord has been able to prove that the tenant acquired vacant possession of suitable residence. Thus the Appeal Court maintained the decree for eviction on the ground of acquisition of fact position of suitable residence by the tenant.

4. The learned Counsel appearing for the tenant urged that the accommodation acquired by the tenant was not available to him at the time of the passing of the decree and therefore no decree of eviction u/s 13(1)(1) could be passed. He also argued that the acquisition of alternative premises must be available to the tenant at the time of giving notice and the filing of the suit and not thereafter. He also submitted that the alternative accommodation allegedly acquired by the tenant was not suitable.

5. On the other hand, the learned Counsel for the landlord supported the findings recorded by the two Courts below and highlighted the evidence available on record to show that the tenant acquired vacant possession which was suitable for his residence and if after acquiring possession of suitable accommodation the tenant disposed of the same, a ground of eviction u/s 13(1)(1) is clearly established.

6. Section 13(1)(1) of the Rent Control Act reads thus :

"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 coming into operation of this Act has built, acquired vacant possession of or been allotted to suitable residence."

7. Before the landlord can be granted decree for eviction on the ground aforesaid, the landlord is required to plead and prove that after coming into operation of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 the tenant has built a suitable residence or acquired vacant possession of the suitable residence or has been allotted suitable residence. In other words, at the time action is initiated by the landlord for eviction of tenant u/s 13(1)(1) by way of original plaint or amendment, the tenant must have built suitable residence or acquired vacant possession of the suitable residence or the tenant has been allotted suitable residence. The cause of action to the landlord to sue the tenant for eviction under ground 13(1)(1) of the Rent Control Act arises upon building of a suitable residence by the tenant or acquisition of vacant possession of suitable residence by the tenant or allotment of suitable residence to the tenant and that must precede when pleading u/s 13(1)(1) is made. If at the time the case for eviction is set up by the landlord in the pleading u/s 13(1)(1), the tenant has not built suitable residence nor acquired vacant possession of suitable residence nor has been allotted suitable residence, the suit must fail irrespective of the fact that during the pendency of suit the tenant acquired vacant possession of suitable residence or built suitable residence or allotted suitable residence. The expression "has built, acquired vacant possession of or been allotted suitable residence" occurring in section 13(1)(1) of Rent Control Act clearly indicates either of this must happen before such case is set up in pleading and such pleading is accordingly proved in evidence. In the light of the aforesaid legal position, when the facts of the case in hand are examined, it would be seen that though the landlord has pleaded in the plaint that after the purchase of the property C.T.S. No. 2005/1-2-A "E" Ward, Kolhapur by the tenant and the decree was passed against his tenant in the said premises, the tenant has come in possession of the said property, yet there is no specific evidence led by the landlord to establish that the tenant acquired vacant possession of the said property prior to the filing of the suit, a case set up in the plaint. When I turn to the deposition of P.W. 1 (landlord himself), I find that in his entire deposition he has not stated the date on which the tenant acquired vacant possession. What is deposed by him is that the tenant purchased the property C.T.S. No. 2005/1-2-A, "E" Ward at Kolhapur which is situated in Rajarampuri area. He (tenant) purchased it for his own residence. He (tenant) filed the suit against the tenant of that premises for the possession on the ground of requirement. That suit was decreed in 1973. The appeal was also decided in his favour. As per the decree of that suit, he (tenant) got the possession of his property. The landlord has not deposed as to when the possession was obtained by the tenant. Thus it would be clear that there is no evidence led by the landlord that the tenant acquired

vacant possession of the property purchased by him prior to the filing of the suit. The tenant, on the other hand, examined himself and in his cross examination he admitted that he purchased the house in Rajarampuri for his residence. He also admitted that he filed the case on the ground of reasonable and bona fide necessity. He admitted that the said house consisted of 4 rooms and open place and was independent bungalow. He stated that he obtained possession of that house in the year 1979. This deposition is in the cross examination of tenant and there is no evidence to the contrary. When the tenant obtained possession of the property purchased by him in the year 1979, obviously on the date of the filing of the suit on 1st March, 1978 when the ground for eviction u/s 13(1)(1) was set up, the tenant had not acquired possession of that property. Thus on the date of the filing of the suit, no cause of action had accrued to the landlord because the tenant had not acquired vacant possession of the property purchased by him. In view of finding aforesaid, the contention of the landlord that after acquisition of vacant possession of residence if the tenant sold the house, the ground of eviction u/s 13(1)(1) is not lost, though right, pales into insignificance so also the question whether the house purchased by the tenant, which he came in possession of in the year 1979, was suitable for his residence or not. The decree for eviction passed by the courts below u/s 13(1)(1), thus, cannot be maintained.

8. In view of the discussion aforesaid, the writ petition deserves to be allowed and the judgment and decree passed by the Second Additional District Judge, Kolhapur on 28th September, 1987 affirming the judgment and decree passed by the 2nd Joint Civil Judge, Junior Division, Kolhapur on 11th November, 1982 on the ground of acquisition of vacant possession of the suitable residence by the tenant is quashed and set aside. Rule is made absolute in aforesaid terms. No costs.

9. Writ petition allowed