

(1979) 07 GUJ CK 0009

In the Gujarat High Court

Case No : Civil Revision Application No. 810 of 1977

Shivlal Nathuram Vaishnav

APPELLANT

Vs

Sulochana and Others

RESPONDENT

Date of Decision : 26-07-1979

Acts Referred:

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

Citation : AIR 1980 Guj 59 : (1980) 1 GLR 99

Hon'ble Judges : D.C. Gheewala, J;B.K. Mehta, J

Bench : Division Bench

Advocate : M.R. Barot, for the Appellant; J.M. Patel, for M.M. Patel, for the Respondent

Judgement

Mehta, J.—Our learned Brother Surti, J., has referred this Revision Application to us in the following circumstances :

In Regular Civil Suit No. 291 of 1972, Civil Judge (J. D.) Palanpur granted an eviction decree against the present petitioner on the ground that he has acquired suitable residence after coming into operation of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "the Bombay Rent Act"). This eviction decree was granted u/s 13(1)(1) of the Bombay Rent Act. The appeal of the petitioner-tenant was dismissed by the learned District Judge, Banaskantha at Palanpur with the result that the eviction decree was confirmed. The petitioner-tenant, therefore, carried the matter in revision before this Court. In the course of hearing of this revision, a contention was urged on behalf of the petitioner-tenant that a decree for eviction would not be according to law if the tenant has disposed of the property the acquisition of which has exposed the tenant to an eviction decree. The learned single Judge was impressed by this contention since in his opinion it was a question of considerable importance affecting a large number of tenants. He has therefore, referred the entire matter to us.

2. Short question, which therefore, arises in this reference is as to at what

relevant point of time a trial Court dealing with an ejection action should consider the relevant ground of eviction u/s 13(1)(1) of the Bombay Rent Act? Is it necessary that this ground of acquisition by or allotment to a tenant of a building suitable for his residence should necessarily be existing at the time when an eviction decree is made, or that a trial Court would be Justified in granting a decree of eviction in spite of the cause of action having exhausted itself in the sense that the acquired or allotted residence is disposed of by a tenant?

3. A Division Bench of this Court (consisting of B. J. Diwan & V. R. Shah JJ.) was called upon to consider the exact import of words, "has sub-let" in Section 13(1) (e) of the Saurashtra Rent Control Act. The Division Bench, speaking through V. R. Shah J., held that it was enough for a landlord to satisfy the Court that after the Saurashtra Rent Control Act had come into operation, the tenant did sub-let the premises or a part thereof unlawfully and it was not necessary to further show that the sub tenancy was subsisting at the date of the suit. Reliance has been placed on this decision by the learned Advocate appearing on behalf of the respondent-landlord. On the other hand, the contention was sought to be fortified by the learned Advocate for the petitioner-tenant by placing reliance on one unreported decision of a learned single Judge of the Bombay High Court in Spl. Civil App1n. No. 2998 of 1967 decided by Bal J. on 31-7-1968 where the learned Judge has held, while considering the import of words "has built or acquired" u/s 13(1)(1) of the Bombay Rent Act as is in force in the State of Maharashtra, that even if a tenant had acquired suitable premises but was out of possession thereof at about the material point of time by selling it off or by otherwise disposing it, the clause would not apply, and the material point of time, according to the learned single Judge, is either the date of notice to quit or when the landlord makes his claim under the said clause.

4. We have not been able to appreciate how either of the above decisions can be of any assistance to the cause of the respective parties before us. The decision of the Division Bench of this Court was dealing with the question of unlawful subletting which has been made an offence and for which a penalty is prescribed under the Rent Act. if, therefore, a tenant has incurred the penalty, he would not be absolved from the consequences merely because the act which constitutes offence has ceased to exist. The ground of unlawful subletting cannot, therefore, be equated with the ground prescribed u/s 13(1)(1) where a tenant has acquired or has been allotted a suitable residence for the obvious reason. that the latter is merely an enabling ground which may entitle a landlord to seek a decree of eviction while the former is not merely an enabling ground but is also an offence. In our opinion., therefore, that decision will not be of, much assistance to the problem with which we are faced in this reference.

5. Similarly, the decision which has been relied upon on behalf of the petitioner-tenant also does not carry his case any further, because, at the most, what the learned single Judge of the Bombay High Court has held is that the cause of action must be subsisting at the relevant point of time namely when the landlord

gives a notice to quit or when he files the suit claiming possession of the premises. If we may say so, with respect to the learned Advocate appearing on behalf of the petitioner-tenant, that this decision goes against him, it is an admitted position so far as the present case is concerned that when the suit was filed in the trial Court, the petitioner tenant had acquired residence which he had sold away on 21st June, 1974 before the trial Court granted a decree of eviction on 18th March 1975. According to the decision of the Bombay High Court, the cause of action must be subsisting at the time of notice to quit or at the time when the suit is filed. We have, therefore, to consider what is the exact scope and width of clause (1) of Section 13(1) of the Bombay Rent Act, which reads as under:

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

(a) to (k) xx xx xx

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

6. Surti J.. has found himself unable to agree with this contention advanced on behalf of the petitioner-tenant since In his opinion if the contention urged on behalf of the tenant was accepted, it would require rewriting of a clause or reading more than what has been Prescribed therein. According to Surti, J., it was not possible for him to agree to add to clause (1) or read more than what is warranted therein since the contention of Mr. Barot in effect was that the eviction decree would be justified if the tenant is in "actual possession of a suitable residence" at the time of the decree instead of the prescription in the clause, namely that he must have acquired or been allotted a suitable residence.

7. In *Goppulal Vs. Thakurji Shriji Shriji Dwarakadheeshji and Another*, , the Supreme Court was concerned with the question of subletting u/s 13(1)(e) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 and held, -

"If the "tenant" has sublet the premises without the permission of the landlord either before or after the coming into force of the Act, he is not protected from eviction u/s 13(1)(e) and it matters not that he had the right to sublet the premises u/s 108(j) of the Transfer of Property Act. This becomes clear upon construction of clause (e) of Section 13(1). The relevant words in clause (e) are "has sublet". The present perfect tense contemplates a completed event connected some way with the present time. The words take within their sweep any sub-letting which was made in the past and has continued up to the present time."

The ratio, of this decision will apply also in case when eviction is sought u/s 13(1) (1) of the Bombay Rent Act because that clause also enjoins that a landlord will, be entitled to get an eviction decree if the tenant has "acquired or been allotted

suitable residence". The Legislature has expressed this in the present perfect tense and, therefore, it necessarily contemplates not only a completed event but connection of that event in some way With the present time. We are, therefore, of the opinion that in order that a landlord may successfully claim a decree for eviction, it should be necessary that a tenant has acquired or been allotted suitable residence and that the a4uisiation or allotment continued in existence till the date of filing of the suit. The reason for reaching this conclusion is obvious that on the known principle the cause of action must have accrued at the date of the suit and the cause of action in the present case is that the tenant "has acquired or been allotted suitable residence" which on the authority of the above decision of the Supreme Court contemplates a completed event connected in some way with the present time.

8. Our attention has been invited to two decisions of Madhya Pradesh High Court in Ram Gopal v. Shantilal (1977) 1 RCJ 372 and Ahmed Khan v. Michel Nath (1977) 1 RCJ 868 where the view has been taken that if a tenant has acquired or been allotted a suitable residence, it is immaterial whether he is in actual or constructive possession thereof at the time of the suit, or at the time of the decree. A Division Bench of the Delhi High Court has taken Similar view in Batoo Mal Vs. Rameshwar Nath and Others, . The reasoning which has weighed with the Madhya Pradesh High Court as well as Delhi High Court is that once a fetter which is imposed on the right of a landlord to recover possession is 4emoved by acquisition by or allotment to a tenant of a suitable residence, an embargo is lifted and the landlord is entitled to recover possession, and the Court need not read in the clause more than what is warranted. With respect to the learned Judges of both the Courts, having regard to the aforesaid decision of the Supreme Court in Gappulal's case (supra) we are of the opinion that in view of the present perfect tense in which the Legislature has expressed this clause, we must hold that the completed event which is a ground on which ejectment action is based must have some relation to the present time. We are, therefore, of the opinion that the cause of action- provided in Section 13(1)(1) of the Bombay Rent Act must exist not only by or before the notice to quit but it must also exist at the time when the suit is filed. The contention urged on behalf of the petitioner tenant that in order to get a decree of eviction under this clause, the tenant also must continue to be in possession of the residence at the time of the decree is not warranted and we must reject it.

9. There are no other justifying grounds on which we can interfere with the decree of eviction passed by the trial Court and affirmed in appeal by the learned District Judge.

10. Before parting with this Judgment, we may indicate that in a given case trial Court or the appellate Court may be justified in considering for bona fide reasons beyond control of a tenant he was obliged to dispose of the acquired premises and, therefore, a decree of eviction should not follow as a subsequent event to the filing of the suit.

11. The result is that this revision application fails and is dismissed. Rule is discharged with no order as to costs. It is directed that warrant for possession should not be executed against the petitioner-tenant till 31st December, 1979, on the condition that he shall file an undertaking in this Court before 15th August, 1979 that he will regularly pay an amount of Rs. 30/- per month as and by way of damages for use and occupation of the premises and will hand over quiet and vacant possession of the premises in question to the landlord on the expiry of the aforesaid period, and will also undertake not to part with the possession of the premises or any part thereof and will not transfer or assign in any manner his right or interest, if any, in the premises to any other person.

12. Revision dismissed.