
(1999) 03 BOM CK 0029

In the Bombay High Court

Case No : Writ Petition No. 5331 of 1989

Shri Abdulraheman @ Iqbal Faljukhan Pathan since deceased
through legal heirs

APPELLANT

Vs

Sou. Kamalaben Mohanlal Shah

RESPONDENT

Date of Decision : 03-03-1999

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1)(i), 13(2)

Citation : (1999) 3 BomCR 183 : (1999) 2 BOMLR 321 : (1999) 2 MhLj 592

Hon'ble Judges : T.K. Chandrashekhara Das, J

Bench : Single Bench

Advocate : G.R. Rege and Smt. Shakuntala A. Mudbidri, for the Appellant; M.L. Patil, for the Respondent

Judgement

T.K. Chandrashekhara Das, J.—The unsuccessful tenant in both the courts below in a suit for eviction has filed this petition. That the open land bearing C.T.S. No. 5766 admeasuring 113.2 sq. Mtrs in village Miraj, Tal. Miraj for the monthly rent of Rs. 50/- was taken on rent by the petitioner for his personal use. He had constructed structure in the suit premises for shop. The tenancy was terminated by the respondent on 30-9-1978 on the ground of default in making the payment of rent and also personal occupation of the landlord. The Civil Suit No. 317 of 1978 before the trial Court was filed by other respondent landlady on the aforesaid grounds and trial went on those grounds. In fact the trial Court decreed the suit on both the grounds. At the appellate stage, the landlady has given up the ground of default in payment of rent. Both the courts below found that the landlady has established her reasonable and bona fide requirement. Normally, in that circumstances, this Court is very slow in interfering to up settings the findings of the courts below.

2. The learned Counsel for the petitioner Mr. Rege has contended that though the courts below has granted decree of eviction against the petitioner u/s 13(1)(i) in fact, it has been pleaded and proved before the Court that the eviction is sought

on the ground of 13(1)(g). He contended that the courts below was wrong in passing decree against his client u/s 13(1)(i) depriving his client of the benefit of sub section (2) of section 13 of the Bombay Rent Act. Mr. Rege took me through various part of the pleadings and the evidence for this purpose. Though he tried to challenge the very findings of the bona fide requirement and reasonableness as I indicated earlier, in exercise of the power under Article 227 of the Constitution of India, though certain discrepancies could be pointed out in the appreciation of evidence by the courts below, it is not proper on my part to interfere in those findings. Therefore, for the purpose of this case, I proceed on the premise that there is concurrent finding on facts by the courts below that the landlady has established the reasonableness and bona fide requirement. In this context, learned Counsel for the petitioner, Mr. Rege argued that inspite of the fact that there are overwhelming evidence and pleadings to lay the case under the precinct of 13(1)(g), the Court was wrong in resting their decision on 13(1)(i). He submits that in the notice for terminating the tenancy and in the plaint, the plaintiff has pleaded that the construction proposed in the suit premises is for the plaintiffs personal use and occupation. Mr. Rege also brought to my notice evidence of P.W. 2, husband of the plaintiff who says that he wants property for conducting the business. Therefore, clear case which was made out by the plaintiff is that he bona fide require the premises for his own occupation after construction. The pleadings and proof have all the trappings of the case made a ground envisaged u/s 13(1)(g). In order to fortify his contention, he sought to rely on a decision of the Supreme Court in *Ramniklal Pitambardas Mehta v. Indradaman Amratlal Sheth*, reported in AIR 1964 S.C 1677. It is a case where the eviction was sought under Clause (hh) of section 13(1) of the Bombay Rent Act which deals with the situation where the building requires for demolition and reconstruction. In this context, Supreme Court observed in para 15 and 16 as under :

"(15) We are therefore of opinion that once the landlord establishes that he bona fide requires the premises for his occupation, he is entitled to recover possession of it from tenant in view of the provisions of sub-clause (g) of section 13(1) irrespective of the fact whether he would occupy the premises without making any alteration to them or after making the necessary alterations.

(16) The provisions of Clause (hh) cannot possibly apply to the case where a landlord reasonably and bona fide requires the premises for his own occupation even if he had to demolish premises and to erect a new building on them. The provisions of Clause (hh) apply to cases where the landlord does not require the premises for his own occupation but requires them for erecting a new building which is to be let out to tenants. This is clear from the provisions of sub-section (3-A) which provides that a landlord has to give certain undertaking before a decree for eviction can be passed on the ground specified in Clause (hh). He has to undertake that the new building will have not less than two times the number of residential tenements and not less than two times the floor area contained in the premises sought to be demolished, that the work of demolishing the

premises shall be commenced by him not later than one month and shall be completed not later than three months from the date he recovers possession of the entire premises and that the work of erection of the new building shall be completed by him not later than fifteen months from the said date. These undertakings thus provide for a time schedule for the new building to come up into existence and ensures atleast the doubling of the residential tenements, i.e. rooms or groups of rooms rented or offered for rent as a unit; vide section 5(12) of the Act." (Underlines supplied)

3. Mr. Rege also cites decision of Gujarat High Court in similar matter. He brought to my attention the decision in Pathan Bajitkhan Kayamkhan and another v. Shah Maneklal Harilal and others, reported in 12 GLR 421. Relying on the aforesaid Supreme Court decision, the learned Judge of the Gujarat High Court has held :

"16. Decision of the Supreme Court in Ramniklal Pitambardas Mehta v. Indradaman Amratlal Sheth, AIR 1964 SC 1677 throws some light on the problem that is posed before me. A contention was raised in that case that Clause (g) will apply only when the landlord bona fide needs to occupy the premises without making any alteration in them, i.e. to occupy the identical building which the tenant occupies. That contention was negatived observing that there is no justification to give such a narrow construction either to the word "premises" or to the word "occupies" in Clause (g) of section 13(1) of the Act."

4. Mr. Rege then argues that both the courts below are faulty in ordering eviction u/s 13(1)(i) when in fact the pleadings and evidence goes otherwise. Eviction is sought for personal use and occupation and both the courts below ought to have dismissed the petition. But I do not think that the suit is one which is liable to be dismissed in toto. As I pointed out earlier, the case under 13(1)(g) has been fully and properly established by the landlord. In that circumstances before passing eviction order, the lower courts ought to have framed the issue u/s 13(2) and examine the comparative hardships of the landlord and tenant. In other words, even if the eviction is sought for construction and the tenancy is for the open land and if the landlord demands that construction is for the purpose of his personal use, though it appears that it has a trapping of section 13(1)(i), the eviction sought really has to be considered u/s 13(1)(g) and consequently sub-section (2) of section 13 will come into play. In fact this contention was raised in the appellate stage on behalf of the tenant but the Lower Appellate Court has brushed aside saying that the eviction is sought only u/s 13(1)(i).

5. In Thakkar Ishwarlal Hargovandas v. Panchal Girdharlal Raichand, reported in 16 GLR 1005 similar contention was raised in the above case. In para 11 of the judgement, the learned Single Judge has observed:

"In my opinion, where a landlord seeks possession of his land for constructing a building for his own occupation or for occupation by the members of his family, his case will be governed by Clause (g) because in such a case the erection of a new building is purely incidental to his occupation of the land. It is merely a

mode of occupying the land. The Court is not concerned with how he occupies his land. He may occupy it as it is or he may erect a structure and occupy it. His occupation of his land after having constructed thereon a structure constitutes his basic need. In other words, in such a case, his need to occupy the land after erecting a structure thereon is principal purpose and the erection of a structure is purely incidental and, therefore, it is a mere mode of occupation. If a landlord states that he wants possession of his open land only for erecting a new structure without stating anything more, his case may fall under Clause (i). Indeed the fate of his case will ultimately depend upon what turns out in evidence. He may be silent in his plaint in regard to his own occupation but if it turns out in evidence that he wants to occupy it after constructing a structure thereon he cannot be allowed to resort to Clause (i) as a subterfuge to cloak his requirement under Clause (g)."

6. The learned Counsel for the respondent Mr. Patil tried to distinguish the principle laid down by the Supreme Court in the aforesaid decision. He submits that it is a matter coming under 13(1)(hh) whereas in our case, it is coming under 13(1)(i). Therefore, case of the Supreme Court can be easily distinguishable.

7. He also cited decision of the Bombay High Court in Nona Narayan Kamble v. Kashiprasad Nitanna Prasad alias Jahamba Prasad Dube, reported in 1987 M R C J 147. The learned Judge was also relying on the said Supreme Court decision and opined :

"I may say at once that there is no substance in the Appellate court's finding that the plaintiff was not entitled to a decree u/s 13(1)(g) or section 13(1)(hhh)(i). As laid down in Ramnikal Pitambardas Mehta Vs. Indradaman Amratlal Sheth, , Clause (g) will apply not only where the landlord bona fide needs occupation of the premises as they are, but also when the need is coupled with a desire to make constructions, alterations or extension to the premises existing. Next is the interpretation placed by the Appellate Court upon the words "new building" occurring in section 13(1)(hhh)(i). The Appellate Court constructed this expression as equal to a pucca or permanent structure. The word "building" would include any structure, whether strong or flimsy, whether of reed or mud or cement. The word "new" should not be equated to shiny or glossy material being used for the first time. A new building, as I understand it, is a structure brought into existence, for the first time, and irrespective of the material used or the strength of the structure in terms of durability and other such factors . The claim, was, thus, not untenable."

8. He also cited a decision of this Court in Mrs. Rampyari Surajbali and others v. K. V. Borkar and another, reported in 1986 MRCJ 155. In fact this decision had hardly any application on the facts of this case. The main thrust of the said judgement is that section 13(1) apply only in respect of lease relating to open land. I do not think the decision will be of any help to fortify the contention raised by Mr. Patil. He also brought to my notice another decision of this Court in

Mangharam Chuhamal Vs. B.C. Patel and Others, . In this case this Court was examining constitutional validity of the provisions of section 13(1)(i). However, it has not discussed the point which is raised in this writ petition. Therefore, this decision is also not helpful to decide this case.

9. In this context, we have to examine the scheme of the Act particularly section 13. Section 13 of the Act put certain restrictions on the exercising right of the landlord in evicting his tenants. The various circumstances and situation have been taken note of by the legislature under that section. One of the important circumstance is u/s is 13(1)(g) where the landlord who let out the building to his tenant requires it back for his bona fide and reasonable requirement for his own use. The sub-section (2) of section 13 says that before any eviction is ordered under 13(1)(g), the comparative hardships about the availability of the accommodation of the tenant and landlord has to be considered by the Court. We notice that section 13(1)(h), 13(1)(hh), 13(1)(hhh) and 13(1)(i) deals with different constructional activities to be carried out in the premises. Section 13(1)(h) deals with a situation where the premises require reasonably and bona fide for carrying out repairs. Section 13(1)(hh) deals with where the premises requires demolition and reconstruction. Section 13(1)(hhh) deals with a circumstance where the premises are required to be demolished by orders of the Local Authority or other Competent Authority and section 13(1)(i) deals with the situation where the landlord requires the land bona fide for the erection of a new building. Looking at these sub clauses, though the same deals with different facets of constructional activities on the premises, a common factor which is present in all these sub clauses is that the landlord should establish his reasonable and bona fide requirement for the constructional activities as enumerated in Clause 13(1)(h), (hh), (hhh) and (i). Though these sub clauses are demonstrably distinct from the wording of section 13(1)(g), it contain a common feature that is found in all these is feature of reasonable and bona fide requirement of the landlord. But Clause 13(1)(g) comes into play only where the eviction is sought for his personal use or occupation. In other words, the personal use or occupation by the landlord which is found in 13(1)(g) is lacking in other sub clauses. In view of this analysis, Mr. Rege is justified in arguing that wherever eviction is sought for the bona fide and reasonable requirement for personal use even after the constructional activities contemplated in this sub clauses, it is squarely coming under 13(1)(g) and not under 13(1)(i) or any other clauses.

10. To sum up, even though landlord seeks eviction u/s 13(1)(i) and it has come out in the pleadings as well as in the evidence that the construction proposed to be done in the premises is for the purpose of his own use and occupation, then notwithstanding the claim made by the landlord based on 13(1)(i), sub section (2) of section 13 will come into play and the Court can pass a decree for eviction after establishing the reasonableness and bona fide of the landlord's requirement only after considering the comparative hardship of the landlord and tenant as envisaged u/s 13(2) of the Act. In view of this, it is necessary to send

the matter back to the trial Court for framing issue based on sub-section. (2) of section 13 and decide the same before passing the decree of eviction against the petitioner. The trial Court should complete- this exercise within three months from the date of receipt of the judgement Parties are at liberty to lead evidence on this issue.

11. At this juncture, learned Counsel for the respondent points out that his client had to vacate the premises which he was holding on mortgage by the end of 31st May, 1999 by virtue of order passed by this Court. In view of the directions contained in this judgement, liberty is given to move for extension of that period.

12. Before parting with, I make it clear that findings entered by the courts below regarding reasonableness and bona fide requirement of the landlord is not interfered with and the same is confirmed. The trial Court is directed only to decide the issue of comparative hardship u/s 13(1)(2) of the Act. For this limited purpose, the impugned judgements are set aside.

13. Writ petition is partly allowed and rule made absolute in the above terms. No orders as to costs.

Certified copy expedited.

14. Petition allowed partly.