
(2009) 06 BOM CK 0088

In the Bombay High Court

Case No : Civil Revision Application No. 483 of 2002

Smt. Sushila Gopal Patil and Others

APPELLANT

Vs

Shri Reshmasing Mehersing Khanguda and Others

RESPONDENT

Date of Decision : 26-06-2009

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13A1, 31H

Citation : (2009) 6 BomCR 346 : (2009) 111 BOMLR 2774 : (2011) 2 RCR(Rent) 41

Hon'ble Judges : S.P. Davare, J

Bench : Single Bench

Advocate : Amol Sawant, for the Appellant; N.R. Katneshwarkar, for the Respondent

Final Decision : Allowed

Judgement

S.P. Davare, J.—In this Civil Revision Application, challenge is to the legality and correctness of the order passed by the Competent Authority, Nasik Division, Nasik Road under Bombay Rent Control Act on 17.5.2002, by which he allowed the application of the respondent/landlord u/s 13A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 and directed the petitioners (tenants herein) to deliver vacant and peaceful possession of the disputed premises to the respondent/landlord.

2. The petitioners herein are original opponents (tenants) and the respondent herein is original applicant (landlord). The subject matter i.e. disputed property is two rooms on the ground floor of the building bearing Old Municipal House No. 3781 (New No. 7/174) of Bhusawal, District Jalgaon. Initially the suit property was owned by one Shri Dulichand Savalram Agrawal, who let out two rooms on the ground floor to Shri Gopal Kisan Patil (i.e. husband of petitioner No. 1 and father of petitioner Nos. 2 to 6) on rental basis in the year 1964. Admittedly, the disputed property was let out for commercial purpose and the petitioners carry on business of grocery shop therein since 1964.

3. The present respondent i.e. landlord was serving in Indian Air Force and retired from Indian Air Force in the year 1973. After retirement the respondent/landlord purchased the suit property from the owner Shri Agrawal by way of registered sale deed (Exh.67) on 1.6.1982. In the year 1992, the respondent/landlord instituted Regular Civil Suit No. 55 of 1992 against the petitioners for decree of eviction and possession. However, the said Regular Civil Suit No. 55 of 1992 was dismissed and disposed of for want of prosecution on 8.8.1997. Meanwhile, original tenant Shri G.K.Patil i.e. husband of petitioner No. 1 and father of petitioner Nos. 2 to 6 expired in the year 1993.

4. After disposal of Regular Civil Suit No. 55 of 1992 as afore said, the respondent/landlord filed Rent Application No. CAN/1098/(17)/98 u/s 13A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as, "the Bombay Rent Act") against the petitioners herein before the Competent Authority, Nasik Division, Nasik Road, praying for eviction and possession on 26.6.1998. Accordingly, the Competent Authority, Nasik Division, Nasik Road allowed the said application filed by the respondent/landlord u/s 13A of the Bombay Rent Act, by judgment and order dated 17.5.2002 and directed the petitioners herein to deliver the vacant and peaceful possession of the disputed premises to the respondent/landlord. Being aggrieved and dissatisfied by the said judgment and order, the petitioners (tenants) have assailed its legality and correctness in the present Civil Revision Application.

5. The main point, which is sought to be raised by the petitioners in the present Civil Revision Application, is about the non-maintainability of the eviction proceedings initiated against the petitioners by the respondent on the ground of bona fide requirement in terms of Section 13A of the Bombay Rent Act, after the retirement of the respondent/landlord from the Indian Air Force, since the disputed property i.e. the suit property was acquired by the respondent after his retirement from the Defence Service i.e. Indian Air Force. It is the contention of the petitioners that the respondent retired from the Indian Air Force in the year 1973 and thereafter purchased the suit property after the substantial period i.e. on 1.6.1982 by way of registered sale deed and the eviction proceedings were initiated on the ground of bona fide requirement in accordance with Section 13A of the said Act in the year 1998 and hence the same is not maintainable.

6. In the said context, the learned Counsel for the respondent countered the said argument and submitted that Section 13A of the Bombay Rent Act nowhere spells out that the landlord is entitled to recover the possession of the premises only if he acquired the same during the Military service and, therefore, submitted that the contention raised by the learned Counsel for the petitioners bears no substance, since it is not one of the ingredients of Section 13A of the Bombay Rent Act.

7. To substantiate the contention of the petitioners, the learned Counsel for the petitioners relied upon the observations made by the Honourable Supreme Court in the judgment reported at Mrs Winifred Ross and Another Vs. Mrs Ivy Fonseca

and Others, , in which it is held as follows :

The object of Section 13A of the Act is quite a laudable one. It is introduced in order to enable members of the armed forces who have leased out their buildings when they are in service to recover quickly possession of such buildings without the restrictions contained in the other parts of the Act either when they are still in service or on their retirement for their use and occupation or for the use and occupation of the members of their family.

An analysis of Clause (a) of Section 13A shows that the person who wishes to claim the benefit of that S. should be a landlord of the premises while he is a member of the armed forces of the Union and that he may recover possession of the premises on the ground that the premises are bona fide required by him for occupation by himself or any member of his family on the production of the required certificate either while he is still in service or after his retirement. The essential requirements that he should have leased out the building while he was a member of the armed forces.

8. It is thus clear that the Apex Court while interpreting the said Section has clearly held that a landlord, who is or who had been in Military service, can recover the possession of the leased out premises u/s 13A of the Bombay Rent Act when he himself has leased out the premises while he had been a member of the Armed Forces. In substance, a person/landlord, who becomes landlord of the property after his retirement from the Armed Forces, would not be entitled to recover possession of the leased out premises by virtue of provisions contained in Section 13A of the Bombay Rent Act.

9. Applying the said parameters in the instant case, it is abundantly clear that the respondent retired from the Indian Air Force in the year 1973 and thereafter after the lapse of substantial period he purchased the suit property from the earlier owner Shri Agrawal by virtue of registered sale deed vide Exh.67 on 1.6.1982 and the application was filed by the respondent/landlord before the Competent Authority u/s 13A of the Bombay Rent Act praying for eviction of the petitioners on 26.6.1998. Hence, it is crystal clear that the respondent/landlord acquired the disputed premises as owner thereof after his retirement from the Indian Air Force and thereafter initiated the eviction proceedings on the ground of bona fide requirement in terms of Section 13A of the Bombay Rent Act in the year 1998. Thus, there is no dispute that the respondent/landlord, who had initiated the proceedings u/s 13A of the Bombay Rent Act, for eviction of the petitioners from the disputed premises, did not acquire the title to the disputed premises while he was in the service of Indian Air Force and he purchased the said premises only after his retirement by virtue of sale deed dated 1.6.1982.

10. In this view of the matter, the decision of the Apex Court in the matter of Winifred Ross (supra) is clearly applicable to the facts of the present case and, therefore, applying the tests laid by the Honourable Supreme Court in the above said decision, the impugned order dated 17.5.2002 shall not sustain and,

therefore, the same is liable to be quashed and set aside.

11. Moreover, reliance also can be placed on the observations made by the Honourable Supreme Court in the case reported at Shivram Anand Shiroor Vs. Radhabai Shantram Kowshik and Another, , in which it is held as follows :

Having regard to the object and purposes of the Act and in particular Section 13A its difficult to hold that Section 13A can be availed of by an ex-member of the armed forces to recover from a tenant possession of a building which he acquires after his retirement....

The statement of objects and reasons was read to us. It says :

DEFENCE services personnel are liable to transfers and to be stationed in different parts of the country. They are often posted at non-family stations. Some of these personnel, who possess their own premises either in their home towns or elsewhere have necessarily to hire them out to other persons temporarily while they are away on duty. It has been represented to the State government by the military authorities that on their retire mentor transfer to non-family stations the serving and ex-service personnel find it extremely difficult to regain possession of their premises which they badly require for personal occupation permanently or for housing their families for the duration of their posting at non-family stations. In case of death of a service personnel while in service or death of ex-service personnel shortly after the retirement, the widow also finds it extremely difficult to regain possession of their premises for her personal occupation or occupation other family.

THE cases of defence services personnel due to their special obligations and disabilities do need different treatment from that accorded to other landlords and in fact special provisions have been made for them in some of the States, whereby processes for each personnel to regain possession of their premises have been simplified and made more effective .

IT is considered necessary to make a special provision in the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 to enable a member or retired member of the armed forces of the Union or a widow of such a member who dies while in service, or who dies within five years of his retirement, to regain possession of their premises, when bona fid required for occupation by them or members of their families and to provide that the court shall be bound to pass a decree for eviction on such ground if such member or widow, as landlord, produces at the hearing of the suit, the necessary certificate signed by the Head of his Service or his Commanding Officer or the Area or Sub-Area Commander within whose jurisdiction the premises are situated. The Billis intended to achieve these objects.

12. Thus, after discussing the aims and reasons of incorporating Section 13A of the Bombay Rent Act, the Honourable Supreme Court in the said case endorsed the view expressed in the earlier case by the Division Bench of the Honourable

Supreme Court reported at Mrs Winifred Ross and Another Vs. Mrs Ivy Fonseca and Others, .

13. Relying upon the afore said Judgments, Single Judge of this Court also held in the case reported at Satish Kumar Banwarilal Sharma Vs. Major Virendra D. Ganju, as follows :

A landlord who is or who had been in military service can recover possession of the leased premises u/s 13A of the Bombay Rents, Hotel and Lodging House Rate Control Act, 1947 when he himself had leased out the premises while he had been a member of the armed forces. A person who acquires the property and title of land lordship after his retirement from the armed forces he would not be entitled to recover possession of the leased premises by virtue of provision contained in Section 13A(1).

Where a member of the armed forces retired in May 1990 and purchased residential premises on 16.8.1990 which had been let out, eviction proceedings initiated u/s 13A(1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 on 29.8.1992 were not maintainable.

14. Thus it is necessary to hold that the respondent/landlord could not have initiated the proceedings for eviction under the provisions of Section 13A of the Bombay Rent Act in view of the foregoing discussion since the said eviction proceeding was filed solely on the ground of bona fide requirement of the respondent/landlord after having retired from Indian Air Force, but in respect of the premises which was purchased after retirement and since the eviction proceeding has not been initiated on any other ground, the impugned order passed by the learned Competent Authority, Nasik Division, Nasik Road on 17.5.1982 shall not sustain and same is liable to be quashed and set aside.

15. The learned Counsel for the petitioners also canvassed the other points, such as, the landlord did not obtain leave of the court while disposing of Regular Civil Suit No. 55 of 1992 for filing application before the Competent Authority and such non obtaining of leave is fatal to the application filed by the respondent/landlord before the Competent Authority for eviction. However, in the said context, the learned Counsel for the respondent pointed out that the provision of Section 31H of the Bombay Rent Act is applicable to pending suits and proceedings in the court. Besides that the learned Counsel for the petitioners also made submission that the landlord acquired rooms in the same building during the pendency of the application before the Competent Authority and presently he is in possession of 14 rooms and has failed to adduce and produce evidence in respect of bona fide requirement. It is also submitted that the disputed premises is the commercial premises and Section 13A of the Bombay Rent Act is meant for residential premises.

16. However, in view of the fact of arriving to the conclusion that the application preferred by the respondent/landlord before the Competent Authority was not maintainable u/s 13A of the Bombay Rent Act, this Court need not express any

opinion regarding the other points sought to be agitated in the present Civil Revision Application.

17. In the result, Civil Revision Application succeeds. The impugned order passed by the learned Competent Authority, Nasik Division, Nasik Road in case No. CAN 1098(17)/98 on 17.5.2002 stands quashed and set aside. Rule is made absolute in the afore said terms. In view of the facts and circumstances, there shall be no order as to costs.