

(1970) 08 BOM CK 0001

In the Bombay High Court

Case No : Spl. Civil Application No. 1027 of 1966

Sohansingh Bharatsingh

APPELLANT

Vs

Narhar Narayan Godbole and Another

RESPONDENT

Date of Decision : 25-08-1970

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1)
Transfer of Property Act, 1882 — Section 106

Citation : AIR 1972 Bom 67 : (1971) 73 BOMLR 282 : (1971) ILR (Bom) 975 : (1972) MhLj 49

Hon'ble Judges : Deshpande, J

Bench : Single Bench

Advocate : Sharad Manohar, for the Appellant; Y.S. Chitale and V.N. Gadgil, for the Respondent

Judgement

1. This Special Civil application arises out of the proceedings under the Bombay Rent Act instituted by respondent No. 1 plaintiff landlord against petitioner - defendant No. 1 and respondent No. 2 (defendant No. 2). The premises in dispute appear to be an open and with some structures thereon situate at City Survey No. 366, Sadashiv Peth, Poona City. Originally the premises were let out to one Sevak Singh Makhansingh on a rent of Rs. 25/- per month. The said Sevak Singh assigned his tenancy rights in favour of defendant No. 2. Defendant No. 2 then started paying rent at the rate of Rs. 30/- to plaintiff - landlord. On 12-2-1963 defendant NO. 2 assigned his interest in the premises to defendant NO. 1. It appears that defendant No. 2 through his lawyer Redkar informed the fact of this assignment to the landlord and asked him to accept the rent from defendant No. 1. In reply thereto the landlord gave notice on 20-3-1963 calling upon defendants Nos. 1 and 2 to vacate the premises for various reasons, including that the same were reasonably and bona fide required by him for his own occupation. Copies of this notice addressed to the lawyer Redkar were endorsed to defendants Nos. 1 and 2. After some time the present proceedings were instituted for possession against both the defendants by the landlord on

various grounds, including the one that he required the premises for his own occupation, where he wanted to construct a house for himself. Defendants denied the various averments made in the plaint. By judgment and decree dated 7-8-1964 in Civil Suit No. 3396 of 1963 the trial Court decreed the suit on the ground of the landlord requiring the premises bona fide and reasonably for his own occupation u/s 13(1)(g) of the Bombay Rent Act. On appeal by the tenant to the District Court, the decree has been affirmed by the judgment and decree dated 12th April 1966 in Civil Appeal No. 696 of 1964. The learned Third Extra Assistant Judge, Poona, however, granted the decree for possession u/s 13(1)(i) of the Rent Act. This decree is challenged in this Special Civil application by defendant No. 1. Defendant No. 2 naturally supports his case.

2. Mr. Sharad Manohar, the learned Advocate appearing for the petitioner, contends that the quit notice is invalid for two reasons. He firstly contends that notice addressed to a lawyer, cannot be effective for terminating tenancy where lawyer is not shown to have authority to receive the same. He secondly contends that the notice does not in terms give 15 days time as required u/s 106 of the Transfer of Property Act. There is hardly any substance in either of these contentions of the learned Advocate. Admittedly copies of the notice addressed to the lawyer were served on both the defendants indicating that the tenancy was sought to be terminated thereby. Without going into the question as to whether the lawyer to whom the notice was mainly addressed was authorised to receive this notice or not, the implications of such copies also simultaneously being received by both the defendants are too plain. I have not been to appreciate in the face of these admitted facts how notice ceases to be effective merely because original of the same was addressed to a lawyer, assuming that notice to defendant No. 1 was also necessary. Secondly, the said notice also calls upon the defendants to vacate the premises and deliver peaceful possession thereof to the landlord "by the end of the month of tenancy commencing after receipt of this notice". It is not suggested that, after the receipt of this notice, less than 15 days were left with the tenant before the expiry of the period of the tenancy. All that is suggested is that the notice itself was given on 20th March, 1963. The whole foundation for this submission is based on the wording of the notice saying that he was "giving this notice extinguishing the rights..... hereby". This wording cannot be construed to mean that, tenancy was being extinguished with effect from the date of notice. These words only, notify that the tenancy rights were being extinguished by virtue of this notice dated 20th March, 1963, and obviously the tenancy was contemplated to be terminated "by the end of the month of tenancy commencing next after receipt of this notice." There is thus no force in the first contention raised by Mr. Sharad Manohar.

3. Mr. Sharad Manohar then contends that in either case the decree for possession u/s 13(1)(i) is not warranted by the facts of the case. Premises assumed by the Assistant Judge, says the Counsel, themselves have no foundation in facts. The learned Assistant Judge, no doubt, assumes that the structure on the land in dispute belonged to the tenant and it is on this basis that

the decree for possession is passed by him u/s 13(1)(i) of the Rent Act. This assumption, according to Mr. Sharad Manohar, is not only not borne out by any evidence, but is contrary to the case pleaded by the landlord himself in his plaint. He drew my attention to the recitals in the plaint. Paragraph 1 of the plaint describes the suit premises to mean land at C. T. S. No. 367 admeasuring about 756 sq. feet with temporary shed thereon. In paragraph 2 of the plaint, the plaintiff in terms says that the property and the premises described in paragraph 1 belong to the plaintiff as full and absolute owner. The plain implication of this averment is that the plaintiff claims the ownership not only of the land but also of the temporary shed standing thereon. Paragraph 3 recites that the premises consist only of vacant lands and temporary shed thereon. This is not denied by the tenants. Evidence also was led by the parties on the basis of these averments. It is thus clear that, even according to the plaintiff's own case, the temporary shed or the structures on the land belonged to himself. There is thus no basis for the assumption that, it belonged to the tenant.

4. Mr. Chitale, the learned advocate appearing for respondent No. 1 landlord could not dispute this though he faintly suggested that the above construction of the plaint was not correct. He, however, contends that the trial proceeded on the basis that the temporary shed on the land belonged to the defendants. In support of this contention he firstly relied on the language of the decree passed by the learned trial Judge. It is true that the learned trial Judge has directed defendants Nos. 1 and 2 to "put the plaintiff in possession of one land by removing their structures standing on the suit site on or before 1-11-1964." Now, such a decree could have been passed only on the footing that the structure on the land belonged to the defendants. But Mr. Chitale could not draw my attention to any material from which the trial Court could have made such an assumption. Mr. Chitale, secondly, drew my attention to the observations in paragraph 10 of the judgment of the Assistant Judge and contended that this position was, in fact, admitted by the tenants before the Assistant Judge. Relevant observations in paragraph 10 of his judgment are as follows :

"There was no dispute before me that the suit open plot belongs to the landlord. At present there is some structure in it, but it appears that the landlord is not claiming the ownership of the same. The landlord has said in his plaint that the premises included also this structure but it is clear from his notice Exh. 32 that this structure was built by his tenants who were in possession of the open plot. It was also an admitted proposition as argued before me that this structure never belonged to the landlord, but it was erected by the tenant. It is on the basis of this admitted fact that the lower Court has also passed a decree for vacant possession of the suit plot by removing the said structure by the person in possession. As such I have no hesitation to hold that it is an admitted fact that only the open plot was let out to Sevaksingh by the present landlord."

The observations in the above para on the face of them betray lack of precision and some misconception of the facts and presumably the argument advanced. In

the first place, he says ".....it appears that the landlord is not claiming the ownership of the same." But this is plainly contrary to the averments in paragraphs 2 and 3 of the plaint. He then says that in his notice Exhibit 32 the landlord has stated "that this structure was built by his tenants, who were in possession of the open plot." The contents of Exhibit 32 do not bear this out, and Mr. Chitale, could not place his finger on any portion of Exhibit 32 to support these observations. The Assistant Judge then says that it was also an admitted proposition as argued before him that this structure never belonged to the landlord and it was erected by the tenant. But the learned Judge does not indicate to whose arguments he was referring to and what precisely was the admission. Then he says that "it is on the basis of this admitted fact that the lower court has also passed a decree for vacant possession of the suit plot by removing the said structure by the person in possession." But the learned trial Judge has not in any part of his judgment, however, referred to any such admission of the tenant to which the Assistant Judge has made reference. He says that "It is an admitted fact that only the open plot was let out to Sevaksingh by the present landlord." It is not known to whose admission the Assistant Judge is referring to. It is true that defendant No. 1 has not filed any affidavit, denying having made such admissions before either of the two Courts below. But, as stated by me earlier, the observations of the Assistant Judge themselves do not attribute such admissions either to defendant No. 1 or to defendant No. 2 and none of the defendants were really called upon to refute any such assertions. I do not think it possible to rely on such vague observations of the Assistant Judge for coming to the conclusion that the structure on the land, in fact, belonged to the tenant or that any of the tenants had admitted this fact before either of the Courts below.

5. On the contrary, while assigning his tenancy rights to defendant No. 1, defendant No. 2 has not claimed ownership of such structure in the assignment deed (Exhibit 40). Had it belonged to him, he would not have failed to mention it in Exhibit 40 and claim higher price from defendant No. 1. This question assumes importance in this case because, on it depends the decision as to which of the clauses of Section 13(1) of the Rent Act governs the claim of the landlord and whether the conditions necessary for the application of the said clause have been duly fulfilled or not. I must, therefore, conclude that there is no basis for assumption the structure on the land belonged to the tenant. The case shall have to be decided on the footing that the land and structure both belonged to the landlord. Plaintiff's own case is that he wants to construct a house on the land for his occupation and this he shall have to do after demolition of the present structure.

6. This at once raises the question whether the case is covered by clause (g) or clause (i) of Section 13(1) of the Rent Act. Mr. Sharad Manohar however contends that neither of the two clauses are applicable and the case clearly falls u/s 13(1)(hh), as firstly the premises do not consist of more than two floors, and secondly plaintiff requires the same for demolition and for erecting a new

building thereon. He then contends that the landlord is not entitled to possession of the suit premises, not having proved to have complied with the provisions of sub - section (3 - A) read with sub - section (3 - B) of Section 13 of the rent Act. This contention need not detain me as the point can be said to have been concluded by the Supreme Court in its judgment reported in Ramnikal Pitambardas Mehta Vs. Indradaman Amratlal Sheth, . There also the landlord claimed possession of the premises u/s 13(1)(g) on which some structure belonging to him was then standing. He intended to demolish the existing structure, and build new one for his own. On behalf of the tenant it was argued that such a claim for demolition of the existing structure, and erecting a new building thereon, was covered by Section 13(1)(hh) and not by Section 13(1)(g) of the Bombay Rent Act. This contention was overruled by the Supreme Court holding that contemplated demolition of the existing unsuitable structure and construction of a bungalow thereon, cannot take out landlord's case from Section 13(1)(g) when this process was necessitated for the purpose of his own occupation. The Supreme Court also held that clause (hh) of sub - section (1) of Section 13 was inapplicable as proposed construction was not intended for the tenants. IN view of this pronouncement of the Supreme Court, I do not think it necessary t o examine the contention of Mr. Sharad Manohar any further, as the said authority is conclusive of the points raised by him before me. The present case also shall have to be decided by reference to Section 13(1)(g) of the Rent Act in view of the ratio of the above judgment of the Supreme Court.

7. But Mr. Chitale, the learned advocate appearing for the landlord, contends that even when the landlord seeks possession of land with structure thereon raised by him, his case still cannot be said to have been excluded from the purview of Section 13(1)(i) of the Rent Act. He contends that application of Section 13(1)(g) to the facts of such a case cannot have the necessary consequence, of its exclusion from Section 13(1)(i) of the Rent Act. This contention is devoid of any substance. Clauses (g) and (ii) of sub - section (1) of Section 13 cover the different contingencies under which any landlord can claim possession of the premises from the tenant. These rights are available on proof of certain set of facts. These rights are then subjected to certain other overriding considerations provided in sub - sections (2) to (3) (b), and protection to the tenants is again ensured by suitable provisions of Sections 16 to 17 - B against the possible abuse of these provisions by the landlords. A set of facts falling under any one clause excludes the possibility of the application of any other clause of Section 13(1) of the Rent Act to the same facts. This case must either fall under clause (g) or clause (i) of Section 13(1). Contention that it can fall under both the clauses is thus misconceived.

8. Mr. Chitale then contends that clause (i) of sub - section (1) of Section 13 opens with the words "where the premises are land," and according to Mr. Chitale, there is no warrant for the narrow construction of the word "land" only to mean open land. The word "land", according to him connotes ordinarily everything attached to the land, and must be deemed to include not only open

land but also the structure standing thereon. In support of his contention he relies on the dictionary meaning of the word "land" in Stroud's Judicial Dictionary in Volume II at page 1571. I do not think it necessary to refer to the several passages to which may attention was drawn by Mr. Chitale, as this dictionary meaning is based on several English cases. Now, unlike in England, Indian law recognizes the dual ownership in the property and the dictionary meaning given by Stroud's and based on English conception of property will not be of much assistance for construing the word "land" correctly. The precise connotation of the word "land" shall have to be ascertained by reference to the context and the setting in which the word is used in Section 13 of the Rent Act.

9. The word "premises" has been defined in Section 5(8) of the Rent Act. Three kinds of properties appear to have been sought to be covered by this definition. It firstly covers the land not being used for agricultural purposes in clause (a). It secondly covers building or part of a building let separately as set out in Clause (b). It, thirdly, also seeks to cover the adjuncts of any such building enumerated in clauses (i) to (iii) in the latter part of the said clause (b). In the context the word "land" in clause (a) of Section 5(8) ought to be deemed to connote open land on which there is no building or a part of building or to which there are no adjuncts or any kind. If the word "land" in Section 13(1)(g) is read in this light, it can be construed to mean only open land. This definition on which Mr. Chitale relied rather than support him, supports the contention of Mr. Sharad Manohar. In view of the interpretation of this clause in the judgment reported in AIR 1966 SC 1024. Landlord can claim possession under this clause by removal of the structure, built by the tenant after getting the lease of the open land from the landlord, when the landlord still remains the owner of the open plot. But he cannot avail of this provision, when structure also belongs to him, though the above authority does not deal directly with this point.

10. This view gets further reinforced if one examines the provisions of Section 13 closely. In clauses (a) to (1) in sub - section (1) of Section 13 several contingencies are enumerated in which the landlord is enabled to exercise his right to possession of the premises from his tenant. Clauses (g) to (ii) cover the contingencies where the premises let out to the tenant are bona fide required by the landlord for some purpose or the other enumerated in the said clause. In Clauses (g) to (hhh) the word "premises" is used to denote building or structure belonging to the landlord. This is too clear to require any detailed discussion. Requirements, for, occupation, repairs, and demolition covered by these clauses can have no meaning unless existence of some structure belonging to the landlord is assumed. As against this, in clauses (i) and (ii) of this sub - section (1), the import of the word "premises" is distinctly restricted by saying "where the premises are land" or "where the premises are land in the nature of garden or ground.....". Thus the word "land" in clauses (i) and (ii) on the face of its imports restricted connotation and is used in contradistinction to the word "premises" which in the context cover a building or a structure erected on any land. The word land in both these clauses (i) and (ii) must be construed,

therefore, to man only open land without any structure of the landlord thereon.

11. Secondly, clause (g) contemplates a case where the premises "are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held." This includes a case where demolition and reconstruction is necessary for this purpose. As against this clause (i) covers a case where the premises are reasonably and bona fide required "for the erection of a new building." The distinction between the emphasis on the two different purposes, where the premises are required for occupation and the purpose where the premises are required for erection of a new building can hardly be ignored. This distinction cannot be said to be without difference. Apart from this facts of this case attract Clause 13 (1) (g) which deals specially with cases of landlords' requirements for their own occupation. Clause (g) generally dealing with requirements of landlords to erect a building will not therefore apply.

12. It may be noted in this context that all open lands are not covered by Part II of the Bombay Rent Act. Only such pieces of open lands are covered by Part II of the Act which are let for residence, education, business, trade or storage within the meaning of Section 5(1) of the Rent Act. When the purpose in clause (i) of Section 13 is shown to be "the erection of a new building" the same can have reference ordinarily to buildings capable of being used for any of these purposes. On the fact of it, such purpose of erection of new buildings is different from the purpose of occupation by the landlord himself. It is true that in view of the width of the phraseology new erection for the purpose of landlord's occupation cannot be altogether excluded from Section 13(1)(i). But then it will still be a case of possession of an open plot with structure of the tenant thereon covered by Section 13(1)(i) and not the case of possession of land and structure of the landlord thereon which he seeks to demolish and reconstruct for his occupation, attracting the provisions of Section 13(1)(g) of the Rent Act. Looked at from this point of view, clause (g) which enables the landlord to claim possession of premises for him when the same is reasonably and bona fide required for his own occupation, on proof of certain set of facts excludes the application of clause (i) under which a landlord can be said to have been enabled to claim possession when bona fide and reasonably required for erection of a new building.

13. Mr. Chitale strongly relied on the words "new" in the phrase "erection of a new building" in Section 13(1)(g) of the Act and contends that the word "new" will become meaningless unless it is construed to have reference to some structure of the landlord, in the place of which new building is sought to be erected. In other words, it is urged that question of erection of "new building" cannot conceivably arise, unless the landlord makes out a case of demolition of his old one. There is not much substance in this contention. As held by the Supreme Court in AIR 1966 SC 1024, this clause also applies to the case where tenant has erected his structure on obtaining the lease of open plot. As stated earlier, this Part II of the Rent Act is applicable to the open lands only when the

same is let for residence, education, business or storage. In each of these cases some sort of structure is ordinarily raised thereon by the tenant to whom the openland is let out. The word "new" presumably has reference to some such structure of the land, the possession of which is invariably claimed by the landlord by the removal thereof. Cases may, however, arise when no structure whatsoever is raised by the tenant though such cases are likely to be few and rare. Even so, that by itself will not give the word "new" any added significance.

14. Thus looked at from any point of view, the conclusion is irresistible that the word "land" in clause (i) of Section 13(1) of Rent Act means open land and this clause covers a case where the premises are open land and the structure constructed thereon, if any, belongs to the tenant. It is not capable of covering a case where the existing structure belongs to the landlord himself. The words in Section 13(1)(c) "where the premises are land" ought to be construed to mean when the premises are land without any construction of the landlord thereon. In the present case the landlord seeks possession of the open land on which his own structure is standing for the purpose of his own occupation. This case can be said to have been covered only by clause (g) of Section 13(1). Clause (hh) or (i) of Section 13(1) can have no application to such case.

15. As the learned Assistant Judge has not considered the case from this point of view, the same shall have to be remanded to the Appellate Court for reconsideration thereof. I accordingly allow this Special Civil Application, set aside the order passed by the learned Assistant Judge and remand the case back to him for consideration afresh, on the evidence and for deciding as to whether the landlord is entitled to claim possession u/s 13(1)(g) of the Rent Act. As the matter is pending since 1963, the learned Assistant Judge will dispose of this case as early as possible.

16. Costs will abide by the result.

17. Order accordingly.