

(1995) 07 GUJ CK 0029
In the Gujarat High Court

Suresh Govindji Kelkar and Others

APPELLANT

Vs

Ratilal Dahyabhai

RESPONDENT

Date of Decision : 07-07-1995

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13A, 13A

Citation : (1996) 1 GLR 375

Hon'ble Judges : S.K. Keshote, J;R.A. Mehta, J

Bench : Division Bench

Judgement

R.A. Mehta, J.—This revision application by the tenant against the concurrent findings of the two lower Courts arises from an order u/s 13A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 which reads as follows:

13 A. Where the landlord proposes to make any improvement in, or construct any additional structure on, any building which (or part of which) has been let to a tenant, and the tenant refuses to allow the landlord to make the improvement or construct such additional structure, if the Court, on an application made to it in this behalf by the landlord, is satisfied that such work will not cause undue hardship to the tenant, the Court may permit the landlord to do such work, and may make such other order as it thinks fit in the circumstances of the case.

This Section was inserted by Gujarat Act No. 57 of 1963.

2. The trial Court has passed a decree directing as follows:

The plaintiff is permitted to do the construction of additional structure on the terrace of the suit premises according to law without causing any undue hardship to the defendants-tenants or causing any damage to the suit demise premises in occupation of the defendants-tenants.

The defendants-tenants or their men, agent, or servants are permanently restrained by injunction from doing any obstruction or interference to the plaintiff, his man, agent, servants etc. from doing the said construction work of

the additional super-structure on the suit terrace of the demised bungalow.

3. The application was made to Small Causes Court, Ahmedabad in the year 1975. It was decided by the trial Court on 28-8-1981. The appellate Court dismissed the appeal on 2-2-1983.

4. The High Court admitted the revision application and issued Rule on 14-3-1983 and referred the matter to Division Bench in view of the conflict of decisions between 16 GLR 888 and the unreported judgment of our learned brother Surti, J. in Civil Revision Application No. 513 of 1975 decided on 1-2-1978. That is how the matter has come before the Division Bench.

5. Before we proceed with the matter on merits, we may deal with the sequence of proceedings.

In the trial Court, two defendants namely, the widow and son Suresh were the original defendants, heirs of Govindji Kelkar who had died in the year 1967. Later on, by Ex. 45, the other heirs were joined as defendants. u/s 5(1 I)(c), tenant means any person by whom or on whose account rent is payable for any premises and includes, in relation to premises let for residence, any member of the tenant's family residing with the tenant at the time of, or within three months immediately preceding the death of the tenant as may be decided in default of agreement by the Court. In the present case, all the heirs were joined as defendants; three of the defendants had appeared and contested. Rest of the defendants, though served, have not appeared and the decree came to be passed against all the defendants including the defendants who did not appear. The appeal was filed by only two defendants. The son and the widow of the deceased tenant. Other co-defendants were joined as respondents. However, the appellants deleted the other sons and daughters of the deceased tenant by application Ex. 14 wherein it was stated that the addresses of respondents nos. 2,3,4 and 5 were not known and, therefore, their names be deleted and the appellate Court permitted such deletion. In the present revision application also, they are not joined as parties.

6. However, Sudhaben G. Kelkar, defendant No. 6 had made an application for being joined as a party to this revision application. This application is not affirmed and not registered. In fact, for non-removal of office objections, by the order of Court whereby conditional time was granted, the application came to be dismissed for want of prosecution on 18-10-1994. It bears Stamp No. 10445 of 1993.

However, we have heard the Learned Counsel for that party. That party has adopted the arguments of revisional applicants.

7. During the pendency of the present Revision Application, the original landlord Respondent Ratilal also expired in 1985. His heirs have been brought on record. Thereafter in 1985, the heirs of Ratilal Dahyabhai sold the suit property who are now the newly added respondents Nos. 2 and 3.

8. By filing an additional affidavit, the newly added respondents Nos. 2 and 3 have submitted that in view of the prevailing bye-laws of Ahmedabad Municipal Corporation and on account of the fact that part of the open land has already been acquired by the Ahmedabad Municipal Corporation for widening of the road, fresh building plan has been approved by the Ahmedabad Municipal Corporation on 19/26-6-1995. In para 3 of that affidavit, it is stated as follows:

I say that thereafter respondents Nos. 2 and 3 were advised that in view of the prevailing building bye-laws of the Ahmedabad Municipal Corporation, it was advisable to get the new building plans approved and, therefore, respondents Nos. 2 and 3 have got the new building plans approved by the Ahmedabad Municipal Corporation on 19/26-6-1995. Annexed hereto and marked as Annexure I is a copy of the building plan approved by the Ahmedabad Municipal Corporation. I say that the proposed building on the first floor as well as second floor would be on the same apparent as the ground floor building, except that on 1st floor as well as on the 2nd floor, there will be one bed room less than the ground floor. I say that all the load bearing walls on the 1st floor as well as on the 2nd floor will be above the load bearing walls on the ground floor of the suit house. I say that the earlier building plans which were got approved by late Shri Ratilal Dahyabhai were also provide load bearing walls on the first floor and 2nd floor above the load bearing walls on the ground floor. However, now there will be one bed room less on the 1st floor as well as on the 2nd floor and, therefore, there is no increase in the load on account of the proposed first floor and second floor; on the contrary, the load will be less in view of the fact that there will be one bed room less. I say that one bed room was required to be reduced from 1st floor as well as 2nd floor on account of the fact that a part of the open land on the ground floor in front of the suit house has already been acquired by the Ahmedabad Municipal Corporation for widening of the road.

The Learned Counsel for the petitioners has objected to the production of this affidavit and submitted that in view of this new circumstance, the matter should be remanded back to the trial Court because the trial Court had taken the decision on the basis of the plans which were produced at the trial 15 years back.

9. We do not think that this matter which is already 20 years old is required to be sent back. Neither Section 13A shows that the Court should permit construction only according to the particular plan nor the trial court has passed any decree for a particular plan. Section 13A provides that where the landlord proposes to make any improvement in, or construct any additional structure on, any building which or part of which has been let to a tenant, and the tenant refuses to allow the landlord to make the improvement or construct such additional structure, if the Court, on an application made to it in this behalf by the landlord, is satisfied that such work will not cause undue hardship to the tenant, the Court may permit the landlord to do such work, and may make such other order as it thinks fit in the circumstances of the case. The trial Court has permitted the plaintiff to do the construction of additional structure in the suit

premises according to law without causing undue hardship to the defendants-tenants and causing any damage to the suit premises.

10. Moreover, there is no material or substantial change in the plans submitted earlier and in the fresh plans. The present plans which are now submitted are on the same line and on the same walls. Only one room is reduced on each of the two floors. This does not require any re-appreciation of evidence or leading of any fresh evidence. In fact, the production of this affidavit was not necessary in view of the language of the order passed by the trial Court. However, the landlord has without keeping back anything produced the same before the Court and it is permitted to be produced and it is taken on record.

11. The material question which is raised by the Learned Counsel for the petitioners is whether the landlord can deprive a tenant of possession of even part of the tenanted premises (terrace) without first obtaining a decree for possession in accordance with law and getting the possession. It is submitted that Section 12 of the Act gives complete protection to the tenant by providing that the landlord shall not be entitled to recover possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy. It is further submitted that Section 13 makes an exception to this protection by providing that notwithstanding anything contained in this Act, the landlord shall be entitled to recover possession of any suit premises if the Court is satisfied about the grounds mentioned in Section 17(1) (a) to (1). It is, therefore, submitted that the tenant having been given protection against eviction, the landlord is not entitled to deprive the tenant of this protection and the possession of the rented premises or a part thereof without obtaining a decree for possession.

12. In this connection, reliance is placed on the judgment of Mr. Justice A.N. Surti in Civil Revision Application No. 513 of 1976 decided on 1-3-1968 (sic). In that case, the trial Court had granted permission to the landlord u/s 13A to construct a stair-case in the corner of the Angna let to the tenant and it was contended by the tenant that the landlord cannot be permitted to put up a stair-case in any place which is in the part of the demised premises and because thereby the tenant's right to use, occupy and possess the demised premises would be prejudicially affected and as a result of the construction of the stair-case, the tenant would lose his right to exclusively possess the portion of the demised premises. The learned single Judge found substance and force in that contention and held that Section 13A of the Rent Act did not contemplate a situation whereby the landlord can put any structure so as to affect the existing right of the tenant to enjoy the suit premises exclusively. The learned Judge, therefore, granted permission to the landlord to put up the stair-case in any place except in the demised premises. The argument put forward by the landlord that there had been a right in law even to affect prejudicially the right of the tenant when the landlord wants to construct any new structure as provided in

Section 13A of the Rent Act was rejected.

13. As against this, the Learned Counsel for the respondents has relied on the earlier judgment of another learned single Judge (Coram: S.H. Sheth, J.) in the case of *Thakker Popatlal Jadavji v. Thakker Durlabhji Dharmshi* (1975) XVI GLR 888. It is contended on behalf of the respondents that u/s 13 A, the legislature has with full awareness of the existing provisions of Section 12 and Section 13, provided that when the landlord proposes to make additional structure on any building which has been let to a tenant, the Court may permit him to do such work inspite of the refusal of the tenant to allow the landlord to do so, if the Court is satisfied that it would not cause any undue hardship to the tenant. It is, therefore, contended that the legislature has knowing fully well that the premises have been let to the tenant and the landlord proposes to put up additional structure, he has a right to approach the Court when the tenant refuses to allow the landlord to make such additional structure. Only if the Court is satisfied that such additional work does not cause undue hardship to the tenant, then only the Court would permit such work. The legislature did not want the landlord to undergo multiplicity of proceedings and did not want the tenant also to face such multiplicity of proceedings. The tenant is reasonably protected against eviction. At the same time, the legislature has shown the awareness about the need to make additional accommodation and to encourage such additional construction and that too, without causing undue hardship to the tenant. When the legislature added Section 13A in 1963, the legislature was aware of the existing provisions of Sections 12 and 13 regarding the protection given to the tenant and limited right on specific grounds given to the landlord for getting possession of the demised premises from the tenant. The protection given by Section 12 is subject to the new provision of Section 13A. The landlord need not sue for eviction of the tenant, not even partial eviction. The legislature did not want Section 13 to be resorted to at all and provided a direct simple mode for additional structure.

14. Moreover, putting up additional structure without undue hardship to the tenant is not a case of eviction of the tenant on depriving him of the protection. It is a special situation not covered by Section 12 or 13. Under none of the provisions of sub-clauses of Section 13(1), the landlord can ask for possession of a part (terrace) of the premises for putting up additional structure.

15. The Learned Counsel for the petitioners has referred to clauses (h), (hh), (hhh) and (i) of Section 13. Under all these clauses, the landlord has to ask for possession of the whole of the premises and only in respect of ground (h) or (i), there can be a decree for part of the premises to be vacated for carrying out the work of repairs. Clause (h) enables the landlord to get a decree for possession for carrying out repairs which cannot be carried out without the premises being vacated and there can be a decree for partial possession under Sub-section (3), but it can be only for the purpose of repairs which cannot be carried out without the premises being vacated.

16. Clause (hh) of Section 13(1) enables the landlord to move the Court for

evicting the tenant where the landlord wants possession for the immediate purpose of demolition and erection of a new building. In the present case, there is no question of demolition of the new building at all. Therefore, Clause (hh) does not apply.

Clause (hhh) would apply only when the premises are required for the immediate purpose of demolition ordered by any local authority or other competent authority. This also has no application.

Clause (i) applies only when the premises are land and such land is reasonably and bona fide required by the landlord for the erection of a new building. Therefore, Clause (i) has also no application.

Clause (ii) is also not applicable because there also, the premises are land appurtenant to a building or part of a building and such land is required by the landlord for erection of a new building.

It is, thus, clear that there is no provision u/s 13 or any other provision in the Act where the landlord can go to the Court for getting possession of the part of the premises for putting additional structure on the building let to a tenant.

17. The legislature being fully aware of the provisions of Sections 12 and 13 added the provision of Section 13A in 1963 enabling the landlord to put up an additional structure on the building already let out to the tenant. Therefore, though there is protection u/s 12 against depriving the tenant of possession, that protection is subject to the conditions laid down in the Act and the condition laid down in Section 13A is that the tenant shall not refuse to allow the landlord to make additional structure in the building let to him if such work does not cause undue hardship to the tenant and if he refuses, the landlord can take the assistance of the Court and the Court may permit the same.

18. The statement of objects and reasons of the Amendment Act No. 57 of 1963 are contained in Bill No. 56 of 1963. These objects are found in Part V of the Gazette dated 12-9-1963 at page 316 (326). The relevant paragraph reads as follows:

This clause inserts new Section 13A so as to allow opportunities to landlords to undertake additional constructions on buildings already let out to tenants.

It is, thus, clear that the legislature has deliberately and consciously, made a special provision for extending an opportunity and encouraging the landlord to undertake additional construction and that too on the buildings already let to the tenant. The legislature has taken care to see that such work does not cause undue hardship to the tenants.

19. The learned single Judge (S.H. Sheth, J.) in the case of Thakker Popatlal Jadavji (supra) has taken this view and held as under:

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A person who seeks enforcement of a right which is a creature of law takes it as the law gives him. If law gives him a qualified right or an abridged right, he enjoys it as given to him or leaves it as he cannot contend that he is entitled to a right without the qualification or the abridgement attached to it. In the instant case, the protection which the Bombay Rent Act grants to the tenants is conditioned amongst others by the provisions of Section 13A. It is, therefore, not open to a tenant to contend that he has absolute right to the possession of the terrace forming a part of his premises but has no obligation u/s 13A to allow or permit his landlord to construct an additional structure on the terrace of the building let out to him.

The learned Judge further observed in para 9 that no hardship is likely to be caused to the tenant by the landlord constructing an additional structure on the building; merely because the tenant is deprived of the use of the terrace which he may be using during summer for sleeping, it cannot be said that he will put to undue hardship by his being deprived thereof and further observed that the concept of "undue hardship" incorporated in Section 13 A has got to be understood on a comparative analysis of the hardship which is likely to be caused to a tenant by such an action on the part of the landlord and by the benefit which is likely to accrue to the landlord or to his future tenants.

We wholly agree with the reasoning and conclusions of the learned single Judge, Sheth, J. The same view has later on been taken by our learned brother S.D. Shah, J. in Civil Revision Application No. 757 of 1992 decided on 3-7-1992 following the judgment of Mr. Justice S.H. Sheth. The judgment of Mr. Justice Surti was also cited before the learned single Judge Mr. Justice S.D. Shah and the conflict was pointed out. The learned Judge held that Mr. Justice Surti who later decided the question was not shown the reported judgment of Mr. Justice S.H. Sheth and, therefore, it was held to be per incurium.

20. In our view, there is not much difference between the views of the two learned Judges. The learned single Judge A.N. Surti, J. has observed that Section 13A contemplates that no undue hardship be caused to the tenant when the landlord proposes to carry out any additional structure in the demised premises and if the Court comes to the conclusion that putting additional structure in the demised premises causes undue hardship to the tenant, the Court may refuse such permission. However, if the judgment of learned single Judge A.N. Surti, J. is read to mean that whenever there is additional structure in the demised premises, it is necessarily undue hardship or to mean that the landlord is not entitled to put up such additional structure on the demised premises because they are let to the tenant, that is required to be cleared and overruled.

21. In the present case, putting up additional structure on the demised premises does not cause any undue hardship. In fact, it does not cause any hardship at all except that the tenant may psychologically feel otherwise. The very intention of the Rent Act is to see that the more and more accommodation is made available and is encouraged particularly in important cities and towns where the land is

very scarce and costly and if the tenants were to prevent such additional construction, major expansion of accommodation would be hampered and as observed by S.H. Sheth, J., it would be a curse to the society. It would frustrate the very purpose of Section 13A and the legislative intention.

22. This was the only contention raised which fails and hence the Revision Application is dismissed with costs. The costs of this Revision Application are quantified at Rs. 2000/-. The petitioner to pay the costs to the contesting respondents.

23. The Learned Counsel for the petitioners prays that the stay which has continued for last 12 years in this Revision Application be continued for a period of six weeks. It is really most unfortunate that the stay has continued for 12 years. It does no credit to law and administration of justice. By lapse of all these years from 1975 when the application was made before the trial Court and from 1983 when the stay was granted by the High Court, the cost of construction has multiplied several times. However, with a view not to deprive the petitioners of having further recourse in accordance with law, the interim stay is continued upto 15th August 1995.