

(2009) 08 BOM CK 0206
In the Bombay High Court
Case No : Writ Petition No. 761 of 1992

Surjabai Kevalchand Dhadiwal (since deceased by heirs and L.Rs.) and Others APPELLANT

Vs

Sadashiv Sawalaram Gaikwar (since deceased through L.Rs.) and Others RESPONDENT

Date of Decision : 14-08-2009

Acts Referred:

Bombay Hotel and Lodging Rates (Control) (Amendment) Act, 1950 — Section 61, 9(1)
Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1),
13(2)
Constitution of India, 1950 — Article 227

Citation : (2010) 3 BomCR 752

Hon'ble Judges : Oka A.S., J

Bench : Single Bench

Advocate : Modhav Jamdar, for the Appellant; Prafulla B. Shah, for the Respondent

Judgement

Oka A.S., J.—The submissions of the learned Counsel for the parties were heard on the earlier date. By this petition under Article 227 of the Constitution of India, the petitioners have taken an exception to the Decree of eviction passed under the Bombay Hotel and Lodging Rates (Control) Act, 1947 (hereinafter referred to as the Bombay Rent Act).

2. The suit property subject-matter of the dispute is a land bearing plot No. 5 out of Survey No. 235/B-2B situated at Ambedkar Nagar, Nasik Road, Nasik. The original owner (original plaintiff) Sadashiv executed a registered lease dated 28th October, 1948 in favour of Kewalchand Dhadiwal (original tenants) and predecessor of the petitioners. The lease was for a period of 10 years in respect of the said plot No. 5 which was stated to be an open plot (the Plot No. 5 is hereinafter referred to as "the suit plot").

3. After the suit plot was let out, a structure was built upon the said plot by the original tenant. It must be noted here that after the demise of the original tenant

in the year 1966, the original plaintiff filed a suit for eviction by invoking the provisions of 13(1)(i) of the Bombay Rent Act. The ground pleaded was that the original plaintiff requires the suit plot for erection of a new building. The suit was decreed by the trial Court. The decree was reversed in appeal. It appears that on 18th December, 1969 the original plaintiff obtained a permission for construction of a building. On the basis of the said permission, in June, 1970 a notice was addressed by the original landlord to the legal representatives of the original tenant. By the said notice, the tenancy was purportedly terminated and a demand was made for delivery of vacant possession. Subsequently, in the year 1973, a fresh suit for eviction was filed by the original plaintiff on the same ground u/s 13(1)(i) of Bombay Rent Act. The said suit came to be dismissed. The decree of dismissal was challenged by the original plaintiff by preferring an appeal. During the pendency of the appeal, the original plaintiff expired. By the impugned judgment and Decree dated 13th January, 1993, the learned Additional District Judge interfered with the decree of dismissal passed by the trial Court and a decree for possession was passed in favour of the plaintiffs. It is this decree which is made the subject-matter of challenge by filing the present writ petition.

4. The learned Counsel for the petitioners firstly submitted that there is no finding recorded by the District Court holding that the bona fide need has been established by the original plaintiff. He invited my attention to the findings recorded by the District Court and in particular finding recorded in paragraph 12 of the impugned judgment. He submitted that the District Court had proceeded on the footing that in a suit filed by the landlord where the ground is u/s 13(1)(i) of the Bombay Rent Act, all that the landlord has to establish is that he has obtained a permission for construction of the building and he has sufficient funds and capacity to construct the building. He submitted that the entire case of the original plaintiff has been considered by the learned Additional District Judge in the light of what is observed in paragraph 12 of the judgment. He placed reliance on a decision of the learned Single Judge of this Court in the case of Vasant Badoo Kulkarni Vs. Yasin Ahmed Mujawar since deed by his heirs, He invited my attention to what is held by this Court in paragraphs 11 and 12 of the said decision. He submitted that as a condition precedent for passing the decree for eviction on the said ground, the landlord has to establish his reasonable and bona fide requirement irrespective of the fact that he has obtained a building permission from the local authority and he was possessing sufficient funds for construction of the new building. He has also placed reliance on the decision of the Apex Court in case of AIR 1990 1355 (SC) in support of the said proposition. He has placed reliance on certain other decisions of this Court by pointing out that even on merits the plaintiffs have no case. He contended that the alleged bona fide need is set out in the plaint only in one sentence. He submitted that no particulars of bona fide need have been pleaded and no material facts have been pleaded in the plaint. Even the evidence of the landlord is very sketchy on this aspect. He submitted that it is obvious that there are other properties in the

vicinity of the suit plot where the landlord could have carried out the construction. He submitted that even on merits, this is the case where bona fide need was not established. The last submission made by him is based on the fact that one of the legal representatives of the landlord viz.; the respondent No. 1-G filed a suit for partition claiming 1/7th share in the suit plot and the said suit has been partly decreed by holding that the said respondent 1-G was entitled to 1/38th share in various properties including the suit plot. It is pointed out that the first appeal against the said decree is pending in this Court. He submitted that this factor also needs to be considered as in view of pendency of the appeal against decree, it is not clear as to who will get the possession of the suit plot as and when the decree for partition is executed.

5. The learned Counsel for the respondents (legal representatives of the original plaintiff landlord) has invited my attention to a decision of the Division Bench of this Court in case of Bharat Petroleum Corporation Ltd. and Bharat Refineries Ltd. Vs. Anil Noel Rodrigues, Ajit Joseph Rodrigues and Prashant Antony Rodrigues, . He invited my attention to what is held by the Division Bench of this Court in paragraph 13 of the said decision. He submitted that the Division Bench has held that what is required to be established for passing a decree for eviction u/s 13(1) (i) is that the landlord was desirous of constructing a new building, the landlord has obtained necessary sanction to construct and he has means to construct a building. His submission is that in view of pronouncement of law by the Division Bench of this Court, the decision of the learned Single Judge in case of Vasant Kulkarni (supra) cannot be read as a binding precedent. He therefore submitted that what is observed in paragraph 12 of the impugned judgment is consistent with what is held by the Division Bench of this Court in the case of Bharat Petroleum Corporation Ltd. (supra). Therefore, u/s 13(1)(i) the landlords is not required to plead and prove the bona fide requirement.

6. The learned Counsel for the respondents invited my attention to various findings recorded by the Appellate Court. He submitted that no other property was available for the landlord where he could have constructed a building. He submitted that merely alleging that another property is available to a landlord is no ground to defeat the ground 13(1)(i). He submitted that even the Appellate Court has considered the entire evidence on record and has examined the case of the landlord of bona fide requirement. He submitted that independently of observations made in paragraph 12 of the judgment, the evidence on record has been examined by the Appellate Court and the finding regarding existence of bona fide requirement has been recorded by the Appellate Court which warrants no interference. He submitted that merely because one of the heirs of the deceased landlord has obtained a decree for partition, bona fide need is not at all affected. He, therefore, submitted that no interference is called for.

7. The learned Counsel for the petitioner submitted that what is observed by the Division Bench in paragraph 13 in the case of Bharat Petroleum Corporation Ltd. (supra) is not the ratio. He submitted that the issue which came up for

consideration of the Division Bench was totally different. He submitted that in fact the Division Bench has upheld the decision of the learned Single Judge in case of Vasant Kulkarni (supra) which in turn is based on a decision of the Apex Court in case of AIR 1990 1355 (SC) and in any case, what is binding on this Court is the decision of the Apex Court in the case of Dinanath and another (supra).

8. I have given careful consideration to the submissions made by the learned Counsel for the parties.

9. It will be necessary to deal with the last submission made by the learned Counsel appearing for the petitioner based on the decree for partition obtained by one of the legal representatives of the deceased landlord. The decree is a preliminary decree for partition as is evident from the copy of the decree annexed (Exhibit-D) to the petition. It must be noted here that the writ petition arises out of the suit filed in the year 1983. The preliminary decree is passed on 21st June, 1991. What is operating today is a preliminary decree declaring the shares of various legal representatives of the deceased landlord. The decree has been passed not only in respect of the suit plot but in respect of the large number of Immovable properties both landed and house properties. Even assuming that the decree of eviction passed by the District Court is confirmed by this Court, the preliminary decree of partition will not prevent or stop the construction of the new building on the suit plot. The decree for partition relates to large number of properties. The tenant cannot take undue advantage of the system in which suits/proceedings remain pending for years. This writ petition is of the year 1992 which has reached for final hearing in the year 2009. In the year 2009, this Court is dealing with the suit filed in the year 1973 on the ground of bona fide requirement of the landlord. The preliminary decree for partition has been passed in the year 1991 and an appeal against the said decree is still pending. With the passage of time, new developments such as one of the heirs of original plaintiff-landlord filing a suit for partition are bound to happen. A preliminary decree for partition in respect of the large number of other properties held by the deceased landlord will not affect the merits of the suit filed on the ground u/s 13(1)(i) of the Bombay Rent Act and therefore, last submission deserves to be rejected.

10. It will be necessary to consider to the decision in case of this Court in the case of Vasant Kulkarni (supra). The said decision was in a writ petition filed by the plaintiff-landlord who had filed a suit for possession on the ground of bona fide requirement u/s 13(1)(i) of the Bombay Rent Act. What was let out by him was an open plot in favour of the tenant. The trial Court accepted the case of the landlord u/s 13(1)(i) of the said Act. Against the decree of the trial Court, an appeal was carried to the District Court which was allowed. The decree for possession was set aside. Various submissions were made by the landlord in support of the writ petition. One of the submissions made on behalf of the landlord was that if the landlord has obtained sanction for construction and that

he has an honest intention to construct a building, it will not be open for the Court to reject the case of the landlord unless the Court finds that the said case is mala fide or dishonest. One of the contentions raised by the tenants was that the case will fall u/s 13(1)(g) of the Bombay Rent Act and therefore, the issue of hardship as required by Sub-section (2) of Section 13 of the Bombay Rent Act will have to be considered. Another submission on the part of the tenant was that even assuming that Section 13(1)(i) was applicable, it was not enough for the landlord to show that he has got sanctioned plan and he possesses necessary means but he must prove his bona fide and reasonable requirement. The submissions were answered by the learned Single Judge of this Court. It will be necessary to consider what is held by this Court in paragraph 11 of the said decision which reads thus :

11 Mr. Walawalkar contends that once the landlord has got the plans sanction and prepared the estimate and led evidence to establish his financial position, nothing further should be required to be proved by the landlord. When the landlord offers proof by way of sanctioned plan and his financial ability and says nothing more, the Court is not required to launch on an inquiry as to test bona fides of the landlord. According to Mr. Walawalkar, such an inquiry would be beyond the scope of Section 13(1)(i). The argument is devoid of any substance. In order to succeed u/s 13(1)(i), it is obligatory for the landlord to establish that the plot of land is bona fide and reasonably required by him for the erection of a new building. The two expressions used in the section are "reasonably" and "bona fide". The expressions reasonably and bona fide does not mean that the landlord has to prove mere financial capacity and the sanction of the authorities. The section clearly requires that reasonable and bona fide requirement must be established by the landlord irrespective of the fact that he has obtained sanction from the municipal authorities and he is in possession of necessary funds. The Apex Court had an occasion to consider a similar provision under Karnataka Rent Control Act in AIR 1990 1355 (SC) . It was observed in paragraph 4 of the judgment:

The High Court, in our view, had misunderstood the scope of Clause (1). The learned Judges understood it to mean that all that the landlord had to prove was that he had the financial capacity and had acquired the necessary sanction of the concerned authority. That the expressions "reasonably" and "bona fide" require more than mere financial capacity and the sanction of the authorities was not appreciated by the High Court. These two expressions are present in Clause (h) also, but that clause deals with a different situation and it cannot, therefore, be read in to Clause 91). But the expressions in both the provisions must be understood with reference to the evidence adduced by the landlord as to the reasonableness and the bona fide character of his requirements. While Clause (h) refers to a landlord's requirement of occupation of an existing building, Clause 91) refers to a vacant land required by the landlord for construction of new building. His reasonable and bona fide requirement must be established by the landlord, irrespective and independent of any sanction which he may have

obtained from the local authority. That the landlord has obtained the necessary sanction of the local authority and that he is financially capable of constructing a building will not by themselves meant that his requirements are reasonable and bona fide. Although his financial capacity may be one of the elements which may be taken into account, that by itself, in our view, would not be sufficient to establish the reasonableness and the bona fide character of his requirements.

(Emphasis added)

As is apparent from paragraph 11, the view taken by the learned Single Judge is based on the decision of the Apex Court in the case of Dinanath and another (supra) which is a binding precedent. In the case of Dinanath and another (supra), the Apex Court was dealing with the provisions of Karnataka Rent Control Act, 1961. After considering the relevant Clauses (h) and (1) of Sub-section (1) of Section 21 of the said Act of 1961, the Apex Court considered the Clause (1). The said Clause (1) of Section 21(1) of the said Act of 1961 is substantially similar to Clause (i) of Section 13(1) of the Bombay Rent Act. The Apex Court held that the financial capacity of the landlord or the sanction obtained from the local authority is not sufficient to establish the reasonable or bona fide character of the requirement. The law laid down by the Apex Court will squarely apply to a suit u/s 13(1)(i) of the Bombay Rent Act and therefore, in such a suit mere financial capacity and building permission obtained by the landlord will not be sufficient to prove bona fide and reasonable the requirement of obtaining possession of the plot on the ground incorporated in Section 13(1)(i) of the Bombay Rent Act.

11. Now at this stage it will be necessary to consider the decision of the Division Bench in case of Bharat Petroleum Corporation Ltd. (supra). The matter before the Division Bench arose on a reference. The controversy subject-matter of the reference has been summarised by the Division Bench in paragraphs 2 and 3 of the said decision. Paragraphs 2 and 3 read thus :

2 The controversy which falls for consideration before this Court is as to which clause of Section 13(1) of the Bombay Rent Act is attracted in a case where the premises is an open land and eviction is sought for the construction of the building which is for the occupation of the landlords themselves or otherwise. In one judgment in the case of Shri Abdulraheman @ Iqbal Faljukhan Pathan since deceased through legal heirs Vs. Sou. Kamalaben Mohanlal Shah, the learned Single Judge (T.K. Chandrashekhara Das, J.) held that since the landlords needed the premises for their own occupation after completion of the construction of the new building, the case would fall u/s 31(1)(g) and not u/s 13(1)(i). It was further held in the said case that once the case fell under die provisions of Section 13(1)(g), it was the duty of die trial Court to have framed an issue u/s 13(2) to examine the comparative hardship of the landlord and die tenant.

3 On the contrary, in other judgments of this Court viz. In the case of Badriprasad K. Agarwal and Ors. v. Premier Garage and Ors. reported in 1980

Bom.C.R. 12 : 1980 (1) R.C.J. (Bom.) 385, the learned Single Judge R.A. Jahagirdar, J) held that in a case where landlord was seeking possession of the premises of the open land for erection of new building, the case would fall u/s 13(1)(i) irrespective of the fact whether the landlord wants to personally occupy the said building or not. Similar view was taken by the another learned Single Judge (A. P. Shah, J.) of this Court in the case of Vasant Badoo Kulkarni Vs. Yasin Ahmed Mujawar since deed by his heirs, wherein the learned Single Judge took a view that a suit for possession of an open land let out to the tenants claiming eviction for construction of the building would be governed by the provisions contained in Section 13(1)(i) of the Act

12. Thus, the main controversy which arose before the Division Bench was whether Section 13(1)(g) or 13(1)(i) will apply to a case where landlord wants premises which is an open land for construction of a building. The other issue considered by the Division Bench is regarding applicability by Sub-section (2) of Section 13 to a suit u/s 13(1)(i) of the Bombay Rent Act. In paragraph 13 of the said decision, the Division Bench has observed thus :

13 The learned Single Judge in the case of Abdul Raheman (supra) has made a reference to the judgment of the Apex Court in the case of Ramniklal Pitambardas Mehta v. Indradaman Amratilal Sheth reported in 1964 DGLS (soft) 148 : AIR 1964 S.C. 1677. In that case, the Apex Court was required to consider whether the provisions of Section 13(1)(g) and Section 13(1)(hh) were applicable to the facts of the said case and, in the context of the said controversy which was before the Apex Court, the Apex Court has made those observations in para 15 of the said judgment. The Apex Court was not required to consider whether the provisions of Section 13(1)(i) were attracted in the said case. Clause (hh) was inserted by amending Section 61 of the Amendment Act 53 of 1950. The said clause is applicable in cases where the premises are required for demolishing the existing building and for erecting a new building on the same premises. Section 13(1)(i), on the contrary, contemplates a situation where the landlord seeks eviction of tenant of an open plot of land and requires it for an erection of a new building. The word "residential" which was earlier found in the said section has been deleted by Amendment Act 53 of 1950 vide Section 9(1)(c) of the Amendment Act. Thus, all that had to be proved by the landlord who had given an open plot of land to the tenant was that he required the land for erection of a new building irrespective of the fact whether the building was required for residential or commercial occupation. It necessarily follows that therefore, the only requirement which had to be proved by the landlord in the case u/s 13(1)(i) was that he wanted to construct a new building and he had means and necessary sanction or permission to construct a new building. The moment these facts are proved by the landlord, he would be entitled to evict the tenant....

(Emphasis added)

13. It must be noted here that the conflict of view which was referred to the Division Bench arose in the case of Abdul Rehman (supra) on the one hand and

in cases of Badriprasad (supra) and VasantKulkarni (supra) on the other hand. After considering the entire law on the aspect, the Division Bench in paragraph 18 has held thus:

...In the said case also, the question which was required to be considered by the Court was : whether in a case where the landlord wanted to construct a new building for the purpose of his own occupation whether Section 13(1)(g) would be attracted or 13(1)(i) would be applicable? The learned Single Judge relying upon the judgment in the case of Badriprasad K. Agarwal and Ors. (supra) and other two judgments referred to in the said case, held that it would be immaterial whether the landlords, after obtaining possession, intended to occupy the premises himself or wanted to let them out. We respectfully agree with the observations made by the learned Single Judge in the said judgment.

19 Under the circumstances, we have no hesitation in holding that the judgment in the case of Abdul Raheman (supra) was passed without taking into consideration the earlier judgments of this Court and even otherwise the view taken by the learned Single Judge cannot be accepted for the reasons stated hereinabove. We therefore, accept the view taken by the two learned Single Judges of this Court in the case of Badriprasad K. Agarwal and Ors. (supra) and in the case of Vasant Badoo Kulkarni (supra).

(Emphasis added)

14. On plain reading of the decision of the Division Bench, it is obvious that the Division Bench was not called upon to decide the question as to what is the nature of the reasonable and bona fide need u/s 13(1)(i) or what are the ingredients of such bona fide need. The Division Bench was not called upon to decide the nature of burden on the landlord to prove the ground u/s 13(1)(i) of the Bombay Rent Act. The issue decided by the Division Bench was when the landlord required an open land for construction of a new building which of the two clauses viz. (i) or (g) of Section 13(1) will be attracted. It must be noted here that in paragraph 19, the Division Bench has expressly upheld the decision in case of Vasant (supra) which on the basis of the decision of the Apex Court in case of Dinanath (supra) holds that the landlord has to establish the reasonable and bona fide requirement irrespective of the fact that he has obtained sanction from the local authority and he has a capacity to carry on construction.

15. It will be necessary to refer to the decision of the Apex Court in case of State of Orissa and Others Vs. Md. Illiyas, . The Apex Court dealt with the question as to what is a binding precedent and what is the ratio decidendi. In paragraph 12 of the said decision the Apex Court held thus:

...A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well settled

theory of precedents, every decision contains three basic postulates: (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts: (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. See *The State of Orissa Vs. Sudhansu Sekhar Misra and Others*, and *Union of India (UOI) and Others Vs. Dhanwanti Devi and Others*, . A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in an Act of Parliament. In *Quinn V. Leathern the Earl of Halsbury, L.C.* Observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides.

(Emphasis added)

It will be also necessary to advert to another decision of the Apex Court in the case of *Union of India (UOI) and Another Vs. Major Bahadur Singh*, . The Apex Court relied upon the decision of Lord Denning. Paragraphs 11 and 12 read thus :

11 Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

12 The following words of Lord Denning in the matter of applying precedents have become locus classicus :

Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such case, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive. Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches, else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.

16. The learned Counsel for the respondents wants this Court to read the observations made by the Division Bench of this Court which are reflected in paragraph 13 of the said decision as a ratio of the said decision. However, all the observations made in the judgment cannot be read as a ratio. What logically

flows from various observations made in the judgment is also not the ratio. What is actually decided is a precedent. Therefore, the observations made by the Division Bench of this Court in paragraph 13 regarding the requirements of Section 13(1)(i) which are reproduced and highlighted in paragraph 12 above cannot be read as a ratio. The Division Bench has expressly approved the decision of learned Single Judge of this Court which relies upon the ratio of the decision of the Apex Court in the case of Dinanath (supra) which takes exactly a contrary view to what is observed by Division Bench in paragraph 13. The Division Bench has expressly affirmed the correctness of the decision in the case of Vasant Badoo Kulkarni (supra). As far as decision in the case of Vasant Badoo Kulkarni (supra) is concerned the learned Single Judge was called upon to decide the meaning of the reasonable and bona fide need u/s 13(1)(i) as indicated in earlier part of the judgment. The meaning of the words "reasonable and bona fide" used in Section 13(1)(i) as laid down in the case of Vasant Badoo Kulkarni (supra) is certainly a binding precedent. In any event, what is observed by the Division Bench in paragraph 13 of the decision cannot be read as a binding precedent in view of the ratio of the decision in the case of Dinanath (supra) wherein the Apex Court has interpreted a similar provision under the Karnataka Act. Thus, even in a suit invoking Section 13(1)(i) of the Bombay Rent Act, the landlord has to prove his bona fide and reasonable requirement.

17. The learned Counsel for the petitioner had invited my attention to the averments made in the plaint. It must be noted here that the averments made in the plaint are very vague. What was let out to the tenant was an open land. In the suit filed by the landlord, the requirement has been pleaded only in one sentence in paragraph 3 of the plaint merely stating that the landlord bona fide requires the suit plot for construction of a building. No particulars of his alleged requirement have been set out in the plaint. Perhaps the plaint proceeds on assumption that what is required to be established is that there was a building permission granted and the landlord has a capacity to construct the building. As far as the evidence is concerned, the examination-in-chief of the original plaintiff runs only into 3 paragraphs. The first paragraph contains the description of the property and incorporates a reference to the permission for construction. The second paragraph contains a statement that he requires the suit plot to construct a new building. In the said paragraph he has given estimated cost of construction and the details of the amounts possessed by him. In the 3rd paragraph, it is stated that the deceased tenant might have spent a sum of Rs. 10,000/- for construction of sheds, but his heirs are having another suitable plot. Thus, the original landlord has not at all stated the particulars or details of alleged bona fide need. In fact, if the entire examination-in-chief is read, it appears that except for stating that he requires the suit plot for construction of a new building, there is not even a whisper of any details of the bona fide requirement. In paragraph 9 of the cross-examination, he has admitted that at Nasik Road, he owns many buildings but not open sites. He admitted that he owns a plot near the suit plot which is let out to a tenant who has installed a petrol pump on the

open land. He admitted that the said plot is also abutting the Ambedkar Road. The said plot and the suit plot originally formed part of the same Survey No. 235/2B. He admitted that he had applied for permission to erect the building on the said plot on which the petrol pump has been installed. He pleaded ignorance about the time when he applied. He accepted that the plan was not approved as the site was in possession of a tenant. He further stated that he was the owner of an open space admeasuring 2 gunthas abutting Ambedkar Road which has been let out to the different persons who have put up sheds. He stated that the said site was in his possession. He admitted that it has been held that the construction of the sheds is unauthorised. He admitted at Ambedkar Road he owns a residential chawl. He has also admitted that at Sallenagar, he was holding open plots which have been let out to the tenants who have constructed the premises thereon. He admitted that he was the owner and in possession of a bungalow having two stories at Nasik Road.

18. Apart from the a bald statement in examination-in-chief, no particulars of the alleged requirement have been set out either in the plaint or in the deposition. All the aforesaid statements on oath of the original plaintiff clearly militate against the alleged bona fide requirement on the basis on which the suit was filed.

19. Apart from this, the learned Additional District Judge has glossed over the aforesaid admissions which show that apart from the suit plot, there was other plots abutting the Ambedkar Road which have been let out to the other tenants. The landlord stated that he had a bungalow having two stories at Nasik Road. This is a case where even the purpose for which he proposes to construct a building on the suit plot has not been set out by the landlord. The entire approach of the Appellate Court is not only erroneous but is contrary to the law. The Appellate Court proceeded on erroneous assumption that the landlord was not required to prove the bona fide need. The landlord has neither pleaded nor proved the bona fide need. There is no finding recorded of existence of such a bona fide need.

20. In the circumstances, petition must succeed and the judgment and Decree of the Appellate Court will have to be set aside and the judgment and Decree of the trial Court will have to be restored.

21. Hence, I pass the following order Rule is made absolute in terms of prayer Clause (b).