
(1966) 03 GUJ CK 0002
In the Gujarat High Court

Taherbhai Hebtullabhai and Another

APPELLANT

Vs

Ambalal Harilal Shah and Another

RESPONDENT

Date of Decision : 25-03-1966

Acts Referred:

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

Citation : (1966) 7 GLR 981

Hon'ble Judges : N.K. Vakil, J

Bench : Single Bench

Judgement

N.K. Vakil, J.—The petitioners in this civil revision application were tenants of a shop which belonged to the opponents in the town of Dholka. The shop was taken on rent as a monthly tenant in 1949 and the petitioners since then carried on the business therein of selling tools and parts of machinery. Respondent No. 1, in partnership with two other persons, was carrying on business in two shops adjoining each other. They deal in kerosene, vegetable ghee, cigarettes, match-boxes, grossery and other miscellaneous articles. They had also to hire godowns to store their goods. The respondents filed suit No. 71 of 1959 in the Court of Civil Judge at Dholka to recover possession of the suit premises on the ground inter alia of reasonable bona fide requirement for personal occupation. The suit was resisted by the present petitioners on several grounds. Inter alia they contended that the suit premises were not required by the landlord bona fide and reasonably for personal occupation and the suit was filed only with a view to force them to increase the rent. That even if it were to be held that it was required for personal use by the landlord reasonably and bona fide, they would suffer greater hardship if a decree were to be passed against them. They further contended that the notices given were not legal and there was no valid termination of the tenancy.

2.The trial Court decreed the suit holding that the suit premises were required by the landlord reasonably and bona fide for personal occupation and negatived all the contentions raised on behalf of the tenants. The tenants then filed appeal No.

112 of 1960. Only three points were raised before the lower appellate Court:

(i) Whether the respondents reasonably and bona fide required the leased premises?

(ii) If yes, whether greater hardship would be caused by passing a decree for eviction of the tenant than by refusing to do so?

(iii) Whether the notice to quit was legal? On all the three points, the appellate Court confirmed the findings of the trial Court and dismissed the appeal.

3. On behalf of the applicants, Mr. A. H. Mehta challenged the decisions of the two Courts on the following three grounds:

(1) There are two landlords who have filed the suit for evicting the tenants, but the suit shop is admittedly required for personal bona fide use of plaintiff No. 1 only. No decree for eviction u/s 13(1)(g) could be passed for the requirement even if reasonable and bona fide, of only one of the joint owners.

(2) There is no definite finding by either of the Courts that the suit shop is required for a specific bona fide and reasonable requirement of the landlord.

(3) On the question of relative hardship, there is no finding given in accordance with the requirement of law by either of the Courts.

4. The learned advocate for the applicants-tenants submitted that the plaintiff No. 1 in his evidence clearly admitted that the shop was required for the personal use of himself only and not also for any use by the joint landlord plaintiff No. 2. It appears that this fact came to be disclosed for the first time in the cross-examination of plaintiff No. 1. The learned trial Judge has, in his judgment while considering issue No. 3 which dealt with the question of bona fide and reasonable personal requirement of the landlords, observed that having regard to the fact that the evidence disclosed that the requirement was of only one of the joint landlords, the question arose as to whether a joint owner could file such a suit to recover the joint property on the ground of his personal requirement. The Judge further observed that that point was not agitated before him, but it being of some importance, needed to be clarified. Then he proceeded to deal with it and made the following observations :

It is clear that as long as there is no partition by metes and bounds, every co-owner has interest in every inch of the joint property. So, the plaintiff No. 1 is a man interested in the entire shop and with the concurrence of the other co-owner, he is entitled to the use of the whole shop. As shown by me above, the plaintiff No. 2 is willing to see that his partner in the property might get the whole property for user for himself.

On behalf of the tenants it was urged that the learned trial Judge had erred in law to take the view he did and the reasoning also is erroneous. It appears that on behalf of the tenants no specific ground was raised in the memorandum of appeal nor was the question agitated even at the time of the arguments in the

appellate Court. The grounds of the civil revision application before this Court also do not contain any such specific contention. Mr. Section N. Patel for the opponents objected to this point being agitated in the manner Mr. Mehta tried to do for the first time in this revision application. Ordinarily the applicants would have been debarred from doing so, but I have permitted to raise the contention as it is made to rest on the facts admitted by the plaintiff landlord himself and is a point of law that goes to the very root of the matter. I may mention that the learned advocate for the opponents has had ample opportunity to prepare himself to meet the point after it was raised.

5. In support of the contention, Mr. Mehta urged that u/s 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the landlord can get possession under the following three cases:

- (1) That the premises are reasonably and bona fide required by the landlord for occupation by himself, or
- (2) that the premises are reasonably and bona fide required by the landlord for occupation by any person for whose benefit the premises are held, or
- (3) the premises are reasonably and bona fide required by the landlord, where the landlord is a trustee of a public charitable trust for occupation for the purpose of the trust.

The present case falls under the first category of these cases and, as there are two landlords, the word "landlord" would necessarily mean both the landlords and, therefore, possession could be awarded only if it is proved that the premises are reasonably and bona fide required by both the landlords for occupation by themselves. In the instant case, admittedly the premises are not required by both. Therefore, under law no decree for possession against the tenants could be passed. In support of his contention, Mr. Mehta relied on the undermentioned two English decisions submitting that the provisions of the English law on the subject and the Bombay Rent Control Act are in pan materia and therefore they would be good authorities to rely upon:

- (1) McIntyre and another v. Hardcastle (1948) 1 All E. R 696. In the said case, the landlords who were joint legal and beneficial owners of a dwelling house within the Rent Restrictions Acts, claimed possession of the house from the tenant under the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, Section 3(1)(a) and Schedule I para, (h)(i) and alternatively u/s 3(1)(b) and (3). The County Court Judge held that they were not entitled to possession as the house was required for occupation as a residence by only one and not both of the two joint owners. The matter was taken in appeal. In respect of the claim under Schedule I para, (h) Tucker. L. J., has observed that it was held in Baker v. Lewis (1946) 2 All E. R. 592, that by reason of the provisions of the Interpretation Act, 1889, Section 1, the word "landlord" in the opening sentence of para (h) includes the plural where there is more than one landlord; the question arose in the said case whether the landlords, when they were more

than one in number, had to prove that the dwelling house was required for occupation as a residence for all of them or for only any one or more, because, in that case, it was only one of the landlords who desired to reside in the house. In *Baker v. Lewis* this question had not directly arisen, but there were observations by way of obiter dicta made by Somervell, L. J. and Asquith, L. J. Somervell, L. J., kept the question open by making the following observation:

I am not in any way implying or suggesting that para, (h) is only applicable in the case of joint owners where they are desiring the dwelling-house for occupation as a residence for all of their number.

Asquith, L.J., however, after referring to the said observations of Somervell, L.J., made the following observations:

Where there are two or more joint beneficial owners, (i), (ii) and (iii) of (h) should, I think, be read as follows: in (i) for "himself" read "themselves", in (ii) for "any son or daughter of his" read "any son or daughter of theirs, " and in (iii) read "their father or mother. " Where, read in this way, neither (i)(ii) nor (iii) has any application, such beneficial owners would fail, for instance, if they proceed under (ii) and are not a married couple with a child, or if they proceed under (iii) and have not got a parent in common; but they would fail in that case not because there are several of them or because they are not a "landlord" within the opening words of the section, but because they could not bring themselves within the language of (i), (ii) or (iii), construed in the way I suggest.

After considering these observations, Tucker L. J., dealing with the case on their hand observed that he did not think that the Legislature had contemplated this situation at all when this paragraph was framed. But, he felt driven to interpret it merely in the light of the actual language used. Looked at in that way, he felt convinced that the interpretation put on it by Asquith, L. J., was a correct one and he did not desire to put into better language that which he had so clearly expressed in the judgment. On this reasoning, the learned Judge upheld the decision of the County Court Judge.

(2) The next decision relied upon was the one in *Wetherall and Co, Ltd. v. Stone and Ors.* (1950) 2 All E. R.1209. This case was under another piece of legislation in the group of Rent Restriction Acts; viz. Landlord and Tenant Act, 1927. In this case the learned Judges more or less found themselves bound by the prior decisions of *McIntyre and another v. Harhcastle*, (Supra) and *Baker v. Lewis* and decided accordingly as the language was similar in the two statutory provisions.

6. Before I proceed to consider the question whether these principles laid down in the English decisions could have any application to cases arising under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, and should be relied upon, it would be necessary to note some of the material and salient features of these decisions. The two decisions relied upon by Mr. Mehta merely relied upon the construction placed in the prior decision in *Baker v. Lewis*. Firstly it is apparent that the learned Judges followed the obiter dicta of Asquith L. J. as

quoted above in the prior decision of Baker v. Lewis. Secondly, in the English Acts with which the learned Judges in the said cases were dealing with the term "landlord" has not been defined as is the case in our Act and, therefore, while considering the controversy raised before me, that fact will have to be kept in mind. One more indicative factor needs also to be noted and that is that Clause (h) of the English Act materially differs from Clause (g) of our Act, particularly the provision indicated by Mr. Mehta as covering the second class of cases in Clause (g), that is to say, that the premises are "reasonably and bona fide required by the landlord for occupation by any person for whose benefit the premises are held. Apart from other considerations that I shall mention a little later, I am of the view that it would not be expedient nor proper to draw upon the observations made or conclusions reached in the said English decisions.

7. I may now turn to the definition of the word "landlord" as given by Section 5 Sub-section (3) which is as follows:

(3) "landlord" means any person who is for the time being, receiving, or entitled to receive, rent in respect of any premises whether on his own account or on account, or on behalf, or for the benefit of any other person or as a trustee, guardian, or receiver for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant; and includes any person not being a tenant who from time to time derives title under a landlord; and further includes in respect of his sub-tenant a tenant who has sub-let any premises;

Mr. Mehta argued that even taking the definition of the word "landlord" as it stands in the Rent Act and read with Section 13(1)(g), the result will be the same as he has pressed before me. In his submission, the definition of the word "landlord" as it stands makes no difference and where there are two persons who are landlords within the meaning of the said definition given, a decree for possession cannot be given on proof of bona fide and reasonable requirement for personal occupation of only one of them.

8. I shall deal with this aspect in details a little later. But before I do so, it will be convenient to analyse the definition of the term "landlord" to appreciate the arguments advanced on either side. The term landlord contemplates four categories of persons to be landlords. The definition in its first part is definitive or restrictive where it says "landlord means" and in the later part where it says "and includes" it becomes an inclusive definition. We are concerned with the first part. Within the meaning of the first part, the following classes of persons will be landlords :

(a) A person who for the time being either is receiving rent or is entitled to receive rent in respect of any premises on his own account.

(b) A person who, for the time being, is recovering rent or is entitled to receive rent in respect of any premises

(i) on account of any other person, or (ii) on behalf of any other person, or (iii) for the benefit of any other person.

(c) A person who for the time being receives rent or is entitled to receive rent

(i) as a trustee, or

(ii) guardian, or

(iii) a receiver for any other person, or

(d) is a person who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant.

This shows that the legislature has given the widest possible amplitude to the expression "landlord" to bring under the purview of the Act all possible persons who would have to deal with tenants of immovable properties other than agricultural lands and properties. The anxiety indeed appears to be to protect the interests of tenants by preventing all possible persons from escaping the rigour of the law who could affect the interests of the tenant adversely.

9. Mr. A. H. Mehta, on behalf of the tenants, contended that both the plaintiffs, no doubt, were landlords within the meaning of the statutory definition of the expression as defined by Section 5 (iii) but the definition of the expression landlord in our Act makes no difference whatever to the construction which he would like the Court to place on Clause (g). According to Mr. Mehta, a person who has proprietary interest in the premises and is a landlord within the meaning of the definition would only fall within the first part of Clause (g) and must, therefore, fulfill the requirement of "occupation for themselves" if more than one, failing which possession cannot be given. Argued Mr. Mehta that each of the three parts in which Clause (g) divides itself, is exclusive of the other and those who fall under the first part cannot fall within the second and vice versa. Construction similar to the one placed by the English decisions on the provisions of the English Act should be placed, on the provision of this Clause (g) as the language and the object of the provisions are similar. Any other construction placed would defeat the object of the Act.

10. It does appear to be true that the presence of the statutory definition of the expression landlord by itself may not have such impact on the construction tried to be put Mr. Mehta on Clause (g) on the analogy of English decisions relied upon by him, as to make it unacceptable. I would also concede, though Mr. Mehta did not advert to it, that Section 1 of the Interpretation Act, 1889, may be a provision more or less similar to Section 13 of the Indian General Clauses Act, 1897, which is equivalent to Section 13(b) of the Bombay General Clauses Act, 1904, which is as follows :

13. In all Bombay Acts, unless there is anything repugnant in the subject or context,-

(a)...

(b) words in the singular shall include the plural, and vice versa."

The consequence being that the word "landlord" in the opening part of Sub-section (1) and in Clause (h) of Section 13 must be read as "landlords". But these facts conceded, by themselves, in my judgment, would not make Mr. Mehta's submission as a whole acceptable for reasons that I shall presently discuss. But before I do so, it will be expedient to note the submissions made on behalf of the landlords in this respect.

11. It was urged that in the case of *McIntyre v. Hardcastle* (supra), Tucker L. J., frankly expressed his helplessness while construing the provisions of the English Act and said that he was driven to interpret it that way merely in the light of the actual language used, though he felt that the legislature itself could not have contemplated such a situation. It was further submitted that the language of the opening part of Section 13 and Clause (g) did not drive us to such a desperate stage and, as a matter of fact, the legislature has provided an escape in Clause (g) itself from being driven to any interpretation that would create a situation similar to the one lamented upon by Tucker L. J., in the said English decision. In the first place, the submission of Mr. Mehta that the first and the second part of Clause (g) are mutually exclusive, was challenged. Mr. Patel argued that it was not correct to say that those persons who would fall under the first category cannot fall under the second category, that is, landlords having proprietary interest can only fall in the first category of persons and each must prove requirement of occupation for himself and such persons cannot take advantage of the second part of Clause (g). He urged that that was not what the legislature has intended, and the second part of Clause (g) has been devised to also include a case of the type in the instant case. The two plaintiffs in the present case, there is no dispute, are landlords within the statutory definition. One of them wants possession for occupation for himself, the other admittedly does not but he agrees that the plaintiff No. 1 may get possession. If these persons are to be confined to the first part of Clause (g) then, may be the situation as the one that arose for the English Judges to solve in the case of *McIntyre v. Hardcastle* (supra) arise here also if the reasoning and construction put in that decision were to be accepted. But that does not happen here because out of the two landlords who have come to Court seeking possession, plaintiff No. 1 can say that he requires possession for occupation by himself and second plaintiff can say that the possession is required for the occupation by plaintiff No. 1 as he is a person for whose benefit also the premises are held. In the case of joint owners, the premises are held for the benefit of each one of them. Therefore, when one of them does not want it for his personal occupation, he can certainly say that he wants it for the benefit of his co-owner, for whose benefit also the premises are held by the joint owners. A provision similar to this second part of Clause (g) was absent in the English statute and hence the difficulty.

12. Mr. Mehta, however, countered that Clause (g) provides for different categories of landlords (i) where the landlord and the occupier to be, is the same

person, (ii) where the landlord and the occupier to be, are different persons, and (iii) where the landlord is a trustee of a public trust and the possession is required for the object of the trust. He urged that the present case falls within the first category. In the second category would fall only the cases such as of guardian and ward or trustee and beneficiary of a private trust and, therefore, the present plaintiffs cannot claim to bring their case within the purview of the second category. It was further submitted that the definition of landlord as pointed out hereinabove contemplated four categories of landlords and only those landlords who fall within the categories other than the first can fall within the purview of the second part of Clause (g). The present plaintiffs belonged to the first class or category of landlords within the meaning of Section 5(3) and, therefore, they cannot claim to get any benefit of the second part of Clause (g).

13. Neither of these respective submissions of the parties can be swept aside or accepted, to my mind, without a thorough examination. I, however, do not find it necessary to examine and resolve this controversy as I am of the opinion that the matter arising in this suit could be decided assuming the fact that the present landlords fall within the first category of the landlords and, therefore, they cannot be held to be entitled to take advantage of the second part of Clause (g).

14. In my view, the ratio of the English decisions relied upon by the tenants cannot be followed in this country. Though the word "him self in Clause (g) may have to be read as "themselves" in the case of joint holders or landlords, the expression "themselves" looking to the conditions and traditions obtaining in this country in respect of holding of immovable properties must be widely interpreted. In the case of joint landlords who are joint beneficial owners and for whose joint benefit the premises are held, in my judgment, the expression "themselves" should not be read in its strict literal sense to connote "each one of them" but should be interpreted liberally to connote "any one of them". It would not either be expedient or proper to follow the views of Judges in England in matters of interpretation of statutory provisions in force in that country of the nature with which we are concerned irrespective of the different social and other conditions prevailing in the two countries. The construction that I am placing, to my mind is justified not only to avoid hardship being caused or injustice being done but also to fall in line with the object of the legislation. It is a well recognised rule of construction to consider how the matter stood before the legislation, any of the provisions whereof the Court is called upon to construe, came to be enacted, what the mischief was for which the old law did not provide and the remedy which has been provided by the Act in question, to cure that mischief. The object of the Bombay Rent Control Act, 1947, is only to create a reasonable restriction on the fundamental right guaranteed by the Constitution to acquire, hold and dispose of property, in favour of one class of citizens, that is to say, the tenants. I do not think that the legislature ever intended that in this country where the joint family system and even otherwise, joint holding of properties is so prominent a factor, if any one or some only of those who own the

property require reasonably and bona fide the premises for occupation by himself or some of them, should be denied the right to get possession provided they satisfy the other provisions of the Act. The mischief which this social legislation intends to remedy is to prevent unscrupulous owners directly or indirectly from taking advantage of shortage of accommodation available on rent at reasonable rate and not to deprive owners of their legitimate rights to recover possession and of enjoyment of property, provided they satisfy the Court that they require the premises reasonably and bona fide for their personal use. This requirement of personal use in the case of joint owners may be only of one or some of them and need not necessarily be of all of them. The scheme of Section 13 discloses that the legislature has not overlooked even the possibility of premises being snatched away from tenants by only one or some of the joint holders on the ground that he or they bona fide require it for his or their personal use. To guard against such a contingency, the legislature has provided that the requirement must not only be bona fide but it must also be reasonable. There is more, it has also been provided by Sub-section (2) of Section 13 that not only the test of greater hardship shall have to be applied even if bona fides and reasonableness of the requirement of the landlord is established, but it is further provided that if the Court is satisfied that no hardship would be caused either to the tenant or to the landlord by passing the decree in respect of a part of the premises, the Court shall pass the decree in respect of such part only. Courts in India have placed a liberal construction on the word "himself" to include not only the members of the family of the landlord but also those who may be staying with him or those who may be dependant on him, on the principle that it could not be the intention of the Act to disrupt the family. Therefore, even those members of a family who have ceased to be dependent on the landlord, it has been held that the requirement of such persons should be included in the expression "requirement of the landlord himself". Similarly, it cannot be the intention that when two or more persons jointly own the premises, the reasonable requirement of one or more of them cannot be said to be the requirement of the landlords for occupation by themselves.

15. The controversy of the nature raised before me had arisen more than once before the Calcutta High Court to resolve and in more than one decision it was held that the view of the English Judges in interpreting provisions of English Rent Restriction Act could not be adopted as the correct view for the interpretation of provisions of Indian Rent Restriction Act. In *Tarak Chandra Mukherjee and Ors. v. Ratanlal Ghosal and Ors.* 1959 Calcutta Law Journal, page 136, it was held that unlike English cases, in this country the system of a number of persons having joint property is so very prevalent that it would amount almost to a denial of legal rights to owners of houses if in interpreting the language of Section 12 of the said Act of 1950 as regards requirement of landlord, the Court holds that each member of a group of landlords must have separate requirements. Thus where out of a number of persons constituting the body of landlords one reasonably requires a premises for his own use and occupation that should be

considered to amount to a requirement on the part of all the landlords. They were of course concerned with the West Bengal Rent Control Act, 1950. But the language of the provision appears to be the same. This case was followed in subsequent judgments of that High Court and one of them is the reported case of Kanika Devi and others v. Amarendra Nath Roy Choudhuri and Ors. 65 Calcutta Weekly Notes, page 1078, wherein premises were required by three plaintiffs as joint landlords and a suit was instituted by them for ejectment of the defendant tenant. The finding of the lower Courts was that plaintiff No. 1 reasonably required the portion of the premises specified in the Schedule for her own occupation and further that plaintiffs Nos. 2 and 3 reasonably required the portion of premises specified in another schedule. On this finding, the trial Court had held that the plaintiffs had made out the ground for ejectment specified in Clause (h) of the proviso to Section 12(1) in the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950. The trial Court had accordingly decreed the suit. However, the appellate Court set aside the judgment and dismissed the suit. The appellate Judge held that the landlords could not get the benefit of Clause (h) of the proviso to Section 12(1) unless it was proved that all the landlords were interested in the ground of requirement on which the claim for eviction was based. He thought he should follow the principle underlying the case of McIntyre v. Hardcastle (supra). Bachawat J., however, referred to the decision in the above quoted Calcutta case and preferred to follow it. He also mentioned two other unreported cases decided by the said High Court. The learned Judge then observed:

It is true that where there are more than one landlord, the word "landlord" in Clause (h) of the proviso to Section 12(1)(h) must be read as "landlords" and the expression "for his own occupation" therein must be read as "for their own occupation. "; nevertheless in the light of the decisions of this Court the word "their" in the last expression must be read as meaning "of them or of any one or more of them" so that the requirement of the premises by the landlords for the occupation of one or more of them is sufficient to bring the case within the clause.

16. Having regard to the above discussion, I hold that in the case of there being more than one landlord jointly holding the premises, in Section 13(1)(g), the word "landlord", by virtue of Section 13(b) of the Bombay General Clauses Act, 1904, should be read as "landlords" and the word "himself" should be read as "themselves". Nevertheless, for reasons stated above, the word "themselves" must be read to connote "themselves or any of them". As a result, the first contention raised on behalf of the tenants cannot be sustained.

17. The next grievance of the tenant is that there is no firm or specific finding by the lower Courts as to the exact purpose for which the landlords require the premises. The Court is not authorised to pass a decree for possession unless the landlord establishes to the satisfaction of the Court that the premises are required reasonably and bona fide for occupation by himself. "Required" under

law does not mean mere desire and it has been held by different Courts that it means something more than a mere wish and involves an element of need. The Court has, therefore, to find what is that exact need or purpose for which the premises are required. Mr. Mehta, referring to the judgment of the appellate Court, submitted that the learned Judge thought that there were two possible requirements of the landlord, viz. (a) for the partnership, and (b) personal requirement to extend the business and get rid of the partners. The learned Judge himself, however, was not sure which one of them was established. Unless this specific finding is made, it would not be possible to apply the test of greater hardship. Even the trial Court, though has at length discussed the evidence on this aspect, has not made a definite finding. I see much force in the grievance on the part of the tenants. The learned appellate Judge in this judgment has categorically stated that it was not quite clear whether the suit shop was required for the partnership concern wherein the respondent No. 1 had half share or whether he required it for himself alone. However, the learned Judge then observed that whatever the case be, it was clear from the evidence on record that the leased premises were reasonably and bona fide required, and that even respondent No. 1 alone would not find the premises at his disposal to be sufficient to carry on his large business. He has further observed that the landlord had his son who wanted to join the business and that could not be done unless the extent of the present business was sufficiently enlarged. For these reasons, therefore, he observed that he had come to the conclusion that the respondent reasonably and bona fide required the leased premises for his use. Therefore, it is apparent that the learned Judge found that it was not clearly established by the landlord as to whether he wanted the premises for his personal use dispensing with the partnership or whether the suit premises were required for the partnership business. Unless and until there is a clear finding on this vital issue, it is indeed difficult for the Court to come to the conclusion that the premises were reasonably required for a particular object.

17.1 Mr. Patel tried to support the judgment by urging that at least there is evidence on the record and which was fully discussed by the trial Court, to show that the landlord required the premises reasonably for expanding his business. It may be for expanding his partnership business or it may be required for expanding his business on his own and that would make no difference. I am unable to accept this part of the submission of Mr. Patel and this aspect would become more emphasised when I deal with the next contention that was raised on behalf of the tenants. That was that the Courts below had failed to apply the very vital test of greater hardship in the manner required by law. It was submitted that, in the first place, as there was no definite finding made as to the exact purpose for which the premises were required, the test of hardship which has to be applied in context with such particular purpose could not be and was not applied by the Courts concerned. He further urged that neither Court applied this test as law requires it to, inasmuch as they only examined the factor of alternative accommodation from the angle of the tenants conduct and tenants''

requirement but did not at all examine the question from the view point of the suitability or otherwise of the alternative accommodation to the landlord himself. It was urged that a landlord, if he wanted to expand his business, could go to the new shop which he alleged was available. This material aspect which law requires the Court to weigh, has been completely lost sight of. It was further urged that the fact that the plaintiff was the owner of the property seemed to have overweighed the judgment and discretion of the Courts below. I find justification in these submissions made by Mr. Mehta. Neither Court has examined the evidence from the point of view as to whether the availability of alternative accommodation could or could not have mitigated the hardship of the landlord. The fact of the landlord being the owner cannot, in the light of Section 13 be allowed to have any wider effect on the question of hardship. If the hardship on both sides is equal, on weighing evidence, the factor of ownership must then tip the balance in favour of the landlord. But going through the judgments, I find that the approach to this question has not been as it ought to have been. Law lays down that unless certain conditions are fulfilled, no decree can be passed in favour of the landlord. Having regard to the fact that there has been no definite or clear finding recorded by the learned appellate Judge, firstly on the subject of the actual purpose for which the premises were required, and secondly the particular factors which are required to be kept in mind while deciding the question of hardship have not been properly considered, there is left a lacuna in the decision of the case and therefore, this is a fit case for being sent back to the appellate Court with the direction that it shall proceed to consider the aforesaid aspect of the case and to dispose of the case in accordance with law.

18. As a consequence, I allow the Civil Revision Application to the extent stated above. I set aside the decree of the appellate Court and order that the District Court, Ahmedabad (Rural) at Narol shall take up the appeal under its original number and proceed to decide the same by keeping in mind the above stated observations and restricting itself to a consideration of the questions under Sub-section (2) of Section 13 of the Act and dispose of the matter according to law. The cost of this petition shall be the cost in the first appellate Court.