
(1974) 06 GUJ CK 0009
In the Gujarat High Court

Thakker Popatlal Jadavji and Another	APPELLANT
Vs	
Thakker Durlabhji Dharamshl	RESPONDENT

Date of Decision : 25-06-1974

Acts Referred:

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

Citation : (1975) 16 GLR 888

Hon'ble Judges : S.H. Sheth, J

Bench : Single Bench

Judgement

S.H. Sheth, J.—The landlord filed against the tenants the present application u/s 13A of the Bombay Rent Act for permission to construct an additional structure on the building let out to the tenants. The landlord alleged that he wants to construct one room and a kitchen on the terrace of the building which is in the possession of the tenants. The premises in possession of the "tenants consist of an enclosed house in which there are two rooms, two kitchens, an Osri and other incidental accommodation.

2. The learned Trial Judge, after having considered the merits of the case, granted the application made by the landlord and made in his favour the following order:

The opponents are ordered to allow the applicant to construct the additional structure of a room and a kitchen on" the western portion of the suit premises and also to construct a stair case for going to this additional structure from the portion of land touching the southern wall of the suit premises within the deli and then from above latrine situated in south of this western portion of the suit premises. The opponents are also ordered to allow access to the applicant, his men and materials in the deli for the purpose of making these permitted constructions.

The applicant is permitted to construct the above situated stair-case of width of not more than 2"-6" (two fit. and six inches). The applicant is further ordered to

make a roof over the bath room situated in the Court yard of this suit premises at his own costs. The applicant is ordered not to demolish the latrine in construction of the stair case.

3. The tenants appealed against that order to the District Court. The learned Assistant Judge confirmed the findings recorded by the learned Trial Judge and dismissed the appeal.

4. It is that appellate order which is called by the tenants in question in this Civil Revision Application.

5. The only question which Mr. D.U. Shah, appearing for the tenants, has raised before me is whether u/s 13 A of the Bombay Rent Act the landlord is entitled to deprive the tenants of possession of the terrace for the purpose of constructing an additional structure on the terrace. Section 13A of the Bombay Rent Act provides as follows:

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.

Section 13A was inserted by Gujarat Act 57 of 1963.

6. The question which Mr. Shah has raised before me turns upon the construction of Section 13A. Section 13A in express terms provides for granting permission to a landlord to construct an additional structure on any building or a part of a building which has been let out to a tenant. The expression "building" used in Section 13A must necessarily include its roof whether it is a roof in the form of a terrace or it is a roof in any other form. Section 13A confers upon the landlord right to construct an additional structure on the terrace which forms a part of a building in the possession of his tenant. A tenant who is in possession of a building with a terrace is necessarily in possession of the terrace. If Section 13A permits a landlord to construct an additional structure on the terrace, it necessarily means that the tenant can be deprived of the possession of the terrace. Unless the tenant is deprived of the possession of the terrace forming the roof of his premises it is extremely difficult for me to think how the landlord can be permitted to construct an additional structure thereon. Mr. Shah has tried to argue that Section 13A applies to buildings which have roofs other than terrace-roofs and to buildings which have terrace-roofs but where the terrace has not been leased out to the tenant as a part of his premises. It is extremely difficult for me to accept this argument raised by Mr. Shah firstly because there is nothing in Section 13A which warrants such a construction and secondly because the building, let out to a tenant, as contemplated by Section 13A, must necessarily mean a building with a roof either in the form of a terrace or in any

other form.

7. Mr. Shah has further tried to argue that the lease granted to a tenant by a landlord in respect of his premises cannot be determined in so far as the terrace in possession of the tenant is concerned. He has further tried to argue that possession and enjoyment of the terrace leased out by a landlord to a tenant as a part of the premises in possession of a tenant cannot be denied to him. Leases, lease-hold rights, determination of tenancy, right of re-entry or right to recover possession, right to continue in possession in spite of the fact that the tenancy of the tenant has been determined by the landlord are all rights which are creatures of law. 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. No such view can ever be taken. To take such a view is to defeat the scheme of the Act and to set the provisions of law at naught. This is the legal aspect of the matter. To take the view which Mr. Shah has canvassed before me is firstly to unduly distinguish between landlords letting out premises with terrace roofs and landlords letting out premises with roofs in other forms. No such discrimination is warranted by Section 13A. Secondly, to take the view which Mr. Shah has canvassed before me is to bring to stagnation all activities of improving, expanding or extending the present buildings. There will be no greater curse to society than to take a view which brings to a stop activities relating to the extension or expansion of the existing buildings particularly in the days of rising population.

8. In my opinion, therefore, Section 13A applies to all premises let out to the tenants irrespective of whether they are premises with terrace roofs or with roofs of any other types. If any premises with a terrace roof have been let out to a tenant, since the terrace forms a part of his lease-hold premises Section 13A is immediately attracted to it and the tenant cannot complain of any action by the landlord contemplated by Section 13A except on the ground of undue hardship. If the terrace which is the roof of the lease hold premises does not form a part of his tenancy the tenant has no right to complain against any use which the landlord may make of that terrace including the use thereof for the purpose of putting up or constructing an additional structure. In any view of the matter, therefore, it is not open to a tenant to say that no permission can be granted to a landlord to construct an additional structure on the premises which have a terrace roof forming a part of the premises demised to him. Where the provisions of Section 13A are attracted the only ground which is available to a tenant to resist the application made by a landlord is that undue hardship will be caused to

him if he is deprived of the possession of the terrace and use thereof. The expression "undue hardship" used by the legislature in Section 13A presupposes that any action which the landlord intends to take within the meaning of Section 13A is likely to cause hardship to his tenant. The question whether the hardship which would be caused to the tenant by the activities of the landlord contemplated by Section 13A would be undue hardship or would be a justifiable hardship will depend upon the facts of each case. No hard and fast rule can be laid down to distinguish undue hardship from justifiable hardship. Ordinarily, if a landlord wants to put up an additional structure on the terrace of the building which has been let out to a tenant, there cannot be any undue hardship which would be caused to him if a landlord is entitled to extend his own building or to put up an additional construction either for his own benefit or for letting it out. However, if there are facts in a given case to show that the hardship which such an action on the part of the landlord would cause to the tenant would be unjustifiable, the Court would be within its jurisdiction to refuse to the landlord permission u/s 13A.

9. In the instant case, no hardship is likely to be caused to the tenants by the landlord constructing an additional structure on the building. There are two reasons why I take this view. In my opinion, the extension of a building which has been leased out to tenant or expansion thereof by putting up an additional structure thereon cannot be said to cause undue hardship to a tenant. 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 be put to undue hardship by his being deprived thereof. The concept of "undue hardship" incorporated in Section 13A 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. If a landlord wants to construct an additional structure for his own occupation or for letting it out to a tenant or tenants, it cannot be said that the hardship which would be caused to his tenant by his being deprived of the use of the terrace will be so great as to override the benefit accruing from the personal occupation by the landlord of the additional structure or such benefit accruing to poor and needy persons of the society to whom the additional structure constructed by the landlord may be let out.

However, so far as the instant case is concerned, the situation is still worse for the tenants. The premises in question are situate in Veraval which is situate on the sea-shore. No one can use the terrace for sleeping at night during summer in the towns or cities situate on sea shore except at a risk to his health on account of moisture-loaded breezes at night and also on account of fall of moisture-balls. In my opinion, in the instant case there is absolutely no hardship which is likely to be caused to the tenants and, therefore, the tenants are not entitled to resist the application of the landlord. In my opinion, the order made by the Courts below is perfectly valid and justified and is in accordance with the provisions of Section 13A. I, therefore, find no substance in this Civil Revision Application. It

fails and is dismissed.

10. Rule is discharged. Since the tenants are not justified in resisting the landlord's application I direct them to pay the costs of this Civil Revision Application to the landlord.