

(1971) 09 BOM CK 0005

In the Bombay High Court

Case No : Spl. Civil Application No. 2607 of 1967

The Laxmi Co-operative Bank Ltd., Sholapur

APPELLANT

Vs

Mohan Govind Diwanji and Another

RESPONDENT

Date of Decision : 10-09-1971

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1), 25
Constitution of India, 1950 — Article 226

Citation : AIR 1972 Bom 354 : (1972) 74 BOMLR 186 : (1972) ILR (Bom) 1033 : (1972) MhLj 423

Hon'ble Judges : Bhole, J

Bench : Single Bench

Advocate : B. Rege, for the Appellant; K.J. Abhyankar, for the Respondent

Judgement

1. The plaintiff, who is the owner of the suit house, and who wanted to evict the defendant, but did not succeed is the petitioner here. The respondent - defendant is occupying a portion on the ground floor of the Plaintiff's house as a monthly tenant on a payment of Rs. 20/- as rent. The property is in the city of Sholapur. The petitioner bank wanted the premises for the purpose of conducting the business. It therefore required the premises reasonably and bona fide for its own use and occupation. It, therefore, served a notice on the respondent dated 2-7-1964 demanding the possession of the premises as well as areas of the rent till the date of the notice. The respondent denied the claim of the petitioner by a reply to that notice. He, however, sent all the arrears. The suit thereafter for possession and mesne profits followed. The respondent resisted the suit. The trial Court framed a number of issues and found that the respondent has established that it bona fide required the suit premises for its own use and occupation and that greater hardship would be caused to it than the respondent, if the suit is dismissed. The trial Court, however, was of the view that in spite of this the petitioner would not be able to recover possession of the suit premises because Section 25 of the Bombay Rents, Hotel and Lodging House Rates Control Act (hereinafter called "Rent Act") is a hurdle in the way of the bank. u/s 25, a

landlord shall not use or permit to be used for non - residential purposes any premises, which on the date of the coming into operation of the Rent Act were used for residential purposes. The date when the Rent Act came into operation is 19-1-1948. The trial Court found that the suit premises were used for residential purposes on 19-1-1948 and, therefore it cannot be used for non residential purposes. Accordingly, therefore, the petitioners were not entitled to recover the suit premises from the respondent.

2. The petitioner went in appeal to the District Court and the learned Extra Assistant Judge, who heard the appeal, also found in favour of the petitioner being of the view that the petitioner required the premises reasonably and bona fide for its own use and occupation. But because according to the learned Assistant Judge the suit premises were not let out for non - residential purposes on 19-1-1948, the petitioner would not be entitled to recover possession of the suit premises. Accordingly, therefore, he dismissed the appeal. It is this order of the learned Assistant Judge, Sholapur, that is sought to be corrected by the petitioner here.

3. Mr. Rege, the learned advocate for the petitioner, contends here that the findings of fact as regards the nature of occupation on 19-1-1948 is erroneous, because of the wrong approach by the learned Assistant Judge. during the course of the judgment, the learned Assistant Judge considered the evidence of Gangadhar Jabde, who was the first owner of the suit premises, Janardhan Pandit, who had conducted a charitable dispensary in the suit premises from 1945 till 1948 and one Sakharam Chati, who had given the evidence as regards alternative accommodation. It is true that the learned Assistant Judge, while deciding the nature of occupation on 19-1-1948, observed that although these three witnesses had stated that there was a charitable dispensary in the suit premises yet they should not be believed because that they are all interested in the petitioner; there is hardly any evidence to show that they were really interested witnesses. But at the same time while deciding the point regarding the necessity of the premises for personal occupation, the learned Assistant Judge in the same breath believed these very witnesses. It is true, as contended by Mr. Rege, the learned advocate for the petitioner that such an approach for recording a finding a fact is erroneous. The witnesses did state that there was a charitable dispensary in the suit premises between 1945 and 1948. This period would cover 19-1-1948. The learned Assistant Judge believed the witnesses on one point but did not believe for no reason the very witnesses on other connected points. In the absence of any evidence whatsoever to show that on 19-1-1948 the nature of occupation was residential, the learned Judge held that it was residential. Mr. Rege, therefore, argued that the case be remanded back because of this patent error. He gave another ground for this and that is that appellate Court should be slow to disbelieve the oral evidence of witnesses when such evidence was believed by the trial Court. After all, according to him the trial Court has opportunity of seeing the witnesses and also the way they give evidence. Therefore when there is question of believing the oral evidence, the appellate

Court should not hastily disbelieve the oral evidence which was believed by the trial Court. He relied for this on *The Bombay Cotton Manufacturing Co. Ltd. v. Raja Bahadur Shirlal Motilal* 17 Bom LR 455 and *Arthur Wijetilekha v. Don Edmond Ronashinghe* AIR 1931 PC 255. The proposition of law as argued by Mr. Rege is correct. But at the same time the appellate Court has always jurisdiction to reassess all the evidence as well as the circumstances that are on record. If therefore, the appellate Court reassesses the evidence, which it is entitled to do in appeal, it cannot be said to have committed an error in law. In my view, therefore, it would be difficult for me to correct this kind of error of fact, though serious, committed by the learned Assistant Judge.

4. In my view the real points for consideration however here is this. Is the learned Assistant Judge as well as the trial Judge right when they independently dealt with the issues :whether the petitioner had established that it required the premises reasonably and bona fide for its own use and occupation; and whether the suit premises were let out for non - residential purposes on 19-1-1948. Both the Courts below held that the suit premises were residential premises on 19-1-1948 both the lower Courts have also answered the question about the reasonable and bona fide requirement of the petitioner in the affirmative. Now Section 13(1)(g) of the Rent Act runs as under :

"13. (1) Notwithstanding anything contained in this Act but subject to the provisions of Section 15, a landlord shall be entitled to recover possession of any premises if the Court is satisfied -

.....

(g) that the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held or where the landlord is s trustee of a public charitable trust that the premises are required for occupation for the purpose of the trust of

.....".

It is argued that Section 13 is independent and is not subject to any of the provisions of the Rent Act, because the expression "Notwithstanding anything contained in this Act, but subject to the provisions of Section 15" is used by the legislature and, therefore, it intended to make Section 13 independent of any provisions in the Act. It cannot, according to Mr. Rege, be subject to any provision in the Act except Section 15. It is, therefore, argued that Section 13 cannot also be subject to Section 25 of the Act. Section 25 of the Rent Act is as follows :

"25 (1) A landlord shall not use or permit to be used for a non - residential, purpose any premises which on the date of the coming into operation of this Act were used for a residential purpose. (2) Any landlord who contravenes the provisions of sub - section (1) shall on conviction be punishable with imprisonment for a term which may extend to three months or with fine or with

both."

It is, therefore, clear that the legislature had intended that the landlord shall not use or permit to be used for non - residential purpose any premises which on 19-1-1948 were used for a residential, purpose. If, therefore, the premises were used for a residential purpose on 19-1-1948, a landlord is prohibited from using the same for a non - residential purpose. Section 25 also provides a penalty. Any landlord who contravenes Section 25(1) is punishable with fine or with imprisonment extending to three months.

5. The point, therefore, that arises here for consideration is whether the words "bona fide" in Section 13(1)(g) can be interpreted with Section 25 at the back of our mind. Words "bona fide" have been interpreted to mean in good faith, "bona fide" also means "honestly" as distinguished from bad faith or without fraud or deception. A question of bona fides is a question of fact and, therefore, the Court is entitled to look to every relevant fact or circumstance affecting the landlord's possession. "Bona fide required" would also mean genuinely and honestly required. To reach this conclusion this Court must be satisfied about the reality of the claim made by the landlord. Now it is true that bona fide and reasonable requirements include requirements for business as well as for residence. But if the premises were used for residential purposes on 19-1-1948 and if the landlord requires it for non - residential purposes, by an application can his requirement be said to be a reasonable requirement in view of the provisions of Section 25 ? It is true that Section 13 seems to be self - contained section and would not be subject to any other provisions in the Act. But at the same time the Court will naturally have to consider bona fide and reasonable requirement of the landlord in view of the provisions of Section 25. If he is not entitled to change the user because he has not fulfilled a particular condition will he be still said to require the premises bona fide and reasonably ? It appears to me that even though the expression "notwithstanding anything contained in this Act but subject to the provisions of Section 15" is used in Section 13 yet when we have to give finding on the "bona fide and reasonable requirement", we will also have to consider the reasonable and bona fide requirement after also reading the provisions of Section 25.

6. I am supported in this view of mine by the decision of Tarkunde, J. in Civil Revn. Appln. 2172 of 1957, decided on 3-12-1959 (Bom). A similar question as the one before me arose before him and according to him Section 25 and Section 13 of the Act are not mutually exclusive. There being no conflict between Section 13(1)(g) and Section 25 of the Rent Act, there was no question of one section governing the other. Tarkunde, J. has observed during the course of his judgment that in considering whether in a particular case the alleged requirement of the landlord is reasonable or bona fide; the Court is certainly entitled to take into account whether the requirement alleged and proved by the landlord is not forbidden by any law. According to him if a landlord desires to use the premises contrary to the penal provisions in Section 25 this Court will not regard such

requirement as either reasonable or bona fide. This means in his view Section 13(1)(g) is not controlled by Section 25, but both the provisions have to be read together. He then continues and says "reading these provisions together it follows that where the landlord claims that he requires the premises contrary to the limitations imposed by Section 25 the Court will not hold that he has fulfilled the requirement of Section 13(1)(g)" with respect I agree with this view of Tarkunde, J.

7. Now, therefore, it cannot be held that the suit premises were not let for non - residential purposes on 19-1-1948 and at the same time held that the bank's requirement for the purpose of its occupation is reasonable and bona fide. It appears to me that this is a manifest and patent error of law on the face of the proceedings. It therefore appears to me that the approach by the trial Court as well as by the learned Assistant Judge to the issues is erroneous. The findings, therefore, in consequence of this erroneous approach are manifestly improper. It is better and proper therefore to remand the record and proceedings of this case back to the District Court, Sholapur for correcting this manifest error. If need be a fresh hearing be given to the parties before passing the final judgment according to law.

8. Petition allowed. Rule made absolute. No order as to costs.

9. Case remanded.