
(1979) 09 BOM CK 0027

In the Bombay High Court

Case No : Spl. C. Application No's. 4415 of 1976 with 4416/76, 4417/76, 4418/76, 4419/76, 4420/76 and 4461 of 1976

Vasant Balwant Mohite and others

APPELLANT

Vs

Shakun B. Dhote and others

RESPONDENT

Date of Decision : 17-09-1979

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(3A)
Evidence Act, 1872 — Section 106

Citation : (1980) MhLj 347

Hon'ble Judges : V. Mohta, J

Bench : Single Bench

Advocate : V.G. Palshikar and B.K. De in Spl. C.A. Nos. 4415 to 4420 and B.K. De in Spl. C.A. No. 4461/76, for the Appellant; K.G. Chendke, for the Respondent

Final Decision : Dismissed

Judgement

V. Mohta, J.—These seven petitions at the behest of the tenants involve points of some importance having bearing on clause 13(3) (vii) of the C. P. and Berar Letting of Houses and Rent Control Order, 1949 (hereinafter referred to as "the Order"), though the petitions are not grounded only on that.

2. The landlady is common and the two chawls in which the petitioners are residing, is the property involved. It appears that these chawls have been constructed on one plot in farm land, New Ramdaspath, Nagpur, which was allotted in favour of one Baliram Kashinathji Dhote (husband of the respondent) some time in the year 1945, by Nagpur Improvement Trust. Shri Baliram applied for permission to construct these chawls in form "A" referred to in Regulation No. 2 of Nagpur Improvement Trust Building Regulations. On the basis of the permission granted, it appears that these two chawls were simultaneously constructed. There was some controversy between the parties as to the actual date of commencement of the construction, but undisputed position is that presently these constructions are of more than 25 years. These appear to be the

temporary constructions whose life according to those Regulations was considered to be 10 years.

3. After the construction of these buildings, the respondent-landlady became the owner of the property by virtue of a gift deed, executed by her husband in her favour. It appears that the petitioners had been paying rent to the respondent in the beginning, though through one Shri Sadanand, the owner of one Shakti Offset Press in which, it appears that the petitioners were employed. A civil suit was filed by the respondent for possession some time in 1968 against all the petitioners. The Civil Court held that the suit was not maintainable in the absence of necessary Permission from the House Rent Controller and thus dismissed the suit on that count. The landlady preferred revisions in the High Court. Only one revision in respect of a tenement in possession of petitioner Vasant, in Special Civil Application No. 4415 of 1976 came to be allowed and the others were dismissed on the ground that they were time barred.

4. The tenancy in respect of all these premises is admittedly monthly and the rent is Rs. 25.50 which was undisputedly payable every month. The landlady through her Advocate gave a notice dated 10th August 1971 to all the petitioners demanding arrears of rent which were due from 1st October 1968 giving all the details. To this notice, the petitioners gave a reply dated 4th September 1971, raising a contention that they were employees of M/s Shakti Offset Works whose owner was near relation of the landlady and that before 1-10-1968 their rent was being deducted every month from their salary and that the further rent could not be paid as the respondent suddenly stopped collecting the rent and did not inform the tenants as to how the rent should be remitted. Money orders were sent. But, because of the pendency of the civil suit, these were not accepted and thus, nobody else was responsible for the accumulation of arrears except the landlady herself and that now the tenants will pay the rent monthly in future and would also be clearing up the past arrears by paying every month additional one month's rent. Thus the tenant offered to pay two months' rent every month one for the current month and one for the past arrears. The landlady gave a reply to this communique on 31st October, 1971, rejecting that offer and proposing that atleast two months arrears should be cleared every month along with the current rent. Admitted position is that the tenants did not clear the arrears either in lumpsum or in the manner proposed by the landlady. No reply was also given and the tenants of their own accord continued to pay two months' rent as offered by them without considering what the landlady had to say in the matter.

5. On 24th January 1973, the respondent moved the House Rent Controller, Nagpur, against all the petitioners under clause 13 (3)(i)(ii) and (vii) of the Order. The contention was that the tenants were admittedly, In arrears of rent for more than three months and under the circumstances, were also habitual defaulters, thus invoking jurisdiction under clause 13 (3) (i) and (ii) of the order. As regards clause 13 (3)(vii), the contention was that the chawls which were constructed in 1950 by making of only temporary arrangement had been

dilapidated and had also become uneconomical. It was, necessary to pull the whole structure down as it was beyond any repairs and had out lived its normal life. For the proposed new permanent construction, a plan was already submitted with the Nagpur Improvement Trust on 17-1-1972. Undertaking was given in the application itself that the construction would be started immediately and that the landlady would be prepared to abide by whatever conditions that would be imposed by the Rent Controller regarding commencement and completion of the construction including the time schedule. It may be stated at this very stage that the respondents have also submitted a Pursis in these petitions on 17th September 1979 undertaking that she will seek renewal of the sanctioned plan from Nagpur Improvement Trust within three months on getting vacant possession of the chawls in question and will immediately start construction of a permanent building which would be completed within a period of one year. It is also mentioned in the undertaking that if due to any unavoidable reason, it becomes impossible for the respondent to stick to this programme, she would seek permission from the House Rent Controller, Nagpur for extension after satisfying the Rent Controller about the genuineness of the difficulty and will be entitled to extension of time only in case the Controller is satisfied about the same. As far as financial condition is concerned, it is not being disputed that the landlady has sufficient means to construct a building.

6. The tenants raised almost common pleas raising a contention that inasmuch as the amount which was admittedly due was offered and was not accepted by the landlady, clause 13 (3)(i) was not attracted. As far as clause 13 (3)(ii) is concerned, the defence was that under the circumstances which were created by the landlady herself, the tenants were justified in withholding the rent upto July 1970 and subsequently offering to clear up the arrears by paying monthly installments continuously till the arrears are completely cleared. About clause 13 (3)(vii), the contention was that the application was mala fide and that the condition of the building was not at all dilapidated. Moreover, it was contended that because a new building was intended to be constructed from the very foundation, no permission as contemplated under this clause could be granted. Repairs or even major alterations may be contemplated in this clause but not the grounding of the whole building. It was also contended that the allegations covering clause 13;(vii) was absolutely vague specially in the absence of specific mention of the period during which the construction was intended to be completed. It was alleged that this ground was being pressed into service only with an intention to harass the non-applicants and was mala fide, raised. Several witnesses were examined by the parties and documentary evidence was also placed on record.

7. The House Rent Controller passed a common order granting permission under all the grounds. As regards clause 13 (3)(i) six months time was granted to the tenants for clearing up of the arrears from October 1965. Admitted position is that in spite of this direction, the payment of the arrears has not been made by any of the tenants. All the tenants carried appeals before the Collector, Nagpur,

who was also pleased to dispose of the appeals by common judgment substantially maintaining the orders passed by the Rent Controller. As regards clause 13 (3)(i) only, one change was made and that was to the effect that inasmuch as the application was filed in January 1973, the direction of payment would be restricted only upto that period. The order was further clarified by making mention that payments made upto that date should be deducted, the obvious reason being that from October 1968, some payment was made towards arrears. Even after this clarification, none of the tenants cleared the dues and I am informed that even for the subsequent period till this date the tenants have not made any payment of rent.

8. The Rent Control Authorities thus recorded a finding that de hors of the reason for not making payment, the undisputed position was that the landlady had not received the rent and therefore, application under clause 13 (3)(i) of the order was maintainable. Regarding habitual default, the finding was that till July 1971, the tenants had some justification for not paying the rent monthly as agreed, because of the pendency of the civil suit, but after the notice, there was absolutely no justification for not clearing of the whole arrears and for giving the offer of clearing arrears only in monthly installments, a proposal to which the landlady, in terms, did not agree. It was observed that it was the duty of the tenants to make such arrangement for payment of past rent and that only because for good, bad or indifferent reasons previously, the rent was not accepted, the tenants could not say that they had no arrangements for clearing up of the arrears. After considering the expert evidence of an Engineer Shri Karadikar and other evidence, the spot inspection note, the age of the building etc., the authorities recorded a finding that the building was in a dilapidated condition and that the landlady's demand for permission for demolishing of the building and construction of the new building in its place was justified. It may be mentioned that even as per the Nagpur Improvement Trust Building Regulations, to which my attention was invited, the life of this building was only 10 years and this period had expired long before even the civil suit came to be filed as far back as in the year 1970.

9. These matters are subject matter of challenge in these petitions. It may be mentioned that as far as petitioner Vasant Balwant Mohite (Spl. Civil Application No. 4415 of 1976) is concerned, the landlady had already secured possession of the house on the basis of a civil Court decree and indeed, the portion of the chawl in which he was in occupation and which even according to the spot note was in a dilapidated condition has now been demolished. One more fact in respect of petitioner Onkar Narayan Charde (in Special Civil Application No. 4461/76) may be noted and it is that even before filing of the civil suits, there was some dispute regarding rent which was referred to the House Rent Controller. Shri De, the learned Advocate for this petitioner, while adopting and supplementing the arguments advanced by Shri Palshikar, the learned Advocate (or the other petitioners, had invited my attention to this additional aspect of the matter and had argued on that basis that in this particular case, there is an

additional proof of mala fides of the petitioner. I may hasten to say that these proceedings will have no much bearing on ultimate decision of these matters, as the other matters are common to all the tenants.

10. Shri Palshikar for the petitioners in the first place has submitted that clause 13 (3)(i) of the orders contemplates only those dues which are not offered and thus argued that reason for accumulation is a relevant factor even under this clause. I am not impressed by this argument at all. The case for the dues may be a relevant factor under clause 13 (3)(ii) but is wholly irrelevant under this clause, the obvious reason being that whether offer was given or not, the liability continues. If the amount is really found due all that the Rent Controller has to do under the scheme of the clause is to compel payment thereof within a particular period and in case this payment is not made, then only to grant the permission, tended this point is covered by various decisions of this Court including the case of Venkatrao v. Namyani Lal 1969 Mh. L J 808. In the case of Ram Babu Vs. Pershadi Lal, also, this view has been taken. Thus, conclusion is inevitable that only the factum of arrears and not the reason thereof is sine qua non for the operation of this clauses. Thus there is hardly anything arguable on this aspect of the case, which presents no difficulty in affirming the findings of the Rent Control Authorities.

11. As regards habitual default, it has been seriously contended that pressing into service this provision, not the contractual defaults but the mental attitude of the tenant alone is core question. There is no manner of doubt in this proposition. What after ail is a mental attitude will depend upon the facts of each case. Here is a case of a monthly tenancy and the rent admittedly payable every month. Because of the pendency of the civil suit upto the year 1971, one can see some justification in non-payment of rent but subsequently non-payment, under the circumstances, is nothing but an indication of mental attitude of not paying the rent which had admittedly become due. The tenant can rely on a concession provided that he is granted by the landlord. If it is granted, it may amount to a fresh contract. But, as regards concession, no person has any right to claim it. In this case, the tenants not only insisted on concession on their own terms but in spite of warning by the landlady did not clear up of the arrears and indeed continued to clear up only one month's arrears as per their own desire. It is pertinent to note that no payment has been made even after the order under clause 13 (3)(i) and the tenants are in huge arrears of rent for a period of more than 7 years. It was contended on behalf of the petitioners that the appellate authority had not afresh granted time and therefore, the payment could not be made. This altruistic grievance strikes as hollow and there is no manner of doubt, having regard to all the circumstances, that the tenants were not interested in making payment of the rent and to clear up even the admitted dues. If, therefore, in this background, the two authorities who are the final authorities, on a question of fact have arrived at a conclusion that case under clause 13 (3) (ii) was made out, I do not think there is any reason to interfere with these orders. Mental attitude, as rightly argued by Shri Chendke, the learned Advocate

for the respondent, is obvious and does not call for microscopic examination in this case.

12. This takes us to the last controversy relating to clause 13 (vii) of the Order and it is about its complexity and applicability to the facts of the present case. The first plank of the argument was that complete demolishing of a house is not covered by the clause at all. Other was that the landlady had not come up with a specific case as to when the construction would be completed and therefore, it was a case of mala fides. The learned counsel for the respondent/landlady, Shri Chendke, in reply had submitted that "the Order" as a matter of fact does cover a case of complete demolition also but on the other hand does not provide for compelling a landlord to start and finish the construction within a particular period and therefore, such a statement was not at all necessary either in pleading or in evidence. Inasmuch as the serious arguments were advanced on the ambit of clause 13 (3) (vii), I may reproduce it for ready reference :

13 (3) (vii). that the landlord desires to make essential repairs or alterations which cannot be made without the tenant vacating the house.

(Emphasis supplied.)

The argument was something like this. In case the whole construction is demolished, the old house does not remain. The alterations or reconstruction can, therefore, go to any extent but has to be short of complete destruction. Having given my anxious consideration to this broad proposition, I find considerable difficulties in accepting the same. In a given case, it is possible that even major alterations cannot be made to the building and the only cause open is to demolish the structure. Surely this cannot be done without tenant vacating the same. To say that such a situation was not intended to be covered under the clause will be to strike at the very root of the purpose of the legislation, and will create difficulties in series. The landlord will be rendered remediless even if a case of demolition has been made out. This debate has not been raised for the first time and is going on since past several years. Consistently it has been held by the Nagpur High Court as well as by this Court that word "alteration" include complete rebuilding. In *Badamibai v. P. A. Tobin* 1952 N L J 4267, it was observed as under :

It is obvious that the word "alterations includes not only mere changes in the structure but complete rebuilding also if it is necessary to effectuate the building of the house.

By this Court, in Special Civil Application No. 547 of 1967, decided on 15-10-1968 in the case of *Laxminarayan v. Gangaprasad* 1969 Mh. L J Note 23, the Nagpur decision has been followed and it has been reiterated that alteration includes complete rebuilding from the very foundation. There is one more decision of this Court, though under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947), holding a similar view, and that is the case of *Badrinarayan Ramsukh Rathi Vs. Nichaldas Tejbhandas Sindhi*

and Another, . While considering the provisions of the Patiala and East Punjab States Union, Urban Rent Restriction Ordinance, the Supreme Court has also accepted in principle, the view that complete re-erection of the building from the very foundation is also contemplated in it. Neta Ram Vs. Jiwan Lal, . Even on first principles, it appears to me that the alteration must include also complete demolition.

13. The next plank of the argument, in my view, does raise certain fundamental aspects. It was submitted by Shri Palshikar, and in my view very rightly, that even though there may not be direct provision in the order compelling the landlord to start and finish the construction within a particular period, this aspect of the question is surely relevant to judge the bona fides of the landlords, and with that regard indeed forest of question mark grows. "The Order" with which we are concerned presently, operates upon Vidarbha region of the State only. Marathwada region has a different Rent Control Legislation and so also the rest part of the State in which Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947), is in force. The order is very old and no substantial changes have been effected in the same, though they are overdue specially in certain matters. There cannot be any manner of doubt that in the long period of over 30 years, vast changes have been taken place specially with relation to housing problems in urban areas necessitating rethinking and reconstruction of the "Order" and also to tune it up in accordance with the felt necessities of the modern times. I am informed that the State is alive to this aspect of the question and that a uniform legislation for whole State on the basis of recommendation of various committees constituted for the purpose is in the offing. Among various provisions with which the "Order" can be discredited is a lacuna that exists by virtue of combined operation of clause 13(3)(vii) and clause 13 (7) of the "Order". Clause 13 (7) reads as under:

13 (7). Where the landlord has obtained possession of a house or portion thereof in pursuance of the permission granted by the Controller under sub-clause (1) on the ground specified in item (vii) of sub-clause (3), he shall, after the repairs or alterations have been made, restore possession of the house or portion thereof on the same conditions as before to the tenant who vacated it and shall not let the same to any other person or occupy it himself unless such tenant has waived in writing his claim to have such possession restored to him.

14. Thus, it will be seen that this clause does not, in terms, provide, for imposition of necessary and consequential obligations on the landlord regarding the starting and finishing the work within a particular period; though analogous provisions are contained in all other Rent Control Legislations. The Bombay Rent Act contains section 13 (3-A) which reads as under:

13 (3-A). No decree for eviction shall be passed on the ground specified in clause (hh) of section (1), unless the landlord produce at the time of the institution of the suit a certificate granted by the Tribunal under sub-section (3B) and gives an undertaking.

(a) that the new building to be erected by him shall be subject to the provisions of any rules, bye-laws or regulations made by a local authority, contain not less than two times the number of residential tenements, and not less than two times the floor area, contained in the premises sought to be demolished;

(b) that the work of demolishing the premises shall be commenced by him not later than one month, and shall be completed not later than three months, from the date he recovers possession of the entire premises; and

(c) that the work of erection of the new building shall be completed by him not later than fifteen months from the said date,

Provided that, where the Court is satisfied that the work of demolishing the premises could not be commenced or completed, or the work of erection of the new buildings, could not be completed, within time for reasons beyond the control of the landlord, the Court may by order for reasons to be recorded extend the periods by such further periods, not exceeding three months at a time, as may, from time to time, be specified by it, so however that the extended period shall in each case not exceed twelve months in the aggregate.

15. The Tamil Nadu Buildings (Lease and Rent Control) Act (18 of 1960) also has a similar provision and reads as under:

14. Recovery of possession by landlord for repairs or for reconstruction,-- (1) Notwithstanding anything contained in this Act but subject to the provisions of sections 12 and 13, on an application made by a landlord, the Controller shall, if he is satisfied:

(a) that the building is bona fide required by the landlord for carrying out repairs which cannot be carried out without the building being vacated, or

(b) that the building is bona fide required by the landlord for the immediate purpose of demolishing it and such demolition is to be made for the purpose of erecting a new building on the site of the building sought to be demolished, pass an order directing the tenant to deliver possession of the building to the landlord before a specified date.

(2) No order directing the tenant to deliver possession of the building under this section shall be passed:

(a) on the ground specified in clause (a) of subsection (1), unless the landlord gives an undertaking that the building shall, on completion of the repairs, be offered to the tenant, who delivered possession in pursuance of an order under sub-section (1) for his reoccupation before the expiry of three months from the date of recovery of possession by the landlord, or before the expiry of such further period as the Controller may, for reasons to be recorded in writing, allow, or

(b) on the ground specified in clause (b) of sub-section (1), unless the landlord gives an undertaking that the work of demolishing any material portion of the

building shall be substantially commenced by him not later than one month and shall be completed before the expiry of three months from the date he recovers possession of the entire building or before the expiry of such further period as the Controller may, for reasons to be recorded in writing allow.

16. Many more such examples can be quoted in which such type of provision requiring the landlord to start and complete the construction within a particular period which can be extended only by the Court, exists and the reasons for incorporating such a provision are not far to seek. If no such obligation is cast on the landlord, he would be able to oust the tenant on the ground and will not be legally obliged to carry out the repairs or alterations within reasonable period and will have to right of postponing it indefinitely or unreasonably. Thereby the rights of the reinstatement on the property will be completely negated or at least reduced to force. The right of a landlord to get possession for repairs and alteration and so also the right of a tenant to get back the property after completion go hand in hand even in terms of the present order due to these twin provisions of clauses 13 (3) (vii) and 13 (7). Ousting of a tenant of this ground is only temporary phase and it cannot be allowed to be made permanent. Thus the commencement of the construction or repairs and its completion within a reasonable period is a sine qua non to such provisions and to their combined effect. It will thus be reasonable to expect that incoming legislation will make the necessary and suitable changes to check the possible misuse of such provisions by incorporating in it a substantial necessary provision about time schedule.

17. Apart from this, let us examine the provision as it is, and see how it works. The two words "desire" and "essential" used in this provision need a pointed attention. Desire to some extent is synonymous with the intention and the intention has to be real and not merely a pretext. Mere intention without element of essentiality may or may not have a place in the provision. The debatable question as to whether the essentiality has relation only with the condition of building and nothing else does not fall for consideration in the present case. But, one thing seems to be definite that existence of both, viz. real desire as well as the essentiality are conditions precedent for moving rent control machinery under this clause the edifice of which can stand only on these two pillars.

18. One cannot lose sight of the fact that this is legislation impregnated with the object of giving protection to the tenants who are by and large considered to be less fortunate class of Society. Dealing with the objects of the Rent Control Legislations in the case of *Neta Ram v Jiwan Lai* (cited supra), the Supreme Court has observed as under:

It is well-known that Rent Restrictions Acts were passed in view of the shortage of houses and the high rents which were being demanded by landlords. The very purpose of the Rent Restriction Acts would be defeated if the landlords were to come forward and to get tenants turned out, on the bare plea that they want to reconstruct the houses, without first establishing that the plea is bona fide with regard to all the circumstances.

Thus, it will be seen that by merely stating in the application that house is to be repaired or altered and that those alterations and/or repairs are essential is not enough. The bona fides, the honest desire of effecting them must also be shown to be in existence. This necessitates the demonstration of all the necessary aspects which go with bona fides. If not the exhaustive an illustrative list of the circumstances which can establish bona fide or real desire can be given. It may include the condition of the house, the nature of the proposed work, the financial capacity to undertake and finish that and so also the period within which the proposed work is intended to be commenced and completed. It is unthinkable that the landlord will have no probable time schedule of the work in his mind at the time when application before the Rent Controller is filed. If these are the requirements without which the intention of the landholder cannot be held to be genuine, it is necessary for him to establish all these relevant factors. After all intention or desire is a mental condition and its abysses has to be plumbed only on the basis of circumstances. The absence of one or more, may be a factor which has to be taken into consideration in the matter though whose approach has to depend upon all circumstances bundled together. Thus, the time schedule is as important as any other aspect of this connection and its absence will go a long way in presuming absence of real desire. In the case of *Metalware and Co. etc. Vs. Bansilal Sarma and Co. etc.*, , dealing with this aspect of the question, the Supreme Court's observations run as under:

If the Rent Controller has to be satisfied about the bona fide requirement of the landlord which must mean genuineness of his claim in that behalf the Rent Controller will have to take into account all the surrounding circumstances including not merely the factors of the landlord being possessed of sufficient means or funds to undertake the project and steps taken by him in that regard but also the existing condition of the building, its age and situation and possibility or otherwise of its being put to a more profitable use after reconstruction.

It is no doubt true that the question of time factor was not in issue before the Supreme Court and therefore, was not decided. The ratio, however, undoubtedly is that of all requirements of bona fides must be established.

19. In the present days short of accommodation, the landlord cannot be allowed to evict the tenant on the ground that repairs or alterations are required to the premises without exhibiting and providing a genuine desire to undertake the work and finish it within a reasonable period. Thus, it seems to me that pleading as well as proof of the time schedule is one of the necessary ingredients of maintainability of application under this clause. All these factors must enter verdict of the Controller and the genuineness or otherwise or the desire must be proved. These matters, however, are with special knowledge of the landlord. This being the position, it is also necessary that all these factors are not allowed to be brought for the first time in evidence, but should be specified in reasonable details in the pleading so that opponent is not taken by surprise and is not

thrown to winds at the eleventh hour. Passing reference may be made to section 106 of Evidence Act and the principles underlying that provision, in this connection.

20. This Court in *Sumitra Devi v. Chunilal* 1975 Mh L J 290 had occasion to deal with this aspect though in somewhat different situation. No doubt this question did not fall for consideration directly in that case, but the following observations made thereunder can be usefully quoted :

It will be implicit in such proceeding to expect the landlord to satisfy the authority by laying material to show that tenant's right under this clause is well protected and would be subserved. Under this clause therefore, if the landlord reasonably satisfies by proof of his ability to reconstruct, that he has taken steps necessary to reconstruct his house or premises and that it is not a mere scheme to eject the tenant and further if his proposed reconstruction does not impair the right of the tenant to restoration of his tenancy, the Rent Control Authorities would not be justified in refusing to accord permission. All that Authority may expect is to have assurance of a time schedule reasonably required for a given type of construction after the premises become available for such construction.

21. Having discussed the core question at some length and illumined the contours of controversy, let us bring the discussion back on the rails of the present case again, and see if there is source material on record to justify permission on this ground on the basis of principles enunciated above. In the application, the landlady has made a categorical statement that the construction would be started as soon as possible and that she was prepared to obey whatever conditions were laid down by the Court in this connection in case the permission is granted. Thus, the landlady has voluntarily undertaken to comply with any of the conditions that the House Rent Controller may reasonably lay down. However, it is true that there is no categorical statement as to when the construction would be started and finished on getting vacant possession of the property. To that, the answer given by Shri Chendke has been that though definite time schedule was not given, the landlady had left this matter also with the House Rent Controller and thus this was still a better proof of bona fides. When pointed attention of the learned Advocate for the respondent was brought to the aspect of definite time schedule, an undertaking in writing has been submitted making it clear that the construction would be started within three months of the renewal of the permission by the Nagpur Improvement Trust and would be completed within a period of one year from the renewed sanction, of course, point will start only after getting possession of the property. It has also been mentioned in the pursis that if for any unavoidable reasons and circumstance, the programme cannot be adhered to, she would apply for extension of time to the Rent Control Authorities. The plans are already submitted to the Nagpur Improvement Trust and there is no Dearth of finance with the landlady. Under the circumstances, it seems to me that all the necessary material to exhibit real desire are pleaded and proved substantially.

22. This is a purely temporary construction whose life is over and major portion of the building has already been dilapidated. The expert has certified that the building has to be demolished because of its condition and age. The Rent Controller has recorded the spot note. It appears that the building was purely temporary and has outlived its life. The part of the building has already been demolished as the dilapidated portion has fallen down. On all this material, both the Courts have come to the conclusion that considering the condition of the building as well as the use to which the landlady desires to put to the property, case under clause 13 (3) (vii) was made out and thus essentiality aspect of the matter is also proved. It was contended by Shri Palshikar that the building can be constructed in parts and by the time some construction takes place, each of the tenants should first be introduced in the building and by this gradual process the whole construction should be completed without calling upon the tenants to vacate the premises. I do not think, this is either reasonable or practicable. Once the case under clause 13 (3) (vii) is made out, how the construction should go on, of what nature the construction should be, are all matters purely within the landlady's discretion. Thus, I see no reason to interfere with the order passed even on this ground.

23. In the result, the petitions are dismissed, but under the circumstances with no order as to costs.