

(1998) 06 BOM CK 0072
In the Bombay High Court
Case No : Writ Petition No. 3492 of 1982

Vasant Badoo Kulkarni

APPELLANT

Vs

Yasin Ahmed Mujawar since deed by his heirs

RESPONDENT

Date of Decision : 11-06-1998

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1)(i), 13(2), 17, 5(8)
Constitution of India, 1950 — Article 226, 227

Citation : (1998) 4 BomCR 455 : (1998) 3 MhLj 62

Hon'ble Judges : A.P. Shah, J

Bench : Single Bench

Advocate : Narendra V. Walawalkar, for the Appellant; V.A. Thorat, for the Respondent

Judgement

A.P. Shah, J.—The petitioner-plaintiff is the owner of an open plot of land admeasuring 30 feet x 18 feet situate at Somwar Petti, Karad, District Satara, which will be hereinafter referred to as the "suit plot". The respondent-defendant is admittedly a tenant of the petitioner in respect of the said plot and has been carrying on business of coal and firewood in a temporary shed constructed thereon by the respondent. The petitioner asked for the return of the suit plot by notice dated 6th February, 1974 as he bona fide and reasonably required it for erection of a building thereon. He also claimed possession on the ground of default in payment of rent. Since the respondent failed to comply with the notice, the petitioner filed Regular Civil Suit No. 67 of 1974 in the Court of Civil Judge, Junior Division, Karad for possession of the suit plot on both the above grounds. The respondent resisted the suit and contended that he was not a defaulter. He further contended that the petitioner had sufficient residential accommodation for his family and moreover he had sufficient open space in C.T.S. No. 432/1. Not only that but the petitioner owns three gunthas of open land at Karad. Hence, it cannot be said that the petitioner required the property for bona fide purpose. Finally the respondent contended that he is doing his business of coal and

firewood. If a decree for possession is passed, he will have no business and would suffer greater hardship.

2. The trial Court accepted the petitioner's case that he required the suit plot bona fide and reasonably u/s 13(1)(i) of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947. The trial Court held that the object of the provision is to encourage the landlord to construct a building in order to avoid acute shortage of residential premises. The petitioner has prepared the plan and estimate vide Exs. 46 and 47, respectively. The plan prepared by the petitioner has been sanctioned by the Municipality vide Ex.48. The petitioner has also produced evidence to show that he has sufficient funds to construct a building. Thus the petitioner has honest intention to construct a building. The trial Court negated the argument of the respondent that the petitioner has got enough open space around his residential house on the ground that the extent of the space has not been established. The argument of the respondent that the petitioner was in possession of another open plot was also negated on the ground that he had sold the same before filing of the suit. While decreeing the suit of the petitioner u/s 13(1)(i), the trial Court rejected the claim for eviction on the ground of default.

3. An appeal came to be filed against the decree by the respondent before the District Court, Satara. The learned District Judge, Satara, inter alia, held that the petitioner has failed to establish that he bona fide and reasonably required the suit plot for the purpose of construction of a building. It was noticed by the learned Judge that the plans and estimate were prepared nearly two years after the filing of the suit. It was also noticed that the estimate prepared by Mr. Umarani vide Ex. 46 is extremely meagre. The learned Judge rejected the explanation offered by the petitioner that since he is going to construct the building in the bricks, sand and mud and, therefore, the estimate of Mr Umarani cannot be said to be meagre. The learned Judge found that the evidence does not show that the petitioner is in possession of sufficient funds to raise the construction. One additional reason given by the learned Judge was that in the year 1974 the petitioner had acquired much bigger plot of land admeasuring 66 feet x 99 feet. The learned Judge found that the said plot was sold after the filing of the suit. In this view of the matter, the learned Judge allowed the appeal and dismissed the petitioner's suit for possession.

4. Mr. Walawalkar, learned Counsel appearing for the petitioner strenuously contended that the District Court fell in error in holding that the plan and estimate ought to have been prepared prior to the filing of the suit. Mr. Walawalkar urged that the fact that plan was prepared after filing of the suit does not militate against the bona fides of the landlord. According to Mr. Walawalkar, mere absence of the plan on the date of the suit cannot straightaway lead to an inference of lack of bona fides. Mr. Walawalkar also assailed the judgment of the learned Judge on the ground that he has taken into consideration certain factors which are totally irrelevant for the purpose of inquiry in the landlord's claim u/s

13(1)(i). He urged that if the landlord has prepared plans and shown that he has honest intention to construct a building, it is not open for the Court to reject the claim of the landlord unless the Court finds that such claim is mala fide or dishonest. Mr. Walawalkar also assailed the finding that the petitioner failed to show that he had necessary funds for the proposed construction. According to Mr. Walawalkar, considering the fact that the petitioner had decided to raise construction in mud and brick, the funds lying in fixed deposit cannot be said to be insufficient. He hastened to add that if the landlord fails to construct upon the open property, the tenant has got remedy to claim back the possession u/s 17 of the Act.

5. The submissions made by Mr. Walawalkar are vehemently opposed by Mr. Thorat, learned Counsel appearing for the respondents. Mr. Thorat contended that in the instant case the claim of the landlord does not fall u/s 13(1)(i) but it falls u/s 13(1)(g). In support of this contention Mr. Thorat argued that admittedly there is structure standing on the property and since section 13(1)(i) relates to open piece of land the suit will be covered by section 13(1)(g) and in that event it will be necessary to examine the comparative hardship u/s 13(2) of the Act. Secondly Mr. Thorat argued that in the suit notice the landlord specifically stated that he wants to construct a new building for his personal occupation. In other words, the claim of the landlord is for demolition of the existing structure and construction of a new structure for his personal occupation and, therefore, section 13(1)(g) will be attracted. In this behalf Mr. Thorat sought to rely upon a decision of Daud, J., in *Nana Narayan Kamble v. K. Nitanna Prasad*, 1987 R.C.J. 147. He also relied on the decision of the Supreme Court in *Ramnikal Pitambardas Mehta Vs. Indradaman Amratlal Sheth*, . Mr. Thorat next argued that even assuming that the landlord's claim falls u/s 13(1)(i), it is not enough to show that the landlord has got the plans sanctioned and he possesses the necessary funds but it is necessary for the Court to inquire whether the claim is bona fide and reasonable. Mr. Thorat argued that the lower Appellate Court on a careful examination of the evidence on record, recorded a finding of fact that the claim of the landlord is not bona fide and reasonable. It is not open for this Court to re-appreciate the evidence and come to a different conclusion in a writ petition under Article 227 of the Constitution.

6. The suit land which was leased to the petitioner is admittedly an open land. No structure constructed by the landlord was leased to the respondent as tenant. Whether on the open land leased there was any structure belonging to the tenant is irrelevant while deciding the question whether the suit falls u/s 13(1)(i). In *Sohan Singh Bharat Singh v. Narhar Narayan Godbole*, 73 Bom.L.R. 282 it has been held by Deshpande, J., that the word "land" in section 13(1)(i) of the Bombay Rent Act means open land and this section covers a case where the premises are open land and the structures constructed thereon, if any, belongs to the tenant, While so holding, Deshpande, J., referred to and relied upon a judgment of the Supreme Court in *Krishnapasuba Rao Kundapur v. Dattatraya Krishnaji Karani*, AIR 1966 S.C. 1024. In that case, the Supreme Court pointed

out that a combined reading of section 5(8) and section 13(1)(i) of the Bombay Rent Act shows that u/s 13(1)(i), the landlord can obtain a decree for eviction in respect of premises which are land and not in respect of premises which are a building or are garden, grounds, etc., appurtenant to the building. Similar is the view taken by Agarwal, J., in *Goregaon Malayalee Samaj (Regd.) Vs. Popatlal Prabhudas and Sons and Others*, .

7. The next argument of Mr. Thorat is that since the petitioner has indented that he wants to construct a new building for the purpose to his own occupation, the case will have to be treated as one u/s 13(1)(g) and not u/s 13(1)(i). In support of this argument, Mr. Thorat heavily relies upon the judgment of the Supreme Court in *Ramniklal Pitambardas Mehta v. Indradaman Amratlal Sheth* (supra). Mr. Thorat contends that if the landlord requires the land for his own use and occupation whether for erecting a building on the same or otherwise the case must be treated as one u/s 13(1)(g) of the Bombay Rent Act and not u/s 13(1)(g) (sic(i)). I am afraid the submission of Mr. Thorat has been considered by this Court in at least three judgments taking the view which is contrary to the view propounded by Mr. Thorat. The first judgment is by Sapre, J., in *Sampat Dhasmaji Bodke & others v. Krishna Sakharam Zore & anr.*, Special Civil Application No. 529 of 1973, decided on 7th November, 1973. In that case also the landlord had filed a suit for possession of the demised premises which were an open site in the town of Wai. It had been mentioned by the landlords that he required the premises for erection of a new building which was going to be utilised for the residence of himself and his family members. An argument similar to the one advanced by Mr. Thorat before me was also advanced before Sapre, J., who rejected the same despite me judgment of the Supreme Court in *Ramniklal's* case. Sapre, J., opined that the reasoning of me Supreme Court in *Ramniklal's* case was necessarily influenced by the fact that a suit for possession of the premises under Clause (hh) necessarily implies that me landlord was required to let out at least a part of the reconstructed premises after he has obtained possession of the leased premises. He noticed the provisions of sub-section (3A) of section 13 in that regard. It was on this ground, said Sapre, J., that the Supreme Court found that when the landlord asks for possession of me premises for his own use and occupation despite the fact that he has to demolish me existing building and erect a new one, the case will be governed by section 13(1)(g). In such a case, the obligation to provide accommodation to the tenants who have been thus dispossessed does not arise. Sapre, J., also noticed that if the landlord pleads that me open land is required for erection of a new building and says nothing more, the Court is not required to launch on an inquiry as to whether the landlord is going to use me building newly erected for his own use and occupation or for letting out to the tenants. On these two counts, Sapre, J., held that a suit for possession of an open land far the construction of a building will be governed by the provisions contained in section 13(1)(i), despite the fact that the building so erected will be occupied personally by the landlord and despite the fact that there is a similarity of expressions relating to the

requirement of the landlord in the two clauses viz., Clause (g) and Clause (i) of section 13(1) of the Bombay Rent Act.

8. The second judgment is by Chandurkar, J., (as he then was) in *Rukminibai Ramvilas Lahori & others v. Dhanpal Baburao Havale & another*. Special Civil Application No. 2659 of 1973, decided on 7th March, 1978. Chandurkar, J., who took the same view as the one taken by Sapre, J., rested his judgment essentially on the view that Clause (i) of section 13(1) contains a special provision relating to open land, whereas Clause (g) may apply to open land as well as premises consisting of constructed buildings and that a special provision excludes the general. Chandurkar, J., also referred to the Supreme Court judgment in *Ramniklal's* case and held that the judgment was of not much assistance because admittedly in that case the leased premises were not an open land. The third judgment is by Justice Jahagirdar in *Badriprasad K. Agrawal & another v. Premier Garage & others*, 1980 B.C.R. 12 : 1980 (1) R.C.J. 385. Jahagirdar, J., after considering the earlier judgments of Justice Sapre and Justice Chandurkar, held that the case governed by section 13(1)(i) would be one where the landlord wants to recover possession of any premises which are land and such land is reasonably and bona fide required by the landlord for the erection of a new building. It would be immaterial whether the landlord is, after obtaining possession, going to occupy the premises himself or let them out. I have, therefore, no hesitation in rejecting the argument of Mr. Thorat that the present case would be covered by section 13(1)(g) and not by section 13(1)(i).

9. The decision of Daud, J., in *Nana Narayan Kamble v. K. Nitanma Prasad* (supra) is also not of much assistance to Mr. Thorat. In that case, the landlord filed a suit for possession in respect of an open plot on the ground that he required the same reasonably and in good faith for the residence of the plaintiff and his family. The trial Court held in plaintiff's favour and that led to the respondent preferring an appeal to the District Court at Pune. The Court of Appeal held that the decree for ejectment could not be sustained whether u/s 13(1)(g) or section 13(1)(hh) (wrongly mentioned as 13(1)(hhh)(i) in the report) of the Rent Act. This was because the District Court felt that since on plaintiff's own showing, he was not going to use the open plot for residence, but would be putting up a structure thereon, therefore, the operation of section 13(1)(g) was excluded. The other clause also did not apply as the plaintiff had stated that he wanted to construct a temporary shed on the plot. Section 13(1)(hh) require construction of a "building" and a temporary shed could not be described as a building. Reversing the judgment of the District Court, Daud, J., held that section 13(1)(g) will apply not only where the landlord bona fide needs occupation of the premises as they are, but also when the need is coupled with a desire to make constructions, alterations or extensions to the premises existing. As far as section 13(1)(hh) is concerned, Daud, J., felt that the word "building" would include any structure, whether strong or flimsy whether of reed or mud or cement. The word "new" should not be equated to shiny or glossy material being used for the first time. The question whether section 13(1)(i) would be attracted

in the facts of the case was not even agitated before the learned Judge. The decisions of Chandurkar, J., and Sapre, J., referred to above, were also not cited before the learned Judge. In these circumstances, it is not possible to treat the decision of Daud, J., as an authority for a proposition that if the landlord sues to recover possession of an open plot for constructing a building for his personal occupation, the case would fall u/s 13(1)(g) and not u/s 13(1)(i).

10. In the instant case, the landlord has led evidence to show that he has prepared the plan and the same was sanctioned by the Municipality subject to certain conditions. He has led evidence to show that an estimate was prepared by Architect Mr. Umarani. He has also produced extract of his Bank account to show that he possesses funds for the purpose of construction. Mr. Walawalkar assails the judgment of the District Court, and in my opinion with some justification, that the landlord's claim u/s 13(1)(i) cannot be rejected merely on the ground that the plan was not ready on the date of filing of the suit. In *Chandrakant Bhalchandra Malvadkar & another v. Hiralal Mulchand Shah*, 1984 B.C.R. 480, Justice Chandurkar, J., observed that making of a building plan before the suit is filed, claiming relief u/s 13(1)(i) of the Bombay Rent Act, may be indicative of bona fides of the landlord. Mere absence of a plan at the date of a suit would not necessarily mean that bona fides of the landlord were wanting. So also the absence of sufficient actual balance in Bank by itself cannot straightaway lead to an inference of want of bona fides. The learned Judge observed that where bona fides of the claim that a house is to be constructed are to be tested, the proper course would be to see whether the landlord is able to satisfy the Court that he has either the necessary funds at his disposal, or he can raise the necessary funds needed for the construction. Thus the mere fact that at the date of the suit he does not possess a sufficient Bank balance cannot be used against him and his claim u/s 13(1)(i) of Bombay Rent Act cannot be rejected on that ground. Same applies to making estimates and other preparations for construction. Thus no set criteria or tests can be laid down for ascertaining the bona fides of the landlord's claim u/s 13(1)(i) of the Bombay Rent Act. The bona fides of such a claim have to be decided on the facts and circumstances of each case.

11. Mr. Walawalkar contends that once the landlord has got the plans sanctioned and prepared the estimate and led evidence to establish his financial position, nothing further should be required to be proved by the landlord. When the landlord offers proof by way of sanctioned plan and his financial ability and says nothing more, the Court is not required to launch on an inquiry as to test bona fides of the landlord. According to Mr. Walawalkar, such an inquiry would be beyond the scope of section 13(1)(i). The argument is devoid of any substance. In order to succeed u/s 13(1)(i), it is obligatory for the landlord to establish that the plot of land is bona fide and reasonably required by him for the erection of a new building. The two expressions used in the section are "reasonably" and "bona fide". The expressions reasonably and bona fide does not mean that the landlord has to prove mere financial capacity and the sanction of the authorities.

The section clearly requires that reasonable and bona fide requirements must be established by the landlord irrespective of the fact that he has obtained sanction from the Municipal authorities and he is in possession of necessary funds. The Apex Court had an occasion to consider a similar provision under Karnataka Rent Control Act in AIR 1990 1355 (SC) . It was observed in paragraph 4 of the judgment :

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

12. With the assistance of the learned Advocates I have gone through the judgment of both the courts and the oral as well as documentary evidence led by the parties. The Appellate Court has recorded a finding that the petitioner had acquired an open plot at Vidyanagar locality on 20th April, 1974. It was observed that the said plot was much bigger than the suit plot and there are many colleges and houses around the said plot and facility of water and electricity is also available. It was observed that the plot was sold after the filing of the suit. The Appellate Court also found that the estimate prepared by Mr. Umarani is ridiculously low and it is not possible to construct a building with such meagre amount. The case of the petitioner that he wanted to construct a building in the bricks, sand and mud and let out the same to third parties was also not found favour with the Appellate Court Ordinarily, the fact that plan was not prepared on the date of the suit would not militate against the bona fides of the landlord but while looking into the claim u/s 13(1)(g) it is necessary to take into consideration the evidence fed by the parties. If a fact finding Court, on appreciation of such evidence comes to a conclusion that the landlord has failed to establish that his requirement is bona fide and reasonable, this Court cannot be expected to re-appreciate the evidence and take a different view. At any rate, in my view, no

ground is made out for exercise of jurisdiction by this Court under Article 227 of the Constitution of India.

13. In the result, petition fails and the same is dismissed. No order as to costs.

14. Petition dismissed.