

(1982) 03 BOM CK 0025

In the Bombay High Court

Case No : Writ Petition No. 22115 of 1980

Vasudeo Raghunath Kulkarni

APPELLANT

Vs

Yashodabai and Others

RESPONDENT

Date of Decision : 23-03-1982

Acts Referred:

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

Citation : AIR 1982 Bom 425 : (1983) 1 BomCR 209

Hon'ble Judges : Sharad Manohar, J

Bench : Single Bench

Advocate : Mahabaleshwar N. Morje, for the Appellant; B.R. Naik and Y.R. Naik, for the Respondent

Judgement

1. This writ petition is filed by the tenant against whom a decree for eviction has been passed concurrently by both the courts below on identical grounds.

2. The facts, though very few, are of quite a tell-tale character. For the sake of convenience, the parties will be referred to hereafter as the "landlord" and "tenant"

(a) The suit premises consists of two rooms in a building called Sri Nivas" situated at 29, Prarthana samaj Road, vile parle (East), Bombay. They admeasured 369 sq. Ft. The premises were let out by the original landlord to the tenant about 40 years ago. The building in which the premises are situate is a ground plus one floor structure. The tenant had been paying Rs. 40/- per month as rent to the landlord.

(B) In the year 1969, the tenant booked a flat admeasuring 450 sq. Ft. In a building being constructed by the "Artchis co-operative Housing society", at mahant Road Extension, vile prle. The flat was booked by the tenant in the name of his son, who was admittedly, a minor at the time of booking. Admittedly, the amount of money for the purchase of flat was paid entirely by the tenant himself. It is admitted by the tenant that he got even the possession of the said flat in

June, 1970.

(C) On 25-6-1970, original landlord shri J.N. Belsare gave a notice to the tenant terminating his tenancy and demanding possession of the suit premises mainly on the ground that the suit premises were required by him bona fide for his personal occupation. On 8-7-1970, a letter was written by the landlord to the tenant almost by way of a rejoinder to his reply and in the said rejoinder, he mentioned the fact that the tenant had acquired suitable alternate accommodation, viz, the above mentioned flat in the co-operative society building where he could conveniently shift. It was stated in the co-operative society building where he could conveniently shift. It was stated in the said rejoinder that in the eviction suit that the landlord proposed to file against the tenant, the said fact would be relied upon as an additional ground for eviction. To this rejoinder-letter, a reply was sent by the tenant on 24-8-1979. What is stated in the reply is of some significance and relevance in this case. In the said reply, he did not deny the fact that he had acquired suitable alternate accommodation. Further, he did not deny the fact that the flat was in fact, purchased by him. All that he stated was that the flat was meant for his son and not himself. Having given this reply on 24-8-1970 after receipt of the second notice-cum-rejoinder dated 26-7-1970 the tenant hit upon a device which he no doubt thought to be extremely ingenious. On 12-10-1970, he made an application to the society for transfer of the flat from his son's name to the name of his daughter and son-in-law. There is some dispute as to whether the application for transfer was made by the tenant himself or whether it was made technically by his son in whose name the fact was supposed to be standing. However, I will assume that the actual application for transfer was made not by the tenant himself but by his son. The tenant has, however, made no secret about the fact the after the construction of the building was completed in the year 1970, he himself got possession of the flat in June 1970. This clearly means that his son was a mere benamidar and the real owner of the flat was he himself. If that is the position, then the mere fact that the actual application for transfer was made by his son and not by himself is of no legal consequence whatsoever. The fact thus stands out that after receiving the notice for delivery of possession on the ground mentioned in S. 13(1)(1) of the Rent Act, the tenant managed to have the flat in the society transferred to the name of his son-in-law. The actual transfer, however, has taken place as late as on 4-2-1973. This means that the transfer had been effected during the pendency of the litigation.

(D) The present suit was filed by the original tenant (landlord?) on 28-1-1971. The grounds for eviction mentioned were the landlord's bona fide personal requirement contemplated by S. 13(1)(g) of the Rent Act and the fact that the tenant had secured suitable alternative accommodation, the ground mentioned by S. 13(1)(1) of the Rent Act. After the filing of the suit, original landlord shri. J.N. Belsare died and his widow and two sons were brought on record as his heirs and legal representatives. The tenant filed his written statement (by way of points of defence) on 22-9-1971. The relevant point of defence consisted of a mere denial

of the plaintiff's claim u/ss. 13(1)(g) and 13(1)(1) of the Rent Act.

(E) To complete the chronology of the event, it may be mentioned that it is long after filing of the written statement that the flat in question situate in the Co-operative society Building was transferred by the society to the tenant's daughter and son-in-law on 4-3-1973. It may be mentioned here further that although the flat now stands technically in the name of Gautams, the defendant's daughter and son-in-law, the entire consideration in respect of the flat has flown from the pockets of the defendant-tenant. It follows that either it is a case of benami transaction or it is a gift by the tenant to his daughter and son-in-law after he received the notice of eviction.

3. It is in the context of these admitted fact or facts found on record that the trial court held that the defendant-tenant was liable for eviction having regard to the provisions of S. 13(1)(1) of the Rent Act. The trial court also found no reason to reject the evidence led by the plaintiff showing that the plaintiff had the first floor admeasuring 778 sq. Ft. Of area in his possession which was extremely inadequate for his grown-up and growing family. The court therefore, found that the plaintiff had established the bonafide character of his requirement vis-?-vis the suit premises. Further, having regard to the fact that the defendant-tenant had acquired the said flat in the co-operative society, the learned judge also held that the question of balance of convenience had got to be decided in favour of the plaintiff-landlord. The plaintiff's suit for eviction was, therefore, decreed by the trial court.

4. In appeal filed by the tenant, the Appellate Bench of the small causes court found it impossible to find any fault, legal or factual, in the judgment of the trial court. The decree passed by the trial court was, therefore, confirmed by the Appeal court and the tenant's appeal was dismissed by him. That's why the tenant has approached this court in its jurisdiction under Art. 227 of the constitution of India.

5. I have narrated the facts above and have mentioned that they are of tell-tale character. The facts leave no room for doubt that it was precisely with a view to get over the difficulty about the provisions of Section 13(1)(1) of the Rent Act that the tenant has managed to get a transfer of his own flat in the Co-operative Society's Building and put it into possession of his daughter and son-in-law. His reply to the notice dated 8-7-1970 shows that he had purchased the flat for the sake of his son. This means the the flat belonged to himself but he had proposed to keep it at the disposal of his son; but it is evident that he had a guilty mind and hence what he has actually done is that he forgot everything about the future needs of his son. The moment he received notice from the landlord on 26-7-1970, he stealthily managed to have the flat transferred to the name of his daughter and son-in-law. He has admitted that he himself got the possession of the flat in June 1970, but still he maneuvered to transfer the possession to his daughter and son-in-law. It cannot be contended, and, in fact it has not been contended , that his son-in-law and his married daughter , were ever the

members of the petitioners family as such . It is therefore nobody's case that now the flat in the Co-operative Society's Building is being occupied by any bonafide members of the tenant's family . Even assuming that it was in possession of a bonafide member of the family , the fact remains that it belongs to the tenant himself . The legal title of the flat does not transfer itself by this convenient device of transfer of the flat in the name of some other person . This is what is noticed by the courts below and hence both the courts have held that so far as the conditions contemplated by S. 13(1)(1) were concerned, they stand fully fulfilled in favour of the landlord in the instant case . Both the courts have found out that the landlord's family is a growing family . Further, it is the tenant's own contention that the landlord's family is quite an affluent family . If that is so , their need for an additional premises can hardly be construed to be devoid of bona fides. Both the courts have recorded concurrent findings of fact in this behalf and I find no reason whatsoever to interfere with the same.

6. The only question then remains is as to whether the question of balance of convenience can be said to be filling in favour of the tenant. Both the Courts have held that since the tenant is the owner of the other premises in the Co-operative Society's Building, it would not lie in his mouth to contend that balance of convenience should be seen in favour of the tenant and not in favour of the landlord. The suit premises admeasures 309 sq. Ft. It just consists of 2 rooms. It is doubtful whether it is a self-contained flat. In any event, the other premises admeasures 450 sq. It, and admittedly that is a self-contained flat. If that is so and if the fact stands established that the legal title of the flat vests in the defendant tenant. It could hardly lie in his mouth to contend that greater hardship would be caused to him by virtue of a decree against him than would be caused to the landlord by refusal to pass any such decree.

7. Mr. Morje, the learned Advocate for the petitioner tenant, however, advanced a four-fold argument before me to contend that the concurrent decree passed by both the Courts below are vitiated in Law. His first contention was the issue No. 3 framed by the trial court was framed in an erroneous manner. Issue No. 3 runs as follows.

"Dose plaintiff prove that the defendant has acquired a suitable residence?"

According to Mr. Morje the wording of Section 13(1)(1) does not admit of such wording for the issue.

I fail to see any justification for such contention, In the first place, substance of the ground relied upon by the landlord provided for him by S. 13(1)(1) of the Rent Act has been sufficiently stand in the issue. It does not at all appear that the defendant tenant ever made any grievance about the phraseology of the issue. My attention was not invited to any prejudice being cause to the tenant by virtue of the said phraseology of the issue. I repeatedly called upon Mr. Morje to point out to me as to when and where he had urged the said point in either of the Courts below. He was unable to throw any light upon that aspect. The point

is nothing but a figment of his own imagination stemming from the inspiration dawning upon him at the time of the hearing of this petition in this Court. It is hardly necessary to deed with the point any further.

8. Next, it was argued by Mr. Morje that the lower Courts have misread the provisions of S. 13(1)(1). According to Mr. Morje, the flat in the Co-operative Society's Building belonged either to the tenant's son or tenant's son-in-law. In either of the events it did not belong to the tenant and in any event it was not in his possession. If that was so, the provisions of S. 13(1)(1) according to him, did not come into operation at all. In this connection, Mr. Morje tried to invite my attention to the other provisions of s. 13(1) of the act where, according to him, distinction is made between the requirements of the tenant himself and the requirement of the members of the tenant's family in addition or in the place of the requirements of the tenant. According to Mr. Morje of Sec. 13(1)(1) refers to the acquisition of tenant alone, the acquisition by or possession of any member of his family of the alternative flat is of no relevance at all.

To my mind, this argument stems from the presumption that the flat in the co-operative Society's Building booked by the tenant himself did not belong to him. Both the lower Courts have recorded the concurrent findings that the flat was, in fact, purchased by the tenant with his own monies. In fact, it is not disputed before me at all that the entire amount of the consideration of the flat came from the pockets of the defendant-tenant. All that is sought to be urged is that initially it was purchased in the name of the son and that subsequently it was transferred to his son-in-law. Nothing was brought on record to show even that the son-in-law has paid any consideration for the transfer of the flat. I do not for a moment suggest that even if such transfer of consideration was proved, the tenant's case would have been on a higher level of justification. But the absence of any such plea or proof takes the case beyond any pale of doubt. Fact just states in the face that the legal title in the other alternative flat vested in the tenant at the relevant time. He tried notice dated 26-7-1970 by engineering the transfer of the flat to the name of his daughter and son-in-law. The contention of Mr. Morje, therefore, must be rejected.

9. Another feeble attempt was made to satisfy me that the flat, in fact belongs to the tenant's son-in-law. But in view of the position stated above. I find it impossible to take the view that at the relevant time the legal title in the alternative flat vested in the son-in-law. Even the possession of the flat was with the tenant at all the relevant time it was he himself who went into possession of the flat in June 1970 and evidently he delivered the possession of the flat to his daughter and son-in-law after he received the notice for delivery of possession from the landlord.

10. This brings me to the last contention urged by Mr. Morje inspired by the belief that it was supported by the judgment of a learned single Judge of this Court in Special Civil Appln. No 299 of 1967 decided by Bal J. On 31st July, 1968, In that case, the tenant had purchased certain other flat which he subsequently

sold. He thereafter received a notice from the landlord presumably on the ground of bona fide personal requirements as also on the ground mentioned in Section 13(1)(1) of the Act. It was in the context of these facts that it was argued before this Court that the premises acquired by the tenant must be available to fill the date of the decree. It appears that his contention was accepted by this Court with certain qualifications. Mr. Morje would want me to hold that the decision was applicable to the facts, of this case, but what he forgot to notice in the said judgment is that while broadly accepting the above mentioned legal proposition, the learned judge observed in so many words as follows:

"I may make it clear that different consideration may arise if a tenant had acquired possession of a suitable residence when the landlord gave him notice terminating his tenancy or when the suit was filed but dishonestly parts with the possession thereof with a view to defeat the landlord's claim." Evidently, it would not lie in the mouth of the tenant in such a case to say that the premises acquired by him are no longer in his possession. This is what Bal J. Was driving at when he made the above observation. That observation squarely covers the facts of the present case. The decision relied upon by Mr. Morje is thus squarely against him so much so that the decision perhaps could have been said to have been given with the specific facts of the present case in mind.

11. Moreover, I have no doubt that the defendant-tenant has indulged in maneuvering evidently with a view to throw dust in the eyes of the Court. I have my own doubt as to whether this Court should entertain his petition in exercises of its jurisdiction under Art. 227 of the Constitution. This jurisdiction is after all analogous to the equity jurisdiction and one who comes to equity must come with clean hands. It is difficult to find any cleanliness in the hands of the petitioner-tenant. I will, however make it clear that I am restricting my decision not to the above aspect at all. I had that no defect is brought to my notice either in the conclusion arrived at by both the Courts below or in the reasoning of the Courts upon which the conclusion is based.

The petition, therefore, facts and the same is dismissed with costs. The rule earlier issued stands discharged.

12. Petition dismissed.