
(1979) 10 GUJ CK 0013
In the Gujarat High Court

Virendra Dwarkadas Mehta

APPELLANT

Vs

Rajkamlal Foundry and Others

RESPONDENT

Date of Decision : 12-10-1979

Acts Referred:

Bombay Rent Act, 1947 — Section 13(1)(g)
Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1)(g),
13(1)(i), 29(2)

Citation : (1979) 2 GLR 348

Hon'ble Judges : N.H. Bhatt, J

Bench : Single Bench

Judgement

N.H. Bhatt, J.—This is a revision application u/s 29(2) of the Bombay Rent Act by the original plaintiff of the civil suit No. 1199 of 1971 dismissed by the learned Joint Civil Judge (J.D.) Rajkot, against which this petitioner-plaintiff had preferred the civil appeal No. 121 of 1975 in the District Court, Rajkot where the learned Joint Civil Judge by his judgment was pleased to confirm the decree of dismissal of the suit. The plaintiff's suit was filed for possession of the rented property, namely, the open land by resort to Section 13(1)(i) of the Bombay Rent Act on the allegation that the rented land was reasonably and bona fide required by the plaintiff-landlord for erection of a new building.

2. It is no longer in controversy before me that the subject matter of lease is a parcel of land situated on the gondal road in the City of Rajkot. The defendants No. 1 firm, whose partners are the defendants No.s. 2 to 6, had hired the said land for the monthly rent of Rs. 550/-. I say that there is no controversy before me about the subject matter of the lease being open land because upto the lower appellate stage, defendants had raised the contention that the subject matter of the lease was not an open land because of its being bounded by a compound wall. Quite rightly Mr. G.N. Desai, appearing as a counsel for the respondents-defendants had not raised this question before me.

3. Both the courts below and particularly the lower appellate court, however,

decided the question of alleged requirement of the plaintiff against him on its view that the plaintiff's suit did not fall u/s 13(1)(i) of the Rent Act but partook of the character of Section 13(1)(g) of the Rent Act and the plaintiff could not be said to have established that he required the premises reasonably and bona fide partly for occupation by himself and partly for the purpose of erection of a new building. The learned appellate Judge in the course of his judgment has emphasised more than once that the plaintiff himself had not entered in to the witness box, that the only man to speak of his requirement was his maternal-uncle-cum-constituted attorney Vasantlal and that the purpose of construction was two-fold namely, the plaintiff's alleged requirement to have a permanent income and, secondly the occupation of that building for his personal purposes. The question that has been raised by the learned respective counsels appearing for the two contending parties was whether the case would fall u/s 13(1)(g) of the Rent Act or whether it would fall squarely u/s 13(1)(i) of the Rent Act. The second controversy raised is as to what are the essential requirements of facts to be established for the purpose of making out a case u/s 13(1)(i) of the Rent Act. According to Mr. Advocate General, appearing for the petitioner-plaintiff, the moment the landlord proved that the subject matter of the lease was an open land, that he had sufficient means to bring up the proposed structure, that he had made requisite preparations in the form of getting municipal permissions nothing else was required to be established. On the other hand, Mr. G.N. Desai appearing for the respondents-tenants with equal emphasis submitted that those were not the only requirement of law and a further element of need, though not an absolute need, would be made out in order to attract the essential requisite, namely, the requirement which is by catena of authorities laid down to mean an element of need, though not an absolute need.

4. As said above, the plaintiff, whose father is leading a semi-retired life in the City of Ahmedabad and who was in his earlier carrier a superintending engineer, had been prosecuting his studies in medicine at the time he filed the suit and the matter was proceeded with before the learned trial Judge. For some undisclosed reasons, the plaintiff did not enter the witness box to depose to his alleged requirement, which is to a major extent, if not exclusively, a matter of subjective state. Requirement is a desire backed up by some element of need. The need could be established by any evidence but ordinarily whether need is felt by the concerned man or not can be authoritatively deposed to by a man harbouring that desire or feeling that mental urge. The learned appellate Judge, in the facts and circumstances of the case, therefore, "appears" to have held that the plaintiff having not come fourth to speak of his alleged genuinely felt need, the requirement cannot be said to have been made good. I use the term "appears" deliberately because the learned appellate Judge has not stated so expressly. The learned Judge in this connection has made the following observations:

The plaintiff has not entered into the witness box and what is necessary has been deposed by Vasantlal about the requirement of the suit premises.... In this case, Vasantlal has positively stated that the premises are required for having

permanent income and for occupation by the plaintiff.... Therefore, the plaintiff shall have to show that he requires the suit premises for making construction for his occupation. It is not proved that he wants to make the construction. Therefore, the plaintiff will have to show that he requires the suit premises for erection of a building bona fide and reasonably. There is nothing to show that there is any bona fide requirement for erection of a building. It appears that the suit is filed with ulterior motive to get the possession from the defendants. The plaintiff's brothers have filed suit against their own tenants for possession of the open plots. The necessary inference that can be drawn so far as the present plaintiff is concerned is that he does not want to make any construction over the suit land and there is no necessity for him to make the construction. His requirement is neither bona fide nor reasonable.

Above are the extracts from the judgment indicating as to how the learned appellate Judge has approached the problem.

5. Frankly I must say that the learned appellate Judge is found to be labouring under some confusion. Though he refers to the plaintiff having not entered the witness box, he does not categorically state that on that count he is not prepared to believe the question of requirement. Some sentences noted above on the contrary may be pressed into service to show that lacuna perhaps did not weigh very seriously with the learned Judge. Some sentences at the same time go to show that the factor might have weighed with him. That is why I have observed above that it "appears" that perhaps the learned Judge was much impressed by the argument that the plaintiff had failed to make good the case of his bona fide and personal requirement.

6. In this connection certain statements from the deposition of Vasantlal are required to be specifically referred to. I translate paragraphs 6 and 8 from the examination-in-chief of that witness Vasantlal at Ex. 28:

6. The plaintiff hails from Rajkot and proposes to settle at Rajkot. He proposes to put up a show room and a shed. He proposes to establish his small-scale industries there and the remaining part he proposes to let out. The plaintiff at present studies in Ahmedabad and is major.

x x x x 8. The plaintiff has only this plot which is situated at Rajkot. His brothers, who are separate, have plots. The prayer is an per the plaint. The plaintiff proposes this construction for his permanent income and for his personal use.

The above-quoted evidence of Vasantlal, assuming that he can at law speak for the plaintiff, his nephew, in respect of the working of the mind of that nephew, there is no escape from the conclusion that the suit land is required by the plaintiff, not purely for the purpose of putting up a structure. The predominant idea in his mind as conveyed through his maternal uncle Vasantlal in this secondhand fashion is that he wants to establish his small-scale industry there. Vasantlal has gone to the extent of saying that the plaintiff, his nephew, though under medical training, was not interested in pursuing medical occupation. I do

not lay down as an absolute proposition of law that in all cases the mental condition of a man or his attitude or aptitude can never be proved except by the word of mouth of that man concerned. Like all other mental states, like motive, object, intention, malice, this requirement also can at times be proved by other evidence. In a landlord's suit u/s 13(1)(g) of the Rent Act for the requirement of his family, the need felt by the family could be proved to even by other members of the family. The fact, however remains that by and large a man, harbouring mental attitudes and mental attributes, is the best witness about his mental condition and whenever such best evidence is kept back without any ostensibly appreciable reason, a court of law would be justified in drawing an adverse inference against the claimant asserting his alleged reasonable and bona fide requirement. But as the learned appellate Judge does not seem to have made much of the plaintiff's having not spoken to his needs himself, I do not confirm the dismissal of the suit on that ground, though I would hasten to add that the man, whose need or requirement is the subject matter of investigation in a court of law, must ordinarily step forth to speak of his requirement and in a given case, a court required to assess the evidence and reach its conclusion on a question of fact, would be justified in doubting, if not discrediting, the said profession of the landlord.

7. As far as the case on hand is concerned, the position is made crystal clear by the evidence of Vasnatlal, who, as noted above, has tried to support the plaintiff's case by resort to Section 13(1)(g) of the Rent Act, though it must be fairly conceded that the plaint, as it stands, speaks only of the case u/s 13(1)(i) of the Rent Act. Had the plaintiff's witness and mouth-piece Vasantlal remained content with sticking to that case u/s 13(1)(i) of the Rent Act, much of the controversy that was raised before me vigorously by the learned Counsels would not have arisen. However, when the plaintiff's accredited representative himself came out with the statement that the premises were substantially, if not wholly, required by the plaintiff for occupation by himself, the case would be one essentially and substantially falling within the purview of Section 13(1)(g) of the Rent Act and not u/s 13(1)(i) thereof. It is difficult to believe that the plaintiff, who had chosen a specialised and coveted branch of medicine as a course of his career and who has been residing in Ahmedabad, would be ready to waste his medical knowledge for pursuing the modest occupation of small-scale industry and that too in a remote place like Rajkot leaving his family, including his father at Ahmedabad. Had the plaintiff come forth before the court as a living exhibit, the court would have judged whether his professions were mere pretences or genuine statements, emanating from the bottom of his heart. For undisclosed reasons, the plaintiff has deprived the court of this valuable guide and aid. On this ground also, I, left to myself, would quite faintly confirm the ultimate conclusion of the learned appellate Judge, despite my dissatisfaction with his confused and partly confusing approach to the problem.

8. The law on this question in my view is very well settled by the judgment of this High Court in the case of Thakkar Ishwarlal Hargovandas v. Panchal

Girdharlal Raichand 16 G.L.R. 1005, which in its turn respectfully adopted and followed the earlier judgment of this Court in the case of Pathan Bajitkhan Kayamatkhan and Anr. v. Shah Maneklal Harilal and Ors. 12 G.L.R. 421. As far as this High Court is concerned, the legal position is exquisitely put by S.H. Sheth J. as follows:

Where a landlord seeks possession of his land for constructing a building for his own occupation or for occupation by the members of his family, his case will be governed by Clause (g) of Section 11(i) of the Bombay Rent Control Act because in such a case the erection of a new building is purely incidental to his occupation of the land. If a landlord states that he wants possession of his open land only for erection a new structure without stating anything more, his case may fall under Clause (i) of Section 13(1). If it turns out in evidence that he wants to occupy it after constructing a structure thereon he cannot be allowed to resort to Clause (i) as subterfuge to cloak his requirement under Clause (g).

(Emphasis supplied by me)

9. In the earlier judgment of Pathan Bajitkhan (Supra), J.M. Sheth J; as he then was, also pointed out to the same reasoning. To quote from paragraph 13 of that judgment:

In view of Clause (g) of Section 13(1) of the Bombay Rent Control Act it is evident that if the premises consist of land and they are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held they are entitled to recover possession of such premises from the tenant. One may occupy such land for his own self by using the land in that very condition or may occupy it by constructing a building thereon and occupy that building. There is one additional ground under Clause (i) of Section 13(1) of the Act which would be available to the landlord in case the premises are "land". For getting possession under that clause, he has to prove that such land is reasonably and bona fide required by the landlord for erection of a new building. It is not necessary for him to prove that he wants a new building to be erected for occupying by himself or by any person for whose benefit the premises are held.

10. In the case on hand, both the courts below and particularly the learned appellate Judge held that the plaintiff's case for all essential purpose was one u/s 13(1)(g) of the Act and reference to erection of a new building was incidental. I use this expression "incidental" on my own by gathering the import of the learned appellate Judge's reasoning. Vasantlal did not state as to out of this much area of the open land, what substantial portion, after being built upon, was to be let out to earn return, on the capital. He had left the things in a nabalous state. All he stated was that in part of the land the plaintiff would put up a shed and an office and the other part will be let out. The fact that in the examination-in-chief itself, both in paragraphs 6 and 8 Vasantlal spoke of the personal requirement of the plaintiff, perhaps would indicate that the predominant idea in

the mind of the plaintiff was the personal occupation of the substantial portion of the open land after it was built upon. If it be so, the case would be a case u/s 13(1)(g) as rightly held by the learned Judges of the court below. At any rate, their approach to this case from that angle cannot be said to be in any way erroneous for want of any positive statement made by Vasantlal in the course of the examination-in-chief itself.

11. Realising the possible repercussions of this over-adroit expression of Vasantlal, the maternal uncle of the plaintiff and his trusted attorney, Mr. Advocate General had urged that if the specific case in the plaint was the one u/s 13(1)(i) of the Act, the subsequent use of a new building put up on the land was to be ignored for all purposes. His submission was that the above-quoted observation of S.H. Sheth J. should not be treated as the correct exposition of law on the point and he implored me to refer the question to the larger Bench in order to resolve the conflict between what S.H. Sheth J. has expressly stated and what in his submission should be the correct import of Section 13(1)(i) of the Rent Act. As I do not find any thing unreasonable in the interpretation placed by the learned, Judge S.H. Sheth J. and it has held the field since long. I do not think it necessary to refer the issue to a larger Bench. In my view, the legal position is too clear to call for any elaboration. If the plaintiff seeks possession of the land with a dominant idea to use the land either in its original state or in the state of its built upon, the case would fall u/s 13(1)(g) of the Rent Act. On the other hand, if the plaintiff comes forth with a prayer for possession of the open land with the assertion that the open land is required for the purpose of erection of a new building, then the case would fall squarely u/s 13(1)(i) of the Act. Every case, therefore, will be required to be decided in the facts and circumstances of that individual case. If it appears to the court that the possession is sought essentially, if not wholly, for occupation by the landlord either in its original form or in its constructed form for personal occupation, Section 13(1)(g) would be attracted and the court in that case would examine whether the plaintiff bona fide, that is, genuinely or honestly, is in some need of either the land or the intended structure and in such case, his sheer capacity to build and his having made plans and other preparations would be not the primarily essential facts. The emphasis obviously in a case falling u/s 13(1)(g) is distinct from the emphasis of the very requirement to be dealt with u/s 13(1)(i) of the Rent Act. In the case on hand, the evidence of Vasantlal in the background of the plaintiff having not come forth to furnish the Court with the first-hand information, points this case more to the one falling u/s 13(1)(g) of the Bombay Rent Act rather than the one u/s 13(1)(i) of the Rent Act.

In this view of the matter, the ultimate conclusion reached by both the courts below is required to be upheld. The revision application is, therefore, rejected. Rule is discharged with no order as to costs.