

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1146 OF 1997

Mahendra Kumar Lahoti(Since Deceased)

1a. Sudha Mahendra Lahoti & Ors.

..Petitioners

V/s.

Rewachand Ghanshyamdas Tuliani

(Since deceased)

Mr.Sunil Revchand Tulani

..Respondent

Mr.S.M. Gorwadkar, Senior Advocate a/w Mr.Sandesh Patil, Chintan Shah & Ms.Anusha Amin i/b Mr.Yatin Shah for the Petitioners.

Ms.Nazia Sheikh i/b Mr.P.J. Thorat for the Respondent.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 06th OCTOBER 2017

Date of Pronouncing the Judgment : 11th OCTOBER 2017

JUDGMENT :

1. Heard the learned counsel for the parties.

2. The petitioners challenge the concurrent decrees dated 14.02.1983 and 04/05.11.1996 made by the Small Causes Court (Trial Court) and the Division Bench of the Small Causes Court (Appeal Court) ordering the eviction of the petitioners from the suit premises on the following grounds:-

(a) Acquisition of suitable residence by the petitioners-tenants (Section 13(1)(l) of the Bombay Rent Act);

(b) Tenants user of the suit premises for purposes other than for which it was let out (Section 13(1)(a) of the Bombay Rent Act);

(c) Reasonable and *bona fide* requirement of the landlords (Section 13(1)(g) of the Bombay Rent Act);

3. The suit premises in the present case is the portion of Flat No.4 on Ground Floor in the building Anil Kunj, 37th Road, TPS-III, Bandra and Garage on the North West side to the said building. The portion, as described in the plaint and as regards which, there is no dispute, is two rooms and kitchen in the rear portion of Flat No.4 and the garage. Accordingly, the expression “suit premises” shall mean two rooms and kitchen in the rear portion of Flat No.4 and the garage.

4. The Trial Court as well as the Appeal Court have concurrently held that the petitioners have acquired alternate

suitable residence; have changed the user of the suit premises from residential to commercial and in any case, the landlord has made out the case of reasonable and *bona fide* requirement. The two Courts have also concurrently answered the issue of comparative hardship in favour of the landlord.

5. Mr.Gorwadkar, the learned Senior Advocate for the petitioners has however made the following submissions in support of this petition :-

(a) In this case, there are neither pleadings nor is there any material on record to suggest that the suit premises had been leased out exclusively for residential purposes. In the absence of such pleadings and proof, decree under Section 13(1)(l) of the Bombay Rent Act was incompetent. Mr.Gorwadkar, submits that the provision in Section 13(1)(l) of the Bombay Rent Act is applicable only to premises which have been let out exclusively for residential purposes and not otherwise.

(b) Mr.Gorwadkar, submits that in any case, the plea of the petitioners, that alternate residence was only an additional residence and not a “*suitable residence*” as

contemplated by Section 13(1)(l) of the Bombay Rent Act has not been considered. He submits that if a tenant consequent upon change in family situation, acquires some additional premises, then such additional premises, by themselves cannot be regarded as “*suitable residence*” so as to attract Section 13(1)(l) of Bombay Rent Act. The decrees, which ignore this principle, are and therefore, in excess of jurisdiction.

(c) Mr.Gorwadkar, submits that in the absence of any pleadings and proof that the suit premises were let out exclusively for residential purposes, the ground under Section 13(1)(a), which in turn, makes reference to the provisions of Section 108(o) of the Transfer of Property Act 1882, was also not attracted. Mr.Gorwadkar, submits that the allegation in this case is that the petitioners-tenants set up a office or storage in the suit premises. In the absence of pleadings and proof that the suit premises were exclusively let out for residential purposes, there was no question of inferring any change of user. Mr.Gorwadkar, submits that the garage was admittedly leased for the purposes of

storage. He submits that no amount of proof, constitutes any substitute for pleadings. He relies on *Mukand Ltd. V/s. Mukand Staff & Officers Association*¹ in support of this proposition.

(d) Mr.Gorwadkar, in the alternate submits that some minor change of purpose, without any corresponding damage or detriment to the leased premises, can never constitute the ground of eviction by alleging change of user. He placed reliance on *Gurdial Batra V/s. Raj Kumar Jain*² and *Jagdish Lal V/s. Prama Nand*³ in support of this proposition.

(e) Finally, Mr.Gorwadkar submits that in this case, there are hardly any pleadings or any proof to make out the case of reasonable *bona fide* requirement. The two Courts, without focusing at all on this primary aspect have laid, unnecessary emphasis on the aspect of comparative hardship. Mr.Gorwadkar submits that unless the landlord, satisfies that his need was both

1 (2004) 10 SCC 460

2 (1989) 3 SCC 441

3 (2000) 5 SCC 44

reasonable and *bona fide*, no eviction can be ordered merely by adverting to the aspect of the comparative hardships. Mr.Gorwadkar submits that there is accordingly jurisdictional error in ordering eviction on the ground of reasonable and *bona fide* requirement.

6. Ms.Nazia Sheikh, instructed by Mr.P.J. Thorat, the learned counsel for the respondent submits that this is a case of concurrent finding of facts and since, there is no perversity demonstrated, this Court, may not interfere with such concurrent findings of facts in the exercise of its jurisdiction under Article 227 of the Constitution of India.

7. Ms.Sheikh, submits that pleadings, particularly in the matter of reasonable *bona fide* requirement have to be construed liberally. She submits that in this case, there are pleadings that the suit premises were let out for residential purposes. She submits that merely because there was some reference to the storage in the garage, that, does not change the nature of the purposes for which the lease was granted i.e., for residential purposes. She submits that in this case, there is no dispute that the tenants acquired alternate premises which were, having greater area than the suit premises.

Taking into consideration the size of the family of the tenants, the alternate larger premises, definitely, constitute “*suitable premises*” for the purposes of attracting Section 13(1)(l) of the Rent Act.

8. Ms. Sheikh submits that in this overwhelming evidence on record that the tenants converted the user from residential to commercial/ office space. The tenants, ceased to reside in the suit premises, shifted to the larger alternate and suitable premises acquired by them. She submits that in this case there is ample evidence on record in support of the reasonable and *bona fide* need of the respondents. She submits that this is not a case where the eviction decree has been made by reference only to comparative hardships. She submits that issue of comparative hardships had to be obviously answered in favour of the landlords, since, admittedly, the tenants have acquired alternate suitable premises. Ms. Sheikh has relies on *Gulshera Khanam V/s. Aftab Ahmad*⁴. For all these reasons Ms. Sheikh submits that this petition may be dismissed with exemplary costs.

9. Rival contentions now fall for my determination.

4 (2016) 9 SCC 414

10. In this case, the petitioners are the tenants in respect of only a portion of Flat No.4, comprising two rooms and kitchen and the garage. The area of the suit premises is approximately 250 sq.ft. and the garage is approximately 40 sq.ft. or thereabouts. Admittedly, the balance portion of Flat No.4 is in the occupation of the respondent-landlord.

11. In the suit, there are clear averments that the suit premises comprise two rooms, kitchen and a garage with the furniture and it is these suit premises which were let out to the petitioners. In paragraph 2, the averment is that the petitioners acquired “suitable alternate accommodation” at Guru Krupa, first Floor, 14th Road, Near Shiv Krupa, TPS-III, Khar, Bombay-52 and shifted to this alternate premises with his family members in the month of December 1968 after vacating the suit premises. In paragraph 8A of the plaint, there are averments that the petitioners permitted defendant No.6, who was unauthorizedly placed in possession of the suit premises, to use the suit premises for business purposes. The averments in paragraph No.8A of the plaint, reads as follows :-

“8A. Defendant No.1 has however allowed the defendant No.6 to use the said premises for business and he is

changed the user of the premises from residence to business and storage.”

12. Considering the circumstances that the suit premises comprise two rooms, kitchen and garage, coupled with the averments in paragraph 8A of the plaint, it is not possible to accept the petitioners contentions that there were no pleadings to establish that the suit premises had been leased out for residential purposes. The garage, is to be regarded as an adjunct to the suit premises. Merely because the garage is to be used for parking vehicle or, in some cases, for storage, that by itself, cannot lead to the inference that the suit premises were let out for residential cum commercial purposes. Even if the written statement of the petitioners is perused, there is no positive case pleaded by the petitioners that the suit premises had been let out for both residential as well as commercial premises. There is no defense raised that the provisions in Section 13(1)(l) of the Bombay Rent Act are not at all applicable to the present case because the suit premises had never been let out only for residential purposes or that the suit premises were let out for residential as well as commercial purposes. Upon reading of the plaint in its entirety, this is not a case where the landlord's suit, ought to fail on the ground of lack of pleadings. Therefore, the

principle in *Mukund Ltd (Supra)* is not attracted to the facts of this case.

13. There is evidence on record that the suit premises were in fact let out for residential purposes only. The evidence was never objected to on the ground that it was allegedly not backed by pleadings. The two Courts, have appreciated such evidence and in the exercise of writ jurisdiction, there is no reason to re-appreciate such evidence or to interfere with the concurrent findings of facts, particularly when no perversity has been demonstrated. Thus, from the pleadings as well as the evidence on record, it is quite clear that the suit premises had been let out to the petitioners for residential purposes.

14. There is overwhelming material on record that the petitioners have acquired alternate residential accommodation admeasuring almost 600 sq.ft. at Guru Kurpa, TPS-III, Bandra, Bombay-52. Incidentally, even the suit premises are located at TPS-III, Bandra, Bombay-50. This position was not even seriously disputed by Mr.Gorwadkar, the learned Senior Advocate for the petitioners. However, his submission was that these alternate premises are additional premises and, in that sense, do not

constitute “*suitable residence*”. Mr.Gorwadkar, submits that taking into consideration the size of the petitioners family, the accommodation in the suit premises was not sufficient. Therefore, additional premises were taken at Guru Krupa Building. In such circumstances, Mr.Gorwadkar submitted that the acquisition of such additional premises can never be regarded as acquisition of “*suitable residence*” so as to attract the provisions of Section 13(1)(l) of the Bombay Rent Act.

15. In order to appreciate Mr.Gorwadkar's submission, reference is necessary to the actual deposition of Mahendra Kumar Lahoti (Original tenant). The relevant portion reads thus :-

“75. In addition to the suit premises, I have another premises situated 14th Road, Khar. The suit premises consist of one room, W.C. and bath combined and a passage. The premises in my possession at Khar consists of a drawing room, a bed-room a kitchen, W.C. and bath. The Khar premises in my possession are taken on rental basis. I took the Khar premises on rental basis as the suit premises being small and insufficient where not meeting the requirement of my family, for the purposes of residence. The suit premises approximately admeasure 250 sq.ft. The Khar premises in my possession are of the dimension of about 600 sq.ft.

The two premises together are quite sufficient for meeting the requirement of the members of my family, Myself, my wife, my younger son aged about 18 years and my widow-sister of 46 years old and one servant are residing in the Khar premises. Normally 3 to 4 persons visit my premises in connection with the affairs of Broadbury Mills. The plaintiff is residing in front of the suit premises. The premises in possession of the plaintiff approximately admeasure 600 sq.ft. The premises at present in possession of the plaintiff consists of a hall, a bed-room W.C. and bath and a kitchen in addition to a balcony. The balcony in possession of the plaintiff admeasures 40 sq.ft. The family of the plaintiff consists of four members viz. The plaintiff, his wife and younger son and the wife of his elder son. The present premises in possession of the plaintiff is adequate and sufficient for the purposes of the plaintiff.”

(emphasis supplied)

16. The tenant has admitted that his immediate family comprises his wife, younger son and widowed-sister. To that, he has added one servant. The statement that normally 3 to 4 persons visit the tenants premises in connection with the affairs of the Broadbury Mills, does not constitute these 3 to 4 persons as family members of the tenant. This means that the tenant and his three family

members were earlier occupying the suit premises admeasuring approximately 250 sq.ft. Thereafter, without any increase in the size of the tenants family, the tenant has acquired alternate residential premises, which are more than double in dimension i.e. about 600 sq.ft., in the very same locality. In a place like Mumbai obviously, the alternate premises acquired by the tenant in such circumstances, are required to be construed as “*suitable residence*” in order to attract the provisions of Section 13(1)(l) of the Bombay Rent Act. There is accordingly no merit in the submission made by Mr.Gorwardkar and there is no reason to interfere with the concurrent findings of facts recorded by the two Courts that the petitioners have indeed acquired *suitable residence* and therefore, are liable for eviction under Section 13(1)(l) of the Bombay Rent Act.

17. In this case, there is evidence on record that the suit premises had been let out to the petitioners for residential purposes. This is also reflected from the leave and license agreement entered into between the parties. There is also evidence on record that after the petitioners shifted to the alternate and suitable residence in Guru Kurpa building, the suit premises have been used for office purposes. In fact, the defendant No.1, in his written statement admitted that he was carrying on his business under the name and

style of M/s.Samrat Udyog from the suit premises. The two Courts have recorded the concurrent findings of facts to the effect that the suit premises were being used for office purposes or for commercial purposes. In such circumstances, there is really no necessity to interfere with concurrent findings of facts recorded by the two Courts in the absence of any perversity.

18. In *Gurdial Batra (Supra)* the premises in question had been let out for commercial purposes. In such circumstances, the change of business from cycle repair to sale of television and that to on temporary basis, was held not to be any change of user as contemplated by Section 108(o) of the Transfer of Property Act. In fact, in paragraph No.6 of the said judgment, the Hon'ble Supreme Court has given instance of change of use i.e. a house let out for residential purpose put to use as a shop, even without structural alteration. In this case, since, the suit premises were let out for residential purposes and were used by the tenants for commercial purposes, the ground for eviction under Section 13(1)(a) of the Bombay Rent Act was attracted and there is no reason to interfere with concurrent findings of facts recorded by the two Courts in that regard.

19. In *Jagdish Lal (Supra)*, again, the shop was let out for the business of general merchandise, readymade and cloth merchant. For some time, the tenant, used the shop as a restaurant and sweet shop. This was also for a temporary period and the tenant reverted to the earlier business. In such circumstances, the Supreme Court held that the main purposes for which the shop was let out was commercial. Mere change from one business to another, did not amount to change of user. The nature of use remained commercial itself. This decision is also distinguishable, because in the present case the premises were allotted for residential purposes and the same have been converted to commercial use.

20. In *Jagdish Lal (Supra)* at paragraph 16, reference is made to the decision of the Supreme Court in ***Bishamber Dass Kohli V/s. Satya Bhalla***⁵ in which it was held that if the building was let out solely for residence, but in a part of the building a lawyer's office was established without the written permission of the landlord, it would amount to a change in the user and consequently the tenant would be liable to be evicted.

21. Accordingly, there is really no case made out to

5 (1993) 1 SCC 566

interfere with the concurrent findings of facts recorded by the two Courts even on the aspect of change of user.

22. Even on the aspect of reasonable and *bona fide* requirement, although, the pleadings in the plaint could have been better, there is no reason to interfere with the concurrent findings of facts recorded by the two Courts.

23. In *Raj Kumar Khaitan and ors. vs. Bibi Zubaida Khatun and anr.*⁶, the Supreme Court ruled that the pleadings in a suit seeking eviction on the grounds of reasonable and *bona fide* requirement have to be construed liberally. In such a suit, it is not even necessary for the landlords to indicate the precise nature of the business which they intended to start in the premises. Further, even if the nature of business is indicated, nobody can bind the landlords to start the same business in the premises after it is vacated.

24. In *Dattatraya L. Kamble Vs. Traders & Agencies & Anr.*⁷, the Supreme Court has held that the expression “*reasonably and bona fide requirement by the landlord*” indicates that the requirements must be really genuine from any reasonable standards.

6 (1997) 11 SCC 411

7 (1999) 4 SCC 1

However, the genuineness of the requirement is not to be tested on par with the dire need of a landlord because the latter is a much greater need. The Supreme Court has gone to the extent of observing that though there is no dispute that the landlord has to prove that he needs the building for his own occupation but there is no warrant for presuming that his need is not *bon fide*. The statute enjoins that the court should be satisfied about the requirement. In appropriate cases it is even open to the Court to presume that the landlord's requirement is *bona fide* and to place the burden of disproving the presumption on the tenant. The Supreme Court has ultimately held that the Courts ought not to take uncharitable view of the landlord when it comes to determining the reasonable and *bona fide* requirement.

25. It is also settled that normally the landlord is the best judge of his requirement and it is not for the tenants to dictate terms to the landlord as to the manner in which the landlord must live or conduct his business. It is also not the law that landlord has to continue to bear inconvenience and the tenant's comforts are all that matter. In this case, the tenant, after acquisition of alternate suitable residence, which is more than double in size, insists that the

need of the landlord, is not reasonable and *bona fide*.

26. Applying the aforesaid principles to the facts of the present case, there is really no case made out to interfere with the concurrent findings of facts on the aspect of reasonable and *bona fide* requirement. In this case, the landlord, has been residing in only a portion of the flat since, the rest was leased out to the tenants. There is cogent evidence produced on record establishing both reasonableness and *bona fide* of the landlords need. The witnesses of landlord have also deposed to the embarrassment faced even to access the washroom because of lack of accommodation. The issue of comparative hardship is also required to be answered in favour of the landlords and against the tenants. In this case, the tenants did not appear to be themselves using the suit premises for their residence, but permitted the suit premises to be converted from residential to commercial use. Further, the tenants have acquired alternate *suitable residence*, which is more than two times in size than the suit premises. All this is sufficient to sustain the concurrent findings recorded by the two Courts even on the aspect of reasonable and *bona fide requirement*.

27. In *Gulshera Khanam V/s. Aftab Ahmad (Supra)* upon

which, reliance was placed by Ms.Nazia Sheikh the Hon'ble Supreme Court, at paragraphs 33 and 34 has observed as follows :-

“33. Likewise, when we peruse the impugned judgment, we find, as rightly urged by the learned counsel for the appellant, the High Court did not keep in mind the aforesaid principle of law laid down by the Constitution Bench in Hindustan Petroleum Corpn. Ltd. So also the principle laid down by this Court in relation to exercise of jurisdiction under Article 227 of the Constitution of India in Surya Dev Rai V. Ram Chander Rai, while deciding the writ petition and proceeded to decide like the first appellate court. The High Court as is clear from the judgment probed all factual aspects of the case, appreciated evidence and then reversed the factual findings of the appellate court and the prescribed authority. This, in our view, was a jurisdictional error, which the High Court committed while deciding the writ petition. In other words, the High Court, in our view, should have confined its inquiry to examine as to whether any jurisdictional error was committed by the first appellate court while deciding the first appeal. It was, however, not done.

34. In our considered opinion, the question in relation to the bona fide need of the appellants daughter to expand the activities of running the clinic was rightly held by the prescribed authority and the first appellate court in the appellant's favour by holding the appellant's need to

be bona fide and genuine. We find no ground on which the High Court could have upset the concurrent finding on this question in its writ jurisdiction under Article 227, which is more or less akin to revisional jurisdiction of the High Court. The High Court also failed to hold that findings of the two Courts were so perverse to the extent that any judicial person could ever reach to such conclusion or that the findings were against any provision of law or were contrary to evidence adduced, etc.”

28. Applying the aforesaid principles as well, there is no case made out to interfere with the concurrent findings of fact recorded by the Trial Court and the Appeal Court.

29. For all the aforesaid reasons, this petition is dismissed.

30. Interim order, if any, stands vacated. There shall however be no order as to costs.

31. Mr.Chintan Shah, the learned counsel for the petitioners requests for continuance of interim order for a period of eight weeks. Subject to the petitioners filing the usual undertaking in this Court, within a period of four weeks from today, the interim order granted earlier shall operate for a period of eight weeks from today. The petitioners to furnish copy of the undertaking to the learned counsel appearing for the respondents.

(M. S. SONAK, J.)