

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6203 OF 1995

Vishnu G. Pawar .. Petitioner
vs.
Tukaram V. Yadav and ors. .. Respondents

Ms Anjali Helekar for the Petitioner.
None for the Respondent.

CORAM : M. S. SONAK, J.
DATE : 11 AUGUST 2017.

JUDGMENT :-

1] Heard Ms Helekar, learned counsel for the petitioner. The respondents though served, neither present nor represented.

2] The challenge in this petition is to the following judgments and orders :

(i) Judgment and decree dated 8th December 1989 made by the Trial Court dismissing the petitioner's suit, i.e., Regular Civil Suit No. 12 of 1978 seeking eviction of the respondents from the suit premises;

(ii) Judgment and order dated 25th August 1995 made by the Appeal Court dismissing the petitioner's Regular Civil Appeal No. 38 of 1990 challenging learned Trial Court's judgment and decree dated 8th December 1989; and

(iii) Judgment and order dated 10th November 2011 made by the Appeal Court in pursuance of this Court's order dated 20th October 2010 remanding the matter to the Appeal Court for deciding limited issue as to whether the petitioner has made out a case for seeking eviction in terms of Section 13(1) (i) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Rent Control Act)

3] The petitioner-landlord has instituted Regular Civil Suit No. 12 of 1978 seeking eviction of the respondents-tenants from an open plot of land on the grounds of default in payment of rent/municipal taxes, nuisance and misuse of the premises and *bona fide* requirement. Learned Trial Court by judgment and decree dated 8th December 1989 had dismissed the suit. The petitioner's Regular Civil Appeal No. 38 of 1990 was dismissed by the Appeal Court on 25 August 1995.

4] This Court, by order dated 20th October 2010 remanded the matter to the Appeal Court for deciding whether the petitioner had made out a ground of *bona fide* requirement as contemplated by Section 13 (1)(i) of the Rent Control Act. The operative portion of

order dated 20th October 2010 reads thus:

“14 At this stage, the Court is not dealing with the other grounds of eviction as finding of fact of the Appellate Court of the first aspect has to be considered. Hence the following order is passed.

a] The parties are directed to appear before the learned Principal District Judge at Kolhapur on 29/11/2010 at 11 a.m..

b] The Appellate Court will record a finding on the following point for consideration.

“Whether the plaintiff has established bonafide need as contemplated by section 13(1)(i) of the Bombay Rents Hotel and Lodging House Rates Control Act, 1947?”

c] It will be open for the parties to apply before the Appellate Court for leading additional evidence on the basis of subsequent events, if any. If the case is made out by the parties, the Appellate Court will allow the parties to adduce additional evidence before it and that Appellate Court shall not pass further order for remand for that purpose.

d] After hearing the parties, the Appellate Court will record a finding on the aforesaid point for determination. The finding shall be recorded on or before 30th April, 2011 and the same shall be forwarded alongwith the record of the case to this Court by 7th May, 2011.

e] It will be open for the learned Principal District Judge to assign the matter to any learned District Judge as per his administrative convenience.

f] The record and proceedings of the case be transmitted forthwith to the Principal District Judge, Kolhapur.

g] After the finding is received, copies thereof shall be made available to the advocates appearing for the parties.

h] It will be open for the parties to file objections to the finding of the District Court by filing affidavits.

i] As the only third respondent is before this Court, the Appellate Court will have to issue notice to rest of the parties of the date fixed for hearing.

j] The petition shall be placed under caption of 'direction' on the daily board in the second week of June, 2011."

5] In pursuance of the aforesaid remand order, the Appeal Court, has passed the judgment and order dated 10th November 2011 holding that the petitioner has failed to make out a ground in terms of Section 13(1)(i) of the Rent Control Act.

6] Ms Helekar, learned counsel for the petitioner, submits that in this case, since it was the responsibility of the respondents to pay both the rent as well as municipal taxes, such rent as well as municipal taxes are required to be held as payable on monthly basis. She submits that there was three months default in payment of rent and therefore, the ground of default in payment of rent/municipal taxes was clearly made out. She submits that there is ample evidence on record that the respondents were utilising the open plot for operating an Oil Mill. This, generated pollution not only in terms of noise, but also on account of noxious fumes that were emitted. She submits that both learned Trial Court as well as the Appeal Courts grossly erred in denying the petitioner decree of eviction on the grounds of default in payment of rent/municipal taxes and nuisance/ misuse of the suit premises.

7] Ms Helekar submits that the impugned judgments and orders, to the extent, they deny the petitioner eviction on the grounds of reasonable and *bona fide* requirement are vitiated by perversity. She submits that the provisions of section 13(1)(i) of the Rent Control Act have been misconstrued. She submits that the vital and relevant evidence has been completely ignored and the reasoning for denial of decree on this ground is vitiated by resort to irrelevant consideration. She placed reliance upon several judgments to demonstrate the misdirection of law into which learned Trial Court and learned Appeal Courts fail, in denying eviction decree in favour of the petitioner on the ground in terms of the Section 13(1)(i) of the Rent Control Act.

8] With the assistance of Ms Helekar, I have perused the impugned judgments and orders as well as other material on record. I have also considered Ms Helekar's submissions in support of the present petition.

9] Insofar as the grounds of default in payment of rent/municipal taxes and nuisance/misuse of suit premises are concerned, there are findings of fact recorded concurrently by learned Trial Court as well

as Appeal Courts holding against the petitioner. The findings in this regard are supportable by the evidence on record. In the exercise of jurisdiction under Article 227 of the Constitution of India, this Court, is not called upon to exercise appellate jurisdiction which would involve re-assessment of the material on record. There is really no perversity as such demonstrated in the record of these findings of fact. The material on record is not sufficient to reverse the findings of fact as regards default in payment of rent/municipal taxes or for that matter nuisance/misuse. Accordingly, taking into consideration the jurisdictional restraints, it is not possible to interfere with the impugned judgments and orders to the extent they deny the petitioner a decree of eviction on the grounds of default in payment of rent/municipal taxes and nuisance/misuse of the suit premises.

10] The Appeal Court, in pursuance of the remand order dated 20th October 2010, has denied the petitioner a decree of eviction on the ground that the suit premises were reasonably and *bonafide* required by the petitioner for erection of a new building.

11] The entire discussion or in any case, the substance of the entire discussion in the impugned order dated 10th November 2011

is contained in paragraph 26, which reads as under:

“26. In this case, landlords failed to prove that he has prepared building plan and estimates, obtaining sanction for proposed construction of new building on the suit plot from the local authority. He also failed to prove that he is financially capable of constructing a new building. Though it has come in evidence that tenant is not using the suit plot for running his oil mill since 1995, that fact itself not sufficient to get possession under Section 13(1)(i). It has already come in evidence that during pendency of this suit, he has constructed double storied building adjacent to suit plot in cement concrete for his residential purpose. In his possession there are five vacant blocks of above stated measurement. Still he falsely stated before the trial court that only one room of 18 x 11 ft. is in his possession. In his affidavit of additional evidence, he has stated that two rooms out of newly constructed house and one basement is in his possession. It has come in evidence that more premises than what stated by him are in his possession. That premises is more than sufficient to satisfy his need of residential as well as commercial premises. All the above stated facts which are stated on oath by the landlord clearly militate against the alleged bonafide requirement on which suit was filed. Hence I answer this point in negative and proceed to the pass the following order.

12] The reasoning can be classified into the following sub-reasons or headings:

- a] That the petitioner did not place on record the Sanctioned Construction Plans or estimates in respect of the building proposed to be erected upon the suit premises;
- b] The financial incapability of the petitioner for undertaking any construction upon the suit premises;
- c] The acquisition by the petitioner of other tenanted

properties in the meanwhile and further, letting out such properties to other tenants:

d] The construction by the petitioner of a two storeyed building near the suit premises.

13] Insofar as the first reasoning is concerned, the same is clearly unsustainable. The decree for eviction could not have been denied upon the ground that the petitioner failed to place on record the Sanctioned Construction Plan or estimates regards the construction which was proposed to be undertaken as and when the petitioner may have been successful in obtaining the possession of the suit premises.

14] The aforesaid reasoning is contrary to the decisions of this Court, at least in the following two cases relied upon by Ms Anjali Helekar :

- a] ***Vasant B. Kulkarni vs. Yasin Ahmed Kujawar since deceased by L.r.s Sharif Yasin and ors. – 1998 (5) Mh.LJ. 62; and***
- b] ***Chandrakant K. Malvadkar vs. Hiralal M. Shah – 1984 Bom.R.C. 49***

15] In *Vasant Badoo (supra)*, learned Single Judge of this Court at paragraph 10 relying upon the decision of the Division Bench in *Chadrakant Malvadkar (supra)* has observed thus:

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 under [section 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 vs. Hiralal Mulchand Shah](#), 1984 Bom.C.R. 49, Justice Chandurkar, J., observed that making of a building plan before the suit is filed, claiming relief under section 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 under section 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 of tests can be laid down for ascertaining the bona fides of the landlord's claim under section 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”

16] Insofar as the aspect of financial incapability is concerned, again, learned Trial Court as well as learned Appeal Courts have dealt with the aspect quite casually. Apart from the legal position enunciated in *Vasant Kulkarni (supra)* and *Chandrakant Malvadkar (supra)*, there is material on record that the petitioner, possibly with help of his children, was very much in a position to undertake the construction as proposed by him.

17] There is evidence on record that one of the petitioner's son, consequent to retirement of the petitioner has secured permanent service in the MSRTC. The area of the suit premises is 40 x 40. In the past, it is the case of the respondents that the petitioner has obtained a loan for construction of an additional building during pendency of the proceedings. Upon cumulative consideration of the material on record, it does appear that the relevant and vital material has been ignored.

18] The third reason is that the petitioner acquired possession of other tenanted premises and again rented out the same to other tenants. From this, it is reasoned that there was lack of *bona fides* on the part of the petitioner. In the absence of *bona fides*, it is reasoned

that no decree of eviction can be made under Section 13(1)(i) of the Rent Control Act.

19] In order to appreciate the said reasoning, it is necessary to refer to the decision in case of *Vasant S. Choudhari vs. Laxman B. Amore (since deceased through his legal heirs) – 1996 (1) Mh.L.J. 41*, in the context of interpretation the provisions contained in Section 13(1) (i) of the Rent Control Act. In the said decision, it is clearly held that Section 13(1)(i) of the Rent Control Act was incorporated in the Act to encourage building activities so as to redress the issue of inadequacy of accommodation. The Legislature did not deem it fit to make a provision similar to Section 13(2), which is required to be read with the provisions in Section 13(1) (g) of the Rent Control Act dealing with the issue of recovery of possession, not of open land but of building, i.e., apartment, room etc. on the grounds of reasonable and *bona fide* requirement. In a matter of where eviction is applied for under Section 13(1) (i) of the Rent Control Act, the Court is not required to address itself on the issue of comparative hardship, but rather, the Court is required to focus on whether or not landlord has taken adequate steps as per the law for obtaining permission from the local authority; whether or

not, the landlord has capacity to erect a new building and whether or not, the landlord has really an intention to act upon on his proclaimed design of erecting a new building. The observations as regards adequate steps for obtaining permission from the local authority are undoubtedly required to be construed in the light of observations in *Vasant Kulkarni (supra)* and *Chandrakant Malvadkar (supra)*.

20] Secondly, in order to appreciate the aforesaid reasoning, reference is also required to be made to the decision of the Hon'ble Supreme Court in *Pratap Rai Tanwani and another vs. Uttam Chand and another – (2004) 8 SCC 490*, which deals with the effect of subsequent events particularly in a matter where eviction is applied for, on the ground of *bona fide* requirement.

21] In *Pratap Rai Tanwani (supra)*, the Hon'ble Supreme Court has held that the crucial date for determining the existence or otherwise cause of action the date of petition. No doubt, subsequent events may be taken into consideration if the effect of such subsequent events is to completely or substantially eclipse such cause of action which may have accrued in favour of the petitioner-landlord on the

date of institution of the eviction proceedings. The Hon'ble Supreme Court has held that it is pernicious unjust to shut the door before an applicant just on the eve of his reaching the finale after passing through all the previous levels of litigation merely on the ground that certain developments occurred pendete lite, because the opposite party succeeded in prolonging the matter for such unduly long period. During the long interval that a list must creep through for long long years, from the start of the ultimate termini in our judicial system, many many events are bound to take place which might happen in relation to the parties as well as the subject -matter of the lis. If the cause of action is to be submerged in such subsequent events on account of the malady of the system, it would shatter the confidence of the litigant despite the impairment already cause. The subsequent events may no doubt be taken into consideration to mould reliefs. The Appeal Courts are therefore, required to examine, evaluate and adjudicate on the subsequent events and their effect. Further held, for the relief to be moulded the occurrence of the subsequent events alleged for relief must not fall within the realm of possibility of probability but must be a certainty, and if the *bona fide* need had been established earlier, such a certainty of the occurrence of the subsequent events is necessary to

be established to show that the said established *bona fide* need stands eclipsed.

22] The present case, no doubt, there is material on record that the petitioner had recovered four additional rooms. There is also evidence on record that one of the rooms was subsequently let out to another tenant for purposes of a Hair Cutting Saloon or Vachanalay. However, there is also evidence on record that during pendency of the litigation, there has been substantial increase in the size of the petitioner's family. Three rooms are occupied by the petitioner and his family members. This position is admitted by the respondents in pleadings. The petitioner's children have grown up and there are also grand children, who have added to the number of family members. In these circumstances, it really cannot be said that need of the petitioner for securing the possession of the open plot for the purpose of erecting a building stands eclipsed. The Appeal Court, has not approached the issue with proper perspective as suggested in the ruling of *Pratap Rai Tanwani (supra)*. Accordingly, without a necessity of re-assessing or re-appreciating the material on record it can be said that this is a case of misdirection and of failure to take

into account the vital and relevant considerations, including legal principles.

23] The fourth reason stated by the Appeal Court is that the petitioner has already constructed a two storeyed building near the suit premises. As pointed out by Ms Helekar, this is not really a two storeyed building, but rather, this is a ground floor structure, which has some usable area in the basement. Further there is material on record that the basement is incapable of use or in any case proper use in the monsoons as water, stagnates in the basement. That apart, this is a subsequent event in a proceeding which commenced in the year 1978. In the meanwhile, as noted earlier, there is a substantial increase in the size of the petitioner's family and consequently in the requirements of the petitioner and his family. The subsequent developments have to be evaluated from the perspective that in a litigation, which has gone on for last 30 to 35 years, such situations are bound to arise. Therefore, unless there is a case of eclipse, it cannot be said that the reason or *bona fides*, in existence on the date of accrual of cause of action, have since been wiped out.

24] Though, in order to make out a case under Section 13(1)(i) of the Rent Control Act, there is no necessity of adverting to the aspect of comparative hardship. Even the Appeal Court has noted that for last several years, the respondents have not been using the said premises and the Oil Mill is no longer in operation. Ms Helekar points out that in fact, on this ground the petitioner has also secured a decree of eviction, which is pending execution. No doubt, this is also a subsequent event. However, this subsequent event is not totally irrelevant particularly since the Appeal court, relying upon subsequent events, has chosen to non-suit the petitioner.

25] The Court is conscious that in the exercise of extra ordinary jurisdiction under Article 227 of the Constitution of India normally, the concurrent findings of facts may not be interfered with upon re-assessment or re-appreciation of the evidence on record. However, in the present case , it is required to be noted that the Court is not reassessing or re-appreciating the material on record. The interference is mainly on ground that the Appeal court has failed to apply the correct principles of law and further, permitted its discretion to be vitiated by reference to irrelevant and impermissible

material. (See : *Goverdhandas M. Agarwal vs. Bherulal U. Bagade – 2005 (3) Mh.L.J. 196 at para 41*).

26] For the aforesaid reasons, whilst the impugned judgments and decrees declining eviction on the ground of default in payment of rent/municipal taxes and on the ground of nuisance/misuse of the suit premises are not interfered with, the impugned judgments and decrees to the extent they deny decree of eviction to the petitioner on the ground as contemplated by Section 13(1)(i) of the Rent Control Act are set aside. Instead, the eviction of the respondents is ordered on the ground as contemplated by Section 13(1)(i) of the Rent Control Act.

27] Rule is made absolute to the aforesaid extent. There shall however, be no order as to costs.

(M. S. SONAK, J.)