

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.150 OF 2011

- 1) Maharashtra State Electricity
Distribution Company Limited,
(Maharashtra State Electricity Board),
Prakash Gadh, Bandra, Mumbai
- 2) The Chief Executive Engineer,
Maharashtra State Electricity
Distribution Company Limited
(Erstwhile M.S.E.B.), Vidyut Bhavan,
Nashik Road, Nashik
- 3) The Superintending Engineer,
Maharashtra State Electricity
Distribution Company Limited
(Erstwhile M.S.E.B.), Circle Office,
Nandurbar
- 4) The Executive Engineer,
Maharashtra State Electricity
Distribution Company Limited
Nandurbar
- 5) The Deputy Executive Engineer,
Maharashtra State Electricity
Distribution Company Limited
Urban Sub Division, Nandurbar ... **APPLICANTS**

VERSUS

- 1) Madanlal Lalchand Jain
Age 51 years, Occu. Business,
R/o Tilak road, Nandurbar,
Tq. and Dist. Nandurbar
- 2) Nandurbar Electric Supply Company,
Nandurbar, Power House Office,
Kanjawada, Nandurbar,
District Nandurbar

3) The Sub-Divisional Officer,
Nandurbar, Taluka and
District Nandurbar

... RESPONDENTS

.....
Shri A.S. Shelke, Advocate for applicants
Shri S.V. Natu, Advocate for respondent No.1.
Shri S.N. Morampalle, A.G.P. for respondent No.3.
.....

CORAM : R. G. AVACHAT, J.

DATE : 15th NOVEMBER, 2021

J U D G M E N T:

The challenge in this revision, under Section 115 of the Code of Civil Procedure, is to the judgment and decree dated 31/3/2006, passed by the Court of Jt. Civil Judge, Junior Division, Nandurbar in a suit, Regular civil Suit No.1/2000, and confirmed by the judgment and decree dated 2/2/2011, passed by the District Judge-1, Nandurbar in Civil Appeal No.6/2006. By the impugned judgment and decree, the appellant (tenant) has been directed to hand over vacant possession of the premises described in the plaint, to the respondent (landlord). As such, it is a case of concurrent findings of facts.

2. The land admeasuring 4067 sq.mtrs. in Survey No.251/A-2 (suit premises) was originally owned by Smt. Rati and Mohan Shaw. Way back in 1937, the suit premises were

leased out for a period of 50 years to Nandurbar Electric Supply Company (original tenant) at a yearly rent of Rs.351/-. It was a registered lease deed, containing an option for renewal for a further period of 50 years. Meanwhile, the original owners of the suit premises sold it to Shri Gajendra Pardeshi and others in September 1983. The subsequent owners again sold the suit premises to the landlord in 1997 and 1998.

3. The landlord brought the suit (Regular Civil Suit No.1/2000) for possession of the suit premises on the ground of reasonable and bonafide requirement, acquisition of suitable alternative premises and non-user. The trial Court decreed the suit on all the three grounds. The appellate Court affirmed the decree for possession of the suit premises with the findings that the landlord proved to have required the suit premises reasonably and bonafide. The appellate Court held that the issue of comparative hardship was not relevant since it was a suit under Section 13(1)(i) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Rent Act, 1947 for short). On the issue of acquisition of suitable alternative accommodation, the appellate Court held that the said issue was not relevant, but if relevant, the answer is in

affirmative. While on the question of non-user of the suit premises for the purpose for which it was let, the appellate Court answered this point partially in affirmative, holding that the premises admeasuring 3500 sq.mtrs. were not used for a continuous period of six months preceding the suit, for the purpose for which it were let.

4. Admittedly, the Nandurbar Electric Supply Company was taken over by the Maharashtra State Electricity Board (M.S.E.B.). The M.S.E.B. came to be split up into four, namely Electricity Generation Company, Electricity Transmission Company, Electricity Distribution Company and the holding Company.

5. Shri A.S. Shelke, learned counsel for the tenant would submit that, although the title of the landlord was not disputed, the tenant claimed ignorance as to the title of the suit premises to have changed hands. According to learned counsel, there was no attornment of tenancy. The landlord sought for possession of the suit premises for the purpose of construction of a Mall (Shopping Complex). The landlord, however, did not lead any evidence to show to have sufficient funds. No documents were produced on record to suggest the

local authority to have approved the plans for construction of a Shopping Complex. He would further submit that, the landlord had purchased little over 200 immovable properties and sold the same. Had he really intended to construct a Shopping Mall, he could not have waited for obtaining a decree. According to learned counsel, the requirement was neither bonafide nor reasonable. It has been suppressed from the plaint that the suit premises were open land. On taking it on lease, the tenant constructed a few buildings thereon for the better utilisation of the suit premises for the purpose for which it were taken on rent. No prayer was made for possession of the suit premises on removal of structure standing thereon. The tenant has been generating electricity for the State of Maharashtra and distributing the same to the district of Nandurbar and the area around. The other lands held by the tenant have all been used for the purpose of its business. The 33 KV Power Station has been operating from the lands Gut No.119/2-A, 271/A and 267/1. The electricity is being distributed through various Sub-Stations. Learned counsel would further submit that, the suit premises are situated within public utility zone. A process for acquisition of the suit premises had already been initiated by the State of Maharashtra. A private interest must yield to the public

interest. Since the suit premises have been reserved for public utility purpose, the landlord would not be permitted to make use thereof for the purpose for which he seeks possession thereof. According to learned counsel, both the Courts have not considered the evidence in right perspective. The Courts also failed to appreciate the evidence in the case vis-a-vis the provisions of the Rent Act. He relied on the following two authorities and ultimately urged for setting aside the impugned judgment and decree.

- (1) Mangharam Chuharmal Vs. B.C. Patel & other
[1972 AIR (Bom.) 46]
- (2) Vasant Shankar Choudhari Vs. laxman Balaji Ambore,
through his legal heirs [1996 (1) Mh.L.J. 41]

6. Shri S.V. Natu, learned counsel for the landlord would, on the other hand, support the impugned judgment and decree.

7. Considered the submissions advanced. Went through the impugned judgment and decree. Perused the evidence to which the attention of this Court was adverted to during the course of arguments.

8. Admittedly, the suit premises had been let out to the erstwhile tenant way back in February 1937 for its business of generation and transmission of electricity. The subject matter of the lease i.e. the suit premises were open land. The lease was for a period of 50 years. Although the lease deed contains a renewal clause, there is no evidence to indicate the option of renewal of lease was exercised by the tenant. The witness examined on behalf of the tenant, in no uncertain terms admitted the landlord's title to the suit premises. The tenant had earlier claimed ignorance about the landlord's title. There was no attornment of tenancy. The record, however, indicates that, the landlord had, before institution of the suit, issued a notice to the tenant, terminating the tenancy. Be that as it may. The landlord claimed to have required the suit premises reasonably and bonafide for erection of a new building (Mall) (Section 13(1)(i)). Admittedly, the subject matter of the lease was an open land. The appellate Court was, therefore, right in observing that the issue of comparative hardship has no relevance for grant of possession under clause (i).

9. Let us have a look at the relevant provisions of the Rent Act, 1947. Sections 13(1)(g), 13(1)(k), 13(1)(l) 13(2)

and 17 of the Maharashtra Rent Control Act read thus :

13. When landlord may recover possession :

(1) Notwithstanding anything contained in this Act but subject to the provisions of Sections 15 and 15A, a landlord shall be entitled to recover possession of any premises if the Court is satisfied :-

.....

(g) that the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held or where the landlord is a trustee of a public charitable trust that the premises are required for occupation for the purposes of the trust, or

.....

(i) that where the premises are land, such land is reasonably and bona fide required by the landlord for the erection of a new building; or

.....

(k) that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit; or

(l) that the tenant after the coming into operation of this Act has built, acquired vacant possession of or been allotted to suitable residence.

(2) No decree for eviction shall be passed on the ground, specified in clause (g) of sub-section (1), if the Court is satisfied that, having regard to all the circumstances of the case including the question whether other reasonable accommodation is

available for the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it.

.....

17. Recovery of possession for occupation, etc. and re-entry :

(1) Where a decree for eviction has been passed by the Court on the ground specified in clause (g) or (i) of sub-section (1) of Section 13 and the premises are not occupied or the work of erection is not commenced within a period of one month from the date the landlord recovers possession or the premises are re-let within one year of the said date to any person other than the original tenant, the Court may, on the application of the original tenant made within thirteen months of such date, order the landlord to place him in occupation of the premises, on the original terms and conditions, and on such order being made, the landlord and any person who may be in occupation of the premises shall give vacant possession to the original tenant.

(2)

10. Since the learned counsel for the applicant has relied on aforesaid two authorities, let us advert to the same. In *Mangharam Chuharmal (supra)*, the Bombay High Court observed in paragraph No.59 as under :

59. A consideration of the various ruling and passages from Law Books cited above shows one striking feature which is common to all, viz. in all

the statutes either the word "bona fide" or the expression "reasonably required" is used. Sometimes the word used is only "requires" without any qualification. Whenever one of these three words is used, the courts have tried to interpret the word bearing in mind the objects of the relevant statutes while interpreting the word "reasonable" even "bona fides" are considered. While interpreting the word "bona fides" the Courts have considered that reasonableness of the requirement is relevant. When the bare word "required" is used the courts have expressed the view that mere wish is not sufficient and there must be something more in the nature of objective facts. Indirectly expressions like "bona fide" and "reasonable" have been considered relevant while interpreting the word "required". But in the Bombay Rent Act in some of the clauses of Section 13, the words used are "reasonably and bona fide required". These words appear in Section 13(1)(g), (h), (hh) and (I). For good reasons the Legislature has used both the expressions and full effect must be given to those expressions while interpreting the sub - section. "Bona fide" means honestly and not actuated by bad faith or oblique motive. "Reasonably" means, according to the dictionary that which is rational, just, not excessive. As these two words are used to govern the word "require" all the three words must be construed in a manner which would be consistent with the object of the Rent Act in general, and Section 13 in particular. The landlord's contractual right to evict his tenant is recognised in a limited way in Section 13 so as to cause the minimum hardship to the tenant in the event of his eviction from the premises. While considering the proof of bona fides and reasonableness of the requirement, a number of factors are bound to overlap. The words "reasonably and bona fide" are not intended to be used disjunctively. In a given case facts

established must prove the bona fides without reference to the reasonable requirement. If want of bona fides amounting to mala fides, is proved, courts can readily infer or hold that the requirement is unreasonable. As observed in some of the cases quoted above, if the requirement is wholly unreasonable that will also have a bearing on the question of bona fides of the landlord. Even on that basis the court will find that the requirement is not bona fide. But at the same time it is possible to hold that the landlord has succeeded in establishing his bona fides, by that, by itself, will not give him a right to evict the tenant; he must further prove that in addition to his bona fides, his requirement also is reasonable.

In case of Vasant Choudhari (supra), this Court observed in paragraph No.15 as under :

15. The second ground which was taken by the petitioner-landlord, namely, the requirement of the open plot for erection of new building, the case of the petitioner/plaintiff was still stronger. The tenant, by his conduct, was certainly not entitled to change the nature of the leased premises from an open plot to a permanently built tenement. Admittedly, what was let out to the tenant was only an open plot. Section 13(1)(i) of the Bombay Rent Act was incorporated in the Act to encourage the building activities so as to reduce the strain on the problem of inadequacy of accommodation. There was, therefore, no provision similar to the section 13(2) of the Bombay Rent Act, which is to be read with Section 13(1)(g) of that Act. Section 13(1)(g) enables the landlord to recover the premises if he reasonably and bona fide requires the same for accommodation by himself or by any person for whose benefit the premises were held or where the landlord was a trustee of a Charitable

Trust, that the premises were required for the accommodation for the purpose of the Trust. The possession of a permanent construction can be sought on the ground that the provision contained in Section 13(1)(g). Therefore, the landlord is under an obligation under the Act to prove that he reasonably and bona fide required the premises for accommodation by himself or by any person for whose benefit the premises are held, or where the landlord is public Trust, the premises were required for the purposes of the Trust. It is in that eventuality that the Court is required to advert to Section 13(2) for decision of the question, whether or not, greater hardship would be caused to the landlord if the decree for possession was denied to him. Such is not the consideration where the landlord proves that he requires the premises, which are an open plot, reasonably and bona fide for the erection of a new building". It may be noted, here, that initially Section 13(1)(i) contained an expression "for the erection of new building". The word "residential" was deleted by Act 61 of 1953. Since then, the question, whether or not, the premises to be constructed were business premises or residential premises, has fallen in the background.

11. A look at the aforesaid provisions of the Rent Act, 1947 would undoubtedly indicate the appellate Court has rightly observed it to be a case under Section 13(1)(i) of the Rent Act. The appellate Court has also rightly observed that Sections 13(1)(k) and 13(1)(l) have no relevance in the facts and circumstances of the case. As such, it is a case of seeking possession of the suit premises (open land) for the purpose of construction of a Mall. The witness for the tenant

admitted in no uncertain terms that the landlord is a known businessman. He is a man of means. Ten years before filing of the suit, the landlord had purchased little over 200 plots and sold them. Admittedly, the landlord deals in real estate. The Rent Act does not require the landlord to come with an evidence as regards availability of funds for construction of a Complex. It is also not a requirement of the Statute that the plans of the proposed construction should have been approved by the local authority first.

12. Section 17 referred to hereinabove is there to take care of the tenant's apprehension. The tenant is one of the arms of mighty State (State Government). There is evidence to indicate it to have ample vacant land. For over last 15 years a part of the portion of the suit premises has not been used. Only 2 – 3 constructions have been standing on the suit premises. The tenant can very well relocate it on its own land. There is also no evidence to indicate the proceedings for acquisition of the suit premises to have been underway. Even if those are in progress, it has very little consequence. The right of the parties to the suit would be governed by the provisions of the Land Acquisition Act if any such proceedings are underway. True, the suit premises are situated in public utility zone. Requirement of the suit premises for construction

of a Mall is nothing short of a public purpose. Admittedly, the suit premises were open land when it came to be let out. The landlord has, therefore, rightly sought possession of the vacant premises. The appellate Court has rightly observed that, in view of Section 108 of the Transfer of Property Act, and as per the terms of the lease, the tenant is bound to remove its structures and hand over vacant possession of the land leased. It is also observed that, Order VII Rule 7 of the Code of Civil Procedure empowers the Court to pass directions to a tenant to remove its structures standing on the suit premises and hand over vacant possession thereof.

13. In view of this Court, the decree passed by the trial Court and affirmed by the appellate Court is in consonance with the evidence in the case. The applicant/landlord could not make out a case of the impugned decree being perverse one. As such, no case is made out for interference with the impugned decree. The Revision Application, therefore, fails. Same is, therefore, dismissed.

**(R. G. AVACHAT)
JUDGE**

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