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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2644 OF 2006
WITH
INTERIM APPLICATION STAMP NO. 6887 OF 2024**

Gulam Husaain Bagwan
Since deceased through LRs.
A. Smt. Nasima Gulam Hussain Bagwan
& Anr. .. Petitioners

Versus

Dattatraya Jagannath Kutte
since deceased through LRs.
1A) Smt. Kusum Dattatraya Kutte
& Ors. .. Respondents

Ms. Shakuntala A. Mudbidri for petitioners.
Ms. Archana Joglekar a/w Mr. S. R. Page a/w Ms. Ruchi
Umratkarn for respondents.

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CORAM: ALOK ARADHE, CJ.

DATE: 30th JULY, 2025

ORAL ORDER:

1. In this petition under Article 227 of the Constitution of India, the petitioner/original defendant has assailed the validity of the judgment and decree dated 28th February, 2006 passed by the Lower Appellate Court in Regular Civil Appeal No. 555 of 1991 by which the appeal preferred by the petitioner against the judgment and decree dated 16th October, 1991 decreeing the suit for eviction has been confirmed and the appeal preferred by the petitioner/original defendant has been dismissed.

2. Facts giving rise to filing of the present writ petition, in nutshell, are that on an oral agreement, sometime in the year

1969, an open plot of land admeasuring 613.2 sq.mtrs. Along with two latrines was let out to the petitioner on a monthly rent of Rs.150/-. The respondent/plaintiff sent a notice dated 3rd May, 1985 seeking eviction of the petitioner. One of the grounds for seeking eviction was that the suit premises are required by the respondent/plaintiff for erection of a new building. The respondent/original plaintiff filed civil suit, namely, RCS No. 252 of 1985 seeking recovery of possession as well as arrears of rent.

3. The trial Court, vide judgment and decree dated 16th October, 1991, *inter alia*, held that the respondent/original plaintiff requires the suit premises for new construction.

4. Being aggrieved, the petitioner preferred an appeal before the Lower Appellate Court. The Lower Appellate Court vide judgment and decree dated 28th February, 2006 has dismissed the appeal preferred by the petitioner. Hence, this writ petition.

5. Learned counsel for the petitioners submits that the ground for eviction under Section 13(1)(i) of the Bombay Rents, Hotels and Lodging House Rates Control Act, 1947 (hereinafter referred to as "the Act of 1947") is not made out as the premises were not the land but two latrines were also constructed on the said land. It is further submitted that the courts below have failed to adhere to the mandate contained in Section 13(3) of the Act of 1947. It is, therefore, urged that the impugned judgment and decree be set aside and the claim of the respondent/plaintiff be dismissed. In support of her submissions, learned counsel for the petitioners placed reliance on the decisions of this Court in ***Abdulraheman***

alias Iqbal vs. Sou. Kamalaben Mohanlal Shah, 2000 (1) RCJ 561 and Vasant Badoo Kulkarni vs. Yasin Ahmed Mujawar since deceased by LRs. Sharif Yasin & Ors., 1998(3) Mh.L.J. 62.

6. On the other hand, learned counsel for the respondents has supported the impugned judgment and decree and has submitted that no case for interference in exercise of powers of superintendence is made out.

7. I have considered the submissions made on behalf of both the sides and perused the record.

8. Section 13(1)(i) and Section 13(3) of the Act of 1947, which are relevant for the purpose of controversy involved in the instant writ petition are extracted below for the facility of reference: -

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-

(a) to (hhh)

(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

(3) The Court may pass the decree on the ground specified in clause (h) or (I) of sub-section (1) only in respect of a part of the premises which in its opinion it is necessary to vacate for carrying out the work or repairs or erection.

Thus, it is evident that if the premises are land and if such land is required reasonably and *bona fide* by the landlord for erection of a new building, a suit under Section 13(1)(i) of the Act of 1947 can be decreed. Section 13(3) enables the Court to pass decree in respect of part of premises which in its opinion is necessary to vacate for carrying out the work or repairs or erection..

9. In the instant case, admittedly, the premises in question were land with two latrines constructed on it. To ascertain the nature of the premises, the test of dominant purpose has to be applied. The premises are mainly an open land with two latrines constructed thereon. Since two latrines constructed were also let out, the premises do not ceased to be an open land. Therefore, the contention that the trial Court as well as the Lower Appellate Court could not have decreed the suit under Section 13(1)(i) of the Act of 1947 is misconceived. It is also pertinent to note that the court, on an evidence adduced by the parties, may pass an order under Section 13(3) of the Act of 1947. No material has been indicated on behalf of the petitioners to demonstrate that a ground under Section 13(3) of the Act of 1947 was made out. The issue whether or not the land in question is required reasonably and *bona fide* for erection of a new building is a question of fact. The trial Court as well as the Lower Appellate Court, on the basis of appreciation of evidence had recorded a concurrent finding that ground for eviction under Section 13(1)(i) of the Act of 1947 is made out.

10. The aforesaid concurrent finding recorded by both the courts below, on the basis of evidence on record, neither can be termed as arbitrary nor perverse. Therefore, no interference with the impugned judgment and decree is called for in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

11. In the result, the writ petition fails and is hereby dismissed.

12. Interim Application does not survive and stands disposed of accordingly.

(CHIEF JUSTICE)