1964

April, 28.

RAMNIKAL PITAMBARDAS MEHTA

v.

INDRADAMAN AMRATLAL SHETH

(A. K. SARKAR, M. HIDAYATULLAH AND RAGHUBAR DAYAL JJ.)

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, s. 13(1) (g), (hh).—*Premises required bonafide for occupation after carrying out repairs—Sub-section if applicable.*

The appellant was a tenant of the ground floor of a house owned by respondent. The respondent sued for ejectment of the appellant on the ground that he required the entire house including the portion occupied by appellant, for his residential purpose. The defence of the appellant was that respondent did not reasonably and *bona fide* require the premises for his occupation and for carrying out repairs. The trial court decreed the suit of the respondent on the ground that respondent *bona fide* required the premises for his occupation. The appeal of the appellant was dismissed. His revision petition was also dismissed by High Court. The appellant came to this Court by special leave. The only question for decision before this Court was whether the case of respondent came within the provisions of s. 13(1)(g) or s. 13(1) (hh). Dismissing the appeal,

HELD:—The case of respondent fell under cl. (g) as he required the premises for his own occupation. The mere fact that he intended to make alterations in the house either on account of his sweet will or on account of absolute necessity in view of the condition of the house, did not affect the question of his requiring the house *bona fide* and reasonably for his occupation, when he had proved his need for occupying the house. There was no such prohibition either in the language of cl. (g) or in any other provision of the Act to the effect that the landlord must occupy the house for residence without making any alteration in it. There could be no logical reason for such a prohibition. The provisions of s. 13 are for the benefit of the landlord and the various grounds for ejectment mentioned in that section are such which reasonably justify the ejectment of the tenant in the exercise of the landlord's general right to eject his tenant. There is no reason why restrictions not mentioned in the grounds be read into them. The provisions of cl. (hh) cannot possibly apply to a case where a landlord reasonably and *bona fide* requires the premises for his own occupation even if he had to demolish the premises and erect a new building on them. The provisions of cl. (hh) apply to cases where the landlord does not require the premises for his own occupation but requires them for erecting a new building which is to be let out to tenants.

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Krishanlal Ishwarlal Desai v. *Bai Vijkor* [1964] 1 S.C.R. 553, *Krishna Das* v. *Bidhan Chandra*, A.I.R. 1959 Cal. 181. *McKenna* v. *Porter Motors Ltd.* [1956] A.C. 688, *Betty's Cafes Ltd.* v. *Phillips Furnishing Stores Ltd.* [1959] A.C. 20, *Manchharam Ghelabhai Pittalwala* v. *Surat Electricity Co. Ltd.* Civil Revision Application No. 204/56 dated 1st February, 1957 by the Bombay High Court and *Allarkha Fakirmahomed* v. *Surat Electricity Co. Ltd.*, Civil Revision Application No. 164/57, dated 8th October, 1957 by the Bombay High Court, referred to.

CIVIL APPELLATE JURISDICTION : CIVIL APPEAL No. 61 OF 1964

Appeal by special leave from the judgment and decree dated October 28, 1963 of the Gujarat High Court in Civil Revision Application No. 697 of 1962.

Purshottam Trikamdas, M. I. Patel and *I. N. Shroff*, for the appellant.

S. T. Desai, B. J. Shelat, J. B. Dadachanji, O. C. Mathur and *Ravinder Narain*, for the respondent.

April 28, 1964. The Judgment of the Court was delivered by

Raghubar Dayal J.

RAGHUBAR DAYAL, J.—This appeal, by special leave, is directed against the order of the Bombay High Court and raises the question of the true construction of sub-cls. (g) and (hh) of sub-s. (1) of s. 13 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Act LVII of 1947), hereinafter called the Act.

The facts leading to the appeal, in short, are that the appellant is a tenant of the ground-floor of a house owned by the respondent. The respondent sued for the ejectment of the appellant on the ground that he required the entire house, including the portion occupied by the appellant, for his residential purpose. He further stated in the plaint:

> "The whole suit bungalow is very old—built about 75 years ago and at present its different parts are likely to give way and collapse. Before sometime, a little portion of an upper balcony had collapsed. In the circumstances, on finding it unsafe to stay in it without making additions, alterations and necessary changes, I, the plaintiff, am obliged to wait till I get possession of the whole bungalow.

I, the plaintiff, have got the upper portion of the said suit bungalow vacated at present and only after the whole bungalow is got overhauled as stated in para above, I, the plaintiff can utilize it for my personal use."

The appellant contested the suit on various grounds including the ones that the respondent did not reasonably and *bona fide* require the premises for his occupation and that he did not reasonably and *bona fide* require the premises for carrying out repairs.

The trial Court found that the respondent *bona fide* required the premises for his occupation. It repelled the contention of the appellant that the provisions of s. 13(1)(g) would not be applicable when the landlord did not wish to occupy the premises as such but intended to occupy it after carrying out major repairs, and decreed the respondent's suit for ejectment.

The defendant went up in appeal. It was dismissed. The appellate Court, agreed with the views of the trial Court. The defendant then presented a revision petition to the High Court. It was rejected. It is against this order that he has filed this appeal.

A preliminary objection has been taken that the revision to the High Court was incompetent as no question of jurisdiction was involved. For the appellant it is urged that on the facts found, the trial Court assumed jurisdiction which it did not have and that therefore the revision was competent. We uphold the preliminary objection and hold that the revision was incompetent.

The question raised was whether a decree in ejectment should be passed on the ground of personal requirement under s. 13(1)(g) of the Act where it was proved that the landlord wanted to pull down the premises and build another and then occupy it. It was said that in such a case he had to proceed under cl. (hh) of s. 13(1). It is clear that the question so raised is one of interpretation of these two clauses. Section 28 of the Act gives jurisdiction to the Court specified in it, to try a suit or proceeding between

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a landlord and tenant relating to possession of the premises. That section expressely provides that no other Court, subject to the provisions of sub-s. (2) which do not apply to this case, has jurisdiction to entertain such suits. It is clear from this section that the trial Court had full jurisdiction to entertain the suit for ejectment. That being so, it had jurisdiction to interpret whether cl. (g) of s. 13(1) would apply to the present case. The appellate Court had jurisdiction to hear the appeal. The High Court could not, therefore, interfere in revision with the decision of the appellate Court, even if it had gone wrong, on facts or law, in the exercise of its jurisdiction. It follows that the revision application had to be dismissed by the High Court and that this appeal too must fail.

Since the merits of the case have been argued fully before us, we express our opinion on the law point urged before us.

The sole question to determine in this appeal is whether the respondent's case came within the provisions of s. 13(1)(g) of the Act or fell within the provisions of s. 13(1)(hh). We may now set out these provisions:

> "13(1) Nothwithstanding anything contained in this Act but subject to the provisions of section 15, 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
>
> (hh) that the premises consist of not more than two floors and are reasonably and *bona fide* required by the landlord for the immediate purpose of demolishing them and such demolition is to be made for the purpose of erecting new building on the premises sought to be demolished."

A landlord can sue for the ejectment of his tenant in view of s. 13(1) for various reasons including the one that he requires the premises reasonably and *bona fide* for occupation by himself. The respondent alleged, and the Courts below have found, that he *bona fide* required the premises in the suit for occupation by himself. The respondent stated in the plaint that he would take up residence in the premises after overhauling it. It is on this account that the appellant submits that the case falls under s. 13(1)(hh), as the respondent wants the premises for the immediate purpose of demolishing it and erecting a new building.

It is further contended for the appellant that the two grounds for ejectment under cls. (g) and (hh) are mutually exclusive and therefore a landlord cannot take advantage of cl. (g) when his case falls under cl. (hh) in view of the immediate steps he has to take after getting possession of the premises. We need not express an opinion on this point, as, for reasons to be mentioned later, the case falls under cl. (g) and not under cl. (hh) of s. 13(1) of the Act.

We agree with the Courts below that the respondent's case falls under cl. (g) when he *bona fide* requires the premises for his own occupation. The mere fact that he intends to make alterations in the house either on account of his sweet will or on account of absolute necessity in view of the condition of the house, does not affect the question of his requiring the house *bona fide* and reasonably for his occupation, when he has proved his need for occupying the house. There is no such prohibition either in the language of cl. (g) or in any other provision of the Act to the effect that the landlord must occupy the house for residence without making any alterations in it. There could not be any logical reason for such a prohibition. Under ordinary law, the landlord is entitled to eject his tenant whenever he likes, after following certain procedure except in cases where he has contracted not to eject him before the happening of a certain event. The Act restricts that general right of the landlord in the special circumstances prevailing in regard to the availability of accommodation and the incidental abuse of those circumstances by landlords in demanding unjustifiably high rents.

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The Act has provided sufficient protection to the tenants against being harassed by threat of ejectment in case they are unable to satisfy landlords' demands. Various restrictions have been placed on the right of the landlord to eject the tenant. Section 12(1) provides that the landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays or is ready and willing to pay the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy in so far as they are consistent with the provisions of the Act. Section 13 provides exceptional cases in which the landlord can eject the tenant even though he had been paying rent regularly or be ready and willing to pay rent. The provisions of s. 13 are for the advantage of the landlord and the various grounds for ejectment mentioned in that section are such which reasonably justify the ejectment of the tenant in the exercise of the landlord's general right to eject his tenant. There is therefore no reason why restrictions not mentioned in the grounds be read into them. We do not therefore agree with the contention that cl. (g) will apply only when the landlord *bona fide* needs to occupy the premises without making any alteration in them, *i.e.*, to occupy the identical building which the tenant occupies. There is no justification to give such a narrow construction either to the word 'premises' or to the word 'occupies' which have been construed by this Court in *Krishanlal Ishwarlal Desai* v. *Bai Vijkor*(1) referred to later.

There are provisions in the Act which ensure that the provisions of cl. (g) are not abused. Section 17 provides that if the premises are not occupied within a period of one month from the date the landlord recovers possession or the premises are re-let within a period of one year of the said date to any person other than the original tenant, the Court may order the landlord, on the application of the original tenant, within the time prescribed, to place him in occupation of the premises on the original terms and conditions. This tends to ensure that a landlord does not eject a tenant unless he really requires the premises for occupation by himself.

(1) [1964] 1. S.C.R. 553.

We are therefore of opinion that once the landlord establishes that he *bona fide* requires the premises for his occupation, he is entitled to recover possession of it from the tenant in view of the provisions of sub-cl. (g) of s. 13(1) irrespective of the fact whether he would occupy the premises without making any alterations to them or after making the necessary alterations.

The provisions of cl. (hh) cannot possibly apply to the case where a landlord reasonably and *bona fide* requires the premises for his own occupation even if he had to demolish the premises and to erect a new building on them. The provisions of cl. (hh) apply to cases where the landlord does not require the premises for his own occupation but requires them for erecting a new building which is to be let out to tenants. This is clear from the provisions of sub-s. (3A) which provide that a landlord has to give certain undertaking before a decree for eviction can be passed on the ground specified in cl. (hh). He has to undertake that the new building will have not less than two times the number of residential tenements and not less than two times the floor area contained in the premises sought to be demolished, that the work of demolishing the premises shall be commenced by him not later than one month and shall be completed not later than three months from the date he recovers posession of the entire premises and that the work of erection of the new building shall be completed by him not later than fifteen months from the said date. These undertakings thus provide for a time schedule for the new building to come up into existence and ensures atleast the doubling of the residential tenements, *i.e.*, rooms or groups of rooms rented or offered for rent as a unit: *vide* s. 5(12) of the Act.

Such undertakings would be unnecessary if the landlord seeks to eject the tenant from the premises in order to occupy the premises himself after making the necessary alterations to suit his conveniences. Further, s. 17A provides for the ejected tenant's re-occupying the premises in case the landlord does not start the work of demolition within the period specified in sub-s. (3A). Section 17B provides for the ejected tenant to notify to the landlord within six months

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from the date on which he delivered vacant possession of the premises of his intention to occupy a tenement in the new building on its completion on the conditions specified in the section. Section 17C provides that the landlord would intimate to the tenant the date when the new building would be complete and that the tenant would be entitled to occupy the tenement on that date. These provisions clearly establish that the provisions of cl. (hh) apply when the landlord desires to demolish the premises for the purpose of erecting a new building on the premises for being let to tenants.

We may mention that the provisions of clauses similar to cls. (g) and (hh) of sub-s. (1) of s. 13 of the Act have been construed in this way in *Krishna Das* v. *Bidhan Chandra*(1), *McKenna* v. *Porter Motors Ltd.*(2), and *Betty's Cafes Ltd.* v. *Phillips Furnishing Stores Ltd.*(3).

The appellant has referred us to two cases of the Bombay High Court which tend to support him in so far as it is held in them that in circumstances similar to the present one, the case would come under cl. (hh) of s. 13(1) and not under cl. (g). They are : *Manchharam Ghelabhai Pittalwala v. The Surat Electricity Co. Ltdt.*(4) and *Allarkha Fakirmahomed* v. *The Surat Electricity Co. Ltd.*(5). The latter case followed the previous one. In the former case the High Court said:

> "Indeed the expression 'occupation' occurring in clause (g) means 'possession followed by actual occupation', while for the purpose of clause (hh) what is necessary is 'possession for the purpose of demolition'. 'Occupation' within clause (g) would include 'possession', as it is obvious that one cannot occupy unless one is able to possess, but in the case of clause (hh) it is clear that it is not necessary to occupy for the purpose of demolition. What is necessary is that the land-

(1) A.I.R. 1959, Cal. 181 ; (2) [1956] A. C. 688;

(3) [1959] A. C. 20 ;

(4) Civil Revision Application No. 204/56 decided on 1-2-57 by the Bombay High Court.

(5) Civil Revision Application No. 164/57 decided on 8-10-57 by the Bombay High Court.

> lord must possess in order to enable him to demolish and erect a new building."

Demolition of the existing building and subsequent erection of a new building are only intermediate steps in order to make the building fit for occupation by the landlord;

In *Krishanlal Iswarlal Desai's case*(1) this Court said in connection with the provisions of s. 17(1) of the Act:

> "What is, however, clear beyond any doubt is that when the possession is obtained in execution it must be followed by an act of occupation which must inevitably consist of some overt act in that behalf....."

'Occupation' of the premises in cl. (g) does not necessarily refer to occupation as residence. The owner can occupy a place by making use of it in any manner. In a case like the present, if the plaintiffs on getting possession start their work of demolition within the prescribed period, they would have occupied the premises in order to erect a building fit for their occupation.

We therefore hold that the respondent's case came within cl. (g) of sub-s. (1) of s. 13 of the Act and therefore dismiss the appeal with costs. Three months allowed for vacating the premises on the defendant tenant undertaking to vacate the premises himself during this period.

Appeal dismissed.

COMMISSIONER OF INCOME-TAX, MADRAS

v.

THE AMRUTANJAN LTD., MADRAS

1964

April, 28.

(K. SUBBA RAO, J. C. SHAH AND S. M. SIKRI, JJ.)

Income Tax—Object and scope of s. 23-A—"Company in which the public are substantially interested"—Meaning of—Indian Income Tax Act, 1922 (11 of 1922), s. 23-A.

The Income-tax Officer found that the respondent company had declared during the three years ending March 31, 1947, March 31, 1948,

(1) [1964] 1 S.C.R. 553.