(1995) 06 GUJ CK 0016

Gujarat High Court

Case No: None

Smt. Laxmiben Mavjibhai and Another		APPELLANT
	Vs	
Shankarbhai Mulubhai		RESPONDENT

Date of Decision: June 22, 1995

Acts Referred:

- Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Section 13(1)(1), 13(1)(1), 13(1)(c), 13(l)(c), 29(2)

Citation: (1995) 2 GLR 1320

Hon'ble Judges: S.D. Shah, J

Bench: Single Bench

Judgement

S.D. Shah, J.

This landlords'' revision application u/s 29(2) of Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 is against concurrent judgment of two Courts below whereby the Courts have refused the decree of eviction in favour of the landlords and against the respondent-tenant.

2. In order to properly appreciate the submissions made by Miss V.P. Shah, learned Counsel for the landlords, the relevant facts giving rise to the present revision application are stated hereinafter briefly:

(i) The landlords instituted Reg. C.S. No. 1089 of 1971 which came to be renumbered as Rent Suit No. 638 of 1977 on the establishment of the Court of Small Causes at Surat. The suit was filed for recovery of possession of the premises bearing No. 1598 situated in Ward No. 8 in Gopipura, Surat inter alia contending that the defendant-tenant was a tenant of two rooms on the ground floor of the said building at a monthly rent of Rs. 20/- and Rs. 4/- per month towards municipal taxes. That he was in arrears of rent from 1-5-71 for a period of 4 months, that the front room was being used by the tenant for carrying on his business of cycle repairing

and rear room was used for residence with his family.

(ii) It was contended that the defendant-tenant was liable to be evicted firstly on the ground that he has erected on the premises permanent structure without the consent of the landlords in writing. It was contended that the defendant-tenant has constructed a loft and had inserted wooden beams in the walls for putting up the loft. It was also alleged that he has put rolling shutters in place of wooden door and for that purpose he has damaged the front wall. It was further alleged that the defendant had inserted nails with big joints in the wall as well as in the weather-sheds for the purpose of displaying tyres and tubes. These various acts committed by the defendant-tenant amounted to making permanent structure in the suit premises without obtaining consent in writing of the landlords and therefore, the defendant-tenant was liable to be evicted u/s 13(l)(b) of the Bombay Rent Act.

(iii) Another ground pressed into service by the landlords for seeking eviction of the tenant was that the defendant-tenant has been guilty of conduct which amounted to nuisance or annoyance to the adjoining or neighbouring occupiers and that therefore, he was liable to be evicted u/s 13(l)(c) of the Bombay Rent Act. It was alleged that the parsal or backyard at the back of the premises was not leased to the defendant and yet he was keeping his cot in the parsal and causing nuisance and annoyance to the landlords. He was also keeping his kits and other household articles. He was also keeping his water-heater and also using fire-wood and cow-dung cakes for the purpose of heating water which created lot of smoke and not only blacken the walls but caused damage to the walls. The defendant was requested time and again not to make use of parsal or backyard for the aforesaid purpose but he used filthy language abusing the landlord and assaulted him on number of occasions and as many as 21 criminal complaints and Chapter cases came to be filed for such conduct of the defendant. That the defendant was, therefore, liable to be evicted on the ground that his conduct amounted to nuisance and annoyance to the neighbouring occupiers. On the aforesaid grounds the landlords sought decree of possession against the tenant as well as decree for arrears of rent of Rs. 96/-.

(iv) The petitioners-landlords also instituted one another suit being R.C.S. No. 385 of 1972 which came to be renumbered as Rent Suit No. 680 of 1977 against the defendant-tenant for declaration and permanent injunction declaring that the defendant-tenant had no right to use parsal or backyard for any purpose and for permanent injunction restraining the tenant from putting cow-dung cakes, articles, water-heater, cycles, cot, etc., in the backyard and from cleaning and washing clothes, cycles in the chowk at the backyard, (v) Both the suits were consolidated and common evidence was led. The Court of Small Causes at Surat by common judgment and decree, dated 10-4-1978 dismissed the Rent Suit No. 638 of 1977 for possession and fixed standard rent at the rate of Rs. 24/- p.m. inclusive of municipal

taxes and only passed decree for arrears of rent for an amount of Rs. 96/-. As regards decree for possession the suit of the landlords was dismissed. However, the trial Court decreed the suit of the landlords being Rent Suit No. 680 of 1977 and granted declaration that the defendant has no right to put his articles like cot, water-heater and cycles in the backyard or parsal of the suit premises and further granted permanent injunction restraining the defendant from obstructing the passage of the plaintiffs and other tenants for going to latrine and putting articles like cot, water-heater, cycles, etc., in the backyard and restrained the defendant from cleaning or washing cycles and clothes in the chowk.

(vi) Being aggrieved by the judgment and decree passed by the trial Court in Rent Suit No. 638 of 1977 whereby the trial Court refused decree for possession in favour of landlords, the landlords preferred Reg. Appeal No. 130 of 1978 in the Court of Extra Asstt. Judge, Surat. However, against the judgment and decree of declaration and permanent injunction passed in favour of landlords and against defendant, the defendant-tenant did not prefer any appeal. The judgment and decree of the trial Court, therefore, in Rent Suit No. 680 of 1977 had become final and declaration as well as injunction granted by the trial Court against defendenat-tenant were not the subject-matter of appeal before the lower appellate Court nor could they be challenged in this revision application by the tenant.

(vii) The Extra Asstt. Judge, Surat by judgment and decree, dated 6-10-1980 dismissed the Regular Civil Appeal No. 103 of 1978 and confirmed the decree passed by the trial Court thereby dismissing the suit of the landlords for possession of the suit premises and confirmed the decree passed by the trial Court.

3. Being aggrieved by the aforesaid findings and concurrent decree of the two Courts below the landlords have preferred this revision application.

4. Before I proceed to consider and set out the submissions raised by Miss V.P. Shah, learned Advocate for petitioners, it shall have to be noted that the jurisdiction of this Court u/s 29(2) of the Bombay Rent Act is very limited. In the case of Helper Girdharbhai Vs. Saiyed Mohmad Mirasaheb Kadri and Others, the Apex Court has made following pertinent observations in the context of Section 29(2) of the Bomabay Rent Act and the revisional powers of this Court:

In exercising revisional power u/s 29(2) the High Court must ensure that the principles of law have been correctly borne in mind by the lower Court. Secondly, the facts have been properly appreciated and a decision arrived at taking all material and relevant facts in mind. In order to warrant interference, the decision must be such a decision which no reasonable man could have arrived at. Lastly, such a decision does not lead to miscarriage of justice. But, in the guise of revision substitution of one view where two views are possible and the Court of Small Causes has taken a particular view, is not permissible. If a possible view has been taken the High Court would be exceeding its jurisdiction if it substitutes its own view in place

of that of the Courts below because it considers it to be a better view. The fact that the High Court would have taken a different view is wholly irrelevant.

5. Keeping the aforesaid observations in mind this Court shall have to approach the submissions made by the learned Counsel for the landlords.

6. Miss V.P. Shah, learned Counsel for petitioners-landlords very strenuously urged before this Court that the nature of alterations made or structures erected by the tenant in the suit premises would amount to erecting permanent structures within the meaning of Section 13(l)(b) of the Bombay Rent Act. She has in this connection invited the attention of this Court to the extensive nature of alteration made by the tenant in the suit premises. The tenant has removed the front door and has instead got fixed a rolling shutter. For this purpose, the front side walls and bricks and cement were required to be scrapped and very heavy iron rolling shutter was fitted in the walls. In the said process the wooden planks of the door were destroyed and putting up of such a heavy rolling shutter in substance would amount to putting permanent structure. The second alteration attributed to the tenant is that he has inserted nails of very big size in the weather shed with a view to displaying tyres and tubes and that has damaged the property. The third act attributed to the tenant is that the tenant has fixed wooden loft in the front room by inserting wooden beams in the big walls and thereby he has damaged the premises.

7. From the aforesaid nature and extent of construction, she has very strenuously urged before this Court that said construction is of permanent nature and is made without consent of the landlords in writing. Therefore, she submitted that the tenant has acted in breach of provisions of Section 13(l)(b) of the Bombay Rent Act and the two Courts below, therefore, ought to have passed decree for possession in favour of landlords.

8. In my opinion, in order to appreciate the aforesaid submission in its proper perspective it is necessary to refer to the Explanation to Section 13(1) which came to be inserted by Gujarat Act 57 of 1963. The said Explanation reads as under:

For the purpose of Clause (b) no permanent structure shall be deemed to be erected on any premises merely by reason of construction of a partition wall, door or lattice work or the filling of kitchen stand or such other alterations made in the premises as can be removed without serious damage to the premises.

9. From the aforesaid Explanation it becomes clear that merely by reason of construction of partition wall, door or lattice work or the filling of kitchen stand or such other alterations made in the premises which can be removed without serious damage to the premises it would not amount to making of a permanent structure. Removability of structure without seriously damaging the premises is the test provided by the legislature which is well accepted by this Court. In the case of Patel Ishwarbhai Lallubhai v. Parshottam Ranchhodbhai reported in (1967) 8 GLR 665 the learned single Judge of this Court held that Explanation to Section 13(1) has

reference to minor alteration in an existing structure for more beneficial enjoyment thereof and not to major alterations. It gives liberty to the tenant merely to put up a partition wall, a door or lattice or to fill in the kitchen stand or such other alterations. Such minor alterations which could be removed without serious damage to the premises are permissible and cannot be considered to be erection of a permanent structure within the meaning of Clause (b).

10. Keeping the aforesaid position of law in mind, it shall have to be examined whether the alterations made by the tenant can be said to be permanent structure or not and whether they were of merely temporary nature. Removal of door and placing of rolling shutter prima facie may involve some alteration in the walls and insertion of hinges or two ends of shutter in the wall. However, such shutter can be removed and premises can be restored to its original position by placing door. This type of alteration is solely made with a view to have better security and more beneficial use of the premises. This type of minor alteration does not cause damage to the premises. It enhances the beneficial use of the premises. Secondly, placing of loft by inserting beams in the two walls also cannot be said to be permanent construction. Wooden loft is always removable. It can be removed from the two walls by removing the wooden beams and the holes made in the walls can be filled by bricks and wall can be re-plastered. This may not seriously damage the property and this type of construction may not amount to permanent alteration. The trial Court has after weighing evidence of witnesses found that the alterations made by the tenant were of temporary nature and were not permanent alterations. In my opinion, such finding of the trial Court is consistent with law and facts and the lower appellate Court has also confirmed such finding. I do not see any flaw in the reasoning of the two Courts below calling for any interference of this Court on this ground. In the case of Ramji Virji v. Kadarbhai Esufali reported in the (1972) 13 GLR 81 putting up a wooden loft was held temporary structure so as not to attract liability of eviction. In the present case, from the nature of alterations made by the tenant it cannot be said that he has put up permanent construction so as to invite liability of eviction.

11. Even otherwise, in my opinion, it will not be permissible for this Court to pass decree of eviction on the ground that the defendant-tenant has placed rolling shutters and has thereby made permanent construction. It may be noted that if construction of this nature is made with the consent, express or implied, of the landlord, such a ground is not available to the landlord for seeking his eviction. After appreciation of evidence, the Courts below have found that in fact, order for rolling shutters was placed by the defendant with the consent of the plaintiffs. It is also established that in fact for other shops situated on the ground floor landlords have already got orders placed for rolling shutters through the defendant. It is also found from the evidence that about 9 rolling shutters are placed in the ground floor of the same building at the instance of plaintiffs-landlords. One Labhshanker Parmanand who had placed the rolling shutters had issued bills at Exhs. 107 & 108 and he is

examined at Exh. 106 and he has proved that in fact the bills were issued in the name of plaintiff. It is, thus, clear that placing of rolling shutters was with the consent of the plaintiff-landlord and in fact plaintiff-landlord got rolling shutters fixed in other part of the ground floor premises through very Labhshanker Parmanand. This construction or alteration, therefore, cannot provide a ground for eviction of the tenant, plaintiff-landlord having consented to such alteration being made.

12. The second ground on which the eviction of the tenant is sought is that the tenant has been guilty of conduct which is a nuisance to the landlord, he being the adjoining or neighbouring occupier. In order to decide whether the landlord is entitled to benefit of Section 13(l)(c) of the said Act it is necessary to refer to the material part of the said section. Section 13(l)(c) in so far as it is material for the purpose of this discussion reads as under:

13(l)(a) ....

(b) ....

(c) - that the tenant or any person residing with the tenant has been guilty of conduct which is a nuisance or annoyance to the adjoining or neighbouring occupiers, or has been or has been convicted of using the premises or allowing the premises to be used for immoral or illegal purpose.

13. It may be mentioned that identical provision is also enacted in various State legislations. Under Calcutta Rent Restriction Act in Section 12 more or less identical provision is enacted. Section 12(l)(c) empowers the landlord to seek eviction of the tenant where the tenant has been guilty of conduct which is annoyance or nuisance to an occupier of adjoining or neighbouring premises. Similar provision is also to be found in Mysore House Rent and Accommodation Control Act. Section 8(2)(vi) inter alia provides that the landlord shall be entitled to possession of premises if the tenant or any person residing with him has been guilty of such acts and conduct amounting to annoyance or nuisance to the adjoining or neighbouring occupier or has been guilty of using the house for immoral or illegal purposes. In almost all the State Legislations language employed is in pari materia and conduct of the tenant as would cause annoyance or nuisance to the adjoining or neighbouring occupier is a ground for seeking eviction of the tenant.

14. In order to attract the provisions of this clause the landlord has to establish:

(i) the offending conduct of the tenant or any person residing with the tenant.

(ii) that such conduct was causing annoyance or nuisance to the adjoining or neighbouring occupier.

15. It may be mentioned at the outset that the legislature has while providing ground for eviction of tenant referred to the conduct of the tenant which may

amount to "annoyance" or "nuisance". The use of the two words is significant. If the two words carry same meaning the legislature is guilty of tautology. The legislature has advisedly used two words as in my opinion they do not carry the same meaning and have different legal connotations. It is by now well accepted that the word "annoyance" has different meaning than the word "nuisance". In the case of Chandrakant Madhavrao Bhaiber v. Gajendrakumar Sunderlal Shah reported in (1971) 21 GLR 551 Justice A.D. Desai was called upon to decide the question of applicability of Section 13(l)(c) of the said Act where the premises were let out for residence to the opponent. The opponent used the premises for boarding his workers, i.e., to provide his workers a shelter as a part of his business activities. From evidence it was found that there were 31 persons using one common latrine and bath room with the result the family members of other tenants including the females had to stand in queue which caused inconvenience to the tenants residing on the first and second floors. It was in the context of aforesaid situation that the learned single Judge was called upon to decide the question as to whether the conduct of the tenant in allowing his workers to stay in the premises amounted to causing annoyance and/or nuisance. It was in this context that the learned single Judge referred to the dictionary meaning of the words "annoy" and "annoyance" and he observed as under:

The meaning of the word "annoy" as stated in the Short Oxford Dictionary, third edition is "to be odious or a cause of trouble; to affect so as to ruffle, trouble, vex, to molest, injure, to derange, affect injuriously". The word "annoyance" is stated to mean an action of annoying, molestation, or state of feeling caused by what annoys. The meaning of word "annoy" as given in the Webster''s New Twentieth Dictionary, IInd edition, is to "irritate, to bother or vex, as by continued or repeated acts or to "harm, injure or to molest, to make angry" and the word "annoyance" is stated to mean that which annoys. The word "annoyance", therefore, indicates such conduct of a person which would harm, injure or irritate other persons or to make them angry. The word "annoyance" as used in Clause (c) of Sub-section (1) of Section 13 of the Act includes an act which interferes with the peaceful and reasonable enjoyment of the premises by the adjoining or neighbouring occupiers. In Tok Healty V. Benhan 40, Chancery Division page 80 the Court had to consider the meaning of the word "annoyance" as used in a covenant of lease. The facts of the case were that a dwelling house was rented out. The premises were used for keeping outdoor patients for treatment of throat, nose, ear, skin, eye, fistula and other diseases and the question which arose for consideration of the Court was whether the use of the premises for the aforesaid purposes caused annoyance to the neighbours. Lindley, L.J. made the following observations:

Now what is the meaning of "annoyance"? The meaning is that which annoys, that which raises objections and unpleasant feelings. Anything which raises objection in the minds of reasonable men may be an annoyance within the meaning of covenant''.

16. In unreported decision of this Court, the learned single Judge while deciding C.R.A. No. 481 of 1969 dated 11-7-1973 was called upon to decide the question as to whether the conduct of the tenant who has put up table, chairs and other articles on otta of the godown of the landlord which was not leased to him despite objection of the landlord can be said to amount to annoyance to the landlord. In the aforesaid fact situation, by reference to rent note a finding was reached that the tenant was given on lease only a shop which was to the North of the godown and that otta of the adjoining godowns was not a part of leased property given under the rent note. Tenant had only right of passage over the otta of the adjoining godowns. Tenant firstly pleaded that adjoining otta was given on lease and then pleaded in the alternative that he has right to use said otta. It was also found that the tenant was using otta of the godowns for keeping his articles including table, chairs and despite the request of the landlord to remove the table, chairs, and other articles the tenant refused to do so and even admitted in the Court that he refused to remove the table, chairs and other articles which he was keeping on the otta. In this context finding was reached that the landlord was justified in asking the tenant to remove table, chairs and other articles from the otta and not to occupy the same and that the tenant was not justified in his conduct in persisting with using of otta. Such conduct whether would amount to causing annoyance to the landlord was the moot question before S.N. Patel, J. in the aforesaid revision application. After referring to the decision of A.D. Desai, J. in Chandrakcmt Madhavrao Bhaiber (supra) the learned Judge took the view that the conduct of tenant in placing table, chairs and other articles on otta which was not leased to him and in persisting to use the same despite request of the landlord to remove the same amounted to annoyance within the meaning of the said term so as to incur liability of eviction u/s 13(l)(c) of the Bombay Rent Act.

17. The aforesaid unreported decision of the learned single Judge of this Court is squarely attracted to the fact situation obtaining before this Court in this case. It must be noted that the two Courts have concurrently found that the defendant-tenant was not given on lease the parsal or backyard portion. He was also not given on lease the bath room situated in said backyard. It is also concurrently found by two Courts that despite this clear position, the defendant persisted to make use of parsal or backyard not only by storing the goods and articles but also by placing and washing bicycles of his shop, by keeping his cot or charpoy in the open space for sleeping there and also by placing water-heater by burning cow-dung cakes causing emission of black smoke which necessarily would cause annoyance to all other tenants and neighbouring occupiers, landlord being one of them. The defendant initially took up a plea that he was entitled to make use of said open parsal or backyard and that he was entitled to use the same since the time of his tenancy. In the alternative, he pleaded that he was entitled to make permissive use of the open space and bath room. At the time of his oral deposition he came out with the theory that he was exclusively using the bath room but when

he was subjected to cross-examination and in the light of oral evidence of the plaintiff two Courts have concurrently found that the tenant was not in the exclusive use of bath room and that the landlord had the right to use the bath room and if at all the tenant has used the bath room he had used the same by the grace of the landlord. The tenant was requested by the landlord not to use the parsal or backyard portion for storing his articles, for placing his bicycles, for keeping his cot or charpoy and for sleeping there and for placing his water-heater and burning wooden pieces or cow-dung cakes. Despite repeated requests made to the tenant not only he did not stop the use of open space or parsal or backyard, but he persisted for placing his cot or charpoy and used the same for sleeping purpose. He also used the parsal for storing his kits and articles. He also continued to use the open place placing bicycles and for washing bicycles. He persistently continued his conduct despite the knowldege on his part that he was not entitled to make use of osri, parsal or backyard for sleeping purpose, for placing his charpoy or cot, for storing his goods and articles and for using his water-heater by use of wooden pieces or cow-dung cakes. It would not be out of place to mention that the landlord was obliged to file separate suit for declaration and injunction being Rent Suit No. 785 of 1972 for declaring that the tenant was not entitled to use the open place, parsal, osri or backyard for keeping his cot or charpoy, for storing his articles or goods and for keeping the water-heater and using the same by burning wooden pieces or cow-dung cakes. Such suit instituted by the landlord came to be decreed in favour of landlord and against the tenant and the Court also granted permanent injunction restraining the tenant permanently from making use of osri, parsal or backyard portion by placing his cot or charpoy for sleeping purpose, by storing his goods or articles, by placing his water-heater and using the same. It may be noted that such a decree of declaration and permanent injunction granted by the trial Court has become final as the defendant-tenant did not carry the matter in appeal and the said position is accepted before this Court also. With these findings which are concurrently reached by two Courts the question that is required to be answered is whether the ratio of the decision of the learned single Judge (S.N. Patel, J.) of this Court in C.R.A. No. 481 of 1969 would apply to the fact situation obtaining before this Court or not. In my opinion, the answer must be in the affirmative, and it shall have to be held that persistent conduct of the defendant-tenant in using the osri, parsal or backyard portion as well as bath room by placing his cot or charpoy for sleeping purpose, by storing his goods or articles in such open place, by keeping his water-heater and using the same by burning wooden pieces and/or cow-dung cakes resulting into emission of black smoke would undoubtedly result into annoyance to the neighbouring occupiers including the other tenants and landlord himself. The landlord has on number of occasions in the spirit of "live and let live" requested the tenant not to make such use as it was causing lot of annoyance to him and to other neighbouring occupiers, but the tenant persisted in his conduct. In the case before S.N. Patel, J. the Court was called upon to decide the question as to whether the conduct of the tenant in putting up table, chairs and other articles on

otta of the godown of the landlord which was not leased to him despite objection of the landlord can be said to amount to annoyance to landlord. In the said case, the finding was reached by two Courts including the High Court that the tenant was not leased out otta and he has no right to use the said otta for keeping his articles. Similar is the position before this Court. Concurrently finding is reached by two Courts that the tenant was not leased out the osri, parsal or backyard portion nor was he entitled to use the same for keeping his cot or charpoy for sleeping there, for storing his goods and articles and for keeping his water-heater and using the water-heater by burning wooden pieces and cow-dung cakes. Not only such finding is reached, but the suit of the landlord for declaration and permanent injunction is decreed by the trial Court which judgment and decree is accepted by the tenant. It is also not disputed that the landlord has on number of occasions requested the tenant not to make use of the parsal or osri or backyard portion and it is also found that the tenant has persisted in making use of osri or parsal for the aforesaid purpose thereby causing lot of annoyance to the neighbouring occupiers which ultimately led to filing of more than 20 criminal complaints by the landlord (neighbouring occupiers) against the tenant. Unfortunately, having reached said concurrent finding the two Courts below have for the reasons which are beyond one''s comprehension recorded a finding that such conduct of the tenant cannot be said to have caused any mental torture to the landlord. The two Courts have unfortunately insisted that it ought to have been proved that on every occasion when the landlord has gone to the defendant-tenant to request him to remove the cot or charpoy or goods or water-heater the defendant has either assaulted them or has quarrelled with them or has given them abuses. Two Courts have, therefore, recorded a finding that in the absence of such positive evidence, it was not possible for the Courts to take a view that the conduct of the defendant amounted to nuisance and/or annoyance. Having recorded the finding that the defendant-tenant was placing cot or charpoy in parsal and was sleeping there, the Courts have found that it is not stated that he was sleeping in the manner which was not befitting to any reasonable person and therefore, such user by the tenant cannot be said to cause any annoyance to the neighbouring occupiers. As regards placing of water-heater in parsal and use of wooden pieces and cow-dung cakes is concerned, the Courts have concurrently found that the tenant was not using the charcol but he was using wooden pieces and cow-dung cakes which would result into emission of black smoke which would naturally cause annoyance to the neighbouring occupiers, more particularly, when smoke would go upward in a building covered from all the four sides would cause nuisance or annoyance to the neighbouring occupiers residing on the ground floor as well as first and second floors. In every respect, therefore, the present case is one which is squarely covered by the ratio of decision of the learned single Judge (S.N. Patel, J.) and two Courts below have unfortunately not only failed to follow such binding precedent but has for no perceivable reason refused to follow the same and by a very laboured process of reasoning distinguished the said judgment by making following observations:

In the present case, it is a fact that the defendant was not given on lease the parsal and the chowk and the bath room but there is no reliable and sufficient evidence that the plaintiffs used to come for taking bath in the said bath room and that the defendant had created troubles to the plaintiffs or to his family members by keeping the cot in the parsal or nearby the said bath room. There is also no reliable and sufficient evidence that the plaintiffs or any of their family members are required to pass on many occasions from the said parsal and that on account of the kits of the defendants in the parsal or the cot the quarrels used to take place. So, as such, the authority, relied upon by the plaintiffs is not of any help.

18. In my opinion, once the finding was reached by the trial Court that the tenant was not entitled to use the open place of osri or parsal or backyard portion as well as bath room and that he was not entitled to use the same by keeping his cot or charpoy, for storing his goods or articles or for keeping water-heater and using the same, and once the trial Court granted permanent injunction restraining the tenant from committing such conduct and the tenant having accepted such decree and judgment of the trial Court, it was not permissible for the Court thereafter to hold that the ratio of the decision of S.N. Patel, J. in C.R.A. No. 481 of 1969 was not attracted to the fact situation. Such a finding is not only against and contrary to the evidence on record but is patently and blatantly against the findings reached in the judgment and decree passed by the trial Court in the suit of the landlord against the tenant. The two Courts were, therefore, not only acting contrary to the binding precedent of this Court, but finding was arrived at by the two Courts by ignoring the material and relevant facts which would warrant, interference by this Court. The decision of the two Courts below is one which would lead to miscarriage of justice because the landlord having convincingly proved that the conduct of the tenant would amount to nuisance or annoyance and would squarely fall within the definition of "annoyance" the decree of eviction is denied to the landlord.

19. Even if the decision in this Court is not to be based on the annoyance caused to the landlord by user of the open place, other part of the conduct of the tenant in persisting to commit the same conduct requiring the landlord to file every time criminal complaint or Chapter case and ultimately before the Criminal Court by pleading guilty and by giving assurance of not repeating such conduct in future and once again persistently committing such conduct more than 20 times would, in my opinion, very strongly make out a case of nuisance or annoyance to the neighbouring occupiers who happen to be landlord in the present case.

20. In the context of this very provision the learned single Judge of Bombay High Court in the case of Gulam Husain Mirza v. Laxmidas Premji reported in 84 (2) All India Rent Control Journal 302 examined extensively the extent and scope of the words "nuisance" and "annoyance". In the case before the Bombay High Court the tenant was not leased out the open terrace on the top floor. However, he appropriated major portion of the terrace by putting flower posts and he excluded

everyone, including the landlords, from user of the said open terrace. He was also using water from the water tank on the top floor directly for the purpose of maintaining a garden of flower posts. He was using the entire terrace as part of the exclusive property by putting stones, mud and all that was necessary to keep up the flower plants and for nursing and tending the flower plants. The question before the Court was whether such a conduct of the tenant amounted to causing nuisance and annoyance to the neighbouring occupiers. The High Court noticed that the words "nuisance" and "annoyance" do not have fixed connotation and in fact have a wide import. The Legislature also has not defined the words. In the Halsbury''s Treatise of Laws of England, 2nd edition, Volume 24, para 30 states:

The term ''nuisance'' as used in law is not a term capable of exact definition. It has been used with meanings varying in extent by the old writers, and even at the present day there is not entire agreement as to whether certain acts or omissions shall be classed as nuisance or whether they do not rather fall under other divisions of law of tort.

The treatise further points out:

Nuisance may be broadly divided into (1) acts not warranted by law or omissions to discharge a legal duty, which acts or omissions obstruct or cause inconvenience or damage to the public in the exercise of rights common to all His Majesty''s subject; (2) acts or omissions which have been designated or treated as nuisance by statute; (3) acts or omissions connected with the user or occupation of land which cause damage to another person in connection with the latter''s user or occupation of land".

21. As stated earlier, to be a nuisance an act or omission must be such that unlawfully interferes with other person''s use, enjoyment or entitlement of the property of rights therein. Such interference would have an annoying result, for that would affect the ordinary pleasures of men and trouble their minds. Annoyance in a given case would thus, be a result of nuisance. By itself "annoyance", therefore, is a term of wider amplitude and would include all that is disagreeable to good sense and against fair and just habitation. All that is disagreeable and interfering with the pleasurable enjoyment of the ordinary occupants of their premises would be within its ambit. Annoying conduct is irritative conduct. It gives rise to discomfort and displeasure and affects the reasonable peace of mind. It also gives rise to unpleasant feeling amongst men and also gives occasion to rise objections. In short, wherever there is a civil trespass upon and with regard to the use and the enjoyment of the property of others, nuisance would be answered and whenever such a trespass results in irritable and disagreeable situation, annoyance can be found. So, stated, nuisance can be treated as a specie of annoyance. Therefore, all "nuisance" may be "annoyance" but all the acts of annoyance may not amount to nuisance. Actionable or not, annyoance could be established by reason of the fact that the given conduct interferes with the ordinary comforts and pleasure of

persons.

22. From the terminology employed in Section 13(l)(c) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 and other identical statutes enacted by other State legislatures where same terminology is employed providing grounds of eviction of tenant, it becomes clear that legislature was contemplating acts or conducts of private nuisance committed by the tenant so as to cause nuisance or annoyance to the neighbouring occupiers. The essence of nuisance is a condition or activity which unduly interferes with the use or enjoyment of one''s property. Nuisance is an act or omission which is an interference with, disturbance of or annoyance to a person in the exercise or enjoyment of:

(a) a right belonging to him as a member of public, when it is a public nuisance or

(b) his ownership or occupation of land or some easement, profit or other right used or enjoyed in connection with land, when it is a private nuisance.

A private nuisance may be and usually is caused by a person doing something on his own property or in the property of his occupation, his conduct only becomes nuisance when the consequences of his acts are not confined to his own property but extend to the property of his neighbour or neighbourly occupiers by:

(I) causing an encroachment on his neighbour''s property when it closely resembles trespass,

(II) causing physical damage to his neighbour''s land or building or works or vegetation upon it, or

(III) unduly interfering with his neighbour in the comfortable and convenient enjoyment of his property.

It is a nuisance when a person does something on his own property which interferes with his neighbour''s ability to enjoy his property by putting it to profitable use.

23. Nuisance of the third kind referred to hereinabove, i.e., in the sense of causing an interference with the enjoyment of property are for instance, creating stenches by carrying on of an offensive manufacture or otherwise causing smoke or noxious fumes to pass on to the neighbour''s property, raising clouds of coal dust, making unreasonable noises, or vibration. In this kind of nuisance, "the personal inconvenience and interference with one''s enjoyment, one''s quiet, one''s personal freedom, anything that discomposes, or injuriously effects the senses or the nerves there is no absolute standard to be applied. It is always a question of degree whether the interference with comfort or convenience is sufficiently serious to constitute a nuisance. The acts complained of as constituting the nuisance, such as, noise, smells or vibration will usually be lawful acts which only become wrongful from the circumstances under which they are performed, such as, time, place, extent or the manner of performance. In organised society everyone must put up

with a certain amount of discomfort and annoyance from the legitimate activities of his neighbours, and in attempting to fix the standard of tolerance the vague maxim sic utere tuo, ut alienum non laedas has been consistently invoked. But the maxim is of no use in deciding whether an interference can amount to an actionable nuisance and the Courts have to strike a balance between the right of the defendant to use his property for his own lawful enjoyment and the right of the plaintiff to the undisturbed enjoyment of his property. No precise or universal formula is possible but a useful test is what is reasonable according to ordinary usages of mankind living in a particular society. "Whether such an act does constitute a nuisance must be determined not merely by an abstract consideration of the act itself but by reference to all the circumstances of the particular case. A nuisance or annoyance to provide a ground of eviction of the tenant must be such as to be a real interference with the comfort or convenience of living according to the standards of the average man. An interference with something of abnormal sensitiveness does not of itself constitute a nuisance. A man cannot increase the liabilities of his neighbour by applying his own property to special uses, whether for business or for pleasure. But once the nuisance is established the landlord who is a neighbouring occupier has the cause of action to move the Court for eviction of tenant. The inconvenience or discomfort which is caused to the neighbouring occupier must be one materially interfering with ordinary comfort physically of human existence, not merely according to elegant or dainty modes and habits of living, but according to plain, sober and simple notions among the people living in Indian society. To send regularly large volumes of heavy smoke by burning wood pieces or cow-dung cakes in the water-heater which would necessarily travel to the rooms of the adjoining neighbours or occupiers in the same tenement may well amount to nuisance. Similarly, to commit act of trespass by encroaching upon and using the portion of the premises not leased out to the tenant despite consistent requests by the landlord not to make such use which ultimately led to quarrels between the two, tenant at times beating the landlord and at times even abusing the landlord and/or the members of his family and ultimately causing mental torture or tension to such an extent that the landlord is compelled to institute or lodge criminal complaints in the Court of law both for maintenance of law and order situation as well as for protection to him against the threats and violative conduct of the tenant would undoubtedly cause annoyance or discomfort to the landlord. It is true that the landlord might, in the spirit of "live and let live" forgive the tenant on tenant tendering apology and giving assurance in the criminal Court of better behaviour in future and of not repeating such conduct in future. However, this would not amount to landlord accepting to live with such nuisance or annoyance for all times to come or to the landlord abandoning his remedies. A wrongful act of the tenant in the present case has given rise to two remedies, one is remedy of launching criminal prosecution and another is remedy of recovering damages. Under the special statute governing the right of landlord and the tenant like Bombay Rent Act still third remedy is provided being remedy of seeking eviction of tenant on the ground

that his conduct amounted to nuisance or annoyance to the neighbouring occupiers. It would not, therefore, be right to say that since the tenant pleaded guilty in most of the criminal complaints filed against him and assured the criminal Court of better behaviour and of not repeating the conduct for which the criminal complaint was filed against him and since thereupon the landlord has accepted the recording of compromise between him and the tenant in the criminal case, the landlord has given up his remedy of seeking eviction of the tenant. In my opinion, the three types of remedies available to the landlord are concurrent and it is always open to him either to resort to all of them or to resort to any one or two of them. In the present case, the landlord was one who really behaved with the philosophy of "live and let live". He is a man of uncomparable tolerance. However, when the tenant has persistently and stubbornly acted not only in breach of his duty but also in breach of assurances given by him to the criminal Courts and has repeated the conduct which has caused tremendous and unbearable pain and mental torture to the landlord for which he was required to file as many as 20 complaints his conduct squarely falls within the meaning of "nuisance" and "annoyance" and he is liable to be evicted. A man of extraordinary tolerance also got exhausted and a saturation point of tolerance was reached. It was in such circumstances that he resorted to statutory remedy of eviction of the tenant on the ground of persistent and assiduous conducts amounting to nuisance or annoyance.

24. Turning now to the actual facts found by the two Courts below, firstly, it is undisputedly recorded that the tenant had no right to use the parsal, osri or backyard portion for the purpose of placing his cot or charpoy and sleeping thereon, for storing his goods, kits and articles, for placing and washing his cycles and for placing water-heater and using the same by burning wood pieces and cow-dung cakes resulting into emission of voluminous black smoke which would travel into the rooms of the premises of neighbouring occupiers. Secondly, it is found that the stand of the tenant that he has the right to use parsal, osri or backyard portion for the aforesaid purpose was not substantiated by him and was given up in deposition and that in the suit filed by the landlord not only declaration was granted in favour of landlord but permanent injunction was granted restraining the defendant-tenant from using parsal, osri or backyard portion for any of the aforesaid purposes. Such a decree of declaration and permanent injunction is accepted by the tenant as he has not preferred any appeal against such decree and the same has become final. Thirdly, it is found from oral as well as documentary evidence by the two Courts below that the plaintiff-landlord was required to file 21 criminal complaints against the tenant. Exh. 49 is a compromise recorded in Criminal Appeal No. 61 of 1974 which would go to show that the tenant accepted the guilty and assured the Court of not repeating the conduct. Exh. 50 refers to another charge-sheet against the tenant where the tenant has been guilty of beating the landlord which also resulted into compromise. Exh. 51 is one another compromise in Criminal Case No. 3021 of 1971 wherein the tenant has agreed not to put any article or goods or not to put his

charpoy or cot to sleep thereon in the open place which was admitted to be in possession of the landlord. There is yet another compromise on record which had taken place in Criminal Revision Application No. 7 of 1973 wherein also similar assurances were given by the tenant to the landlord and the criminal complaint was compromised. Exh. 53 is certified copy of another compromise which was recorded in Chapter case proceedings wherein also the tenant has agreed to keep peace and tranquility and not to resort to any violence. Exh. 54 is yet another complaint where the tenant has allegedly beaten the servant of the landlord. The tenant has filed countercomplaint alleging that such charge against him would amount to defamation. These two cases had also resulted into compromise and from such compromise at Exh. 57 it becomes clear that the tenant has, once again, assured the Court not to act in the manner in which he has acted and has tendered unconditional apology and has not pressed his complaint of defamation. Over and above the history of aforesaid 21 criminal complaints in most of which the tenant has admitted his guilt and has assured of not repeating such conduct and has yet persistently and stubbornly acted in the same fashion so as to cause annoyance and mental torture to the landlord would go to establish that the conduct of the tenant amounted to causing nuisance or annoyance to the neighbouring occupiers, landlord being one of them. The lower appellate Court has in fact found that it was expected of the tenant that he must live in a co-operative manner with the landlord. It is also found that the tenant has not come to the Court with clean hands and he has taken contentions which were contradictory and self-defeating. He has also found that even the report of Commissioner at Exh. 82 has also found that the tenant has persisted in making use of parsal, osri and/or backyard portion of the premises for the purpose of storing his personal articles, goods and kits, for the purpose of placing water-heater. In one of the photographs taken it is also found that a cot or charpoy was lying and his articles were also lying in the open place which was not to be used by him. In view of such voluminous documentary evidence one fails to understand as to how two Courts have recorded the finding that the conduct of the tenant did not amount to nuisance or annoyance to the neighbouring occupiers. Both on law as well as on facts, the findings reached by the two Courts below are not only against the well settled principles of law, but are in total disregard of voluminous documentary evidence. In my opinion, therefore, it is a case where interference of this Court in its revisional jurisdiction is absolutely essential as non-exercise of power would result into substantial miscarriage of justice. In fact, in para 11 of the judgment of the Extra Asst. Judge, Surat dated 6-10-1980 all the findings are reached in favour of plaintiff-landlord, but in concluding portion of para 12 abruptly an inconsistent finding is recorded in the following terms:

Considering all the aspects there is some truth in the case of the plaintiffs that the defendant may have been causing nuisance and annoyance to the plaintiffs, but unfortunately the plaintiffs have failed to bring required evidence to prove the

conduct of the defendant amounting to nuisance and annoyance. It is also a fact that the plaintiffs had also filed a suit for declaration and injunction and that the learned trial Court was pleased to declare that the defendant had no right to put his articles like cot, water-heater or cycles in the rear side of the parsal or in the chowk, which the defendant has no right to put, and clean or wash his bicycles in the chowk, the defendant has no right to obstruct the passage of the plaintiffs and other tenants from going to the latrine and was also pleased to order for the perpetual injunction restraining the defendant from putting goods like cot, water-heater, cycles etc. in the rear side of the parsal or chowk and for restraining the defendant from cleaning and washing cycles in the chowk. So, as such, it is clear that the defendant was not entitled to carry out such acts in the parsal and the chowk and so, as such, declaration and injunction was granted against the defendant. The defendant has also not preferred any appeal against the said judgment and decree of the trial Court of such nature in Old Regular Civil Suit No. 385 of 1972, which is the Rent Suit No. 680 of 1977, which is consolidated with the Rent Suit No. 638 of 1977. But the plaintiffs have failed to prove that the defendant''s acts in putting up the cot in the parsal and some kits in the parsal was amounting to nuisance and annoyance as required for the eviction decree u/s 13(1)(1) of the Bombay Rent Control Act.

25. For the reasons already recorded the aforesaid findings reached by the lower appellate Court as well as by the trial Court are not only contrary to the oral as well as documentary evidence on record, but are also inconsistent with the statement of principles of law on the subject as stated hereinabove. The aforesaid findings are, therefore, required to be interfered with and the decree of eviction is required to be passed against respondent-tenant and in favour of plaintiffs-landlord. The judgment and decree of the Courts below in Rent Suit No. 638 of 1977 passed by the Judge of the Small Causes Court at Surat as well as judgment and decree passed by the Extra Asstt. Judge at Surat in Regular Civil Appeal No. 130 of 1978 are hereby quashed and set aside. This revision application is allowed and decree of eviction is passed against the respondent-tenant requiring the respondent-tenant to vacate the suit premises and to hand over peaceful and vacant possession thereof to the petitioners-landlord latest by August 31, 1995. Rule is made absolute accordingly. In the facts and circumstances of the case, there shall be no order as to costs.