

## Dr. Vinayak Trimbak Wale Vs Tarachand Hiralal Shet Marwadi

**Court:** Bombay High Court

**Date of Decision:** March 8, 1960

**Acts Referred:** Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 " Section 13, 9

**Citation:** (1960) 62 BOMLR 785

**Hon'ble Judges:** Gokhale, J

**Bench:** Single Bench

**Final Decision:** Allowed

### Judgement

Gokhale, J.

This is a revision application filed by the tenant against a decree passed by the Court of the Assistant Judge of East Khandesh

at Jalgaon in Civil Appeal No. 395 of 1956 directing him to vacate the suit premises, of which he is a monthly tenant. The petitioner is a dentist and

he has been in possession of the southern portion of the ground floor of Municipal House No. 299 in Baliram Peth, Jalgaon, in C. S. No. 2184/8,

since 1939. The premises are being occupied by him partly for his residence and partly for his dispensary and the rent payable for the block is Rs.

27 per month plus permitted increases. The opponent, who is a resident of the village of Zurkheda in Taluka Erandol, purchased this house on.

August 30, 1949. On July 2, 1955, the opponent gave a notice to the petitioner terminating the petitioner's lease by the end of July 1955 on the

ground that he required the premises in the occupation of the petitioner bona fide for his own occupation because he wanted to shift from

Zurkheda to Jalgaon as dacoities were taking place in nearby villages and that his only son as well as his wife required medical treatment, and his

daughter was to be educated and, therefore, it was necessary for him to shift to Jalgaon. As that notice was not complied with, the opponent filed

Regular Civil Suit No. 421 of 1955 in the Court of the Second Joint Civil Judge, Junior Division, Jalgaon, on September 5, 1955, to recover

possession of the suit premises and an amount of Ft3. 160 for arrears of rent as well as future mesne profits and costs.

2. The suit was resisted by the petitioner on several grounds. It was alleged that though the rent of the premises was Rs. 27, after the purchase of

the suit building by the opponent from the former owner Jaikisan Ramvilas, the opponent used to recover Rs. 40 from the petitioner and ultimately

in 1955 Rs. 60 were recovered. The petitioner denied that the plaintiff required the suit premises for his personal use and occupation. He also

urged that some blocks in the building had fallen vacant, but plaintiff gave them to others at increased rent, and, therefore, the plaintiff's claim was

not bona fide and reasonable.

3. The trial Court held that the plaintiff had failed to prove that he reasonably and bona fide required the suit premises for his personal use and

occupation and, therefore, plaintiff was not entitled to possession. It also held that plaintiff was entitled to an increase at Rs. 3 per month and,

therefore, passed a decree in favour of the plaintiff directing the defendant-petitioner to pay Rs. 105 in respect of arrears of rent and dismissed the

plaintiff's claim regarding possession.

4. Against this decree, the opponent filed Civil Appeal No. 395 of 1956 in the Court of the District Judge, East Khandesh, at Jalgaon, and the

learned Assistant Judge, who heard the appeal allowed the same, holding that the plaintiff required the suit premises bona fide and reasonably for

his own use and occupation. The lower appellate Court, therefore, directed the defendant-petitioner to hand over possession to the plaintiff by the

end of September 1958 and passed a decree in favour of the plaintiff for Rs. 150 on account of arrears of rent and permitted increases and

directed an inquiry into future mesne profits under Order XX, Rule 12(1)(c), of the Civil Procedure Code. It is against this decree that the present

revision application has been filed.

5. Mr. Kotwal, learned advocate appearing on behalf of the petitioner, has contended that the learned appellate Judge has approached the

question of the bona fide requirement of the plaintiff from a wrong point of view. It has to be mentioned that in the trial Court evidence was led on

behalf of the petitioner to show that even after notice vacancies had occurred in the suit building, but plaintiff had rented the vacant blocks to other

tenants at higher rent. Evidence was led to show that one Mr. Gupte pleader, who was the tenant on the first floor, had vacated the portion of the

first floor in his occupation from July 1955. It would appear that the learned trial Judge inspected the suit building and his inspection notes showed

that the block occupied by Mr. Gupte Pleader was locked and was vacant. Taking into consideration this and other evidence, the trial Court came

to the conclusion that plaintiff's requirement of the suit premises for his own use was not bona fide or reasonable. The trial Court also held that on

the evidence it would be the defendant who would be put to greater hardship if a decree for eviction was passed against him whereas the plaintiff

would not be put to any inconvenience or hardship if a decree for eviction was not passed in his favour. Now, it appears that the learned appellate

Judge was of the view that the approach of the trial Court on the question at issue between the parties was not a correct approach, but what the

Court had to consider was only whether the plaintiff reasonably and bona fide needed the suit premises at the date of the notice. In this

connection, this is what the lower appellate Court observed:

The plaintiff gave one notice to one tenant only to vacate the premises. If, thereafter, some other tenants to whom such a notice was never given

were to vacate the premises, then it was not incumbent upon the plaintiff to occupy them. Plaintiff had a right to let out these premises to other

tenants. If the plaintiff is charging higher rents to those tenants, it is a matter between those tenants and the plaintiff. Those tenants to whom higher

rents are charged, according to the defendant, can take the matter to a Court of law and get the higher rent reduced to the standard rent of the

premises.

In my view, Mr. Kotwal is right in his argument that the lower appellate Court has misdirected itself on the question of the plaintiff's requirement of

the suit premises for his personal use and has taken a wrong view of the relevant provisions of the Bombay Rents, Hotel and Lodging House Rates

Control Act, 1947, to be hereafter referred to as the Bombay Rent Act.

6. u/s 13(f)(g) of the Bombay Rent Act, in so far as it is material, a landlord would be entitled to recover possession of any premises if the Court is

satisfied that the premises are reasonably and bona fide required by him for occupation by himself. The burden would, therefore, be on the

landlord to prove that the premises of which he is seeking possession are required by him for occupation by himself reasonably and bona fide. The

lower appellate Court seems to be of the view that it would be sufficient for the landlord in such a case to show that at the date when he gave

notice he reasonably and bona fide required the premises and it is not necessary for the landlord also to show that that requirement of his continued

even during the pendency of the suit. In my judgment, in order to satisfy the requirements of Section 13(1)(g) of the Bombay Rent Act, the

landlord must establish to the satisfaction of the Court that his requirement of the suit premises for occupation by himself continued even during the

pendency of the suit.

7. In support of his argument, Mr. Kotwal relied on *Bhagwandas v. Kaikhushru* (1920) 23 Bom. L.R. 287, in which the facts were as follows:-

The landlord Bhagwandas gave a notice to his tenant in December 1917 to vacate the shop in possession of the tenant. As the notice was not

complied with, the landlord filed a suit to eject the tenant on the ground that the shop was required by him since the Municipality had ordered a

set-back of the house. The suit ended in a decree in favour of the landlord and the tenant was ordered to give up possession of the shop on or

before July 31, 1918. In the meantime, on April 10, 1918, the Bombay Rent Act II of 1918 was placed on the statute-book. On the strength of

this Rent Act, the tenant applied for suspension of the decree and he secured the suspension for a period of ten months. When that period expired,

the landlord applied to execute the decree, but the trial Judge ordered the execution of the decree to be stayed sine die, as it appeared to him that

the plea on which the landlord had sought to eject the tenant was not substantiated, and he considered that the plea of the landlord that he wanted

the premises for his own use was belated. The landlord applied to this Court in revision, and it was held that the only question which the Court had

to consider in such a case was whether at the time the landlord sought to eject a tenant he reasonably required the premises for his own use. As

there was no finding on the point, the case was sent down to the trial Court to decide on the evidence whether the landlord could satisfy the Court

that he reasonably required the suit premises for his own use, "at the present moment." It may be mentioned that u/s 9(2) of the Bombay Rent Act

II of 1918, a landlord had a right to recover possession of any premises in occupation of a tenant if he reasonably and bona fide required them for

his own occupation, a provision similar to the provision in Section 13(1)(g) of the present Act; and this Court held that in such a case the landlord

had to satisfy the Court that he reasonably required the premises for his own use at the time that he sought to eject the tenant. Mr. Kotwal also

drew my attention to an English decision reported in *Benninga (Mitcham), Limited v. Bijstra* [1946] 1 K.B. 58, where it was held that on a claim

by landlords for possession of a dwelling-house, without proof of suitable alternative accommodation, on the ground that it is reasonably required

by them for occupation as a residence for some person engaged in their whole-time employment, within the meaning of Schedule 1(g) to the Rent

and Mortgage Interest Restrictions (Amendment) Act, 1933, the material date on which possession is so reasonably to be required is that of the

hearing. Both these cases support Mr. Kotwal's contention.

8. In this connection, reference may also be made to Sub-section (2) of Section 13 of the Bombay Rent Act which, so far as is material, provides

as follows:-

S. 13(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.

In *Shantaram Keshav Vs. Prabhakar Balwant and Another*, Mr. Justice Bavdekar held that the word "decree" in Section 13(2) of the Bombay

Rent Act means the decree for eviction which is passed by the trial Court and, therefore, the time at which the availability of the accommodation

either to the landlord or tenant, which has to be taken into consideration u/s 13(2) of the Act, is the time when the trial Court is about to pass the

decree for eviction. This principle must equally apply u/s 13(1)(g), of the Bombay Rent Act. In order that a landlord should become entitled to

recover possession of any premises on the ground of reasonable and bona fide requirement u/s 13(1)(g), the Court has to be satisfied that the

premises are reasonably and bona fide required by him for occupation by himself. When the landlord gives notice seeking to terminate the tenancy

of the tenant on that ground and files a suit for possession, it is not only essential for him to show that at the date when he gave notice he

reasonably and bona fide required the premises for his own occupation, but that his need continued even pending the hearing of the suit. The trial

Court's satisfaction on this point must relate to the period of the hearing of the suit itself and the passing of the decree, and cannot be confined to

the date of the notice.

9. Mr. Gupte, learned advocate appearing on behalf of the opponent-landlord, contends that even assuming that the test applied by the lower

appellate Court was not the correct test, the finding given by that Court that the plaintiff required the suit premises reasonably and bona fide for his

own use is a finding of fact and cannot be interfered with in revision. In my view, this argument cannot be accepted because it is clear from the

judgment of the lower appellate Court that it proceeded to examine the evidence in the case on the basis that what the plaintiff had to establish was

that, at the date of the notice, he bona fide and reasonably required the premises for his own occupation, and subsequent vacancies in the building

of which he did not take advantage would not affect the question in any manner. It is clear from the record that one Vasant Bhikaji who was

occupying one room and veranda on the ground floor of the suit house at a rent of Rs. 10 was evicted through a suit, and, in execution of the

decree obtained against him, plaintiff got possession of the room and verandah from him in December 1954. It is true, as the learned appellate

Judge has observed, that at that time there was no dacoity in the villages near about Zurkheda and there-fore it might be that plaintiff did not feel

apprehensive regarding the safety of his family in December 1954. But plaintiff's own evidence shows that there was a dacoity in Sheri and

Bhokar, two villages near Zurkheda, in 1955, and the evidence on record also shows that the room and the verandah on the ground floor vacated

by Vasant Bhikaji as well as one room on the upper floor were let out to one Kanakmal Ramdas by the plaintiff in November 1955 at a rent of Rs.

20 per month. It is clear from the notice given by the plaintiff on July 2, 1955, that plaintiff was feeling apprehensive about the safety of his family

because of dacoities in the villages round about. But if that was really so, there was no reason why plaintiff should not have occupied the room and

the verandah which was vacated by Vasant Bhikaji and also one other room on the upper floor all of which were subsequently let out to Kanakmal

Ramdas. It would also appear that one Gupta Sub-Registrar vacated one block in the suit building in January 1955 and it remained vacant up to

April and May 1955. Subsequently, this block was split up into two tenements and one was let out to atenant at Rs. 15 per month and the other to

one Kawadia at Rs. 20 per month. The learned appellate Judge has observed that plaintiff was not bound to occupy this block vacated by Sub-

Registrar Gupte which was lying vacant up to 1955 because no dacoities had taken place in the villages up to May 1955. In my view, the learned

Judge was not justified in imagining things in the absence of any reliable evidence in the record. It also appears that another block occupied by one

Bhaskar Vasudeo paying Rs. 5 per month was let out by plaintiff to one Panvala for Rs. 12 per month. It may be that this was not sufficient for the

purpose of the plaintiff. But in my view, the lower appellate Court was wrong in criticising the learned trial Judge in taking this instance also into

consideration on the question as to the bona fide requirement of the landlord. It also appears that one Mr. D.S. Gupte pleader left one block on

the upper floor of the suit building after June 30, 1955. It is true that neither Mr. Gupte pleader nor his clerk N. S. Kiilkarni were examined; but

there is evidence on the record to show that Mr. Gupte pleader had written to the Electricity Company at Jalgaon to remove the meter and to

adjust his electricity bill from the deposit kept by him, and he had paid rent to the landlord up to June 30, 1956, only. The learned Judge, it

appears, was under the impression that Mr. Gupte pleader had paid rent up to June 30, 1955, only, whereas the notice was given to the defendant

on July 2, 1955 There is, however, no dispute that Mr. Gupte pleader had paid rent up to June 30, 1956 and the present suit, was filed on

September 5, 1955. As already stated, the learned Judge of the trial Court visited the suit premises and his inspection notes would indicate that the

block of Mr. Gupte Pleader was vacant while the suit was pending. There is no evidence on the record to indicate that at the date the trial Court

decided the suit against the plaintiff, either Mr. Gupte Pleader was in occupation of that block or that plaintiff had let it out to some other tenant. In

these circumstances, in my view, the trial Court was justified in taking this circumstance also into consideration in coming to the conclusion that

plaintiff's requirement of the suit premises for his own occupation was not a reasonable and bona fide one.

10. The result is that I must hold that the finding of the lower appellate Court that plaintiff required the premises reasonably and bona fide for his

own occupation cannot be regarded as a finding of fact, because the appreciation of evidence on this point by the lower appellate Court was on

the basis that it was not necessary for the plaintiff to show his bona fide and reasonable requirement at the time the Court was called upon to pass

a decree for eviction. In my view, the trial Court's finding that the plaintiff failed to prove that he reasonably and bona fide required the suit

premises for his personal use and occupation is justified in view of the evidence on the record, which has been briefly referred to above and which

throws ample light on the conduct of the plaintiff.

11. On the question of balance of convenience under Sub-section (2) of Section 13 of the Act, the trial Court came to the conclusion that the

petitioner would be put to greater hardship by passing a decree for eviction rather than the opponent. Admittedly the petitioner, who is a dentist, is

a tenant of the suit premises since 1939. long before the opponent purchased the suit building. The portion of the ground floor which he is

occupying as a tenant is being used by him partly for his residential purposes and partly for his own dispensary. It was in these circumstances and

in the light of the evidence on the record that the trial court held that the balance of convenience would be in favour of the defendant and not the

plaintiff. on this question, the lower appellate Court referred to a purshis that was filed on behalf of the plaintiff (exh. 14 in appeal) which showed

that some other landlords were present in the appellate court on July 21, 1956 and it was stated in the purshis that the house of nine landlords

mentioned in the purshis were vacant. The purshis shows that only four of the landlords, were present while the other five landlords, mentioned in

purshis were absent. The contents of the purshis do not justify the remark of the lower appellate Court that the landlords were present in Court to

signify their consent to letting their houses to the defendant. Mr. Gupte, learned advocate appearing on behalf of the opponent, argues that this

purshis would establish that there would have been no hardship on the defendant if a decree in favour of the plaintiff for possession was passed It

would appear that the lower appellate Court has not properly considered this, question at all. This purshis was filed only in answer to a question by

the Court to the pleader of the plaintiff as to whether plaintiff would be able to help the defendant to find suitable premises for his occupation. In

my view it was wrong in law to admit additional evidence in this manager at the appellate stages. Besides what the Court has to consider u/s 13(2)

of the Act is not whether the landlord would be able to find alternative accommodation for the tenant, but whether greater hardship would be

caused to the tenant, if a decree for eviction was passed against him than to the landlord if no such decree were passed having regard to all the

circumstances of the case including the circumstance of availability of other reasonable accommodation. There does not appear to be a proper

consideration of and any clear finding on this point by the lower appellate Court. As already indicated the defendant has been a tenant of the suit

premises since 1939 and the trial Court was justified in view of the circumstances, in coming to the conclusion that greater hardship would be

caused to the defendant if a decree for eviction was passed against him and no hardship would be caused to the plaintiff if there was no decree for

possession passed in his favour. The filing of the purshis (exh. 14) on the part of the plaintiff in the lower appellate Court would, in my opinion, go

rather against the plaintiff. The plaintiff is a resident of Zurkheda and if, according to him, there are other houses. vacant in Jalgaon, the owners of

which were willing to let them out to the defendant it would be easy for the plaintiff to get sufficient accommodation for himself at Jalgaon. even

apart from this, however, I am of the view What the lower appellate Court was wrong in not considering properly and giving any definite finding on

the question of comparative hardship as contemplated in Section 13(2) of the Bombay Rent Act. In my judgment the trial Court"s finding on this

point is correct.

12. The result is that I must allow this revision application, make the rule absolute and set aside the decree of the lower appellate Court to the

extent it awards possession of the suit premises to the plaintiff and directs enquiry into future mesne profits and proportionate costs. The petitioner

will be entitled to his costs in this revision application from the opponent. Each party to bear his own costs in the two lower Courts.