Laxman Shripati Yadav and Others Vs Dhirajrai Nanabhai Khatri

Court: Bombay High Court

Date of Decision: Feb. 26, 1980

Acts Referred: Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 â€" Section 12, 12(1), 12(3), 13(1), 13(2)
Transfer of Property Act, 1882 â€" Section 106

Hon'ble Judges: Sharad Manohar, J

Bench: Single Bench

Advocate: C.R. Dalvi, for the Appellant; P. Ankesaria and M.V. Govilkar, for the Respondent

Judgement

Sharad Manohar, J.
The question that falls for decision of this Court in this petition is of a somewhat ticklish character. It relates really to

the interpretation of section 13(1)(g) read with section 13(2) of the Bombay Rent, Hotel and Lodging House Rates Control Act, 1947 (hereinafter,

the Rent Act). The said two provisions aim at striking a balance between the respective rights of a landlord and a tenant. The question that arises in

this petition is as to what weight is to be accorded to the fact that the plaintiff, who bona fide requires the possession of the rented premises, is the

owner of the same. In other words, the question is what is the degree of the social constraint envisaged by section 13(2) of the Rent Act upon the

right of the title paramount in connection with the possession of the hereditament.

2. The facts of the case are as follows :---

(a) The suit premises are house No. 1573 at Bhimpura Cantonment, Pune. The premises consist of two rooms which are let out to the respondent

in this petition. The monthly rent together with the permitted increases was Rs. 30.75 P. There is no dispute that the respondent has been residing

in the suit premises since the year 1942.

(b) The building in which the suit premises are situate are owned by the petitioners. There is some dispute as to whether there are some other

persons having interest in the suit property along with the present petitioners. But that aspect of the matter has no relevance so far as the present

petition is concerned.

(c) On 6-9-1973 the present petitioners filed a suit in the Court of Small Causes at Pune for recovery of possession of the suit premises from the

respondent. They contended that they were the joint owners in respect of the suit premises, the suit property being a part of the joint family

property in their hands. The suit was filed for the respondent''s eviction under two grounds provided for by the Rent Act viz.

(i) That the respondent was in arrears of rent for a period exceeding six months and that he had not paid the rent inspite of a notice given to him by

the petitioners u/s 13(2) of the Rent Act within a period of one month from the date of the receipt thereof by the respondent.

(ii) That the suit premises were required by the petitioners reasonably and bona fide for the personal occupation of Ashok petitioner No. 5 and for

the wife of Laxman Shripati Yadav petitioner No.1.

The contention regarding the requirements of Ashok-petitioner No. 5 was that he was recently married and has no proper accommodation at the

time of the suit in Pune for himself and his wife. It may be stated here that in the plaint, Ashok-petitioner No. 5 was described to be a student

residing at Pune.

The contention regarding the requirement of the wife of petitioner No.1 was that she was ailing from rheumatism and was medically advised to

change the climate by shifting from Mahableshwar to Pune.

(d) The suit was contested by the respondent on various grounds. It was firstly contended that the suit was not maintainable at the instance of the

petitioners only because in addition to the petitioners the three daughters of deceased

Gundappa Yadav who was the original owner of the joint family property, were also having an interest in the suit premises. It was contended that

the suit at the instance of the petitioners alone was not maintainable. It was further contended that the respondent''s tenancy was not validly

terminated by a notice a required u/s 106 of the Transfer of Property Act. The allegation about the arrears of rent was denied and it was

contended that the respondent had, in fact, offered the rent to the petitioners but that the same was not accepted by them even during the period of

one month from the date of the notice u/s 12(2) of the Rent Act. The plea regarding the reasonable and bona fide requirement of the petitioners

was denied and it was further stoutly contended that, even assuming that the petitioners had proved the bona fide character of their requirement,

still no decree should be passed against the respondent because graver hardship would be caused to the respondent by virtue of passing of the

decree against him than would be caused to the petitioners by not passing any decree in their favour.

(e) On these pleadings, issues were framed. The first issue was related to the maintainability of the suit in the light of the respondent''s contention

regarding non-joinder of parties. Consequently, it also related to the validity of the notice u/s 106 of the Transfer of Property Act, 1882. This issue

was decided by the trial court in favour of the petitioners. All the same the Court held that the notice was not sufficient under the provisions of the

Bombay rent Act because it did not sent out all the grounds on which possession was sought.

So far as the contention regarding default in the payment of rent was concerned no issue appears to have been framed by the trial Court

presumably because the contention was raised by the respondent that the rent charged was not standard rent and because an application was

made in the written statement for the fixation of the standard rent. The issue, therefore, framed was as to whether the rent charged by the

petitioners was excessive. The trial Court recorded a finding that the rent charged was not excessive at all. However, in view of the existence of the

dispute regarding standard rent, and in view of the fact that the rent was duly paid by the tenant, in any event, as per the requirement of section

12(3)(b) of the Rent Act, the trial Court appears to have come to the conclusion that no decree could be passed against the tenant under any of

the provisions of sections 12 of the Rent Act.

So far as the question relating to the bona fide requirement of the petitioners was concerned, the trial Court framed issues 2 and 3 in that behalf. In

answer to issue No. 2, it was held by the trial Court that the requirements of the petitioners in respect of the suit premises was reasonable and

bona fide. However, the trial Court held that much graver hardship would be caused to the respondent by passing a decree for eviction then would

be caused to the petitioners by not passing a decree in their favour.

In this view of things, the trial Court dismissed the suit for possession filed by the petitioners.

(f) In appeal it appears that the contention regarding the respondent''s default in payment of rent was not urged by the petitioner at all. So far as the

maintainability of the suit was concerned, the learned Judge took a view that the suit was not maintainable on account of non-joinder of the said

three daughters of the deceased Gundappa Yadav. So far as the question of bona fide requirement was concerned, the contention of the

petitioners was accepted by the learned Judge and he held that the petitioners required the suit premises reasonably and bona fide for the

occupation of petitioner No. 5 as also for the wife of petitioner No. 1. He disagreed with the view of the trial Court that more hardship would be

caused to the tenant by passing a decree for eviction than would be caused to the landlords/petitioners by not passing a decree in their favour.

However, he held that the notice of termination of tenancy was not in compliance with the requirements of section 106 of the Transfer of Property

Act, 1882. This view appears to have been taken by him consistently with his view that the three daughters of the deceased Gundappa Yadav

were having interest in the suit premises. He held that since they were not parties to the notice given by the petitioners u/s 106 of the Transfer of

Property Act, the quit notice was illegal and invalid in the eyes of the law. In view of his said decision regarding the validity of the notice and

maintainability of the suit, the learned Judge dismissed the petitioner''s appeal and confirmed the decree of dismissal passed by the trial Court.

The present petition is filed by the petitioners under Article 227 of the Constitution against the said Appellate Decree.

3. By the time when the petition came up for final hearing, the question as regards the requirement of a notice u/s 106 of the Transfer of Property

Act, 1882 had been finally decided by the Supreme Court in V. Dhanapal Chettiar Vs. Yesodai Ammal, The question regarding validity of the said

notice has, by virtue of the said decision, been rendered wholly irrelevant. Likewise the view of the lower Court regarding non-maintainability of

the suit on account of non-joinder of parties has lost ground in view of the two judgements of the Supreme Court reported in Sri Ram Pasricha Vs.

Jagannath and Others, Kanta Goel Vs. B.P. Pathak and Others, Smt. Kanta Goel v. B.P. Pathak. In view of this position, Mr. Dalvi, the learned

Advocate for the petitioners contended that it would be really for the respondent to justify the decree passed by the learned Assistant Judge. He

contended that in view of the unequivocal finding regarding the bona fide requirement and balance of convenience in favour of the petitioners, the

decree for eviction of the respondent must inevitably follow. Miss Anklesaria for the respondent has countenanced this contention with great

competence. The ticklish question posed at the outset is the one that falls for the determination of this Court by virtue of the rival contentions of the

two Counsel a reference to which will be made presently.

4. Before discussing the said relevant question arising from the provisions of section 13(2) of the Rent Act it is necessary and worthwhile to set out

the position regarding the facts which are established. It can be taken as fairly established that the contention of the petitioners that they should get

back the possession of the suit premises so that the wife of petitioner No. 1 could shift from Mahableshwar to Pune is a reasonable one. The

learned Assistant Judge has held that the wife of petitioner No. 1 was suffering from rheumatism and that she was medically advised to shift from

Mahableshwar to Pune so that she would not be required to face the inclement climate of Mahableshwar during the Monsoon. That the change of

climate was necessary for her is a finding of fact which is recorded by both the lower courts and I see no reason to look askance at the same.

Likewise I find that the requirement of petitioner No. 5 Ashok to have his own place in Pune for his residence with his newly married wife is a

reasonable requirement. It is found by the courts below that at present he is staying in a lodge and he is required to pay lodging charges which are

disproportionate to his present salary. It is found by the courts below that though Ashok, petitioner No. 5 was described as a student in the plaint,

by the time the suit reached hearing he had completed his education and had got a job in the Central Bank of India at Pune. In these circumstances,

if Ashok desired to live in the suit premises with his own wife and with the wife of petitioner No. 1 there would be nothing unreasonable about it.

5. Likewise it can be said to have been clearly established that the respondent is an old man, about 70 years of age, and that he has 8 members in

his family living in these two rooms of the suit premises. It could be further taken to be fairly established that the respondent as such is wholly

incapacitated in the matter of his earnings since January 1968 and only one member of his family, that is his son, is earning about Rs. 225/- per

month. It can be taken to be established that if no decree for possession is passed in favour of the petitioners, petitioner No. 5 will have to continue

to stay in the lodge or he shall have to find out some other place in Pune on rent or, may be, he will have to purchase some place in Pune.

Likewise, in that case, the wife of petitioner No. 1 shall have probably to continue with her practice of coming down to the dry place of Wai during

the monsoon season so as to escape the bout of rheumatism. But these facts notwithstanding one conclusion emerges as finally unquestionable. It is

that Ashok would not be thrown on the streets if no decree for eviction is passed in his favour although he shall suffer quite some inconvenience,

any a real hardship, until he gets alternative accommodation on rent or by purchase. It will be difficult for him to stay with his wife continuously in

the lodge. There is evidence on record to show that his wife is staying sometimes in Bombay with her parents and sometimes she stays at

Mahableshwar with her in-laws. It is not shown that she never stays with her husband in Pune; but by and large it cannot be gainsaid that it will not

be very convenient for Ashok to bring his wife to stay in the lodge continuously.

6. However, the most important fact that has got to be taken into account in this behalf is that is no evidence led by the petitioners to show that no

place will be available to them in Pune on rent having regard to the income bracket to which they belong. In fact petitioners have led no evidence

even for laying down a foundation for the plea that inspite of diligent search on their part no accommodation could be secured by them for

petitioner No. 5. Presumably, they persuaded themselves to believe that since they were the owners of the suit premises, it was not for them to go

in hunt of any other premises for their residence and that the task of such hunting expedition was earmarked for the tenant only. Whatever that may

be, the fact remains that no efforts are made by the petitioners for acquiring other premises in Pune for the residence of petitioner No. 5 and of the

wife of petitioner No. 1.

7. On the other hand, it may be taken as well established that if a decree for eviction is passed against the respondent the old man and each and

every member of his family will be thrown on the streets to swell the ranks of the pavement dwellers. Evidence has been led by the respondent that

within the income of Rs. 225/- per month, it is impossible for him and his family to get any premises at the rent even near about the figure of rent

that they are presently playing for the suit premises. The total picture, therefore, is that on the one side positive inconvenience and undeniable

hardship would be caused to the petitioners, their ownership notwithstanding, if no decree for eviction is passed against the respondent and on the

other hand, ruin and destruction stares starkly in the face of the respondent and the members of his family if a decree for eviction is passed against

them.

7-A. We have to consider the effect of the provisions of section 13(2) of the Rent Act on the rights of the respondent partly to this litigation against

the backdrop of these facts.

8. But before dealing with the various aspects of the question, it is necessary to examine and deal with one contention advanced by Mr. Dalvi

almost as a preliminary objection. I have stated above the total picture that emerges from the established facts. From that picture conclusion would

appear irresistable that more and graver hardship would be caused to the tenant by virtue of a decree for eviction. It is in this context that Mr.

Dalvi contends that sitting in my writ jurisdiction I should not arrive at such conclusion because, willy-nilly that will result,

(a) in my interfering with a finding of fact recorded by the lower Appellate Court.

(b) in my trying to correct a ""mere error"" in the judgment of the lower Court.

9. In this connection he placed strong reliance upon the decision of the Supreme Court, well known by now as AIR 1975 1297 (SC) Mr. Dalvi

contends that the question whether greater hardship would be caused to the tenant or not is essentially a question of fact, that finding is recorded

by the lower appellate Court in favour of the landlord, that there is no legal justification for interfering with the finding and that if I did so. I would

be inevitably acting contrary to the dicta laid down in the said Babhutmal''s case.

10. To my mind Mr. Dalvi''s objection is not well founded. I have mentioned above the factual position regarding the respective hardship that is

likely to result to either of the parties. All those facts are to be found from the judgment of the lower courts only. The question before me is the one

of drawing correct conclusion from those proves facts. Such a question is not a question of fact; it is a neat question of law. From those proves

facts if the only conclusion possible is that greater or graver hardship would be caused to the tenant, the conclusion arrived at by the lower Court

to the contrary could not be a legally correct conclusion far less would it be "a mere error" within the contemplation of the said decision in

Babhutmal"s case. To my mind the question legitimately raised by Mr. Dalvi relating to the interaction of the landlord"s right flowing from his

ownership and that of the tenant who is ready and willing to abide by the conditions of tenancy but is genuinely and truthfully unable to find out

alternate accommodation within his means, is a question of root going character necessitating the examination of at least the rationale of section

13(2) of the Rent Act if not the relevant portion of the scheme of the Act as a whole.

11. Coming to the main question, I have stated above that the total picture seen as above does show that much graver hardship is likely to be

caused to the tenant by passing a decree for his eviction that would be caused to the landlords by not passing such decree. But it is in this context

that the above-mentioned question is posed by Mr. Dalvi. He says that the petitioners are the owners of the premises. It is their right to get back

possession of the premises whenever they require and if in that process the tenant suffers any hardship, even a grave hardship, it is something which

is inevitable about which law and courts are helpless. In other words, according to him, in the decision-making process envisaged by said section

13(2) of the Act, the factor of the plaintiff"s ownership must be held to be a factor of significant weight. If we read the section subject to such

implicit qualification, he contends, the finding arrived at by the lower Court would be found to be a perfectly legitimate finding.

12. Quite a few authorities were relied upon by both the sides in this connection. But it would be sufficient to refer to only three out of them.

12- A. The first is the decision of the Supreme Court in the case of Mst. Bega Begum and Others Vs. Abdul Ahad Khan (Dead) by Lrs. and

Others, . It may be mentioned here that this authority is strenuously relied upon by both the sides. The following observations of the Supreme

Court in the said judgment were relied upon by Mr. Dalvi :

In the instant case it has been established that the landlords have not only a genuine requirement to possess the house, but it is necessary for them

to do so in order to augment their income and maintain themselves properly. Being the owners of the house they cannot be denied eviction and be

compelled to live below the poverty line merely to enable the respondents to carry on their flourishing hotel business, at the cost of the landlords-

appellants. This shows the great prejudice that will be caused to the plaintiffs if their suit is dismissed. The plaintiffs have already produced material

before the Court to show that their income does not exceed more than Rs. 8,000/- to Rs. 9,000/- per year as the yearly Income Tax paid by them

is Rs. 70/- to Rs. 80/- only. There is no other means for them to augment their income except to get their own house vacated by the defendants so

as to run a hotel business. On the other hand the defendants have been running the hotel for the last 30 years and must have made sufficient profits.

To begin with, the defendants had taken the lease only for 10 years which now by virtue of the statue has been extended to 30 years which is a

sufficiently long period for which the plaintiffs have been deprived of the possession of the house. There is thus no equity in favour of the

respondents for continuing in possession any further.

Mr. Dalvi also strongly relied upon the facts of the said case which, he says, were practically identical to the facts of the present case and relying

upon the observation of the Supreme Court in relation to the said facts, he contended that a Decree for eviction in the present case must follow.

13. Miss Ankelsaria, the learned Counsel who very competently and persuasively argued the case on behalf of the respondent on the other hand

relied upon the following observations of the Supreme Court in the selfsame judgment :---

If the defendants had proved that they will not be able to get any accommodation anywhere in the city where they could set up a hotel, this might

have been a weighty consideration, but the evidence of all the witnesses examined by the defendants only shows that the defendants may not get

alternative accommodation in that very locality where the house in dispute is situated. There is no satisfactory evidence to prove that even in other

business localities there is no possibility of the defendants getting a house. To insist on getting an alternative accommodation of a similar nature in

the same locality will be asking for the impossible. What is established from the evidence of the defendants is that if they are ejected, they might not

get a house as big as the house in dispute in the very locality where the disputed house is situated. Thus, on a careful comparison and assessment of

the relative advantages and disadvantages of the landlord and the tenant it is clear that the scale is tilted in favour of the plaintiffs.

Miss Anklesaria contended that in that particular case before the Supreme Court, the Supreme Court found the balance or sale to have been tilted

in favour of the landlord because it was found by the Court that,

(a) The defendant tenant had enough resources to purchase alternative accommodation for his business.

(b) No evidence was led by the tenant to show that it would not be possible for him to acquire such alternative accommodation.

Miss Anklesaria contends that the entire decision of the Supreme Court is based upon this aspect of the matter which basically distinguishes the

present case before me from the one with which the Supreme Court was dealing.

14. She has pointed out with some force that in the instant case, the respondent has led evidence that the made inquiries for alternate

accommodation and found it impossible to get any at the rent which he could afford. She rightly pointed out that this much part of the evidence of

the respondent has gone on record unchallenged. She, therefore, contends that the observations made by the Supreme Court thus supports her

plea that the provisions of sub-section (2) of section 13, of Bombay Rent Act really enure to her benefit and upon correct application of the same,

no decree for eviction could be passed against the respondent.

15. In support of her said contention relating to the provisions of sub-section (2) of section 13 Miss Anklesaria also sought to place reliance upon

the judgment of the Gujarat High Court reported in Kasturbhai Ramchand Panchal and Brothers and Others Vs. Firm of Mohanlal Nathubhai and

Others, , in the case of Kastubhai & Brs. v. Firm Mohanlal. Miss Anklesaria particularly invited my attention to the following observation of the

Gujarat High Court in the said judgment :

Once the resultant hardship on this statutory balance is determined, the second part of section 13(2) comes into play. Even though the words "no

hardship" are used in section 13(2) in the context of a partial decree, they must mean no resultant hardship, because the partial decree would

deprive the tenant of some part of his premises and would require the landlord also to be satisfied with only a part. What the legislature intends is a

just balance being struck between the landlord and the tenant, so that when this factor is put in the scale, the Court would be satisfied that the scale

will not be tilted on either side.

It is only then the Court could pass a partial decree. But, if even this partial decree still tilts the balance and swings it on the side of the landlord,

then, the Court would have no jurisdiction to refuse to pass the decree for the entire suit premises. Thus three contingencies might arise. If the

balance swings on the side of the landlord, so that there is greater hardship left to the landlord as a result of this statutory balance-sheet of hardship

the landlord must get the entire decree. If, however, the resultant balance of hardship in this balance-sheet is nil in the sense that there is a just

balance and the scale swings on neither side, then, the case is one of a partial decree. It is only when the greater hardship is on the side of the

tenant and the balance or the scale tilts in his favour that the decree would be refused.

Relying upon these observations in this second authority, Miss Anklesaria contends that it is positively certain from the facts found that the balance

or the scale tilts in the tenant''s favour and, hence, the decree for eviction must be refused.

16. Mr. Dalvi appearing for the petitioners, on the other hand, contended, inter alia, that if such a view was to be taken, no decree could be ever

passed in favour of any landlord, on the ground of bona fide requirement of additional premises for his growing family, against an indigent and

impecunious tenant. He contended that the fact that the tenant is given protection by the Rent Act does not mean that the rights of ownership of the

property let out to the tenant are to be considered to have been wiped off the body of law relating to property. He contends that at the most this is

a case where the balance can be said to have been equally poised in favour of the landlord as well as the tenant. In such circumstances, he

contends, the fact that the landlord is the owner of the premises and, as such, is the real person entitled to the enjoyment of the same, must

inexorably operate as a tilting factor in favour of the landlord.

17. Most anxious consideration given by me to this aspect of the question and it is only thereafter that I have arrived at a firm conclusion that under

the scheme of the Rent Act, with particular reference to section 13(2) of the same, the landlord''s ownership of the suit premises becomes relevant,

in connection with his right to evict the tenant on the ground of his personal bona fide requirements only in two circumstances :---

(a) When greater hardship will be caused to the landlord by not passing a decree in his favour than would be caused to the tenant, if eviction

decree was passed against him.

(b) When the balance of hardship is equally poised. In no other case the landlord will be entitled to decree for eviction just because he is the owner

of the suit premises. It follows that in every case when the tenant is likely to suffer greater and/or graver hardship, the factor of plaintiff''s ownership

of the suit premises loses all its relevance and must be relegated to the realm of provisional oblivion.

18. This conclusion becomes irresistable if we examine the scheme of the Rent Act with particular reference to sections 12 to 15. u/s 12(1) of the

Act, it is provided 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 rent and observes and performs other conditions of the tenancy, in so far as they are consistent with the provisions of this Act.

Sub-sections 2 to 4 of said section 12 therefore go to provide for the result if the tenant commits default in the payment of rent.

18-A. Section 13 of the Rent Act is enacted plainly with a view to over-ride the broad embargo contained in section 12(1) on the landlord''s right

to evict the tenant. Section 13(1) of the Act starts with the no obstinate clause. This evidently means that if there was any inconsistency between

section 12(1) of the Rent Act and section 13 of the said Act, the provisions of section 13 would prevail. In other words this means that if the

conditions, of section 13(1) are satisfied, the embargo enacted by said section 12(1) on the landlord''s right of the tenant''s eviction would

disappear. It follows that the landlord''s right at the General Law to bind down the tenant to the contractual terms of tenancy and to claim back

possession of the tenanted hereditaments on the strength of those terms has withered away. He does continue to have a right to get back

possession and that possession he gets back certainly because he is the owner landlord; but that right is conditioned, hedged and circumscribed by

those two provisions, sections 12 and 13 of the Rent Act. To the extent to which those provisions enable him to get back possessions from the

tenant, he can assert his right of ownership in that behalf. De hors those provisions, his right of ownership is virtually impotent.

19. The protection given to the tenant is given to him because he is in lawful possession of the suit premises and that is the reason why it is

extended even to the sub-tenants. As a logical result, section 14 of the Act provides that if the tenancy of head-tenant is effectively determined, the

sub-tenant would not lose right to remain in possession, as would have happened under the General Law, but he would become the direct tenant

of the landlord, so that a kind of fresh tenancy is created between the head landlord and the erstwhile sub-tenant statutorily. This is an illustration of

what has come to be described as ""statutory tenancy"". After this new direct tenancy is engendered, the rights and liabilities of the said direct tenant

on the one hand and his new landlord on the other start afresh and start being governed by the said provisions of sections 12 and 13 of the Act.

Section 15 of the Rent Act provides for the particular circumstances in which a sub-tenancy would be lawful and the others in which it would be

unlawful. The sub-tenant entitled to the benefit of section 14 evidently will be one who is recognised to be a lawful sub-tenant as per provisions of

sections 15 and 15-A of the Rent Act.

20. This resume of all these sections unmistakably shows that the landlords right to recover possession of the suit premises upon termination of the

tenancy under the General Law has been seriously and substantially curtailed by the Rent Act. No doubt the landlord would be entitled to recover

back possession if the tenant continues to make default in payment of rent as provided by the section 12 of the Rent Act. No doubt, the landlord is

given a right to get back possession if he makes out a case u/s 13(1) or under 13-A of the Rent Act. But evidently the provisions of section 13(1)

are enacted as an exception to the general embargo provided by section 12(1) of the Act and if the conditions laid down by said sub-section 1 of

section 13 are not made good the landlord has no right to get back the possession, his ownership notwithstanding. The long and short of this

fulsome discussion is that Mr. Dalvi''s contention that the landlord''s ownership of the suit premises is a factor which cannot be forgotten, is

somewhat misconceived. There are occasions galore when courts do pass decrees in favour of landlords for eviction of their tenants. Such decrees

are passed only because the plaintiff is landlord of the suit premises. Here I am using the word ''landlord'' synonymously with the word ''owner''.

The owners gets decree for eviction of his tenant because he is the owner. He would not have got any such decree if he was not the owner. But the

Rent Act imposes certain conditions subject to which alone the owner would get back possession from the tenant. This is where the Rent Act

strikes notes of discord with the General law contained in the Transfer of Property Act. Under the Transfer of Property Act the landlord was

entitled to get back possession of the rented premises from the tenant immediately when the later''s tenancy was terminated. Under the Rent Act

that is not enough. As a matter of fact termination of the tenancy has become practically an academic question after the advent of the Rent Act.

The Rent Act require that an owner of the rented premises can get back possession from his tenant only in certain circumstances and in no other.

The ownership factor is not done away with. It is very much there. The owner shall continue to receive rent from the tenant. The owner shall

continue to be entitled to performance from the tenant of the other conditions of the tenancy. The landlord continues to have rights of ownership.

All these, however, are subject to the provisions of section 12(1) of the Act. That is in fact the difference between the property rights under the

general law of the Transfer of Property Act and that under the special law of the Rent Act. Under the Transfer of Property Act all that the owner is

required to do is validly terminate the tenant''s tenancy and his right to get back possession becomes indefeasible. Under the Rent Act this right is

heavily hedged and circumscribed.

21. At this stage it is worthwhile referring to the provisions of section 13(2) of the Act. Section 13(2) runs as follows :

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.

Where the Court is satisfied that no hardship would be caused either to the tenant or to the landlord by passing the decree in respect of a part of

the premises, the Court shall pass the decree in respect of such part only.

22. We are not concerned with the latter part of the sub-section until the former part is relevant. The sub-section specifically provides that if

greater hardship is likely to be caused to the tenant by the eviction decree then would be caused to the landlord by virtue of the absence of the

decree, the decree should not be passed. We have found in the present case that though positive hardship would be caused to the petitioners, if no

decree is passed in his favour, the hardship that would be caused to the tenant by a decree for eviction against him would be much greater and

much grievous. Hence under the said sub-section (2), no decree for eviction could be passed by the Court.

23. But more significant is the other aspect of the said sub-section (2) of section 13 and this is whether the rule of law laid down by the Supreme

Court in Bega Begum''s case becomes relevant. Under sub-section (2) the Court is required to have regard to the question ""whether other

reasonable accommodation is available for the landlord or the tenant"". While considering this question in Bega Begum''s the Supreme Court found

that the tenant could as well have purchased another accommodation. The Supreme Court found that he had made no attempt in that behalf. In the

instant case before us the position is exactly reverse. Here the landlords are in a position to purchase or otherwise acquire alternate

accommodation with a view to avoid hardship. In this connection it is significant to note that sub-section (2) makes no distinction between the

position of the landlord and the position of the tenant in this behalf. The law laid down by the Supreme Court in Bega Begum''s case must therefore

apply with equal force to the case before me. Applying the ratio of the said case it must be held in the instant case that the tenant has fully

established that no other reasonable accommodation would be available to him if a decree for eviction is passed against him. But, on the other

hand, nothing has been brought on record by the landlord to show that they will not be in a position to acquire any other reasonable

accommodation, if no decree for eviction is passed in their favour. As stated above no evidence has been led by any of the petitioners to show that

it would be impossible for them to acquire any such accommodation in Pune. There is no dispute that compared to the tenant, the petitioners are in

much more affluent circumstances. Having regard to all these circumstances, to my mind it must be held that within the framework of section 13(1)

(g) read with section 13(2) of the Act, a decree for eviction cannot be passed in favour of the petitioners.

24. The third authority cited by Miss Ankelesaria is one in which the entire question has been considered by a Division Bench of this Court in a

broader perspective and this is what the Division Bench has observed in the said judgment reported in 1978 Mah. Law Journal, Page 860

Kisanrao Madhavrao Bartakke v. Narayan Dhondu Shete :---

Even if the landlord proves his bona fide and reasonable need for occupation it does not follow that a decree for eviction will be immediately

passed by the Court. The first part of sub-section (2) of section 13, Bombay Rents, Hotel and Lodging House Rates Control Act is in the nature of

further injunction upon Court from passing decree for eviction unless satisfaction required by that sub-section is reached. A comparative hardship

between landlord and tenant is to be found out and conclusion must be reached that hardship will be greater on the landlord if no decree is passed.

When such satisfaction is reached that inspite of the need of the landlord being bona fide hardship will be greater upon the tenant a decree for

eviction is to be refused.

25. Mr. Dalvi for the petitioners contended that it is against the spirit of the Rent Act that the landlord, who owns his own house, should be

expected to purchase another house for the purpose of his own accommodation merely because his tenant in the premises rented by him is below

the poverty line. This contention of Mr. Dalvi would have been well placed, if the provisions of sub-section (2) of section 13 were couched in

words other than those in which we find them. As we are all aware, the concept of property has undergone a radical change in this century and

particularly in the last few decades. We find that the actual tiller of the land though not its owner becomes entitled to be the owner of the land

principally because he is tilling the land. The property rights are envisaged by the legislature in the social perspective and in the process of this

thinking if sacrifice is required to be made by the owner of the property in respect of his rights flowing from the ownership, the legislature has found

that this sacrifice would be well worth its while. In this connection, the Legislature''s intent can be gathered by a fruitful test laid down by the

Supreme Court in Sant Ram Vs. Rajinder Lal and Others, in the case of Sant Ram v. Rajinder Lal. This is what the Supreme Court observed :---

Where doubts arise the Gandhian talisman becomes a tool of interpretation. Whenever you are in doubt .....apply the following test. Recall the

fact of the poorest and the weakest man whom you may have seen, and ask yourself, if the step you contemplate is going to be of any use to him.

If we remember these two rules, the conclusion is easy that there is no exclusiveness of purpose that can be spelt out of the lease deed. That

knocks at the bottom of the case of the landlord.

The abovementioned approach is based upon the human aspect of law and this human aspect is provided for by this relevant statute in significant

measure. We find this aspect to have been emphasized by the Supreme Court also in another judgment reported in Jivram Ranchhoddas Thakkar

and Another Vs. Tulshiram Ratanchand Mantri and Others, in the case of Jivram Ranchhoddas Thakkar and another v. Tulshiram Ratanchand

Mantri and others. There the Supreme Court had held that, ""it was right to adopt a course of live and let live, which was a humanistic approach

and the power of the Court under the provisions of the Rent Act was outlined by this judgment in the light of this humanistic approach"". Having

regard to all the above-mentioned facts, I do feel that the interpretation of sub-section (2) of section 13 given by me above could not be said to be

misconceived.

26. Incidentally, I may point out that the learned Judges of the Division Bench delivering the above mentioned judgment in the case of Kisanrao

Madhavrao Bartakke v. Narayan Dhondu Shete had occasion to consider the above mentioned judgment of the Gujarat High Court reported in

Boothalinga Agencies Vs. V.T.C. Poriaswami Nadar, , upon which strong reliance was placed by Miss Anklesaria. Though there can be little

doubt that the said judgment of the Gujarat High Court goes a long way to support Miss Anklesaria''s contention, the point is that the said

judgment is by necessary implication approved by the Division Bench. Atleast, it can be said for certain that it is not dissented by the Division

Bench. Even otherwise, on first principles, I feel that the ratio of the said judgment of the Gujarat High Court is unassailable. It is significant that the

Division Bench of this Court has only distinguished the said judgment. The ratio of the said judgment is not disapproved of by the Bench.

27. In this view of things, I hold that the decree passed by both the courts below is fully justified, if not, for the reasons mentioned therein.

28. For all these reasons, I am of the view that the petitioners are not entitled to a decree for eviction against the respondent.

29. Rule earlier issued must, therefore, be discharged.

30. In the circumstances of the case there shall be no order as to costs.