

**(1999) 02 BOM CK 0090****Bombay High Court****Case No:** Writ Petition No. 4589 of 1984

Narsingrao Kondaya Kondle

APPELLANT

Vs

Mallesham Irayya Sambharam  
and others

RESPONDENT

**Date of Decision:** Feb. 26, 1999**Acts Referred:**

- Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Section 13(1), 13(2), 13(3)

**Citation:** (1999) 2 ALLMR 488 : (1999) 3 BomCR 179 : (1999) 2 MhLJ 397**Hon'ble Judges:** T.K. Chandrashekara Das, J**Bench:** Single Bench**Advocate:** R.M. Agrawal, for the Appellant; S.M. Mhamane, R.S. Mhamane and M.R. Deshpande, for the Respondent**Judgement**

@JUDGMENTTAG-ORDER

T.K. Chandrashekara, J.

Petitioner is the landlord in respect of the suit property, which is an open plot bearing Sub-Plot No. 276/6 of Plot No. 9 in T.P. Scheme No. 1. Raviwar Peth, Solapur. It is the case of the petitioner that he required the plot for construction of his residential house. The open plot was originally given for construction of a shed to the original tenant and the defendants are the sub-tenants and the legal heirs of the original tenant. It is revealed from the pleadings of the parties that there were previous litigations between the tenant and the petitioner regarding the sub-tenancy and also regarding the claim of the tenant that the tenancy is of 99 years etc. Those suits have been ended in dismissal.

2. The original suit which gave rise to this writ petition, was filed on the ground of arrears of rent and also on the ground of bona fide requirement of the landlord for construction of a residential house for his own occupation. Both the courts below

found that the claim made by the petitioner was not reasonable and bona fide. Normally this Court is not expected to interfere in the findings of facts in exercise of its jurisdiction under Article 227 of the Constitution of India. But the learned Counsel for the petitioner Shri Agrawal has brought to my notice the glaring discrepancy in appreciating the evidence and reaching erroneous conclusion by the courts below. The bona fide requirement of the petitioner was rejected by the courts below as it found that the petitioner was residing along with his nephew. According to the evidence on the record, when the petitioner was occupying a house as a tenant, the landlord of the house had threatened him for eviction. Then his nephew has purchased that full house. This circumstance has taken by the courts below to come to the conclusion that the petitioner can very well stay, without demur in the house that belonged to his nephew and the petitioner did not require the suit plot for construction of a residential house. According to me this approach of the courts below is quite erroneous. Merely because, the petitioner is staying in the house that belongs to his nephew cannot cast any doubt about the bona fide requirement of the petitioner. In order to come to such a conclusion, there must be sufficient evidence to prove that the petitioner could reside or stay in the suit that belonged to his nephew, as a matter of right. The defendant has failed to establish such a circumstance in this case. In view of this, merely because the petitioner was staying in the house that belongs to his nephew cannot cast any doubt about the bona fide requirement of the suit house of the petitioner. On the other hand, if a landlord who is occupying a premises as tenant, requires for his occupation his own house, which was being occupied by his tenant, is itself will be the circumstance to establish reasonable requirement of a landlord. The landlord's desire, who is having no other house of his own, itself is a sufficient circumstance to indicate his reasonable and bona fide requirement.

3. Another circumstance that militates against his case which has been pointed out before the courts below, was that the petitioner is having a plot of his own in the M.I.D.C. area. The trial Court has accepted the contention of the defendant/tenant that since the petitioner is having a plot in the M.I.D.C. area, is the sufficient circumstance to doubt the petitioner's bona fide. Even the certificate issued by the Town Planning Authority, Solapur was sought to be produced by the petitioner in the Appellate Court but the Appellate Court has rejected the same on the ground that no further proof was adduced by the petitioner to prove that document. I have examined that document. According to me no further proof is required for proving that document, as it is a public document issued by the public authority. Moreover there is an uncontested admission made by the petitioner before the trial Court that he had a plot in the M.I.D.C. area but it is being in the industrial zone, where he was running a powerloom, which he cannot use for his own residential purpose. According to me both the courts below have wrongly rejected the contention of the petitioner. Acquisition of an alternate site is the matter to be considered while considering the comparative hardship of the tenant and the landlord under

sub-section (2) of section 13 of the Bombay Rent Act. Sub-section (2), provides for consideration on the aspect of comparative hardship between the tenant and the landlord. Under the provisions of sub-section (2), the landlord would become entitled for a decree only when a residential house is sought to be vacated by the landlord for his bona fide occupation, as envisaged u/s 13(1)(g) of the Act. On examining the pleadings and evidence adduced thereof it is clear that the defendant/tenant is trying to bring his case within the ambit of section 13(1)(i). There was a rival contention advanced before me by the learned Counsel for the respondents Shri S.M. Mhamane that there was no issue before the courts below to the effect that the eviction was sought u/s 13(1)(i). In the first place this argument would appear to be attractive. It is true that no specific issue has been framed in this regard in this case by the trial Court. But on a detail reading of the plaint, it can be seen that the petitioner had sought eviction of the tenant from the suit premises, so as to construct a new residential house. Therefore, merely because there is no framing of an issue on this aspect u/s 13(1)(i) of the Act, this matter need not be remanded back for that purpose alone. Because the ingredients to be established by the parties, both under sections 13(1)(g) and 13(1)(i) are almost the same. In other words, the matter that was factually required to be looked into by the courts below under both these sections, was whether the requirement of the suit house of the landlord was reasonable and bona fide. There is no dispute at all that this question has not been gone into by both the courts below. Therefore, the request made on behalf of the respondent for the purpose of framing the specific issue that the matter may be remanded back, cannot be accepted.

4. It is further contended by Mr. S.M. Mhamane, the learned Counsel for the respondents that in view of the sub-section (3) of section 13 of the Act, this Court need not to interfere in the case where the decree is not passed by the courts below. Because the landlord cannot construct a house in the remaining part of the premises without disturbing the building. To appreciate the argument of the learned Counsel for the respondent Shri Mhamane, it is necessary to refer to sub-section (3) of section 13 of the Act, which reads as follows :

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

It is true that this aspect has not been examined by the courts below. In other words this plea has not been raised by the parties before the authorities below. The learned Counsel for the respondents submits that in the absence of such specific plea is being raised by both the parties, the matter has to be remanded back to the lower Court. With respect, I cannot agree with the submission mainly because it is for giving protection to the tenants, sub-section (3) of the Act was enacted. Thus it is for the tenant to raise that question before the courts below. Therefore, at this stage the request for remand of the matter for that purpose alone, can not be

entertained. Besides, the learned Counsel Mr. Agrawal pointed out that total area of the premises is only 2500 sq. feet. This area may require for construction of a house of the petitioner. He also brought to my notice that a Commissioner, which was appointed in this case by the trial Court, has drawn up a map Exh. 43, for ascertaining the scope of the construction. From the report and the map drawn by the Commissioner, it can be seen that the respondents have occupied the portion of the suit structure. Thus the construction of the house can be carried out if only the respondent is dispossessed. No courteous argument has been placed by the respondents in respect of this contentions advanced by the learned Counsel for the petitioner. In view of the above discussion, the orders passed by both the courts below requires interference at the hands of this Court.

5. In the result, the writ petition is allowed. The impugned orders passed by the courts below are set aside. There shall be decree for eviction of the respondents from the suit premises.

6. Rule is made absolute accordingly. In the circumstances of the case there is no order as to costs.

7. As this stage, the learned Counsel for the respondents made a request for stay of the operation of this judgement for a period of two months. The learned Counsel for the petitioner Shri Agrawal, has not opposed this request, provided the respondents shall give one week's prior notice before the matter is taken up to the Supreme Court. Therefore, this judgement is hereby stayed for the period of two months. In case the respondents, takes up the matter to the Supreme Court, they shall give prior notice of one week to the petitioner before the matter is taken to the Supreme Court.

8. Certified copy expedited.

9. Petition allowed.