KRISHANLAL ISHWARLAL DESAI

v.

BAI VIJKOR AND OTHERS

1963

January, 18.

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR, K. N. WANCHOO, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Rents and Rates Control—Recovery of possession by landlord—Reasonable and bonafide requirement for occupation or construction—Failure of landlord to occupy within one month—Whether tenant entitled to get possession—Bombay Rents, Hotel and Lodging House Rates Control Act., 1947 (Bom. 57 of 1947), ss. 13 (1) (g), 13 (1) (i), 17 (1).

The appellant is the owner of a vacant plot of land of which the respondents were the tenants. The former applied to the court for ejectment of the latter and for getting possession under s. 13 (1) (g) and (e) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 on the grounds that he reasonably required the land for occupation by himself and for erection of new buildings. The trial court found in favour of the appellant on the first ground but rejected his claim under the second ground. Though cross appeals were filed the appellate court substantially upheld the order of the court below. Thereafter the appellant took possession about four months later and started storing materials for sanitary works and buildings even though at the trial his case was that he wanted the land for storing of timber. The respondents applied under s. 17 (1) of the Act to the trial court to obtain possession of the premises on the ground that the appellant had failed to occupy the premises within one month of his recovery of possession. The trial court rejected their application but the appellate court allowed the appeal filed by them. The revision petition filed by the appellant was summarily rejected by the High Court. The present appeal is by way of special leave granted by this Court.

The appellant's contention before this Court was that the period of limitation of one month prescribed under s. 17 (1) would be applicable to an order under s. 13 (1) (i) and not to one passed under s. 13 (1) (g).

Held, that s. 17 (1) makes a distinction between occupation and possession. The period of limitation of one month

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applies as much to the case of occupation as to the case of erection of the work contemplated by cl. 13 (1) (g) and (i) respectively. Since the appellant did not occupy the premises within one month he has failed to comply with the first part of s. 17 (1) and hence the respondents are entitled to an order for the possession of the premises.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 804 of 1962.

Appeal by special leave from the order dated April 11, 1962, of the Gujarat High Court in Civil Revision Application No. 335 of 1962.

M. C. Setalvad, and *I. N. Shroff*, for the appellant.

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

1963. January 18. The Judgment of the Court was delivered by

Gajendragadkar, J.

GAJENDRAGADKAR, J.—This appeal by special leave raises a short question about the construction of section 17 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (No. 57 of 1947) (hereinafter called the Act). The said question arises in this way. The appellant Krishanlal Ishwarlal Desai is the landlord who owns an open plot of land named Hathi Khada in Kalaswadi town in the district of Surat. The said plot measures 32,406 sq. ft. This plot was in the possession of the respondents Bai Vijkor & others as tenants. In 1951, the appellant sued the respondents in ejectment. He claimed that under s. 13 (1) (g) and (i) of the Act he was entitled to recover possession of the premises consisting of the open plot in question. This claim was resisted by the respondents. The trial Court held that the appellant had not established his case under s. 13 (1) (i) but had proved his claim under s. 13 (1) (g). Having recorded this finding, the trial Court

proceeded to examine the extent of the requirement proved by the appellant. Section 13 (1) (g) provides *inter alia*, that notwithstanding anything contained in the Act, a landlord shall be entitled to recover possession of any premises if the Court is satisfied that the premises are reasonably and bonafied required by the landlord for occupation by himself. Section 13 (1) (i) provides that the landlord would be similarly entitled to recover possession if the premises being land, they are reasonably and bonafide required by the landlord for the erection of a new building. The trial Court found that the requirement of the appellant would be adequately met if he is given a decree for the possession of 2/3rds of the plot in suit. Accordingly, a decree was passed in his favour to that extent on March 16, 1955.

This decree was challenged both by the appellant and the respondents by cross-appeals in the District Court. The District Court held that the view taken by the trial Court was substantially right and there was no reason to interfere with the decree passed by it. In the result, both the appeals were dismissed on April 28, 1956.

The appellant then filed an execution application and obtained possession of 2/3rds of the premises in question on June 29, 1957. It appears that at the trial, the appellant's case was that he wanted the said premises for the purpose of his timber business. Eventually, however, the appellant occupied the said premises on October 24, 1957, not for carrying on his timber business but for storing or stocking materials of sanitary works and building contracts which business he had started in partnership on that day. The appellant had constructed a shed for the watchmen to look after the articles which were stored on the open plot.

On July 29, 1958, the respondents applied under s. 17 (1) of the Act to the trial Court to obtain

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possession of the said premises on the ground that the appellant had failed to occupy the said premises within a period of one month from the date when he recovered possession as required by s. 17 (1). The trial Court held that the respondents had failed to make out a case under s. 17 (1) and so, their application was dismissed.

The respondents then preferred a revisional application in the District Court. This revisional application was treated as an appeal because the order passed by the trial Court was applicable. The District Court held that the appellant had failed to occupy the premises within the period prescribed by s. 17 (1) and so, the respondents were entitled to an order against the appellant for the possession of the said premises. This order was challenged by the appellant by preferring a revisional application before the High Court of Gujarat. The revisional application was, however, summarily dismissed. It is this revisional decision of the High Court of Gujarat that has given rise to the present appeal, and the only question which is raised for our decision is about the construction of s. 17 (1) of the Act.

We have already seen that s. 13 provides for cases where the landlord is entitled to recover possession of the premises from the tenant and that the appellant in fact obtained a decree for possession under s. 13 (1) (g) on the ground that 2/3rds of the premises were reasonably and bona fide required by him for occupation by himself. The respondents' case is that under s. 17 (1) it was obligatory on the appellant to occupy the premises within one month after June, 29 1957 when possession was delivered to him in execution proceedings; since he had failed to comply with this requirement, they became entitled to obtain back possession of the said premises; and as the present application had been made by them within 13 months from June, 29 1957, as

required by s. 17 (1), an order for possession ought to be passed in their favour. The appellant, on the other hand, contends that the stipulation as to the period of one month on which the respondents relied does not apply to the case of occupation which would arise in the case of a decree passed under s. 13 (1) (g). The said period applies to the case of a decree passed under s. 13 (1) (i). That is how the controversy between the parties raises the question of construction of s. 17 (1).

Let us now read s. 17 (1). Section 17 (1) reads as under :—

> "where a decree for eviction has been passed by the Court on the ground specified in clause (g) or (i) of sub-section (1) of s. 13 and the premises are not occupied or the work of erection is not commenced within a period of one month from the date the landlord recovers possession or the premises are re-let within one year of the said date to any person other than the original tenant, the Court may on the application of the original tenant, made within thirteen months of such date order the landlord to place in occupation of the premises on the original terms and conditions, and, on such order being made, the landlord and any person who may be in occupation of the premises shall give vacant possession to the original tenant."

It is clear that when s. 17 (1) refers to the requirement that the premises must be occupied by the landlord, the occupation intended by the provision is different from possession, because the first clause of 17 (1) makes a clear distinction between occupation and delivery of possession. The effect of this clause is that when a landlord who has obtained a decree for possession executes the decree and obtains possession of the premises in question he must occupy them

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in terms of the case made out by him under s. 13 (1) (g) and held proved at the trial. Whether or not the occupation by the landlord should be for the same purpose which he set out at the trial or can be for a different purpose, is a question which it is unnecessary to decide in the present appeal. What is, however, clear beyond any doubt is that when the possession is obtained in execution it must be followed by an act of occupation which must inevitably consist of some overt act in that behalf and this overt act was, on the finding of the District Court, done by the appellant on October 24, 1957. That means that the appellant occupied the premises beyond the period of one month prescribed by s. 17 (1).

Does the stipulation about the period of one month apply to the case of a decree passed under s. 13 (1) (g)? That is the next question to consider. It would be noticed that the first clause of s. 17 (1) deals with decrees passed under s. 13 (1) (g) and (i) and reading the clause, there appears to be no difficulty in holding that the requirement as to one month applies to both categories of decrees. On a fair and reasonable construction of that clause, there appears to be no escape from the conclusion that the period of one month applies as much to the case of occupation as to the case of erection of the work contemplated by ss. 13 (1) (g) and (i) respectively.

Besides, the scheme of s. 17 (1) clearly supports this construction. Section (13) (1) has allowed the landlord to eject the tenants from the premises in their possession for specified reasons and s. 17 (1) affords a protection to the tenants where a decree for ejectment has been passed against them under cl. (g) or (i) of s. 13 (1). If the legislature thought it necessary to require the landlord to commence the work of erection if he has obtained a decree for possession under s. 13 (1) within one month, there is

no reason why the legislature should not have provided for the same or similar period in respect of occupation which is referable to the decree passed under s. (13) (1) (g). Mr. Setalvad contends that the occupation could be effected within a reasonable time for he suggests that no limitation having been prescribed in that behalf, the general rule would be that it should be done within a reasonable time. We think this construction cannot be accepted because it is extremely unlikely that the legislature should have provided the period of one month for one category of decrees and should have made no specific provision in that behalf in respect of decrees of the other category. Besides, the construction of the clause according to the rules of ordinary grammar is decisively against the appellant's contention.

The second clause of s. 17(1) refers to a case where the landlord re-lets the premises within one year of the date on which he obtains possession in execution proceedings to any person other than the original tenant. In other words, this clause covers cases where the landlord obtains a decree for possession and instead of using the premises for purposes pleaded by him and on proof of which a decree was passed in his favour he proceeds to re-let them to a stranger; and it provides that if this re-letting takes place within one year of the date specified by it, the original tenant is entitled to claim possession of the said premises. This clause also shows that s.17(1) is intended to afford protection to the rights of tenants who have been ejected under s. 13(1)(g) and (i).

Similarly, a period of limitation is prescribed for the exercise of the rights conferred on the tenants by the last clause of s. 17(1). This clause provides that the tenants who want to claim the protection of s. 17(1) must apply within 13 months of the date on which possession was delivered to the landlord-decree-holder. The scheme of s. 17(1) thus clearly proves

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that all the relevant clauses have prescribed respective periods of limitation, and so, it would be idle to suggest that the liability imposed on the landlord to occupy the premises possession of which had been decreed in his favour under s. 13(1)(g) is without any relevant limitation.

There is another consideration which supports this conclusion. Section 17(2) provides for a penalty against a landlord who contravenes the provisions of s. 17(1). This provision lays down, *inter alia*, that any landlord who recovers possession on the grounds specified under cl. (g) or (i) of s. 13(1) and keeps the premises unoccupied or does not commence the work of erection without reasonable excuse within the period of one month from the date on which he recovers possession, shall on conviction be punishable in the manner specified in the said provision. Similar penalty is imposed on a landlord or other person in occupation of the premises who fails to comply with the order of the Court under s. 17(1). It is obvious that when the first clause of s. 17(2) refers to the failure of the landlord either to occupy or to commence erection of the work without reasonable excuse within the period of one month, absence of reasonable excuse and the period of one month apply as much to cases falling under cl. (g) as to cases falling under cl. (i) of s. 13(1). The plea open to the landlord that he failed to occupy the premises or he failed to commence the work of construction within the specified period because of a reasonable excuse is available to him in both categories of cases and so, absence of reasonable excuse applies equally to both the said categories. If that is so, the period of one month which is the crucial point must govern both the categories of cases. Therefore, in our opinion, the High Court was right in agreeing with the decision of the District Court that the appellant in the present case had failed to comply with the first part of s. 17(1) and so, the respondents were entitled

to—an order for possession of the premises in question. The appeal accordingly fails and is dismissed with costs.

Appeal dismissed.

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TILKAYAT SHRI GOVINDLALJI MAHARAJ

v.

THE STATE OF RAJASTHAN AND OTHERS

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR, K. N. WANCHOO, K. C. DAS GUPTA and J. C. SHAH, JJ.)

Nathdwara Temple—Private or public temple—Tests—Validity of enactment providing for proper administration of temple—Constitutionality—Nathdwara Temple Act, 1959 (Rajasthan 13 of 1959) ss. 2 (viii), 3, 4, 5, 7, 10, 11, 16, 21, 22, 27, 28, 30, 35, 36, 37—Constitution of India, Arts. 14, 19 (1) (f), 25, 26, 31 (2).

The history of the Nathdwara Temple in the District of Udaipur showed that Vallabha, who was the founder of the denomination known as Pushtimargiya Vaishnava Sampradaya, installed the idol of Srinathji in a temple and that later on his descendants built the Nathdwara Temple in 1761. The religious reputation of the temple grew in importance and several grants were made and thousands of devotees visiting the temple made offerings to the temple. The succession to the Gaddi of the Tilkayat received recognition from the Rulers of Mewar, but on several occasions the Rulers interfered whenever it was found that the affairs of the temple were not managed properly. In 1934 a Firman was issued by the Udaipur Darbar, by which, inter alia, it was declared that according to the law of Udaipur all the property dedicated or presented to or otherwise coming to the Deity Shrinathji was property of the shrine, that the Tilkayat Maharaj for the time being was merely a custodian, Manager and Trustee of the said property and that the Udaipur Darbar had absolute right to supervise that the