

Mrs. Winifred Ross & Anr vs Mrs. Ivy Fonseca & Ors on 7 December, 1983

Equivalent citations: 1984 AIR 458, 1984 SCR (1)1005, AIR 1984 SUPREME COURT 458, 1984 UJ (SC) 860, 1984 MPRCJ 107, 1984 HRR 206, 1984 (1) SCC 288, (1984) 1 ALL RENTCAS 259, (1984) MAH LJ 411, (1984) MAHLR 343, (1984) 1 RENCRA 117, (1984) 1 RENTLR 418, (1984) 2 RENTLR 23, (1984) 1 BOM CR 385, 1984 86 BOM LR 178

Author: E.S. Venkataramiah

Bench: E.S. Venkataramiah, R.B. Misra

PETITIONER:

MRS. WINIFRED ROSS & ANR.

Vs.

RESPONDENT:

MRS. IVY FONSECA & ORS.

DATE OF JUDGMENT 07/12/1983

BENCH:

VENKATARAMIAH, E.S. (J)

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VENKATARAMIAH, E.S. (J)

MISRA, R.B. (J)

CITATION:

1984 AIR 458 1984 SCR (1)1005

1984 SCC (1) 288 1983 SCALE (2)900

CITATOR INFO :

E 1984 SC 786 (3)

ACT:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947-S. 13A1- Whether an ex-member of armed forces who acquires title to property after his retirement is entitled to recover possession from tenant under s. 13A 1 ?

HEADNOTE:

The plaintiff who was a member of the armed forces of the Union had retired from service in 1967. The suit property was a part of the property gifted by his mother-in-

law to his wife in 1976, which in turn had been gifted in his favour in 1977, probably with the object of taking advantage of s. 13A1 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 which had been introduced in the Act by way of an amendment made in 1975. The plaintiff filed the suit under s.13A1 for recovery of possession of the suit property from the defendant who had been occupying the same for a number of years and in the course of the suit produced a certificate issued by the Army Officer concerned as required by that section. The suit was decreed by the trial court and the defendant's appeal against the same was turned down by the District Judge whereupon the defendant filed a petition under Arts. 226 and 227 of the Constitution which was allowed. The High Court dismissed the suit for eviction holding that the plaintiff was not entitled to file the suit under s.13A1 as he had acquired the premises long after he had retired from service and that his requirement was not bona fide even for purposes of granting relief under s. 13(1) (g).

Dismissing the appeal,

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HELD: Section 13A1 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 has been introduced in the Act to enable members of the armed forces who have leased out their buildings when they are in service to recover quickly possession of such buildings without the restrictions contained in the other parts of the Act, either when they are still in service, or on their retirement, for their use and occupation or for the use and occupation of the members of their family. An analysis of cl. (a) of s.13A1 shows that the person who wishes to claim the benefit of that section should be a landlord of the premises while he is a member of the armed forces of the Union and that he may recover possession of the premises on the ground that the premises are bona fide required by him for occupation by himself or any member of his family on the production of the required certificate either while he is still in service or after his retirement. The essential requirement is that he should have leased out the building while he was a member of the armed forces. His

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widow can also recover the premises of which she is or has become the landlord under cl. (b) subject to fulfillment of the conditions. Having regard to the object and purposes of the Act and in particular of s.13A1 it is difficult to hold that s. 13A1 can be availed of by an ex-member of the armed forces to recover from a tenant possession of a building which he acquires after his retirement. [1011B-D]

A liberal construction of s.13A1 would enable unscrupulous landlords who cannot get rid of tenants to transfer their premises to ex-military men, as it has been done in this case, in order to avail of the benefit of the provision with a private arrangement between them. Since

such an interpretation is likely to expose the provision to a successful challenge under Art. 14 of the Constitution it has to be read down as conferring benefit only on those members of the armed forces who were landlords of the premises in question while they were in service even though they may avail of it after their retirement. [1012B; 1014G-H]

[The Court refrained from expressing any opinion on the question whether a member or a retired member of the armed forces who acquire title to a building which is already in the occupation of a tenant by inheritance, partition, transfer or otherwise and thus becomes the landlord of the building while he is a member of the armed forces, can avail of the remedy against such tenant under s. 13A1.] [1015C-D]

Sushila Bai Vasudev Jaeel v. M. S. Dhillon [1979] Maharashtra Law Journal 125; and Jyotish Ranjan Chakrabarti v. N. K. Mitra, [1983] 1 R.C.J. 223 approved.

Nihal Chand v. Kalyan Chand, [1978] 2 S.C.R. 183; B. N. Mutto & Anr. v. T. K. Nandi [1979] 2 S.C.R. 409 distinguished.

In the instant case, the plaintiff was not entitled to succeed even on the basis of s. 13(1) (g) of the Act. The High Court was right in arriving at the finding that the plaintiff had not established that he was really in need of the building. [1015 D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1796 of 1982.

From the Judgment and Order dated 24th April, 1981 of the High Court of Bombay in Special Civil Application No. 3025 of 1978.

G.L. Sanghi, C.N. Murty and R. Vasudevan for the Appellants.

T.S. Krishnamoorthy Iyer and R. Nagaratnam for the Respondent No. 1.

The Judgment of the Court was delivered by VENKATARAMIAH, J. The principal question for consideration in this appeal by special leave is whether a person who was formerly a member of the armed forces can recover possession of a building which was acquired by him after he had retired from the armed forces under section 13 A 1 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Act No. 57 of 1947) (hereinafter referred to as 'the Act') for occupation by himself or any member of his family.

The plaintiff Lt. Col. T.E. Ross was formerly serving as a member of the Indian Army and he retired from the military service in the year 1967. The property of which the suit building forms a part originally belonged to his mother-in-law, Mrs. Arcene Parera. She gifted the said property in favour

of her daughter, Mrs. Winifred Ross, the wife of the plaintiff on November 9, 1976. The property consisted of some out-houses. The defendant has been a tenant in one of those out-houses for a number of years. The said premises consisted of two rooms and a varandah. On June 6, 1977, Mrs. Winifred Ross gifted the portion in which the defendant was residing as a tenant in favour of the plaintiff. The remaining part of the property acquired under the gift deed executed by the mother-in-law of the plaintiff continued in the occupation of Mrs. Winifred Ross. The gift of only the portion of the property in the occupation of the defendant appears to have been made with the object of taking advantage of section 13 A1 of the Act which was introduced by way of an amendment of the Act in 1975. Section 13 A1 of the Act reads thus:

"13A1. Notwithstanding anything contained in this Act (a) a landlord, who is a member of the armed forces of the Union, or who was such member and is duly retired (which term shall include premature retirement) shall be entitled to recover possession of any premises, on the ground that the premises are bona fide required by him for occupation by himself or any member of his family (which term shall include a parent or other relation ordinarily residing with him and dependent on him); and the Court shall pass a decree for eviction on such ground if the landlord, at the hearing of the suit, produces a certi-

ificate signed by the Head of his Service or his Commanding Officer to the effect that-

(i) he is presently a member of the armed forces of the Union or he was such member and is now a retired ex-serviceman;

(ii) he does not possess any other suitable residence in the local area where he or the members of his family can reside;

(b) where a member of the armed forces of the Union dies while in service or such member is duly retired as stated above and dies within five years of his retirement his widow, who is or becomes a landlord of any premises, shall be entitled to recover possession of such premises, on the ground that the premises are bona fide required by her for occupation by herself or any member of her family (which term shall include her or her husband's parent or other relation ordinarily residing with her); and the Court shall pass a decree for eviction on such ground, if such widow, at the hearing of the suit, produces a certificate signed by the Area or Sub-Area Commander within whose jurisdiction the premises are situated to the effect that-

(i) she is a widow of a deceased member of the armed forces as aforesaid;

(ii) she does not possess any other suitable residence in the local area where she or the members of her family can reside.

Explanation 1.- For the purposes of clause (a) of this section, the expression "the Head of this Service", in the case of officers retired from the Indian Army includes the area Commander, in the

case of officers retired from the Indian Navy includes the Flag Officer Commanding-in-Chief, Western Naval Command, and in the case of officers retired from the Indian Air Force includes the Station Commander.

Explanation 2.- For the purposes of this section, any certificate granted thereunder shall be conclusive evidence of the facts stated therein."

Immediately after the gift deed was executed in his favour, the plaintiff issued a notice to the defendant on June 14, 1977 terminating the tenancy and asking the defendant to vacate the premises at the end of July, 1977. Then he filed the Civil Suit No. 2131 of 1977 on the file of the Second Additional Judge, Small Cause Court, Pune for recovery of possession of the premises under section 13A1 of the Act. He also produced in the course of the suit a certificate issued by the Army Officer concerned as required by that section. The plaintiff claimed that he required the premises for his own use and occupation to stay alongwith his wife and that he had no premises of his own in Pune for his residence. The defendant contested the suit. But the suit was decreed by the trial court on March 18, 1978 and the defendant was directed to deliver possession of the premises within one month from the date of signing the decree. The defendant filed an appeal against that decree before the District Judge, Pune in Civil Appeal No. 228 of 1978. That appeal was dismissed on November 15, 1978. Against the decree passed in the appeal the defendant filed a petition under Articles 226 and 227 of the Constitution before the High Court of Bombay in Special Civil Application No. 3025 of 1978. During the pendency of the said petition the plaintiff died and his legal representatives were brought on record. The High Court allowed the said petition and dismissed the suit for eviction. The High Court held that the plaintiff was not entitled to file the suit under section 13A1 of the Act as he had acquired the premises long after he had retired from the service of the army and that his requirement also was not bona fide even for purposes of granting relief under section 13(1) (g). This appeal by special leave is filed by the legal representatives of the plaintiff against the judgment of the High Court.

The first question which arises for consideration is whether the plaintiff who had acquired title to the premises in question and became its landlord after he had retired from the service of the Army could maintain the petition under section 13A1. The object of introducing the said section into the Act is contained in the Statement of Objects and Reasons annexed to the amending Bill which later on was passed by the State Legislature. It reads:

"Defence Services Personnel are liable to transfers and to be stationed in different parts of the country. They are often posted at non-family stations. Some of these personnel, who possess their own premises either in their home towns or elsewhere have necessarily to hire them out to other persons temporarily while they are away on duty. It has been represented to the State Government by the military authorities that on their retirement or transfer to non-family stations the serving and ex-service personnel find it extremely difficult to regain possession of their premises which they badly require for personal occupation permanently or for housing their families for the duration of their posting at non-family stations. In case of death of a service personnel while in service or death of ex-service personnel shortly after the

retirement, the widow also finds it extremely difficult to regain possession of their premises for her personal occupation or occupation of her family.

2. The cases of Defence Services Personnel due to their special obligations and disabilities do need different treatment from that accorded to other landlords and in fact special provisions have been made for them in some of the States, whereby processes for each personnel to regain possession of their premises have been simplified and made more effective.

3. It is considered necessary to make a special provision in the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 to enable a member or retired member of the armed forces of the Union or a widow of such a member who dies while in service, or who dies within five years of his retirement, to regain possession of their premises, when bona fide required for occupation by them or members of their families and to provide that the Court shall be bound to pass a decree for eviction on such ground if such member or widow, as landlord, produces, at the hearing of the suit, the necessary certificate signed by the Head of his Service or His Commanding Officer or the Area or Sub-Area Commander within whose jurisdiction the premises are situated.

The Bill is intended to achieve these objects." The object of section 13A1 of the Act is quite a laudable one. It is introduced in order to enable members of the armed forces who have leased out their buildings when they are in service to recover quickly possession of such buildings without the restrictions contained in the other parts of the Act either when they are still in service or on their retirement for their use and occupation or for the use and occupation of the members of their family. Even the widows of such landlords may under clause (b) of section 13A1 can recover possession of such buildings if they satisfied the conditions mentioned therein. An analysis of clause (a) of section 13A1 shows that the person who wishes to claim the benefit of that section should be a landlord of the premises while he is a member of the armed forces of the Union and that he may recover possession of the premises on the ground that the premises are bona fide required by him for occupation by himself or any member of his family on the production of the required certificate either while he is still in service or after his retirement. The essential requirement is that he should have leased out the building while he was a member of the armed forces. His widow can also recover the premises of which she is or has become the landlord under clause (b) subject to fulfillment of the conditions. Having regard to the object and purposes of the Act and in particular section 13A1 it is difficult to hold that section 13A1 can be availed of by an ex-member of the armed forces to recover from a tenant possession of a building which he acquires after his retirement. Acceptance of this argument will expose the very section 13A1 of the Act to a successful challenge on the ground of violation of Article 14 of the Constitution for if that were so, a retired military officer who has no house of his own can purchase any building in the occupation of a tenant after his retirement, successfully evict a tenant living in it on the ground that he needs it for his use, then sell it for a fancy price and again because he has no house of his own, he can again acquire another building and deal with it in the same way. There appears to be no restriction on the number of times he can do so. It was argued that he would not be able to get the requisite certificate under the Act more than once. A reading of section 13A1 of the Act shows that the certificate should show that the person concerned has been a member of the armed forces and that he does not possess any other suitable residence in the local area where he or members of his family can reside. Those conditions being

satisfied the certificate cannot be refused. A liberal construction of section 13A1 of the Act as it is being pressed upon us would also enable unscrupulous landlords who cannot get rid of tenants to transfer their premises to ex-military men, as it has been done in this case in order to avail of the benefit of the said section with a private arrangement between them. It is also possible that a person who has retired from the armed forces may after retirement lease out a premises belonging to him in favour of a tenant and then seek his eviction at his will under section 13A1 of the Act. In fact the facts involved in the case of *Sushilabai Vasudeo Jaeel & Ors. v. M. S. Dhillon & Ors.*(1) were similar to the above illustration. In that case the plaintiff was a person who had been discharged from the army in the year 1946. Thereafter he was working in the Railways. He had let out a premises belonging to him in 1957. The High Court of Bombay held that he could not avail himself of the benefit of section 13A1 of the Act as he had not let out the building while he was in the army. The High Court found that section 13A1 of the Act did not govern the case of a person who had retired long back from the armed forces and was gainfully employed elsewhere and while so employed had let out his premises with open eyes. We fully endorse this view.

In another case *Jyotish Ranjan Chakrabarti v. N.K. Mitra*(2) decided by the Calcutta High Court a provision similar to section 13A1 of the Act came up for consideration. That provision was section 29B of the West Bengal Premises Tenancy Act, 1956, the material part of which read as follows:

‘29B. (1) No Civil Court shall entertain any application..... by a landlord who is retired member of the naval, military or air force of the Union of India or will retire within a period of less than one year as such member, for the recovery of possession of any premises on the ground specified in clause (ff) of sub-section (1) of section 13 but such application shall be dealt with by the Controller in accordance with the procedure specified in this section.

... .. The above provision conferred a right to recover possession of premises from a tenant on a retired member of the armed forces or a member retiring within a period of less than one year from the armed forces who is a landlord and is in need of the premises at or about the time of retirement by resorting to a summary remedy. There the landlord had retired from the armed forces in 1970 but he had acquired title to the premises in question in 1979. The High Court of Calcutta held that he was not entitled to claim the benefit of section 29B of the West Bengal Premises Tenancy Act, 1956 on the ground that the provision applied only to those persons who were landlords at the time of their retirement.

The appellants cannot derive any support from the decision of this Court in *Nihal Chand v. Kalyan Chand Jain*(1) In that case section 14A(1) of the Delhi Rent Control Act, 1958 arose for consideration. That section provides that where a landlord who being a person in occupation of any residential premises allotted to him by the Central Government is required to vacate such residential accommodation or in default to incur certain obligations on the ground that he owns in the Union Territory of Delhi a residential accommodation either in his own name or in the name of his wife or dependent child there shall accrue on and from the date of such order to such landlord notwithstanding anything contained in the Delhi Rent Control Act, 1958 a right to recover immediate possession of any premises let out by him. The landlord in that case who was a Central

Government servant had been allotted a residential premises by the Central Government. In accordance with a general order issued pursuant to the Central Government's decision dated September 9, 1975, a notice was served on the landlord on September 30, 1975 which was much before his retirement which took place on November 30, 1975 to vacate the premises allotted to him by the Government as he had his own accommodation in Delhi which he had leased out and that if he did not do so he had to pay penal rent for the Government premises. When he filed a suit for eviction under section 14A(1) of the Delhi Rent Control Act, 1958 he had ceased to be a Government servant by reason of his retirement. The tenant contended that he could not avail himself of the benefit of section 14A(1) as he had ceased to be a Government servant. This Court negatived the said plea holding that the cause of action arose on September 30, 1975 when he was served with the notice by the Government and on that date he was very much in service even though the Court observed that there was some force in the argument that section 14A(1) of the Delhi Rent Control Act, 1958 was intended for the benefit of persons who were in Government service.

The judgment of this Court in B.N. Mutto & Anr. v. T.K. Nandi(1) which again arose under section 14A of the Delhi Rent Control Act, 1958 was also relied on by the appellants in support of the argument that as the expression 'landlord' used in section 13A1 of the Act was capable of being construed as including within its scope even ex-military men who may have become landlords after their retirement, the limited meaning given to it in the Statement of Objects and Reasons should not be given to it and that section 13A1 should, therefore, be interpreted without reference to the Statement of Objects and Reasons. In the above decision, this Court held that while the original object of enacting section 14A of the Delhi Rent Control Act, 1958 was to confer benefit on Government servants only, later on it was thought fit to confer a similar benefit also on others who were in possession of Government buildings and who were being asked to vacate them on the ground that they had their own accommodation in the Union Territory of Delhi. In the instant case there is no ground to presume that section 13A1 of the Act was intended to confer benefit on a class of persons wider than the class referred to in the Statement of Objects and Reasons, that is, on all retired members of the armed forces irrespective of the fact whether they were landlords while they were in service or not. There is no valid justification to give such a wide meaning to the section.

Since a liberal interpretation of section 13A1 of the Act is likely to expose it to a successful challenge on the basis of Article 14 of the Constitution, it has to be read down as conferring benefit only on those members of the armed forces who were landlords of the premises in question while they were in service even though they may avail of it after their retirement. Such a construction would save it from the criticism that it is discriminatory and also would advance the object of enacting it, namely, that members of the armed forces should not while they are in service feel worried about the difficulties of a long drawn out litigation when they wish to get back the premises which they have leased out during their service. Persons in the position of the landlord in the present case cannot, therefore, maintain a suit under section 13A1 of the Act. The High Court was, therefore, right in rejecting the above contention.

We, however, wish to clarify that in this case we express no opinion on the question whether a member or a retired member of the armed forces who acquires title to a building which is already in the occupation of a tenant by inheritance, partition, transfer or otherwise and thus becomes the

landlord of the building while he is a member of the armed forces, can avail of the remedy against such tenant under section 13A1 of the Act.

Even on the basis of section 13(1)(g) of the Act, the plaintiff is not entitled to succeed in view of the clear finding recorded by the High Court. We have gone through the reasons given by the High Court to reverse the decision of the District Court on the above question. We agree that the plaintiff has not established that he was really in need of the building. The finding of the High Court on this question also does not call for any interference.

For the foregoing reasons, the appeal fails and is hereby dismissed. No costs.

H.L.C.

Appeal dismissed.