

Miss Kanta Udharam Jagasia vs Shri C.K.S.Rao on 2 December, 1997

Equivalent citations: AIR 1998 SUPREME COURT 569, 1998 (1) SCC 403, 1998 AIR SCW 162, (1997) 9 JT 556 (SC), 1997 (9) JT 556, 1997 (7) SCALE 446, 1998 SCFBRC 45, 1998 BOMRC 226, 1998 () HRR 127, 1998 (1) ALL CJ 526, 1998 (1) UJ (SC) 71, 1998 UJ(SC) 1 71, (1998) 4 JT 373 (SC), (1997) 7 SCALE 446, (1998) 1 RENCJ 144, (1997) 2 RENCRC 693, (1997) 2 RENTLR 616, (1997) 10 SUPREME 251, (1998) 1 SCJ 50, (1998) 4 BOM CR 297

Author: K. Venkataswami

Bench: K. Venkataswami

PETITIONER:
MISS KANTA UDHARAM JAGASIA

Vs.

RESPONDENT:
SHRI C.K.S.RAO

DATE OF JUDGMENT: 02/12/1997

BENCH:
A.S. ANAND, K. VENKATASWAMI

ACT:

HEADNOTE:

JUDGMENT:

THE 2ND DAY OF DECEMBER, 1997 Present:

Hon'ble Dr.Justice A.S.Anand Hon'ble Mr.Justice K.Venkataswami Harish Salve, Sr.Adv., C.K.Sasi, Kailash Vasdev, Advs. with him for the appellant R.S.Hegde, and K.R.Nagraja, Advs. for the Respondent J U D G E N T The following Judgment of the Court was delivered:

K. Venkataswami. J.

The appellant-landlady. who was successful before the Competent Authority. Konkan Division, Bombay, in getting an order of eviction against the respondent-tenant but failed before the High Court. has filed this appeal by special leave challenging the reversing decision of the High Court.

The appellant claiming to be the owner of Flat No.3 situated on the ground floor of building bearing Plot No.

42. The Sindhi Immigrants Cooperative Housing Society Ltd.

Chamber Road, Bombay, preferred an application under Section 13A1 (i)A(ii) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter called the 'Act') seeking eviction of the tenant (respondent herein) from the said premises. According to the appellant. the plot bearing No. 42 was initially allotted in favour of her mother. Smt. Navabat. wife of Udharam, by the Housing Society Later on. Moti Ram, brother of the appellant, was accepted as a member of the Housing Society in place of Smt. Navabai, Still later, i.e.. some time in November, 1960, the appellant's father Udharam became a member in place of Motiram. The said Motiram constructed the present building consisting of ground, first and second floors in Plot bearing No. 42. On 11.9.69. Udharam died leaving behind three sons and three daughters. including the appellant. On 23.9.69. A Deed of Declaration was executed among the legal heirs of the deceased Udharam whereunder the appellant and one of her brothers, Hiranand were allotted the ground floor. The ground floor itself consisted of four flats. The Housing Society by its Resolution dated 24.9.69 accepted the inter se arrangement as mentioned above. Again on 31.1.88. on being informed, the Housing Society accepted the arrangement reached between the appellant and her brother. Hiranand, whereunder Flat Nos. 1 and 2 of the around floor were allotted to Hiranand and Flat Nos. 3 and 4 fell to the share of the appellant. Of the four flats on the ground floor at the relevant time. Flat Nos.2 to 4 were in possession of tenants. The respondent was tenant in Flat No.3. The appellant was residing along with the family of her brother in Flat No.1.

Finding that it was no longer possible to get on with her sister-in-law, the appellant preferred an application for possession of Flat No.3 alleging that she being a holder of scientific post in the Department of Bhabha Atomic Research Centre (for short BARC) was entitled to invoke Section 13A] (A) (ii) on the Act. She also enclosed necessary Certificate to support her claim that she was holding a scientific post in the Department of BARC and that she had no other suitable premises for her residence in the local area where the suit premises was situated. It was also claimed by the appellant that her claim was bona fide and her joint living with her brother's family was no longer possible for reasons given in the applications.

The applications for eviction was resisted by the respondent. It was alleged in the written statement that the appellant was not the owner of the suit flat: theat there was no relationship of a landlord and tenant between them:

that she was not holding a post of Scientific Officer in BARC: that Flat No.1 on the ground floor was conveniently divided into Flat Nos. 1A and 1B and the appellant was in possession of one of the flats and that, therefore, her claim was not bona fide.

Before the Competent Authority, the appellant, besides examining herself, has examined the Assistant Personnel Officer of the BARC to prove the Certificate dated 2.7.88. She also examined the Manager of the Housing Society to support her claim that Flat Nos. 3 and 4 were ultimately allotted to her share under the arrangement between the appellant and her brother. She also examined her Aunt, and old lady of 46 years, to prove that the appellant was not able to get on with her brother's family consisting of her brother, sister-in-law and two college going children and the relationship between the appellant and her sister-in-law was strained.

The respondent-tenant examined himself to substantiate the allegations made in his written statement. He also examined a Supervisor in the Local Department of the Bombay Suburban Electric Ltd., Santacruz, to depose that the appellant had made an application for transfer of the electric meter in Flat No.1A to her name. He also examined a Ward Officer in the Chembur Ward of the Bombay Municipal Corporation to elicit that the whole property No. 42 stands in the name of Moti ram Udham Jagasia. In addition to the above, he also examined his son to speak about the details regarding Flat No. 1A and 1B.

In the light of the pleadings. Oral and documentary evidence, the competent Authority by an order dated 31.3.90. held that the appellant had proved that she was the landlady qua respondent-tenant as defined in the Act: that she was holding a scientific post in BARC to enable her to invoke Section 13A1 (1) (A) (ii) of the Act that the Certificate produced by her was proved; that she had no other suitable accommodation and that her claim for possession was bona fide one. On those findings, an order of eviction of the respondent-tenant from the suit flat was passed by the Competent Authority.

The tenant aggrieved by the order of eviction preferred a Revision to the High Court under Section 31F of the Act. Before the High Court, it was contended on behalf of the respondent-tenant that the Certificate originality enclosed along with the application for eviction was not in order and the competent Authority ought not to have allowed the applicant-landlady to substitute the Certificate issued by the Competent Authority during the pendency of the eviction petition. This ground did not find favour with the High Court and the High Court after a lengthy discussion on this issue, held that the Certificate produced during the pendency of the trial would be sufficient compliance of the requirement under Section 13A1 of the Act. Accordingly, the High Court rejected the first contention.

It was then contended before the High Court that the second Certificate. Even though issued by the Competent Authority, was issued mechanically, arbitrarily and without

application of mind and was therefore, liable to be ignored and consequently the order of eviction passed on the basis of the Certificate was also liable to be set aside. In other words, the contention of the tenant before the High Court was that though the Certificate certifies that the landlady was holding a post of the Scientific Officer, she being a Medical Doctor and discharging the duties of a Doctor, could not be treated as a Scientific Officer and the Certificate issued was, therefore, not on proper appreciation of the term. This contention found favour with the High Court and the High Court held that merely because the BARC had chosen to style the applicant a "Scientific Officer", that would not tract the jurisdiction of the Court from finding out whether the applicant was, in fact, a Scientific Officer and to whom the benefit of the provision was to be extended. The High Court found that the applicant-landlady was not entitled to the benefit of Section 13A1 of the Act despite the issuance of the Certificate and despite the conclusiveness of the facts stated in the Certificate. The High Court also found that the Certificate had been issued in colourable exercise of power and the same was tainted with malafides and, therefore, liable to be lenored. The High Court did not stop there and further analysed the contents of the Certificate sentence by sentence and land that the facts given in the Certificate were not correct and on that ground also. The certificate deserved to be ignored totally. Consequently, the benefit of Section 13A1 of the Act could not be extended to the applicant.

The High Court also considered the question of bona fide requirement and analysed the evidence, as if it was the Competent Authority, led by the parties and came to a conclusion that the inter se arrangement between the family members, though accepted by the Housing Society, cannot be accepted and relied upon. The High Court also found on re- appreciation of facts that the applicant could continue to occupy the portion in her possession conveniently and, therefore, she had not been able to prove that she required the suit premises bona fide for her occupation.

On these findings, the High Court reversing the order of the Competent Authority, dismissed the applications for eviction.

Mr. Harish N. Salve learned senior counsel appearing for the appellant, submitted that the High Court exceeded it revisional jurisdiction in re-appreciating the evidence and failed to appreciate that the appellant was posted as a Scientific Officer as per the Presidential Order, which had been gazetted as per the Presidential Order, which had been gazetted and it was not for the High Court to go further and investigate whether the appellant was holding a scientific post or not. Even though the High Court found that the Certificate was conclusive according to Section 13A1 (1)(A)(b) it went wrong in going beyond the Certificate. He submitted that the purpose of introducing special provisions in the Act has been successfully defeated by dragging the proceedings for nearly a decade. According to the learned counsel, the relationship of landlady and tenant cannot be disputed as admittedly the tenant was paying rents to the appellant. Even otherwise, the fact the appellant is a co-

owner she is entitled to file the application for eviction. In the absence of other co-owners disputing her claim, it is not open to the tenant to challenge her title. In support of his contention that a co-owner can file a petition for eviction the learned counsel placed reliance on two judgments of this Court reported in Kanta Goel Vs. B.P. Pathak & Ors. - (1977)2 SCC 814. and Pal Singh Vs. Sunder Singh (dead) by LRs. & Ors. (1989) SCC 444. He also submitted that on a plain reading of Sections 13A1 and 31F the High Court ought not to have rejected the Certificate and analysed the Facts and evidence as if it was sitting in Appeal over the decision of the Competent Authority. Broadly speaking the contents in the certificate regarding the plot number and the name of the Society leave no doubt about the facts given therein. In any case, the respondent-tenant is not prejudiced by small mistakes appearing in the certificate which have been unduly magnified by the High Court instead of ignoring the same.

Contending contrary, Mr. R.S. Hegde, learned counsel appearing for the respondent-tenant, submitted that the High Court was right in coming to the conclusion that the Certificate issued by the competent Authority was without application of mind and it was open to the High Court to go into the correctness of the Certificate, notwithstanding that the Certificate was conclusive in the light of Section 13A1(2) of the Act. He also submitted that certain facts given in the Certificate regarding the ownership were also not correct as found by the High Court and, therefore, the High Court was justified in rejecting the Certificate. According to Mr.Hegde, in the absence of registered documents specifying the allotments inter se the heirs of deceased Udharam, the claim of the appellant that she was the owner of a specific flat cannot be accepted and, therefore, the High Court was right in holding that the arrangement accepted by the Housing Society cannot be pressed into service. Learned counsel also wanted to raise the point rejected by the High Court, namely, that the Competent Authority ought not to have allowed the applicant to substitute the first Certificate which was not issued by the Competent Authority, though the second one was issued by the Competent Authority.

We have carefully considered the rival submissions. We are of the view that the High Court exceeded its revisional jurisdiction in interfering with the order of the Competent Authority without appreciating the limitation imposed by the Act. The relevant portion of Section 13A1(1)(A)(ii) and 2 reads as follows:-

"13A1. Members of armed forces of the Union, scientists or their successor-in-interest entitled to recover possession of premises required for their occupation. (1) Notwithstanding anything to the contrary contained in this Act or any contract,--

(A) a landlord who,--

(i).....

(ii) holds a scientific post in the Department of Atomic Energy of the Central Government or in any of its aided institution (hereinafter in this section referred to as "a scientist") or was such a scientist and has retired as such (which term shall include premature retirement) and one year has not elapsed since his retirement on the date

of making of the applications.

Shall be entitled to recover from his tenant the possession of any premises owned by him on the ground that such premises are bona fide required by him for occupation by himself or by any member of his family, by making an application for the purpose of recovery of possession of the premises, to the Competent Authority; and the Competent Authority shall make an order of eviction on that ground if--

(a) in the case of a landlord who is a member of the armed forces of the Union, he produces a certificate signed by the authorised officer to the effect that,---

(1) he is a member of the armed forces of the Union, or that he was such a member and has retired as such, and

(ii) he does not possess any other premises suitable for residence in the local area where the premises are situated; or

(b) in the case of a landlord who is scientist, he produces a certificate signed by an officer of the Department of Atomic Energy of, or above, the rank of Deputy Secretary to Government to the effect that --

(i) he is presently holding a scientific post in the Department of Atomic Energy or in any of its aided institution specified in the certificate or he was holding such post and has now retired with effect from the date specified in the certificate;

(ii) he does not possess any other suitable residence (excluding any residential accommodation provided by Government) in the local area where the premises are situated. (2) Any Certificate ganted under sub-section (1) shall be conclusive evidence of the facts stated there."

Section 31F reads as follows:-

"31F. Order of Competent Authority to be non-appealable and revision by High Court. (1) No appeal shall the against an order for the recover of possession of any premises made by the Competent Authority in accordance with the procedure specified in Section 31F. (2) The High Court may, at any time sub motu or on the application of any person aggrieved, for the purpose of satisfying itself that an order made in any case by the competent Authority under Section 31E is according to law. call for the record of that case and pass such order in respect thereto as it thinks fit:

Provided that, no powers of revision at the instance of person aggrieved shall be exercised unless an application is presented within ninety days of the date of the order sough to be revised."

The extracts of relevant provisions given above are the provisions as amended by the Bombay Rents (Amendment) Act, 1986, It is necessary in this context to bear in mind the background which necessitated the said amendment in the year 1986. Section 13A1 itself was inserted into the Act by the Maharashtra Amendment Act 52 of 1975. The said Section when introduced initially was made applicable to members of armed forces of Union and their widows only. Subsequently, by Maharashtra Amendment Act 11 of 1977, Section 13A2 was inserted. This provision extended the benefits to persons holding scientific posts in the Department of Atomic Energy of the Central Government or in any of its aided institutions and their widows. However, the procedure for applications and appeal remained the same as appealable to the other landlords for similar relief in the year 1986, a further amendment was brought by the Maharashtra Legislature by combining Section 13A1 and 13A2 and substituting Section 13A2 enabling landlords to recover possession of premises given on expiry of licence. Another significant amendment introduced by the Amending Act 1986 related to special provisions for recovery of possession by landlords such as members of armed forces of the Union, scientists and their widows on the ground that the premises are bona fide required for occupation by them or by any member of their family. It was considered that the normal procedure in the main Act will take time in getting a decree through the Court and the object of making special provisions (Sections 13A1 and 13A2) cannot be achieved. Therefore, the legislature provided a special machinery for summary disposal of the applications made by the landlords coming under Section 13A1 and 13A2 for recovery of premises from the tenants. Consequently, Part IIA was introduced in the Act making suitable provisions for appointment of Competent Authorities for the procedure to be followed by them for giving finality to the order made by the Competent Authority subject to only a revision by the High Court and further barring the jurisdiction of the Civil Court.

It is also necessary to extract the order of appointment of the appellant as a Scientific Officer, which reads as follows:-

Bombay-400039, the 5 May 1997 No. 5/97 BARC:- The President is pleased to appoint the undermentioned officers of the Baba Atomic Research Centre of this Department to the posts indicated under column 35 with effect from the dates indicated under column 5 against each, in an officiating capacity until further orders:-

Sl. Name No.	Permanent post held if any	Offi- ciating as	Now appointed as	Date
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1. - - - -

2. - - - -

3. - - - - -

4. Dr. (Kum) - Scientif- Scientif- 1.8.76 Kanta Udharam ic Officer fic (FN) Jagasia /Engr.Gra- Officer/ de SC /Engr.

Grade SD

5. - - - - -

6. - - - - -

7. - - - - -

8. - - - - -

9. - - - - -

We shall now extract the Certificate, which is relevant for our purpose, issued by the competent Authority, from the Department of Atomic Energy which reads as follows:-

Chhatrapati Shivaji Maharaj Marg, Bombay 400 039 GOVERNMENT OF INDIA
DEPARTMENT OF ATOMIC ENERGY No. 25/42/88/R July 22, 1988 TO
WHOMSOEVER IT MAY CONCERN This is certify that :

(1) Dr. (Kum.) Kanta U.Jagasia, Scientific Officer, Grade SE, Medical Division is presently holding a Scientific Post" In the scale of pay of Rs. 3700-125-4700-150-5000 in the Bhabha Atomic Research Centre, Department of Atomic Energy, Government of India.

(11) As per records, Dr. (Kum.) K.U. Jagasia, who is an owner of accommodation at 42, Sindhi Society, Chembur, Bombay 400 071 does not possess any other residence in Bombay in her name.

This certificate is issued to Dr. (kum.) Jagasia at her request for initiating the eviction proceedings against her tenants and to get possession of her accommodation referred to in item (ii) above, keeping in view the provision contained in Section 132A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 as amended from time to time.

Sd/-

(R. Narayanaswamy) Deputy Secretary/Staff Relations Officer. with his background let us proceed further. A look at Section 31F will show that the legislature deviating from the normal procedure

otherwise provided in the Act by enabling the aggrieved parties to approach the Appellate Court has provided a limited jurisdiction to the High Court against the order of the Competent Authority, Under this provision, the High Court is not expected to go into the matter as an Appellate Authority reappreciating the evidence, as has been done by the High Court in the present case. With respect, we may say that the High Court has considered the issue as if it was deciding the original suit. The legislature has expressly provided that any Certificate granted under Sub-Section (1) of Section 13A1 shall be conclusive evidence of the facts stated therein (Vide Sub-Section 2 extracted above). Nevertheless, the High Court went beyond the Certificate and substituted its own reasoning for not accepting the Certificate. First of all, the Presidential Order appointed the appellant (supra) as a Scientific Officer as notified in the Gazette was brought to the notice of the High Court and in spite of that the High Court found as follows:-

"It is no doubt true that Section 13A1(2) does make the facts stated in the Certificate conclusive evidence of the facts stated therein. However, when it is shown that the applicant, by virtue of the duties that she is performing in the BARC, cannot be included in the category of a Scientific Officer, it would be always open to a court to consider whether the applicant an officer to whom the legislature intended to confer the said benefit. Merely because of the BARC, who are the employees of the applicant, have chosen to style the applicant a Scientific Officer would not detract from the power or the jurisdiction of the Court from finding out whether the applicant is in fact a Scientific Officer to whom the benefit of the said provision is to be extended. To cite an extreme example, to illustrate my point of view, in case BARC issue a certificate in favour of a Peon employed in its Office that he is a Scientific Officer would it on account of the conclusiveness which is given to it by sub-sec.2, come in the way of the Court to hold that he is not a Scientific Officer. In my view, that cannot be the construction that can legitimately be given to the said provision. This would be so even if as has been pointed out by Shri Abhyankar that the appointment of the applicant, as is seen from the aforesaid Gazette, is made by the President of India."

We are unable either to appreciate the example given by the High Court or to accept the conclusion reached by the High Court, Likewise, the High Court found fault with the certificate in stating that the appellant was "an owner of accommodation at 42 Sindhi Society, Chembur Road Bombay-400071.", without appreciating that Flat No.3, which is the suit premises, is within this plot No.42 and the parties were not in doubt about the premises or about the Society whose name is given in the Certificate. The High Court was not justified in finding fault with the Certificate by pointing out minor mistakes viz. in not giving the full details. The High Court was also not right in finding that the Certificate was not acceptable for the additional reason that it was issued under colourable exercise of power and with a malafide intention. we do not find that any such case was put forward or made out before the competent Authority.

We have already noticed the special provisions made in the Act under Section 13A1 as well as under part 11A of the Act and the reason for introducing the said provisions. In one sense the question regarding the conclusive nature of contents contained in the Certificate issued as required under Section 13A1 is no longer res integra. This Court in Shivram Anand Shiroor Vs. Mrs. Radhbai

Shantram Kowshik & Anr. - (1984) 1 SCC 588 had occasion to consider the scope of Section 13A1 as introduced in the year 1975 before the same was amended in 1977 and 1986. However, as regards the conclusiveness of the Certificate there is no change in the Section. Chinnappa Reddy, J. speaking for a Bench of three Judges, while repelling a contention that the Bombay Rent Act is a welfare legislation designed among other matters, to protect tenants from harassment and unreasonable eviction by landlords and it should therefore, be interpreted in a broad and liberal spirit so as to further and not to constrain the object of the Act, observed as follows:-

"Notwithstanding the expressed legislative bias in favour of the tenant, the Legislature itself made a serious departure from the general rule so as to lean in favour of landlords who are or were members of the armed services, and who because of the exigencies of their service were not able to occupy their own premises during the course of their service.

Section 13-A1 was enacted, relaxing the rigour of Section 13 in favour of a landlord who is or was a member of the armed forces. It is now provided that if he produces a certificate in the manner prescribed it shall be taken as established, without further proof that he is presently a member of the armed forces of the union or that he was such member and is now a retired ex-serviceman and that he does not possess any other suitable residence in the local area where he or any member of his family can reside. All that he has to further prove is that he bona fide requires the premises for occupation by himself or any member of his family. The certificate is conclusive proof that he does not possess any suitable residence in the local area, but not that he bona fide requires the same for occupation by himself or any member of his family. There may be cases where he does not possess any other suitable residence in the local area and yet he does not bona fide require the premises for occupation by himself or any member of his family, being comfortably settled elsewhere with no need or pressure to move. But as soon as he establishes that he bona fide required the premises for occupation for his family, he is entitled to recover possession and does not have to further prove that greater hardship would be caused to him than to the tenant if a decree for possession is not granted. It is of course, implicit that the person producing the certificate is the landlord. It is further implicit that the person mentioned in the certificate presently or previously a member of the armed forces was at a simultaneous point of time both landlord and member of the armed forces."

The Bench has noticed an earlier decision on this provision, namely, Winifred Ross Vs. Ivy Fonseca (1984) 1 SCC 288.

In above observations on the conclusive nature of the Certificate supports the view taken by us in this case. Further, it must be remembered that when the three-Judge Bench considered the case, Part IIA was not introduced and, therefore, against the order of the Rent Controller an appeal was provided and further revision under Article 227 of the Constitution of India was available to the aggrieved parties. Now, by introduction of Part IIA the order of the competent Authority was to be final subject to revision by the High Court under Section 31F. This should have been borne in mind by the High Court while dealing with the matter in hand, which the High Court failed to do.

The High Court also was not justified in interfering with the considered finding of the Competent Authority regarding the bona fide requirement of the landlady on the basis of evidence given by her

Aunt. The High Court, forgetting that it had a limited revisional jurisdiction. analysed the evidence and substituted its findings in place of the findings of the Competent Authority. On a perusal of the evidence, we find that the findings arrived at by the Competent Authority on the basis of oral evidence cannot be said to be perverse or even unreasonable requiring the High Court to reverse the same. It is well settled that though another view is possible on reappreciation of the evidence, the revisional Court may not interfere with the findings of the lower courts on that ground. We do not think it is necessary to reiterate that a co-owners' can maintain not seriously disputed before us. We find that question does not strictly arise for consideration on the facts of this case as the legal heirs had settled among themselves regarding allotment of distinct and different shares to each one of them, which was accepted by the Housing Society. We have also seen that the tenant was paying rents to the appellant. The Competent Authority on this aspect has observed as follows:-

"Apart from the above evidence, the applicant's evidence show that after 31.1.1988 the opponent's son Chetan used to pay rent by cheque on behalf of his father drawn in favour of the applicant. The applicant has issued rent receipts to him and she has produced the counterfoils of rent receipts from February 1988 onwards (Ex.A3). The reverse of the counterfoils bear the signature of the opponent's son Chetan. The opponent has produced the rent receipts (Ex. R-1). This Evidence establishes the fact that the appointment has become the contractual tenant of the applicant after 31.1.1988."

Though the matter of hardship is not quite relevant when the application for eviction is under Section 13A1. The Competent Authority has also considered that aspect and found as follows:-

"Coming to the third contention of Mr. Murthy regarding hardship, the question of hardship is irrelevant for the purpose of sec. 13A1 of the Rent Act. Apart from this, the evidence on record reveals that the opponent has other accommodation at his disposal. The opponent's son Dinesh has constructed a bungalow in Mysore Colony at Chembur, Bombay. The opponent is also presumed to be residing with his son Subanna in the premises of Maharashtra Housing Board, Kurla, to avail himself of medical facilities available to him by virtue of his son Subanna being in employment of B.A.R.C. The third contention raised by Mr. Murthy, therefore, is not valid."

In the circumstances, we are of the view that the High Court was not justified in reversing the finding of the Competent Authority and allowing the revision.

In the result, the appeal succeeds and is allowed, the order of the High Court is set aside and that of the competent Authority is restored. There will be no order as to costs.