

Eviction for Unauthorized Permanent Structure

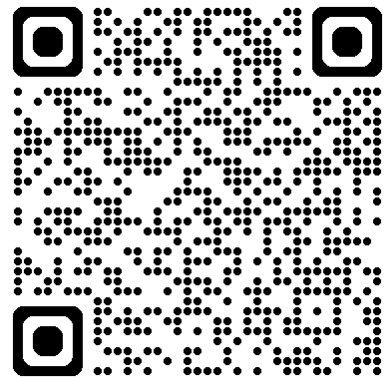
Case Name: Binaifer Batiwala v. Kadambagiri Estates Pvt. Ltd.

Citation: 2024:BHC-AS:41870

Act: Maharashtra Rent Control Act, 1999

Case Brief & MCQs on this case is available in the eBook:

["Bombay High Court Cases in October 2024"](#)



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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10462 OF 2019

Mrs. Binaifer Batiwala alias Binaifer
Lovji Malegam

....*Petitioner*
(*Orig. Defendant*)

-Versus-

Kadambagiri Estates Pvt. Ltd.

...*Respondent*
(*Orig. Plaintiff*)

Mr. Y.S. Jahagirdar, *Senior Advocate i/b. Mr. Shailendra S. Kanetkar for Petitioner.*

Mr. V.A. Thorat, *Senior Advocate with Mr. Rohaan Cama, Mr. Kyrys Modi, Ms. Smruti Kanade, Ms. Jigisha Vadodaria & Ms. Masira Lulania i/b. Negandhi Shah Himaytullah for Respondent No.1.*

CORAM : SANDEEP V. MARNE, J.

Reserved on : 11 October 2024.

Pronounced on : 21 October 2024.

JUDGMENT :

1) Writ Petition is filed challenging the judgment and decree dated 26 August 2019 passed by the learned District Judge-8, Pune in Regular Civil Appeal No.215 of 2010 allowing the Appeal and setting aside the judgment and decree dated 5 December 2009 passed by the learned Judge, Small Causes Court, Pune in Special Civil Suit No.30 of 2002. The Small Causes Court had dismissed Special Civil Suit No.30 of 2002 instituted by Respondent-Plaintiff on the ground of erection of

permanent construction on the suit premises under provisions of Section 16(1)(b) of the Maharashtra Rent Control Act, 1999 (**MRC Act**). The Appellate Court has reversed the decree passed by the Trial Court and has decreed Special Civil Suit No. 30 of 2002 on the grounds of carrying out permanent construction causing destruction or danger to the building and erection of unauthorised extension of permanent nature to the suit premises. The Appellate Court has directed Petitioner/Defendant-tenant to deliver vacant possession of the suit premises. Aggrieved by the decree passed by the Appellate Court, Petitioner-tenant has filed the present Petition.

2) Plaintiff-Respondent is the owner of the bungalow, outhouse and other structures known as 'Bungalow No.7' situated at General Land Register Survey No.426, North Petty Staff Lines within the limits of Pune Cantonment Board, Pune. According to Plaintiff, the Pune Cantonment Board is the owner of the land bearing General Land Register Survey No.426, whereas structures standing thereon are owned by Plaintiff. Suit premises comprise of two parts (i) main bungalow consisting of hall-cum-dining, kitchen, two bedrooms, bathroom, toilet, verandah, dressing room and storeroom situated on the ground floor, totally admeasuring 1700 sq.ft. and (ii) two rooms in the outhouse admeasuring 260 sq.ft. Both structures together are described as **suit premises** in the plaint. Defendant was inducted as monthly tenant in respect of the suit premises by the erstwhile owner and landlord. Plaintiff purchased the structures located at the plot from the erstwhile owner vide five registered sale deeds executed in the year 1990. According to Plaintiff Defendant erected unauthorised extension to the suit premises adjacent to the portion of outhouse admeasuring 21 ft. x 16 ft. plus verandah admeasuring 5 ft x 21 ft. by use of MS angles frame enclosed with asbestos cement sheets with polythene roof. Plaintiff alleged that the

said structure has been used as a room and the same is of permanent nature. Plaintiff also alleged construction of a toilet by use of bricks, cement and GI sheet partition. According to Plaintiff the said constructions were carried out without the written consent of landlord and without permission from the Cantonment Board.

3) Plaintiff accordingly instituted Special Civil Suit No.30 of 2002 in the Court of Small Causes Court, Pune seeking recovery of possession of the suit premises on the ground of construction of permanent nature without landlord's consent in writing and cause of damage to the existing structure. The Suit was resisted by Defendant by filing written statement denying that the structure was of permanent nature or was erected without permission. Defendant claimed that she merely repaired the existing structure, which was in dilapidated condition. She denied construction of toilet. She contended that the erstwhile owners of the property had permitted her to carry out repairs of substantial nature. That the structure on the land was quite old and required continuous and repeated repairs. That repairs were required to be carried out to the outhouse as well as to the old toilet. That there was already a porch made of temporary material, which was in dilapidated conditions and the Defendant merely repaired the same by putting up structures of temporary nature, which is easily removable. Defendant also contended that even after purchase of the structures by Plaintiff, permission was demanded from Mr. Talera on or about 6 February 1996 for repairing the roof and for maintenance work, which permission was granted by letter dated 6 February 1996. Defendant prayed for dismissal of the Suit. Based on the pleadings, Trial Court framed issues of (i) breach of terms of tenancy by carrying out unauthorised /illegal permanent construction without consent of landlord, which is destructive or dangerous to the building, (ii) erecting of unauthorised extension to the suit premises of

permanent nature and (iii) act of carrying out unauthorised additional construction and extension amounting to nuisance and annoyance.

4) On an application made by Plaintiff, Vilas Tarwadi-Architect and Interior Designers was appointed as Court Commissioner for inspection of the premises, who submitted his report alongwith the map at Exhibit-19. Plaintiff examined Suresh Motilal Talera, Narendra S. Desai and Jayesh Pravinchandra Shah and relied upon several documents. Defendant examined herself, Bernard Jayasilan, Freny Rohiton Udachia and also relied upon several documents.

5) After considering the pleadings, documentary and oral evidence, the Small Causes Court proceeded to dismiss the Suit by judgment and order dated 5 December 2009 holding that the Defendant merely erected a temporary structure, which cannot be called a 'construction'. Plaintiff filed Regular Civil Appeal No.215 of 2010 in District Court, Pune challenging the decree dated 5 December 2009. The Appellate Court allowed the appeal by judgment and order dated 22 September 2016 by accepting the grounds of erecting the permanent structure without landlord's consent in writing. The Appellate Court however, rejected the contention of commission of act contrary to provisions of Section 108(o) of the Transfer of Property Act, 1882 as well as cause of nuisance and annoyance to the adjoining or neighbouring occupiers. Defendant was directed to handover possession of the suit premises with separate enquiry into mesne profits. Defendant filed Writ Petition No. 214 of 2017 in this Court, which came to be dismissed by order dated 23 February 2017 recording consent of the learned counsel appearing for Plaintiff for setting aside the decree of the Appellate Court and for remanding the appeal for re-hearing. Accordingly, the decree of the Appellate Court dated 22 September 2016 was set aside and Regular

Civil Appeal No.215 of 2012 was restored for being decided afresh. After the order of remand, the Appellate Court reheard the appeal and dismissed the same by judgment dated 5 January 2018 rejecting all the three grounds of erecting permanent structure, cause of destruction/injury as well as nuisance and annoyance. Plaintiff filed Writ Petition No.5649 of 2018 before this Court challenging the decree of the Appellate Court dated 5 January 2018. This Court disposed of the Petition this time recording consent on behalf of the Petitioner-tenant for setting aside the decree dated 5 January 2018 passed by the Appellate Court. This Court directed photographs taken by the Court Commissioner to be marked as exhibits and to take the same into consideration while deciding the appeal afresh. This Court recorded statement on behalf of the Plaintiff that it shall not press the ground of nuisance under Section 16(1)(c) of the MRC Act. Accordingly, this Court directed the Appellate Court to decide the appeal afresh by taking into consideration the photographs produced by the Court Commissioner. After second remand to the Appellate Court, the Appeal has been finally allowed by judgment and decree dated 26 August 2019. The Appellate Court set aside the decree dated 5 December 2009 passed by the Small Causes Court and has decreed Plaintiff's Suit directing Defendant to handover possession of the suit premises. Aggrieved by the decree of the Appellate Court dated 26 August 2019, the Petitioner-tenant has filed the present Petition. By order dated 1 October 2019, this Court stayed execution of the eviction decree, which order has been continued from time to time.

6) Mr. Jahagirdar, the learned Senior Advocate appearing for Petitioner-tenant would submit that the Appellate Court has erroneously reversed the decree of the Trial Court by which Plaintiff's Suit was dismissed. That the land on which suit premises are situated belonged to Cantonment Board and that therefore provisions of the MRC Act do not

apply to the suit premises and that therefore, the Small Causes Court will not have jurisdiction to try and entertain the Suit. Without prejudice, he would submit that the structure described by Plaintiff is not of permanent nature. That it is merely temporary structure, which is easily removable without causing any damage or injury to the suit premises. That the Appellate Court has erroneously inferred that the said structure is of permanent nature, without taking into consideration the three important tests of nature and extent of structure, durability and its removability. That the learned Appellate Court has erroneously taken into consideration the purpose for which the structure is intended. That mere long life does not make the structure permanent in nature and that the nature of permanency can only be assessed by taking into consideration the type of structure. That the structure has been erected by use of temporary material such as MS angles, asbestos sheets and covered with polythene roof, which can, by no stretch of imagination, be considered as structure of permanent nature. Mr. Jahagirdar would submit that the ground under Section 16(1)(a) of the MRC Act was not even pleaded by the Plaintiff but the same has erroneously been accepted by the Appellate Court.

7) Mr. Jahagirdar would further submit that even if the structure is assumed to be of permanent nature, the same is outside the tenanted premises. That the land on which the same is put up does not belong to Plaintiff and is owned by the Cantonment Board. That Section 16(1)(b) contemplates putting up of construction 'on the premises, whereas the construction in the present is outside the premises.

8) In support of his contentions Mr. Jahagirdar would rely upon following judgments:

- (i) *Suka Ishram Chaudhari Versus. Jamnabai Ranchodas Gujarathi*¹,
- (ii) *Somnath Krishnaji Gangal Versus. Moreshwar Krishnaji Kale and Ors.*²,
- (iii) *Hotel Rosalia Pvt. Ltd. Versus. Metrol Hotels and Ors.*³,
- (iv) *Pitambardas Kalyanji Bakotiya Versus. Dattaji Krishnaji*⁴,
- (v) *Lucky Restaurant & Anr. Versus. M/s. Deccan Talkies, Poona*⁵,
- (vi) *Ratanlal Ramgopal Agarwal & Ors. Versus. Kurban Hussain Gulamali Lahri&Ors.*⁶,
- (vii) *Pushpaben Bhubatrai Kamdar Versus. Gordhandas Walchand Bhatia*⁷,
- (viii) *Venkatlal G. Pittie and Anr. Versus. Bright Bros Pvt. Ltd.*⁸,
- (ix) *Om Prakash Versus. Amar Singh & Ors.*⁹

9) The Petition is opposed by Mr. V. A. Thorat, the learned senior advocate appearing for Respondent-Plaintiff. He would submit that the present case clearly involves increase in usable space by Defendant-tenant by erecting structure of a permanent nature. That the structure is constructed in such a way that the same can be used as a roof. That the structure has been standing and put to use for 17 long years when the Appellate Court decided the appeal and by now it is 21 long years that the structure has lasted and is put to use by Defendant. The case clearly involves intention on the part of the Defendant-tenant to have additional space for use. That it is proved that the Defendant has also constructed a verandah by use of cement, which is accessed by two doors

¹ AIR 1972 Bom 273

² 1995 (1) Mh.L.J. 675

³ 2001(2) Mh.L.J. 881

⁴ 1981 Mh.L.J. 290

⁵ 370 Bom C.R. 1985

⁶ 1986(2) Bom C.R. 597

⁷ 337 Bom R.C. 1987

⁸ 1987 (3) SCC 558

⁹ 1987 (1) SCC 458

from the shed. That the said verandah is not reflected in the sanctioned plan or in the Lease Deed and clearly a new addition of permanent nature. Mr. Thorat would submit that Defendant has not disputed the fact that construction is carried out and that the only issue that require consideration was nature of such construction. That after assessing the evidence on record, the Appellate Court has rightly treated the structure as of permanent nature. That the Cantonment Board issued notice in respect of the structure making it abundantly clear that same is of permanent nature. He would take me through the photographs of the structure to demonstrate its nature. He would submit that permanency of structure is a finding of fact recorded by the Appellate Court, which does not warrant interference by this Court in exercise of writ jurisdiction.

10) Mr. Thorat would further submit that the additional structure admittedly abuts the outhouse and is also annexed to the outhouse. That the structure is also erected in land appurtenant to the outhouse. That such an activity would clearly attract provisions of Section 16(1)(a) and 16(1)(b) of the MRC Act as held by this Court in *M/s. Impex (India) Limited Versus. Mr. Dinashah Jal. Daruwala and Ors.*¹⁰. Mr. Thorat would also rely upon the following judgments in support of his contentions:

- (i) *Purushottam Das Bangur and Ors. Versus. Dayanand Gupta*¹¹
- (ii) *Shridhar Govind Natu Versus. Ankush Krishnaji Sawant*¹²
- (iii) *A-1 Engineering Works & Ors. Versus. Rajendra Kasturchand Vora & Ors.*¹³
- (iv) *Atul Chandra Lahiri Versus. Sonatan Daw*¹⁴

¹⁰ Writ Petition No.2748 of 2004, decided on 4 April 2024.

¹¹ (2012) 10 SCC 409

¹² 1985 Mh.L.J. 246

¹³ 2010 SCC OnLine Bom 717

¹⁴ 1961 SCC OnLine Cal 114

He would pray for dismissal of the Petition.

11) Rival contentions of the parties now fall for my consideration.

12) After having considered the submissions canvassed by the learned counsel appearing for parties, two broad points that arise for consideration in the present petition are (i) whether the construction put up by Petitioner/Defendant is a 'permanent structure' within the meaning of Section 16(1)(b) of the MRC Act and (ii) whether making of such construction 'outside the tenanted premises' would attract the ground for eviction under Section 16(1)(b) of the MRC Act.

13) So far as nature of construction is concerned, it would be necessary to refer to the report of the Court Commissioner, who visited the premises on 12 April 2004 and submitted his report alongwith the sketch map. The Court Commissioner is an Architect and Interior Designer and appointed at the instance of the Plaintiff. He has been examined before the Trial Court and subjected to cross-examination by the Defendant. The observations of the Court Commissioner in his report read thus :

5] My observation regarding the above structures are as follows:

[a] The main bungalow and porch is an old structure with Mangalore tiles roofing. It is built in bricks with lime mortar. The parties had no dispute regarding the said structure.

[b] The outhouse comprises of two rooms with half round Mangalore tiles roofing. It is built in bricks with lime mortar. It is an old structure. There is no dispute regarding the two rooms from the said outhouse.

[c] The dispute structured is an extension on the western side of the two room outhouse premises. The said extension structure is constructed in ground with Fibre sheets fixed on the roof. The said structure is immediately adjacent to the western walls of the two rooms of the outhouse. The said

structure is in the nature of a room. The western, northern & southern walls of the said disputed structure is of 4 mm thick asbestos sheets fixed from the ground line up to the height of 1.99 meters with a wire mesh [jali] of the height of 0.78 meter on the top of such asbestos wall for ventilation purpose. The said disputed structure is erected with support of western wall of two rooms of the outhouse premises. The flooring of the said disputed structure is of concrete.

The said disputed structure is shown in red colour boundary line in the sketch annexed hereto which is part & parcel of this report.

The said disputed structure admeasures 4.89 metres East-West by 6.41 sq. mtrs which is equivalent to 31.34 sq. mts. There are two doors in the western wall of the said disputed structure. There is another door in the Northern wall of the said disputed structure which is at the centre. The said door locations shown in yellow colour in the sketch annexed hereto.

[d] Immediate adjacent to the western wall of the said two room outhouse but inside the disputed structure there is a verandha constructed in cement concrete stretching north-south corner of the disputed structure. The verandha is of 4.74 meters stretching north south and 1 meter in width stretching east-west. Immediately adjacent to the said verandha on the Southern side there is mori constructed in bricks, cement concert plaster and tile cladding inside the mori. The said mori is of the size of 1.67 meter North South by 1.50 meter East West. The said mori is equipped with water tap and plumbing arrangement. There is a washbasin which is permanently fixed to the Northern wall of the disputed structure and it is also equipped with water tap and all plumbing arrangement. The said inside verandha is shown in orange colour, the washbasin is shown in blue colour and the mori in shown in black colour in the sketch annexed hereto.

[e] There is a verandha on the western side of the said disputed structure which is of the size of 1.67 meters east-west and 6.41 meters south. The flooring of the said verandha is made in cement concert. The verandha is covered with the fibre side roofing. The verandha is shown in purple colour in the sketch annexed hereto. The said verandha is opened on three sides i.e. Northern, Southern and Western.

[f] The above said disputed structure along with verandha is constructed in MS Angles firmly embedded in the earth. In all 16 M.S. angles are used for erection of the said structure. The said M.S. angles are shown in letter "L" & "T" in the sketch annexed hereto.

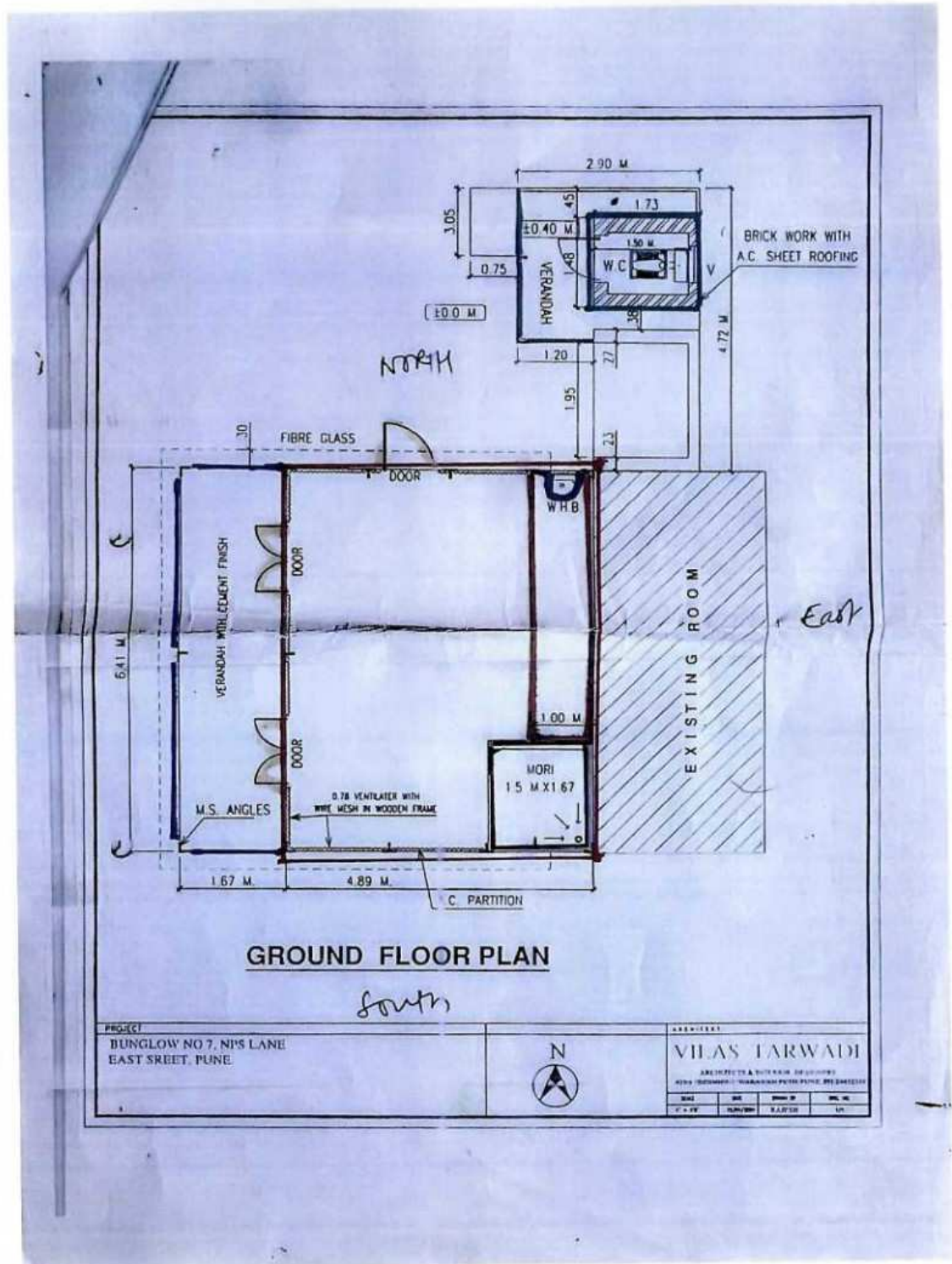
In my opinion the MS structure mori verandha are of permanent nature and distinctly different from the old structure.

[g] On the Northern side of the two rooms outhouse premises there is a garage and to the north of the garage there is a WC structure of the size of 1.73 meters east-west and 1.48 meters north- south. The height of the structure is 2.1 meters. The said WC is constructed in solid brick work and cement plastering. The roof of the said WC structure is of asbestos sheet slopping from east to west. The WC structure is detached from the garage. Immediate to the west of the said WC structure there is a verandha. The flooring of the said verandha is made in cement concert. This verandha is enclosed with MS angles and asbestos sheets;

The said WC & Verandha is shown in green colour in the sketch annexed hereto. The said WC & verandha is of a permanent nature and the construction of the WC & Verandha is distinctly different from the old structure of the outhouses.

The sketch is annexed to this report as Annexure "A" and the rough noting's with the sketch taken at the time of commission work in presence of the parties and their counsels is annexed to this report as Annexure "B". The said rough notings bears the signature of the parties above mentioned.

14) Thus, during the course of his visit, the Court Commissioner has observed presence of an extension to the out-houses which extension was being used as a 'room'. The extended structure is covered from western, northern and southern sides by 4 m.m. thick asbestos sheets upto the height of 1.99 mtrs. Thereafter the sides are covered by wire mesh for further height of 0.78 mtrs till the roof. According to the Court Commissioner, the wire mesh was maintained for ventilation purpose. The flooring of the disputed structure is of cement concrete, three doors were observed to the disputed structure by the Court Commissioner. The Court Commissioner also observed construction of a verandah in cement concrete admeasuring 4.78 mtrs. by 1 meter in addition to construction of a *mori* (washing space) adjacent to the verandah. The Court Commissioner noticed presence of another verandah on western side admeasuring 1.6 mtrs x 6.41 mtrs covered by fibre roofing. The Court Commissioner has observed that the entire disputed structure is constructed by use of 16 M.S. angles firmly embedded in the earth and supported by western side wall by the two rooms of the out-house. The Court Commissioner has finally opined that the extended structure is of 'permanent nature' distinctly different from the old structure of the outhouse. It is not necessary to discuss the nature of construction of toilet, which is concurrently held against the Plaintiff. It would be also be apposite to reproduce the Map prepared by the Court Commissioner which has been admitted in evidence as under :



15) The above Map would show that the structure named 'existing room' is the outhouse and the structure marked in red and blue lines on the western side is the extended structure with three doors and two verandahs. The WC shown on the western side in the Sketch will have to

be ignored in the light of the concurrent findings recorded against the Plaintiff. Thus, the subject matter of dispute is the extended structure on western side of 'existing structure' shown in the above sketch. The sketch would show that the size of the existing structure is atleast two to three times the size of the existing rooms in the outhouses. The photographs of the structure are also placed on record which also clearly indicate that the extended structure is being used as a livable room by the tenant for all practical purposes. Thus this is not a temporary shed for protection from rain or heat. The intention and purpose of putting up the extended structure is to convert the space in front of the outhouse as livable room.

16) No doubt the entire extended structure is not a constructed by use of permanent material such as cement concrete, bricks etc. However, for construction of verandah, the Court Commissioner has opined use of cement concrete and bricks. It has also come in evidence that since the entire structure is erected by use of bolts and nuts, the same can be removed. The issue however, is whether mere removability of structure alone would make the same as a temporary structure for not attracting the folly under Section 16(1)(b) of the MRC Act. Both, Mr. Jahagirdar and Mr. Thorat have relied upon judgments in support of their respective claims, in which principles for determining the nature of construction have been enunciated. It would be apposite to refer to the said judgments at this juncture.

17) Mr. Jahagirdar has relied upon following judgments in support of his contention that the structure put up by the Defendant-tenant cannot be treated as a permanent structure:

- (I) In *Suka Ishram Chaudhari* (supra), the Apex Court has held that for determining permanent character of a structure, it is always necessary to see the nature of structure and mode and degree of annexation. It is further held that it is necessary to see the intention of the party who puts up the structure. The Apex Court has held in para 10 as under :

10. The petitioner has taken on lease only the plot of land. He has not taken any premises. After taking this open plot of land he had in the beginning constructed a temporary tin shed. In 1963 theft was committed from the southern side and, therefore, in order to protect himself as well as his goods, he constructed the wall in brick and mortar. He has also constructed a partition wall to divide for his convenience and for his beneficial use. The rest of the construction is a tin shed. Now, can it be said that the petitioner has erected any permanent structure by constructing the southern wall and the partition wall? **After all while determining the permanent character of a structure it is always necessary to see the nature of the structure and mode and degree of annexation. It may also be necessary to see the intention of the party who puts up the structure. The nature of the structure on the whole is a temporary structure except for this wall. If the landlord finds reasons to eject the petitioner, in my view it will not be difficult for the petitioner to vacate the open plot of land without causing any injury to it.** Construction of the wall, in my view, therefore will not cause any injury to the open plot of land which was leased to him. This is not a case where substantial improvement was made by the petitioner to the premises, which were leased out to him and which, if removed, will cause injury to the open plot of land.

(emphasis added)

- (II) In *Somnath Krishnaji Gangal* (supra), Single Judge of this Court (*A. V. Savant, J.*) has discussed the tests to be applied for determining the nature of the structure after considering the various judgments on the subject. In para-21 of the judgment, this Court held thus:

21. in view of the decisions of the Hon'ble Supreme Court and of this Court, my conclusions are as under:

(i) In deciding the question as to what is a “permanent structure”, it is necessary to consider the mode and degree of annexation as also the intention of the party putting up the structure. The creation of such a work or addition thereof in order to amount to a permanent structure must cause and bring about a substantial improvement and change in the nature and form of accommodation.

(ii) If what has been done is by way of minor repairs for the better enjoyment and use of the premises, it cannot be regarded as a permanent structure. Similarly, if the object and purpose of annexation was only to better the mode of enjoyment of the demised premises as in the case of construction of the kitchen platform, it does not amount to a permanent structure within the meaning of section 13(1)(b) of the said Rent Act.

(iii) The essential element which needs consideration is as to whether the construction is substantial in nature and whether it alters the form, front and structure of the accommodation.

(iv) If what the tenant does is large scale renovation like replacement of the entire roof, covering it with marble tiles, without obtaining permission of the landlord, it may amount to permanent structure within the meaning of section 13(1)(b) of the Rent Act.

(v) Similarly, if the tenant constructs a bathroom in the gallery which puts additional burden in the gallery which is harmful to the structure of the building, it would amount to a permanent structure.

(III) In *Hotel Rosalia P. Ltd.* (supra), a Single Judge of this Court (*V.C. Daga, J.*) has dealt with contention relating to replacement of water tank by the tenant and has held that such act of replacement did not amount to putting up a permanent structure. In para-14, this Court held as under:

14. The dissection of the aforesaid pleadings would show that the plaintiff has neither pleaded absence of *written consent* nor mentioned any of the material facts constituting the erection of the alleged construction on the premises as a permanent structure. No nature of the construction was pleaded in the plaint. The nature of construction or erection on the premises could be permanent, semi-permanent or temporary. In order to prove erection or construction of permanent nature, one has to plead material facts and place material particulars so as to establish the nature of construction. No details are to be found in the plaint. The learned counsel for the respondent, therefore, was right in his contention that on the basis of the averments made in the plaint no cause of action as required under section 13(1)(b) of the Bombay Rent Act was made out by the plaintiff as such no decree for eviction can be passed against defendants-tenants.

He further submitted that the question whether particular construction is a permanent structure within the meaning of section 13(1)(b) of the Rent Act depends upon the facts and circumstances of each case and no hard and fast rule can be laid down in this behalf. **The nature of the structure, its mode of annexation, the intention of the tenant and surrounding circumstances all have to be pleaded to raise an issue whether or not particular structure is a permanent structure**

for the purpose aforesaid. It is also necessary to plead whether the structure brings about substantial change in the character of the demised premises. What was the object and purpose behind such construction? If the object is not for better or more complete enjoyment of the demised premises, then different consideration will walk in.

(emphasis added)

- (IV) In *Pitambardas Kalyanji Bakotiya* (supra) and *Digamber Ramchandra Gadekar* (supra), this Court held that construction of a kitchen platform did not amount to permanent construction within the meaning of Section 13(1)(b) of the Bombay Rent Act. In my view, it is not necessary to consider the ratio of the said two judgments as construction of kitchen platform is now excluded from expression 'permanent structure' within the meaning of Section 13(1)(b) of the Bombay Rent Act, 1947 in view of Explanation added by 1987 amendment and which provision being continued in Section 16(1)(b) of the MRC Act.
- (V) *Lucky Restaurant* (supra) is strenuously relied upon by Mr. Jahagirdar to criticise the findings recorded by the Appellate Court about long use of the structure for determining its nature. According to him, the test is erection of permanent structure and not permanent use of a temporary structure. In para-33 of the judgment, this Court held as under:

33. Mr. Abhyankar, however contended that it is not merely the the nature of the structure that is to be looked into but also the intention of the parties. According to Mr. Abhyankar, the defendant is intending to structure permanently as helpful to the main business which he is carrying on in the suit premises should also be considered & it should be held that the structure has come to stay and, therefore, it is a permanent structure. It is not possible to accept this contention. What is prohibited under section 13 (1) (b) of the Bombay Rent Act is the erection, not the permanent structure, not the permanent use of the temporary structure. It is true, as has been held in *Ibrahim Vs. Khanmahomed*, A. I. R. 1965 Gujarat 152, that the defendant cannot

escape his liability under section 13 (1) (b) of the Bombay Rent Act by contending that though the structure is a permanent structure, it is meant only for use for a short duration. But what is an impermanent by long use. Reliance placed by Mr. Abhyankar on *Manmohan Das Vs. Bishu Das*, A. I. R. 1967 S. C. 643, is not, in my opinion of much use. In that case, section 3 (1) of a U. P. Act, which was in the following terms, fell for determination :-

"Subject to any order passed under sub-section (3) no suit shall, without the permission of the District Magistrate be filed in any Civil court against a tenant for his eviction from any accommodation, except on one or more of the following grounds....

That the tenant has, without the permission in writing of the landlords, made or permitted to be made any such construction as, in the opinion of the Court, has materially altered the accommodation or is likely to diminish its value."

Even if you adopt the concepts involved in the said provision, it is impossible to conclude on the facts of this case that there is a material alteration in the accommodation of that the construction made is demised premises. The inescapable conclusion, therefore is that it has not been proved that the impugned shed is a permanent construction within the meaning of section 13 (1) (b) of the Bombay Rent Act. Indeed the report of the Commissioner clearly establishes that it is otherwise.

(VI) In *Ratanlal Ramgopal Agarwal* (supra), a Single Judge of this Court has held in para-12 as under:

12. The question whether a particular construction is a permanent structure or not, has to be decided with reference to the nature and situs of the structure, the mode of annexation, the intention of the tenant and all the surrounding circumstances. I need not refer to various authorities which lay down the aforesaid tests, but just one decision of Pendse, J., in 1981 Mah. L.J. 290 (*Pitambardas v. Dattaji*). The fact that the wooden shutters in front of the shops were rotten and required replacement is not seriously disputed. Apart from the oral evidence of the tenants, there is also a Commissioner's report on record at Exh. 18. One Advocate Chaudhari was appointed as Commissioner by the trial Court to make a report on the condition of the premises. This report states in clear term that the entire construction was old. It also indicates that the tenants were required to repair the *Patra Chhat* (roof of sheets) in order to protect their stock-in-trade lying in the shop premises. There is no dispute that when all these repairs were going on, the landlords did not raise any objection. It is true that under section 13(1)(b) of the Act, the permission has to be in writing. There is no such written permission in

the present case. However, when all the relevant facts are cumulatively taken into consideration, the conclusion of the District Court that the tenants carried out the alterations in the suit premises by way of repairs, cannot be branded as unreasonable. I may again point out that the Commissioner's report Exh. 18 supports the aforesaid conclusion of the District Court. I do not find good justification to disturb the finding that the works carried out by the tenants do not amount to a permanent structure within the meaning of section 13(1)(b) of the Act.

(VII) In *Pushpaben Bhubatrai Kamdar* (supra), a Single Judge of this Court has dealt with an allegation of removability of bars and shutters from window, fixation of Air Conditioner and fixation of door and partition for privacy and held that such activities did not come within the purview of erecting permanent structure within the meaning of Section 13(1)(a) or (b) of the Bombay Rent Act. This Court held in paras-7 as under:

7. The most serious grouse of plaintiff is in relation to the putting up of a door/partition in the balcony and thus then closing it as to add to the living space available to the defendant. Mr. Rane contends that the partition has been fitted in with iron nails. It divides the balcony, though originally the balcony was open and common. As a result of the door put up by the defendant, the balcony partitioned and the other occupants of the floor as also building are prevented from making use of that portion of the balcony which faces the block or rather, the living space made available to the defendant. While discussing the plaintiff's claim in relation to this point vis a vis Sections 13 (1) (a) and (b), the trial Court has held that nothing which can be termed as waste, has been done. Mr. Shah relies upon *Bickmore v. Dimmer* (1902 B. 2797) Chancery Division 158, in support of the contention that violation of a condition, to be actionable under Section 12 (1) has to be one which would affect the form or structure of the building. Mr. Rane with a view to show that the ratio in *Bickmore v. Dimmer* has not been accepted, relies upon *Manmohan Das Shah and others v. Bishun Das*, reported in AIR 1967 Supreme Court 643. The Supreme Court's decision does not apply because the clause allegedly violated there was in terms different from the covenant allegedly breached and which breach was considered in *Bickmore v. Dimmer*. In the instant case the English case will apply, for the point is whether any actionable violation has taken place entitling plaintiff to claim ejectment. It is not denied that the condition not performed or observed which would entitle a landlord to claim ejectment, has to be one which is of substance. Were this not so, all manner of restrictions would be placed upon the tenant by an unconscionable landlord always waiting for an opportunity to induct

and throw out tenants, with ever increasing frequency so as to render the Rent Act a deadletter. Therefore, whenever the landlord complains of a breach in the performancy of conditions and wants a decree for ejectment, the preliminary question to which Courts must address themselves, is, whether the breach is such as can be said to be vital in nature. Thus viewed it cannot be said that by having installed a partition to the balcony, the tenant has done anything which could be violative of the conditions of tenancy. The statutory Courts have found that the balcony allegedly closed is at the end of the block to which, with the exception of defendant, no one else claims any access. Perhaps, other inhabitants or visitors to the building, may come to the balcony. But we are here concerned with a reasonable and normal use of the premises. The occupants of the building have their own verandahs and balconies. It is unthinkable that having that facility, they would want to plant themselves upon balcony facing the suit premises. It has been argued that by closing a portion of the balcony, defendant has created one more room and thus subjected the landlord to the peril of additional taxation. This again is an extreme view to take. Seen reasonably, the partition and door are no more than a device to ensure privacy. Instead of a wooden partition, if thick curtains had been put up, no exception could have been taken. The material of which the partition is made is similarly neither permanent nor firmly embedded. Therefore, the partition also cannot be taken objection to.

(VIII) In *Venkatlal G. Pittie* (supra) the Apex Court has held that while determining the nature of construction, the Court must look to the nature of the structure, the purpose for which it was intended and then take a whole perspective as to how it affects enjoyment, durability of the building. In paras-21, 22 and 26 of the judgment, the Apex Court held as under:

21. There are numerous authorities dealing with the question how the structure is a permanent structure or not should be judged. It is not necessary to deal with all these. One must look to the nature of the structure, the purpose for which it was intended and take a whole perspective as to how it affects the enjoyment, the durability of the building etc. and other relevant factors and come to a conclusion.

22. Judged in the aforesaid light on an analysis of the evidence the trial court as well as the appellate court had held that the structures were permanent. The High Court observed that in judging whether the structures were permanent or not, the following factors should be taken into consideration referring to an unreported decision of Malvankar, J. in Special Civil Application No. 121 of 1968. These were (1) intention of the party who put up the structure; (2) this intention

was to be gathered from the mode and degree of annexation; (3) if the structure cannot be removed without doing irreparable damage to the demised premises then that would be certainly one of the circumstances to be considered while deciding the question of intention. Likewise, dimensions of the structure and (4) its removability had to be taken into consideration. But these were not the sole tests. (5) The purpose of erecting the structure is another relevant factor. (6) The nature of the materials used for the structure and (7) lastly the durability of the structure. These were the broad tests. The High Court applied these tests. So had the trial court as well as the appellate Bench of Court of Small Causes.

26. Therefore, in view of the fact that large sums had been spent and considering the standard and the nature of the construction and lack of easy removability and the degree of an annexation to the enjoyment for the original purpose, we are of the opinion that the learned Judge as well as appellate Bench of the Court of Small Causes had applied the correct principles and came to a plausible conclusion. About the removability of the structure, the High Court was bound by the finding of the Appellate Authority which appears at pages 341 to 344 of the paper book. In a case of this nature, the High Court found that they had to enter into this question to find the real position whether the proper principles had been correctly borne in mind. It is indisputable that the finding that has to be arrived at by the court in this case is a mixed question of law and fact. Therefore, if the basic factors, for example, there was not proper appreciation of the evidence, if the assumption that lofts per se were not permanent structures then the courts below might be said to have committed error apparent on record and no court instructed in law could take such a view. But if all the relevant factors have been borne in mind and correct legal principles applied then, right or wrong, if a view has been taken by the appellate court, in our opinion, interference under Article 227 of the Constitution was unwarranted.

(IX) Lastly, Mr. Jahagirdar has relied upon judgment of the Apex Court in *Om Prakash* (supra), in which the Apex Court has held in para-6 as under:

6. In determining the question the court must address itself to the nature, character of the constructions and the extent to which they make changes in the front and structure of the accommodation, having regard to the purpose for which the accommodation may have been let out to the tenant. The legislature intended that only those constructions which bring about substantial change in the front and structure of the building should provide a ground for tenants' eviction, it took care to use the word "materially altered the accommodation". The material alterations contemplate change of substantial nature affecting the form and character of the building. Many a time tenants

make minor constructions and alterations for the convenient use of the tenanted accommodation. The legislature does not provide for their eviction instead the construction so made would furnish ground for eviction only when they bring about substantial change in the front and structure of the building. Construction of a chabutra, almirah, opening a window or closing a verandah by temporary structure or replacing of a damaged roof which may be leaking or placing partition in a room or making similar minor alterations for the convenient use of the accommodation do not materially alter the building as in spite of such constructions the front and structure of the building may remain unaffected. The essential element which needs consideration is as to whether the constructions are substantial in nature and they alter the form, front and structure of the accommodation. It is not possible to give exhaustive list of constructions which do not constitute material alterations, as the determination of this question depends on the facts of each case. In *S.B. Mathur v. K.P. Gupta* [1961 All LJ 137] construction of temporary wall enclosing verandah and putting up an iron jungala and placing a partition wall, temporary in nature was held not to constitute material alteration of the accommodation. In *Dr J.G. Gupta v. Bodh Mal* [1969 All LJ 477] a Division Bench of the High Court held that temporary construction made by a tenant in the shape of kitchen and bathroom did not constitute material alterations as the same were temporary and they could be removed without causing any damage to the accommodation. In *Sita Ram Sharan v. Johri Mal* [1972 All LJ 301] a Full Bench held that construction which converted the tenanted premises into double storey structure, materially altered the accommodation. Another Division Bench of the High Court in *Baldev Das v. Ram Khelawan* [1979 All LR 44] held that a partition wall in a shop converting the same into two portions for the convenient use of the same did not amount to material alteration. These decisions were rendered on the facts available on the record of those cases. In deciding this question the court has to consider whether the constructions have been made with the consent of the landlord and if so, whether those constructions are of such substantial nature which make material alterations in the accommodation. The findings of the court regarding constructions would be findings of fact, but the question whether the constructions materially alter the accommodation is a mixed question of fact and law, which should be determined on the application of the correct principles.

18) Relying on the above judgments, Mr. Jahagirdar has contended that when seen in the light of tests of (i) removability of the structure, (ii) degree of annexation, (iii) use of material for putting up the structure etc., the structure in question cannot be treated as a permanent structure since it can easily be removed without causing damage or injury to the

tenanted premises. He has contended that what is necessary to be seen is whether Plaintiff can get back the tenanted structure substantially in its original condition upon vacation thereof, if temporary structure is removed. According to Mr. Jahagirdar, the answer to the said question is in the affirmative since temporary structure can easily be removed and the original outhouse can also be easily restored without causing damage or injury to its structure.

19) On the other hand, Mr. Thorat has relied upon following judgments in support of his contention that the purpose and intention behind putting up the structure must be borne in mind coupled with the factor of longevity of time for which the structure has stood and out to use:

(I) In *Purushottam Das Bangur* (supra) the Apex Court has revisited the tests for determining permanent nature of structure for attracting eviction under the Rent Control Legislations. The Court was considering eviction of tenant under the provisions of West Bengal Premises Tenancy Act, 1956. The allegation against the tenant was that he removed tin roof of kitchen and storeroom and replaced the same by cement concrete slab in addition to putting up a permanent brick and mortar passage which did not exist earlier. Though, eviction was ordered by the Trial Court, the High Court had reversed the eviction decree on the ground that the acts committed by the tenant did not violate Clauses-(m), (o) and (p) of Section 108 of the Transfer of Property Act. The High Court had relied upon judgment of the Apex Court in *Om Prakash* (supra). The Apex Court considered the ratio of its various judgment and held in para-20 as under :

20. To sum up, no hard and fast rule can be prescribed for determining what is permanent or what is not. The use of the word 'permanent' in Section 108 (p) of the Transfer of Property Act, 1882 is meant to distinguish the structure from what is temporary. **The term 'permanent' does not mean that the structure must last forever. A structure that lasts till the end of the tenancy can be treated as a permanent structure. The intention of the party putting up the structure is important, for determining whether it is permanent or temporary. The nature and extent of the structure is similarly an important circumstance for deciding whether the structure is permanent or temporary within the meaning of Section 108 (p) of the Act. Removability of the structure without causing any damage to the building is yet another test that can be applied while deciding the nature of the structure. So also the durability of the structure and the material used for erection of the same will help in deciding whether the structure is permanent or temporary. Lastly the purpose for which the structure is intended is also an important factor that cannot be ignored.**

(emphasis supplied)

The Appellate Bench has relied upon the findings of the Trial Court in *Purushottam Das Bangur* while reversing the decree of the Trial Court. Thus in *Purushottam Das Bangur*, the Apex Court has held that use of the word 'permanent structure' in the provision does not mean that the structure must last forever. It is also held that the structure that lasts till the end of tenancy can be treated as a permanent structure. The Apex Court further held that intention of the parties putting up the structure is important for determining whether it is permanent or temporary. Though the tests such as (i) nature and extent of structure, (ii) removability of structure thereof and (iii) durability and use of material are also relevant, the Apex Court has held that the purpose for which the structure is intended is also an important factor which cannot be ignored.

- (II) Mr. Thorat has also relied upon judgment of Division Bench of Calcutta High Court in *Atul Chandra Lahiri* (supra) which is also

relied upon by the Appellate Bench in para-38 of its judgment. In para 4, Calcutta High Court has held as under:

4. In our view these reasonings of the lower appellate court are erroneous. There is no doubt that the defendant has made substantial structural alterations and additions to the tenanted premises with bricks and cement. The erections are not merely of a temporary character but are solid pucca structures of an enduring nature. We have no hesitation in holding that the totality of the work done points to the conclusion that the erections made by the defendant are in the nature of permanent structures within the meaning of clause (p) of section 108 of the Transfer of Property Act. **The fact that the structures can be demolished and removed at any time does not make them any the less permanent.** Supposing instead of converting a verandah into a room the defendant had built a garage with brick and mortar in a portion of the building demised, could it be said that the structure was not a permanent one? The answer, in my view, must be in the negative. The word 'permanent' in clause (p) of section 108 appears to have been used in contra-distinction to what is temporary. If a structure is intended to be there only temporarily, the statute does not apply; but, if the intention is to enjoy the structure permanently and the structure is of a substantial nature, it must be regarded as a permanent structure. In other words; if the work of conversion or construction is substantial or brings about a substantial change in the character of the premises and it is not merely a small physical change of a temporary or unsubstantial nature such work of construction falls within the mischief of the clause. It is a mixed question of fact and law in each case whether the extent or degree of construction or erection is such as to make it partake of the character of permanent structure or not. Any other view will play havoc with the statute and defeat its object.

(emphasis added)

20) The conspectus of the above discussion is that while determining the permanent or temporary nature of structure, the Court must apply various tests of (i) use of material for erecting the structure, (ii) degree of annexation, (iii) removability of structure without causing any damage to the building, (iv) durability of the structure, (v) intention of the party who puts up the structure and (vi) the purpose for which the structure is intended to be used.

21) In the present case, the test with regard to the use of material, for erecting structure and its removability could be held to be

in favour of the Defendant-tenant as the structure is erected by use of M.S. angles, asbestos sheets and fibre roof and main part of the structure is held to be removable by both the Courts. However, the structure is erected by use of 16 M.S. angles embedded in the earth and in respect of the Verandah, there is use of bricks and cement. The flooring of the entire disputed structure is covered by concrete cement. The test of degree of annexation would go against Petitioner to some extent. Also, if the tests of (i) durability of the structure, (ii) the intention behind putting it up and (iii) its purpose are applied, the inescapable conclusion that emerges is that the structure is of permanent nature. When the Appellate Court decided the Appeal on 26 August 2019, the structure had lasted for 17 long years. By now period of 22 long years has elapsed and the structure still stands good. Thus, the structure is erected in such a manner that the same is bound to last for several years. The structure is thus durable and cannot be termed as a mere temporary structure. If the intention of Defendant is taken into consideration, the structure is put up in such a manner that it provides additional useable space for the tenant. The structure is not constructed with the intention of protecting the tenanted structure or occupants thereof from heat or rain. It is intended to be used as a room and ultimately found to be used as room. Thus, the last test of purpose also goes against the Defendant-tenant, who has been using the structure as a room. Thus, the intention and action of extending the useable space by the tenant beyond the tenanted premises by erecting the structure is clearly established. The size of the structure is also twice or thrice the size of the outhouse. It is erected in such a manner that it is put to use as a living space. Multiple entrances by construction of doors are provided at the structure. The Court Commissioner has also opined that the structure is permanent structure. In my view therefore, the Plaintiff has proved that the Defendant has put

up the structure of permanent nature within the meaning of Section 16(1)(b) of the MRC Act.

22) So far as injury or destruction to the tenanted premises for the purpose of attracting folly under clause (o) of Section 108 of the Transfer of Property Act is concerned, in my view, there are no adequate pleadings or evidence to suggest that construction of the extended portion has really damaged or caused any injury to the tenanted premises as such. Beyond use of the western side wall of the outhouse for drawing support to the extended structure, in my view, there is no evidence on record to infer that the extended structure has caused damage or injury to the tenanted premises as such. Therefore, the Appellate Court has erred in holding that carrying out permanent construction has resulted in destruction or injury to the tenanted premises. However though destruction or injury to the tenanted premises is not proved under Section 16(1)(a) of the MRC Act read with Section 108(o) of the Transfer of Property Act, the decree of eviction can still be sustained since ground under Section 16(1)(b) of the MRC Act is conclusively established.

23) This brings me to the second point about location of the structure being not 'on the premises'. Here, it would be necessary to reproduce the provisions of Section 16(1)(b) of the MRC Act :

(b) that the tenant has, without the landlord's consent given in writing, erected **on the premises** any permanent structure;
(emphasis added)

Thus, Clause-(b) of Section 16(1) uses the expression '*erected on the premises*'. Mr. Jahagirdar would read the provisions of Section 16(1)(b) to mean that erecting a structure must happen 'on the premises', and that putting up additional structure on the land belonging to Cantonment Board does not attract the ground under Section 16(1)(b) of the MRC Act.

I am unable to agree. The location plan would indicate that the outhouse is situated just behind the main bungalow which also forms part of the tenanted premises. There is some vacant space between the main bungalow and the outhouse. The said vacant space is used to access the outhouse. In this vacant space, an additional structure is put up. The additional structure draws support from the western wall of the outhouse. It therefore cannot be contended that the additional structure has absolutely no connection with the tenanted premises. The additional structure is put up in such a manner that it extends the usable space for the tenant outside the outhouse.

24) Mr. Thorat has relied upon judgment of this Court in *Shridhar Govind Nathu* (supra) in which the allegation was that a bathroom was constructed in the rear side gallery of the suit premises. The defence was that construction of such bathroom was outside the suit premises. This Court interpreted the expression 'on the premises' used in Section 13(1)(b) of the Bombay Rent Act and held in para-16 as under:

16. It was contended by the learned counsel for the petitioner that the trial Court was right in holding that the structures and additions were not on demised premises and therefore the plaintiff has no right to claim eviction on that ground. In the opinion of the trial Court the varandah and gallery were not part of the demised premises being outside the area of the demised premises. It was held by the trial Court that they did not fall within the definition of premises which are let out to the defendant. I am afraid that is view of the trial Court cannot be supported either in law or on facts. If we look to the definition of premises' as given in the Rent Act, it states as follows:

"5(8): "premises" means—

(a) any land not being used for agricultural purposes,

(b) any building or part of a building let or given on licence separately (other than a farm building) including—

(i) the garden, grounds, garages and out-houses, if any, appurtenant to such building or part of a building;

(ii) any furniture supplied by the landlord for use in such building or part of a building;

(iii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof, but does not include a room or other accommodation in hotel or lodging house".

In my opinion, the appellate Court was right in coming to the conclusion that the portions of the building in which these constructions or additions are made, were the part of appurtenant of such building let out to the defendant. In this case, the reasonable interpretation of the expression on the 'premises' used in section 13(1)(b) of the Bombay Rent Act will have to be given. Section 13(1)(b) of the Act provides as follows:

“13(1):- Notwithstanding anything contained in this Act but subject to the provisions of sections 15 and 15A, a landlord shall be entitled to recover possession of any premises if the Court is satisfied.

(a).....

(b) that the tenant has, without the landlord's consent given in writing, erected on the premises any permanent structure”.

The expression on the 'premises' used in section 13(1)(b) of the Rent Act cannot be interpreted without the reference to the definition given in section 5(8)(i) and (iii) of the Bombay Rent Act, if that definition is taken into account. It is found in this case, a matter of fact, that the portion used by the tenant was for the beneficial enjoyment of his own tenanted premises. Under the definition which I have quoted above under section 5(8)(iii) of the Rent Act may kindly be looked at this moment. It states as follows:

“5(8)(iii):- Premises means-

any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof”.

The words “part of a building” used in the said sub-section are very sufficient to show that in this case it may not be necessary to show that such part of the building which is being used by the tenant for more beneficial enjoyment thereof should be always let out to him. If it is established in a given case that the part of the building is necessary for beneficial enjoyment of the tenanted premises, it would be sufficient to attract clause (iii) of sub-section (8) of section 5 of the Rent Act as quoted above. Taking a realistic view of the matter and giving reasonable meaning to the expression given in the definition, it will have to be inferred that the word 'premises' used in section 13(1)(b) of the Rent Act cannot be considered in isolation while examining the existence of the structures made by the tenant. If the definition which I have quoted above and the provisions of section 13(1)(b) of the Bombay Rent Act are considered conjointly, it would be clear that the space used by a tenant can be treated as an appurtenant as provided in the definition given under section 5(8)(i) or it can be part of the building for more beneficial enjoyment as provided in section 5(8)(iii) of the Bombay Rent Act. It would be reasonable on the part of the landlord to establish that the tenant has constructed such some structure and made certain additions not only to the rented premises but to such adjoining small portion of the building which necessarily leads to the beneficial enjoyment of the tenanted premises. I therefore think that the words used in section 13(1)(b) of the Bombay Rent Act i.e. “on the premises” may not be restricted to the demised premises. This expression is borrowed from Transfer of Property Act in cases of leases. The expression 'on the premises' used in section 13(1)(b) of the Bombay Rent Act should mean the premises let out to any tenant in addition to the appurtenant and such other

space of which he is taking beneficial enjoyment for the proper use of the rented premises. Such short space either of the gallery or Varandah being used by the tenant must strictly be said to be demised premises let out to him. Still it will be open for the plaintiff in a particular case to prove that the structures made on such nearby or adjoining premises appurtenant to the tenanted premises as being used as part of the beneficial enjoyment of the tenanted room itself, can be said to be the structures on the premises itself within the meaning of section 13(1)(b) of the Bombay Rent Act. It will depend on the nature of the premises, secondly, the extent of the actual user of the area beyond the rented area and thirdly, the actual beneficial enjoyment of that area as part of user of the rented premises. In this particular case as the premises are on the first floor, it is quite clear that the front gallery and rear gallery which were being used by the defendant-tenant can be said to be used for the purpose of beneficial enjoyment and if in a particular case on facts the Court finds that according to the extent of the user of such premises, the tenant uses the same for more beneficial enjoyment, it will be open for the Court to consider the additions and permanent structures made on such a space, although such space may not strictly be part of the premises let out to the tenant under the terms of the lease. I am satisfied in this case that both galleries which were used by the defendant-tenant were part of the premises as being used as appurtenant to the tenanted premises and as such they were necessary for the beneficial use also or for beneficial enjoyment of the premises let out to him. In this view of the matter, the submission made by the learned Counsel for the petitioner is rejected.

25) Mr. Thorat has also relied upon judgment of this Court in *M/s. Impex (India) Ltd* (supra) in which it is held in paras-71, 72 and 73 as under:

71) After considering various judgments cited by the learned counsel appearing for parties, in my view, the question whether erection of permanent structure outside the tenanted premises would entail decree for eviction would depend on facts and circumstances of each case, and particularly, on the location at which, and the situation in which, such structure is erected. In the present case, it is Defendant's case that construction of wall is done to protect the property including the tenanted premises from constant trespass and nuisance by children of mali. Thus construction is carried out by Defendant for its better enjoyment of the tenanted premises and mere location of major part of the wall outside the tenanted premises cannot and did not mean that the wall did not have any connection with the tenanted premises. Considering the facts and circumstances of the case, I am of the view that the act of Defendant in constructing the wall both touching the tenanted premises as well as in the open land behind the bungalow is covered by the eventuality specified in Section 13(1) (c) of the Bombay Rent Act.

72) Also of relevance is the fact that Defendant itself believed that open space admeasuring 10,000 sq.ft was also part of tenanted premises, which is the reason why it sought written permission from the landladies for erection of the wall. It is only after the said open land is held to be not tenanted premises that the Defendant now wants to alter its stand by contending that erection of wall outside tenanted premises cannot be a reason for its eviction from tenanted premises.

73) Therefore, considering the facts and circumstances of the present case, and the manner in which construction of the wall is put up by the Defendant on the open land and touching the garage on the southern side, I am of the view that the landlords were entitled to seek a decree of eviction against the Defendant under Section 13(1)(b) of the Bombay Rent Act.

26) Thus, in *M/s. Impex (India) Ltd*, construction of Wall was found to be touching the garage which was tenanted premises and therefore this Court held that the landlord was entitled to seek decree of eviction under Section 13(1)(b) of the Bombay Rent Act.

27) In the present case also, the tenanted structure touches the western side wall of the outhouse and therefore the Defendant-tenant cannot take a defence that the structure has been erected on property of Cantonment Board not attracting the folly under Section 16(1)(b) of the MRC Act. The Appellate Court has considered the definition of the term 'premises' under Section 7(9) of the Maharashtra Rent Act which also includes the ground appurtenant to the premises. In the present case, the addition structure is put up in the adjoining open space and the Appellate Court has rightly held that the same as the land appurtenant to the outhouse.

28) Considering the overall conspectus of the case, I am of the view that the Appellate Court has rightly decreed the suit under the provisions of Section 16(1)(b) of the Maharashtra Rent Control Act. Even though cause of damage or injury to the tenanted premises within the meaning of Section 16(1)(a) of the MRC Act alongwith Section 108(o) of

the Transfer of Property Act is not proved, the decree can still be sustained on the ground under Section 16(1)(b) of the Maharashtra Rent Control Act.

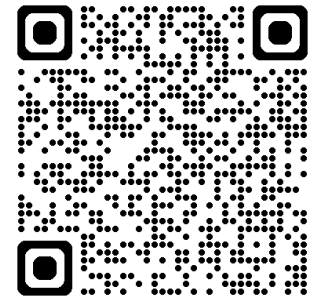
29) The Writ Petition is thus devoid of merits and is **dismissed**. Rule is discharged.

30) Considering the facts and circumstances of the case, Petitioner is granted time upto 31 December 2024 to vacate the suit premises subject to not creating any third-party rights in respect of the suit premises.

[SANDEEP V. MARNE, J.]

Case Brief & MCQs on "Binaifer Batiwala v. Kadambagiri Estates Pvt. Ltd." (2024:BHC-AS:41870) is available in the eBook:

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