Supreme Court of India
Vora Rahimbhai Haji Hasanbhai ... vs Vora Sunderlal Manilal & Anr on 4 November, 1985
Equivalent citations: 1986 AIR 174, 1985 SCR Supl. (3) 717
Author: R Misra
Bench: Misra, R.B. (J)

PETITIONER:
VORA RAHIMBHAI HAJI HASANBHAI POPAT

Vs.

RESPONDENT:
VORA SUNDERLAL MANILAL & ANR.

DATE OF JUDGMENT04/11/1985

BENCH:
MISRA, R.B. (J)
BENCH:
MISRA, R.B. (J)
VENKATARAMIAH, E.S. (J)

CITATION:
1986 AIR 174 1985 SCR Supl. (3) 717
1985 SCC (4) 551 1985 SCALE (2)917

ACT:
Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 Section 13(l)(k).
Tenant - Not using premises for more than six months Liable for eviction - Stipulation in 'rent note' regarding payment of rent for non use - Whether absolves liability for eviction.

HEADNOTE:
The appellant - plaintiff purchased a plot of land. The respondent-defendant accepted the plaintiff as owner on a rent of Rs. 1325 per annum for a period of five years, under a registered rent note. It was further stipulated therein that the tenant was to pay the municipal tax in respect of the rented land to the plaintiff, that on the expiry of the period of five years the tenant shall remove the constructions thereon at his own expense, and hand over the premises in the condition it was let out and that the premises shall not be let out to anyone else.
The plaintiff called upon the defendant to remove the construction erected on the land, and the vacate the premises and hand over possession. As the defendant failed, a suit for eviction was filed, on a number of grounds one of which was that the premises had not been used

by the defendant for a period of more than six months prior to the date of the suit without reasonable caused and, therefore the defendant was liable to eviction under section 13(1) (k) of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947.

The trial court dismissed the suit holding that the notice of termination was not valid and that the plaintiff had failed to prove bona fide requirement, and that as defendant No. 2 was admitted as a sub-tenant many years before the execution of the rent note by the plaintiff, the plaintiff was not entitled to recover possession on the ground of illegal sub-letting.

The plaintiff took up the matter in appeal and the Assistant Judge allowed the appeal partly, holding that the notice of termination was a valid one, that the plaintiff did not

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require the suit premises reasonably and bona fide for occupation for himself and that the suit premises had not been w ed by the defendant continuously for a period of six months immediately preceding the date of suit without any reasonable cause.

The respondent-tenant took up the matter in revision before the High Court, which reversed the finding of the Ist appellate court on the question of user by the defendant, holding that the construction of the super-structure on the land itself was a user and, therefore, the courts below had committed a manifest error in holding that the land in question had not been w ed for more than six months prior to the institution of the suit.

In the appeal to this Court, it was contended on behalf of the appellant-landlord that the tenant was liable to be evicted under s.13(1)(k) of the Act inasmuch as the premises have not been used for the purpose for which they were let out for a continuous period of six months immediately preceding the date of suit without reasonable cause, and that the tenant would be liable for eviction even if he did not use the premises and kept it locked.

On behalf of the respondent-tenant it was contended, that the purpose of letting cannot be assumed, and that it has got to be alleged and proved. The landlord-plaintiff could seek eviction under 8. 13()(k) of the Act only when he proves the purpose for which the premises have been let out and that the same has not been w ed for the purpose for which it was let out. It was further contended that if the landlord had specifically taken the plea of non-user of the premises for the purpose for which it was let out, he would have been able to prove the reasonable caw e for not doing 80 but in the absence of such a plea the defendant-tenant had been seriously prejudiced, and that sec. 12 and 13 of the Act are the only two sections which give protection to the tenant and unless the conditions in the two sections are satisfied the tenant cannot be evicted .

Allowing the Appeal,

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HELD : 1. The judgment of the High Court is set aside and the plaintiff's suit stands decreed. The High Court has gone wrong in holding that the construction of super-structure on the land in dispute was itself a user. The super-structures had already been built before the defendant took the land from the plaintiff under rent note, Ex. 61. As regards sub-tenancy, it has
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been found by the Courts below to have been created long before A the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 came into force. There was therefore no question of the eviction of the subtenant as the sub-tenancy was not illegal. [726 B; 725 G-726 A]

2. The scheme of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 as it appears from the preamble is to consolidate the law relating to the control of rents and repairs of certain premises, of rates of hotels and lodging houses and of evictions. The control had to be brought in because of the scarcity of accommodation in the cities. If this was the preamble of the Act it cannot be accepted that a tenant may take a premises on rent and keep it locked for years together without using it in the absence of a reasonable cause. The intendment of the legislature could be carried out only when the premises is used and not kept vacant for years together. [724 H-725 B]

3. Neither the purpose of letting is indicated in the rent note (Ex.61) nor has it been proved by evidence. A perusal of the rent note indicates that, there is no specific mention of the purpose for which the premises was rented out to the defendant. The defendant had taken the premises from the predecessor in interest of the plaintiff and had made certain super-structures on the land in question. There is, however, material on the record to show that the premises had been let out to the defendant for the purpose of business. Indeed, the premises had been taken in the name of a firm carrying on tobacco business. The defendant admitted in his-deposition that he had shifted his business to Baroda. He had not used any portion of the land for any purpose for the last three or four years and the plaintiff has produced necessary registers from the Municipality and the Central Excise Department to show the same. In the reply given by the counsel for the defendant to the notice, of termination given by the plaintiff, it is admitted that the property was taken on rent by the tenant in his capacity as a manager and owner of the registered firm Vora Manilal Chaganlal & Co., carrying in business in Nadiad. In this situation it cannot be argued that the plaintiff has not been able to establish the purpose for which the premises had been let out to the defendant. [723 E-H]

4. The stipulation in the rent deed to the effect that;

'even if we use or do not use or keep the said property closed we the tenants are bound to pay the rent as stated above' only talks of the liability of the defendant to pay the rent even if he does not use the property and keeps it closed. This, however, does not
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mean that the defendant can keep the premises closed without using lt for years together before the suit. This could never have been the intention of the law makers especially in these days of scarcity of accommodation in towns. If the stipulation made in the rent note is construed to mean that the defendant tenant could keep the premises closed without incurring the liability of eviction, as it sought to be contended for the respondent, it would amount to allowing the parties contracting out of law. [724 D-E]

In the- instant case, on the own-showing of the defendant-respondent, the premises had been taken for the purpose of tobacco business and that business had been stopped for a period of 4 to 5 years before the institution of the suit as the business had expanded and the defendant had shifted to Baroda. Therefore, it can be safely presumed that the land is not being used for the purpose for which it has been proved to have been let out. [725 F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 56 of 1971.

From the Judgment and Order dated 8.12.1969 of the Gujarat High Court in C.R.A. No. 654 of 1967.

Harish Salve, D.N. Misra and Ms. A.K. Verma for the Appellant.

S.H. Sheth and Ms. Kailash Mehta for Respondent No. 1. M.V. Goswami and Ms. Vandana Sharma for Respondent No.2.

The Judgment of the Court was delivered by MISRA, J. The present appeal by special leave is directed against the Judgment of the High Court of Gujarat dated 10th February 1970.

The dispute between the parties concerns a plot of land admeasuring 100 ft. x 164 ft. (i.e., approximately 1822 sq. yards) out of survey No. 18 in the city of Nadiad. This plot was owned by Deviprasad Motilal Jaiswal and Vora Sunderlal Manilal was occupying it as a tenant. He had also made certain constructions on the disputed plot. The appellant purchased the said plot under a registered sale deed dated 18th April, 1955. The defendant accepted the plaintiff as owner on a rent of Rs. 1325 per annum with effect from 18th April, 1955 under a registered rent note dated 9th June, 1955 for a period of five years. The rent note provided (1) that the defendant shall pay to the plaintiff the amount of municipal tax at the rate of Rs. 40 per annum in respect of the rented premises, (2) that the said premises shall not be let out to anyone else, and (3) that on the expiry of the period of

five years the defendant shall remove the constructions at his own expense and hand over to the plaintiff the premises in the condition in which it was let out.

It appears that the defendant No. 1 sublet a portion of the said premises to defendant No. 2, Pa Babubhai Gordhanbhai contrary to the terms of the rent note. The period of lease contemplated in the rent note expired on 17th April, 1960 and the defendant continued as a statutory tenant on a monthly rent under the Rent Control Act. The two sons of the plaintiff Suleman and Ganibhai are dealing in empty tins on a large scale and a spacious premises was required for the said business. The plaintiff called upon the defendant to remove the construction erected on the land in dispute and to vacate the premises and handover the possession. Although the plaintiff filed the suit for eviction on a number of grounds, we are concerned in the present appeal only with the plea that the premises in question had not been used by the defendant for a period of more than six months prior to the date of the suit without reasonable cause I and, therefore, the defendant was liable to eviction under s.13(1)(k) of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947, hereinafter referred to as the Act. The trial court dismissed the suit holding that the notice of termination was not valid and that the plaintiff had failed to prove the bona fide requirement, and that the defendant No.2 was admitted as a sub-tenant many years before the execution of the rent note by the plaintiff and, therefore, the plaintiff was not entitled to recover possession on the ground of illegal sub letting. The plaintiff feeling aggrieved by the judgment took up the matter in appeal and the Assistant Judge allowed the appeal partly holding that the notice of termination was a valid one, that the plaintiff did not require the suit premises reasonably and bonafide for occupation for himself, and that the suit premises had not been used by the defendant continuously for a period of six months immediately preceding the date of suit with out any reasonable cause. The defendant took up the matter in revision before the High Court and the High Court reversed the finding of the 1st appellate court on the question of user by the defendant. It took the view that the construction of the super-

structure on the land itself was a user and, therefore, the courts below and committed a manifest error in holding that the land in question had not been used for more than six months prior to the institution of the suit. The plaintiff has now come to this Court by a special leave.

Mr. Harish, N. Salve counsel for the appellant strenuously urged that the tenant was liable to be evicted under s.13(1)(k) of the Act inasmuch as the premises have not been used for the purpose for which they were let out for a continuous period of six months immediately preceding the date of suit without reasonable cause. He also contended that the defendant would be liable to eviction even if he did not use the premises and kept it locked.

Mr. S.H. Sheth for the defendant-respondent in reply has contended that the purpose of letting cannot be assumed. It has got to be alleged and proved. The plaintiff could seek eviction under s.13(1)(k) of the Act only when he proves the purpose for which the premises have been let out and that the same has not been used for the purpose for which it was let out. In the instant case neither the purpose of letting is indicated in the rent note nor has it been proved by evidence. Therefore, the liability of the defendant under s.13(1)(k) does not arise.

The material portion of the rent note, Exbt.61, is as follows:

> ...The property of the said measurement and situate within the said four boundaries is rented by us from you and you have rented it to us. The rent accrues from the date 18.4.1955. It is agreed that the rent fixed is Rs. 1325 (Rupees thirteen hundred and twenty five) per year. We shall pay the said rent to you every year in full. If default is made in paying the rent you may get the said property vacated by us and our objection of any kind shall not be tenable in respect of the same. The period fixed is for five years. It expires on the date 17.4.1960. We shall handover possession of the said property to you on the said date. We shall not Rub-let the said property to any one else.
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> The construction work which is made on the said property belongs absolutely to us, the tenant. And when we shall vacate the said property we shall remove the said construction work at the cost of us, the tenant. We agree to handover the possession of the property to the owner in the same condition in which the property is rented. Even if we use or do not use or keep the said property closed we, the tenant, are bound to pay the rent as stated above till the period fixed. But if we the tenant, want to vacate the said property within the period fixed we can vacate the same by giving you notice before two months or if we want the said property on rent even after the expiry of the period fixed you are bound to give the same on rent and the rent is to be fixed according to the circumstances at that time and we shall pass and give a new rent note to you. We, the tenant, are to pay Rs. 40 (Rupees forty) every year to you, the owner for municipal tax in respect of the said property in addition to the amount of rent. If the municipal tax comes to more than forty rupees, you the owner are to pay the excess amount of tax.

A perusal of the rent note indicates that there is no specific mention of the purpose for which the premises was rented out to the defendant. It has already been noted that the defendant had taken the premises from the predecessor in interest of the present plaintiff and had made certain superstructures on the land in question. There is however, material on the record to show that the premises had been let out to the defendant for the purpose of business. Indeed the premises had been taken in the name of a firm carrying on tobacco business. The defendant admitted in his deposition that he had shifted his business to Baroda. He had not used any portion of the land for any purpose for the last three or four years and the plaintiff has produced necessary registers from the Municipality and the Central Excise Department to show the same. In addition, in the reply given by the counsel for the defendant to the notice of termination given by the plaintiff, he definitely admitted that the property was taken on rent by the tenant in his capacity as a manager and owner of the firm Vora Manilal Chhaganlal & Co. and that his client, the tenant, was a registered firm carrying on business in . In this situation it cannot be argued with any force that the plaintiff has not been able to establish the purpose for which the premises had been let out to the defendant.

As s second limb to the argument Shri Sheth contended that if the plaintiff had specifically taken the plea of non-user of the premises for the purpose for which it was let out he would have been able to

prove the reasonable cause for not doing 80 but in the absence of such a plea the defendant has been seriously prejudiced.

This contention of the counsel also cannot easily be accepted when on the own admission of the defendant and defendant's counsel the premises had been used for the purpose of carrying to tobacco business. Therefore, the defendant fully knew the purpose for which he had taken the Promises as a tenant. The stand of the defendant all through appears to be that even if he does not use the premises and have been paying rent he does not incur the liability of eviction and for this he banks upon the recital in the rent note that even if we use or do not use or keep the said property closed we the tenants are bound to pay the rent as stated above . This stipulation in the rent deed only talks of the liability of the defendant to pay the rent even if he does not use the property and keeps it closet. This, however, does not mean that the defendant can keep the premises closed without using it for years together before the suit. This could never have been the intention of the law makers especially in these days of scarcity of accommodation in towns. Even if the stipulation made in the rent note is construed to mean that the defendant tenant could keep the premises closed without using it for years together without incurring the liability of eviction, as is sought to be contended for the respondent, it would amount to allowing the parties contracting out of law.

This leads us to the second part of the submission made by the counsel for the appellant that on a correct interpretation of s.13(1)(k) of the Act even non-user of the premises for any purpose whatsoever for years together would make him liable for eviction. The contention on behalf of the respondent, however, is that we cannot add words to s.13(1)(k) and the intention of the legislature is clear from the words used therein, and all that s.13(1)(k) contemplates is that the premises had not been used for the purpose for which they w re let out for a continuous period of six months immediately preceding the date of suit without reasonable cause. It toes not say that mere non-user of the premises will make him liable for eviction.

The scheme of the Act as it appears from the preamble is to consolidate the law relating to the control of rents and repairs of certain premises, of rates of hotels and lodging houses and of evictions. m e control had to be brought in because of the scarcity of accommodation in the cities. If this was the preamble of the Act it cannot be accepted that a tenant may take a premises on rent and keep it locked for years together without using it in the absence of any reasonable cause. The intendment of the legislature could be carried out only when the premises is used and not kept vacant for years together. Shri Sheth, however, sought to support the finding of the High Court that the construction of a superstructure is also a user of the property and the defendant had raised superstructures on the land in question. This argument must be repelled. It appears from the rent note, Exbt. 61, that the defendant had taken the premises from the present plaintiff when the defendant had already built the superstructures when he had taken the land on rent from the predecessor in interest of the plaintiff- appellant. Therefore, there was no question of using the land by raising constructions by the defendant after the execution of the rent note, Exbt.61.

Shri Sheth also referred to 8. 12 and 8. 13 of the Act and contended that these are the only two sections which give protection to the tenant and unless the conditions in the two sections are satisfied the tenant cannot be evicted. What was let out by the plaintiff to the defendant-tenant was

the land and not the superstructures and so Shri Sheth argues that the non-user of the superstructures does not amount to non-user of the land. On the own showing or the defendant-respondent he had shifted his business to Baroda and, Therefore, he is not using the land for any purpose whatsoever. Broadly speaking a premises can be let out either for residential or for business purpose. In the instant case on the own showing of the defendant-respondent it had been taken for the purpose of tobacco business and that business had been stopped for a period of 4 to 5 years before the institution of the suit as the business had expanded and the defendant had shifted to Baroda. Therefore, it can be safely presumed that the land is not being used for the purpose for which it has been proved to have been let out.

The High Court in our opinion has gone wrong in holding that the construction of super-structures on the land in dispute was itself a user. As indicated earlier the super- structures had already been built before the defendant took the land from the plaintiff under rent note, Exbt.61. Therefore, there is no question of making any construction on the land in question by the defendant after the execution of the rent note.

As regards the sub-tenancy it has been found by the courts below that it had been created long before the Act in question came into force and, therefore, there was no question of the eviction of the sub-tenant as the sub- tenancy was not illegal.

For the foregoing discussion the appeal must succeed. It is accordingly allowed and the judgment of the High Court is set aside and the plaintiff's suit stands decreed. The parties shall however, bear their own costs. N.V.K. Appeal allowed