

A

BAPUBHAI MOHANBHAI

v.

*MAHILA SAHAKARI UDYOG MANDIR

August 26, 1975

[A. N. RAY, C.J., K. K. MATHEW AND Y. V. CHANDRAGHOD, JJ.]

B

Bombay, Rents, Hotel and Lodging House Rates Control Act, LVII of 1947—S. 13, 25,—Scope of.

C

Section 13 of the Bombay Rents, Hotel and Lodging House Rates Control Act, LVII of 1947 (which was the Act in force in Gujarat) enumerates the grounds on which a landlord may obtain possession of the premises let out to a tenant. Clause (g) of that section provides that the landlord can obtain possession only if he satisfies the Court that the premises are reasonably and *bona fide* required for occupation by himself. Section 25 provides that a landlord cannot use nor can he permit to be used for a non-residential purpose any premises which, on the date when the Act came into force, were used for a residential purpose. Sub-section (2) of this Section makes contravention of the provisions of sub-s.(1) punishable with imprisonment.

D

On the date on which the Act came into operation, the premises in dispute belonging to the respondent were used for residential purposes. The respondent sought possession on the ground that it wanted them for its office, for running a fair price shop, for establishing a godown, for conducting a tailoring and sewing class and such other purposes. The trial court and the first appellate court found that the respondent needed the premises for its business; but dismissed the suits on the ground that in view of the provisions of s. 25 of the Act the requirement could not be said to be reasonable and *bona fide*. The High Court, while accepting that the premises were required by the respondent for its business, took the view that since the legislature did not subject the right conferred on the landlord by s.13(1) to any other provision save the one contained in s.15, s.25 cannot be permitted to override s.13(1).

E

Allowing the appeal,

HELD : Though the respondent required the premises for the purposes of its business, no decree for possession could be passed in its favour as its requirement could not be said to be reasonable. The requirement runs across the statutory prohibition and is, therefore, not reasonable. [415-E]

F

(1) Under s.13(1)(g) it is not sufficient for a landlord to establish that the premises were required by him but it has to be shown further that the requirement is reasonable and *bona fide*. The requirement of the respondent in the instant case could not be called reasonable if the very statute under which it seeks relief contains an injunction that it shall not use residential premises for a non-residential purpose. Not only does the statute contain an injunction against the user of residential premises* for a non-residential purpose but it makes it penal for a landlord to use for a non-residential purpose any premises which were used for a residential purpose on the date when the Act came into force. [414C-E]

G

(2) (a) The approach of the High Court is misconceived. The true question for consideration is not whether as between s.13(1) and s.25(1), one over-rides the other, and indeed, in view of the wording of the *non-obstane* clause of s.13(1), the provisions of that section must have priority over the rest of the Act, except for what is contained in s.15. But conceding to s.13(1) its rightful precedence and granting that it stands supreme except for s.15, according to its own terms the Court has to be satisfied that the requirement of the landlord is reasonable. [415A-B]

H

(b) If the respondent fails it is not because s.25 overrides s.13(1) but because of its failure to prove the reasonableness of its requirement. Whether the requirement of the landlord is reasonable or not is to be judged from all the facts and circumstances of the case and a truly relevant circumstance

bearing on the reasonableness of the landlord's requirement is that the purpose for which the possession was sought was a purpose for which the premises could not be used save on pain of penal consequences. [415-CD]

(3) Courts sought not to construe a statute in a manner which will encourage the breach of any of its provisions and a decree ought not to be passed which, if honoured, will attract penal consequences. To pass a decree in favour of the respondent on the grounds accepted by the High Court is to invite the respondent to commit a breach of the statutory injunction contained in s.25(1). [415-D]

Laxmi Co-operative Bank Ltd. v. Mohan Govind Diwanji, 74 B.L.R. 186, approved.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 574-575 of 1974.

From the judgment and decree dated the 19th April, 1973 of the Gujarat High Court in Civil Revision Application Nos. 1193 & 1194 of 1967.

P. H. Parekh and Manju Jaitley, for the appellant.

I. N. Shroff, for respondent.

The Judgment of the Court was delivered by

CHANDRACHUD, J.—The appellants in these two appeals are monthly tenants of the respondent, the Mahila Sahakari Udyog Mandir. The respondent filed suits against the appellants for possession of the premises let out to them, on the ground of arrears of rent and on the ground that the premises were reasonably and *bona fide* required by the respondent for its own purposes. On both counts the trial court held against the respondent and dismissed the suits. The decree of the trial court was confirmed in appeal by the learned Assistant Judge, Surat but the High Court of Gujarat allowed the respondent's revision application and decreed the suits. On March 11, 1974 the High Court granted to the appellants a certificate to appeal to this Court under the amended Article 133(1) of the Constitution.

The Bombay Rents, Hotel and Lodging House Rates Control Act, LVII of 1947, is in force in Gujarat with certain modifications. Section 12(1) of the Act provides that a landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of the Act. Section 13 of the Act sets out the various grounds on which a landlord may recover possession of the premises let out to the tenant. Sub-section (1) clause (g) of that section provides :

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

* * * * *

A “(g) that the premises are reasonably and *bona fide* required by the landlord for occupation by himself or by any person for whose benefit the premises are held or where the landlord is a trustee of a public charitable trust that the premises are required for occupation for the purposes of the trust;”

B Section 15(1) provides that notwithstanding anything contained in any law, but subject to any contract to the contrary, it shall not be lawful after the coming into operation of the Act for any tenant to sub-let the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein. Section 15(2) legalises sub-leases, assignments and transfers effected in favour of persons as have entered into possession and have continued in possession on the date of the commencement of the Ordinance of 1959.

C The trial court and the First Appellate Court found that the respondent required the premises for the purpose of its business but they dismissed the suits on the ground that in view of the provisions of section 25 of the Act, the requirement could not be said to be reasonable and *bona fide*. The High Court accepted the finding of the courts below that the premises were required by the respondent for the purpose of its business but it differed from them on the question of the applicability of section 25. The High Court has taken the view that section 13(1)(g) is not subject to section 25 and therefore the question whether the requirement of the landlord is reasonable and *bona fide* has to be decided apart from the provisions of section 25. The correctness of this view is challenged by the tenants in these appeals.

D The scheme of the Act is that ordinarily, the landlord shall not be entitled to evict a tenant so long as the latter pays or is ready and willing to pay the standard rent and permitted increases and so long as he observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of the Act. This rule is enunciated in section 12(1). Section 13 of the Act is in the nature of an exception to section 12. It enumerates the grounds on which, notwithstanding the injunction contained in section 12, a landlord may obtain possession of the premises let out to the tenant. Under section 13(1)(g), the landlord can obtain possession only if he satisfies the court that the premises are required by him “reasonably and *bona fide*”. If the issue as regards the reasonableness of the landlord’s requirement is to be decided without reference to the provision contained in section 25, the respondent would be entitled to succeed because all the three courts have found that the respondent requires the premises genuinely for occupation by itself for the purpose of its business and that the requirement, apart from section 25, is reasonable and *bona fide*. The short question for consideration in these appeals is whether the reasonableness of the landlord’s requirement can be judged in the light of the provision contained in section 25 or whether, as held by the High Court, section 25 is to be kept out of way in judging that question.

H By section 25, a landlord cannot use nor can be permit to be used for a non-residential purpose any premises which on the date when the Act came into force were used for a residential purpose. Under sub-13—L839Sup.CI/75

section (2) of section 25, a landlord who contravenes the provisions of sub-section (1) is punishable with imprisonment for a term which may extend to three months or with fine or with both. In the instant case, the premises were admittedly used for a residential purpose on February 13, 1948 being the date on which the Act came into operation. It is plain from the language of section 25(1), that the respondent cannot convert the user of the premises from a residential to a non-residential purpose. If it did so, it would be liable to be prosecuted and punished under section 25(2).

The respondent sought possession of the premises let out to the appellants and three other tenants on the ground that it wanted one room for its office, two rooms for running a fair-price grain-shop, two rooms for conducting a provision stores, two rooms for preparing pickles, cleaning spices and for keeping the finished products for sale, two rooms for establishing a godown and some more space for conducting a tailoring and sewing class. The respondent succeeded in proving its requirement but its very success in establishing that it required the premises for a non-residential purpose is its failure to establish the ingredients of section 13(1)(g) of the Act. Under that provision, it is not sufficient for a landlord to establish that the premises are required by him but it has to be shown further that the requirement is reasonable and *bona fide*. The requirement of the respondent in the instant case cannot ever be called reasonable, if the very statute under which it seeks relief contains an injunction that it shall not use residential premises for a non-residential purpose. Not only does the statute contain an injunction against the user of residential premises for a non-residential purpose, but it makes it penal for a landlord to use for a non-residential purpose any premises which were used for a residential purpose on the date when the Act came into force. In the light of section 25(1), granting a decree to the respondent for possession of the residential premises on the ground that it requires those premises for a non-residential purpose is to pave the way for its prosecution and punishment under section 25(2). In fact, such a decree would be self-defeating because, whereas the decree shall have been passed on the ground that the respondent requires the premises for a non-residential purpose, it will not be able to use those premises for the purpose for which the decree was granted, save on pain of prosecution.

Learned counsel for the respondent places great reliance on the *non-obstante* clause of section 13(1) and argues that the legislature having considered the question whether section 13 should be made subject to any other law or to any other provision of the Act, came to the conclusion that it should be made subject to the provisions of section 15 only and therefore it would be wrong to subject the provisions contained in section 13(1) to section 25. The High Court also approached the problem before it by saying that the material question for consideration was whether section 13(1) can be made subject to section 25. This question was answered by the High Court by saying that since the legislature did not subject the right conferred on the landlord by section 13(1) to any other provision save the one contained in sec-

A tion 15, section 25 cannot be permitted to override section 13(1). This approach, in our opinion, is misconceived. The true question for consideration is not whether as between section 13(1) and section 25(1) one overrides the other and indeed, in view of the wording of the *non-obstante* clause of section 13(1), the provisions of that section must have priority over the rest of the Act, except for what is contained in section 15. But conceding to section 13(1) its rightful precedence and granting that it stands supreme except for section 15, according to its own terms the court has to be satisfied that the requirement of the landlord is reasonable. A requirement which runs in the teeth of section 25 and which, if established, may throw the landlord open to the risk of a prosecution cannot be called reasonable. Therefore, if the respondent shall have failed, it is not because section 25 overrides section 13 (1) but because of its failure to prove the reasonableness of its requirement. Whether the requirement of the landlord is reasonable or not is to be judged from all the facts and circumstances of the case and a highly relevant circumstance bearing on the reasonableness of the landlord's requirement is that the purpose for which the possession is sought is a purpose for which the premises cannot be used save on pain of penal consequences. Courts ought not to construe a statute in a manner which will encourage the breach of any of its provisions and, most certainly, a decree ought not to be passed which, if honoured, will attract penal consequences. To pass a decree in favour of the respondent on the grounds accepted by the High Court is to invite the respondent to commit a breach of the statutory injunction contained in section 25(1).

E In short, therefore, though the evidence led by the respondent is sufficient to prove that it requires the suit premises for the purpose of its business, no decree for possession can be passed in its favour as its requirement cannot be said to be reasonable. The requirement runs across a statutory prohibition and is therefore not reasonable.

F The view taken by the Bombay High Court in Civil Revision Application No. 2172 of 1957 decided on September 3, 1959 and in *Laxmi Co-operative Bank Ltd. v. Mohan Govind Diwanji*(¹), as also the view taken by a learned Single Judge of the Gujarat High Court in Civil Revision Application No. 896 of 1963 decided on March 7, 1967, is in our opinion correct. The learned Judges of the Gujarat High Court were in error in the instant case in departing from that view.

G For these reasons we allow the appeals, set aside the judgment of the High Court and direct that the suits filed by the respondent against the appellants shall stand dismissed. Respondent shall pay to the appellants the costs of these appeals. One set of hearing fee only.

H P.B.R.

Appeals allowed.