

**HIGH COURT OF GUJARAT**

**DAHYABHAI MOTIRAM  
V/S  
NATHUBHAI BHIMBHAI NAIK**

**Date of Decision:** 03 July 1974

**Citation:** 1974 LawSuit(Guj) 48

**Hon'ble Judges:** [S H Sheth](#)

**Eq. Citations:** 1975 GLR 404, 1975 RCR(Rent) 385, 1976 RCJ 49

**Case Type:** Civil Revision Application

**Case No:** 1163 of 1971

**Head Note:**

**Bombay Rents, Hotel and Lodging House Rates (Control) Act (LVII of 1947) S.13(1)(L) Suitable residence Bungalow constructed in a separate village topographically situated on the outskirts of the town Such residence can be taken into consideration for the purpose of S.13(1)(L). Bombay Rents, Hotel and Lodging House Rates (Control) Act (LVII of 1947) S.5(8), S.6(1), S.13(1)(L) Premises predominant intention of letting the premises to be considered If the predominant intention is business, S.13(1)(L) will not apply.**

**The tenant who has a rented building in Bilimora has constructed a bungalow in the area of Talodh Gram Panchayat. The evidence shows that topographically it is situated opposite Bilimora Railway Station. There is a very short distance between Billimora Railway Station and the bungalow. On the question whether the bungalow constructed by the tenant is a suitable residence for him within the meaning of sec. 13(1)(L) of the Bombay Rent Control Act. HELD that though the defendant has not constructed his bungalow in Billimora town proper it has been constructed in the Gram Panchayat area of Talodh which is situated on the**

outskirts of Billimora town. It cannot be said that since it is technically situate in a different area it cannot be taken into account for the purpose of considering whether it is a suitable residence for the defendant within the meaning of sec. 13(1)(L) of the Bombay Rent Control Act. From the evidence it appears that though Talodh is a separate local self Government unit topographically it appears to be a suburb of Billimora. The Bungalow built in the area of Talodh Gram Panchayat therefore can be taken into account for the purpose of considering the case under sec. 13(1)(L) of the Bombay Rent Act. (para 4) Bombay Rents Hotel and Lodging House Rates (Control) Act (LVII of 1947)-Secs. 5(8) 6 13 intention of letting the premises to be considered-If the predominant intention is business sec. 13(1)(L) will not apply. Where the rent control legislation does not use a residuary expression under which a purpose otherwise not answering the description of any other specific purpose can fall the test of predominant intention has got to be applied. So far as the Bombay Rent Control Act is concerned sec. 5(8) which defines the expression premises does not qualify its connection by assigning to it any such purpose as business-cum-residence. Within the meaning of sec. 6(i) residence-cum-business as an independent purpose cannot be placed under any of the five purposes mentioned in sec. 6(1). The test of predominant intention has got to be applied. To take any other view is to defeat the legislative intent of protecting the less fortunate sections of society. (para 7) If the Court comes to the conclusion that the predominant intention or main purpose of letting the suit premises to the defendant is residence provisions of sec. 13(1)(L) of the Bombay Rent Act will be attracted. If the Court finds that predominant intention or main purpose is business then the provisions of sec. 13 will not apply. (para 8). *Dr. Gopal Dass Varma v. Dr. S. K. Bhardwaj S. Kartar Singh v. Chamanlal* referred to.

**Acts Referred:**

[Bombay Rents, Hotel And Lodging House Rates Control Act, 1947 Sec 13\(1\)\(1\)](#)

**Final Decision:** Application allowed

**Advocates:** K S Nanavati, [I M Nanavati](#), [D D Vyas](#)

**Reference Cases:**

[Cases Cited in \(+\): 4](#)

[Cases Referred in \(+\): 2](#)

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## Judgement Text:-

S H Sheth, J

[1] The plaintiff-landlord filed against the defendant-tenant the present suit for recovering possession of the suit premises on three grounds. Firstly, he alleged that the defendant had been in arrears of rent from December 1, 1967 to November 30, 1968. Secondly, he alleged that he required the suit premises reasonably and bona fide for his own occupation. Thirdly, he alleged that the defendant had built a suitable residence for himself. The rent of the suit premises is Rs. 63.50 per month. The suit premises are situated in the town of Billimora. The defendant denied the plaintiff's claim and contended that the statutory notice served upon him by the plaintiff was invalid. Before the learned trial Judge, the plaintiff gave up his contention as to arrears of rent and proceeded with the trial of the suit on two other grounds of eviction. The learned trial Judge negated the defendant's contention that the statutory notice served upon him was invalid. He also negated the two grounds of eviction which the plaintiff pressed before him for recovery of possession of the suit premises. In that view of the matter, he dismissed the plaintiff's suit.

[2] The plaintiff appealed against that decree to the District Court. Before the learned District Judge the plaintiff gave up his contention that he reasonably and bona fide required the suit premises for his personal occupation and pressed only one ground of eviction in his attempt to obtain decree for possession against the defendant. He contended that the defendant had built a suitable residence within the meaning of sec. 13(1)(1) of the Bombay Rent Act and was, therefore, liable to be evicted. The defendant did not raise the contention before the learned District Judge that the statutory notice served upon him was invalid. The learned District Judge negated the only ground of eviction pressed by the plaintiff for his decision and dismissed the plaintiff's appeal.

[3] It is that appellate decree which is called in question by the plaintiff in this revision application. Mr. Nanavati, who appears for the plaintiff, has raised before me only one contention. He has argued that the learned District Judge was in error in negating the plaintiff's contention that the defendant was liable to be evicted on the ground that he had built a suitable residence. In order to examine this contention, it is necessary to take note of a few undisputed facts. The defendant has admitted in his evidence that he constructed a bungalow in 1969 which consists of ground floor and the first floor. On the

ground floor, there are 5 rooms. On the first floor, there are 4 rooms. In all, the defendant has got nine rooms in his newly constructed bungalow. It appears that he has let out the first floor to a tenant at the monthly rent of Rs. 150/-.

**[4]** So far as the suit premises are concerned, they consist of a building having two storeys. Both the floors have together five rooms which the defendant has been using for his residence as well as for running his dispensary. The first question which I am required to answer is whether the bungalow constructed by the defendant is a suitable residence for him within the meaning of sec. 13(1)(1) of the Bombay Rent Act. I have no doubt in my mind that if the defendant has 9 rooms in his bungalow as against five which he has in the suit premises, it is more suitable for him as residence. Mr. Vyas has argued before me that a residential bungalow constructed by a tenant at a place other than where the suit premises are situate cannot be taken into account for the purpose of passing decree against a tenant under sec. 13(1)(1) of the Bombay Rent Act. Admittedly the bungalow which the defendant has constructed is situate in the area of Talodh gram panchayat. The evidence shows that topographically it is situated opposite Billirnora Railway Station. There is a very short distance between Billirnora Railway Station and the bungalow. According to the plaintiff the distance between the suit premises and the defendant's bungalow is about four furlongs. Though the defendant has not constructed his bungalow in the Billirnora town proper, it has been constructed in the gram panchayat area of Talodh which is situated on the outskirts of Billirnora town. It cannot be said that since it is technically situate in a different area, it cannot be taken into account for the purpose of considering whether it is a suitable residence for the defendant within the meaning of sec. 13(1)(1) of the Bombay Rent Act. If the distance between the rented premises of a tenant and the bungalow which he has constructed is prohibitive or unduly long and if it is situate in a different township, it may be said that such a bungalow will not constitute a suitable residence for tenant within the meaning of sec. 13(1)(1) of the Bombay Rent Act. I am not impressed, therefore, by the argument raised by Mr. Vyas that the situation of the defendant's bungalow in the area of Talodh gram panchayat cannot be taken into account for the purpose of considering the plaintiff's case under sec. 13(1)(1). From the evidence it appears to me that though Talodh is a separate local self Government unit, topographically it appears to be a suburb of Billimora.

**[5]** The next argument which Mr. Vyas has raised is that the suit premises were let out to the defendant for the purpose of residence-cum-business. Therefore, according to him, he cannot be evicted from the suit premises under sec. 13(1)(1) which

contemplates acquisition of vacant possession of or construction of a suitable residence and does not refer to business premises. The evidence shows that the defendant had entered into the possession of the suit premises as a sub-tenant of one Lallubhai Kasanji Mistry who was the plaintiff's tenant in respect of larger premises of which the suit premises constituted a part. It appears that there was litigation between Lallubhai Kasanji Mistry and the defendant on one hand and the plaintiff on the other and that that litigation ended into a consent decree under which the plaintiff accepted the defendant as his direct tenant in respect of the suit premises. The plaintiff has stated in plaint, Ex. 1, that the defendant had not only been residing in the suit premises but carrying on his medical practice there. In paragraph 13 of his Judgment, the learned District Judge has recorded the following finding :

"The evidence led on behalf of the plaintiffs shows that the suit premises are used by the defendant as his dispensary and as residence."

Now, in the instant case there is no documentary evidence to show the purpose for which the suit premises were let. The oral evidence shows that the defendant has been residing in the suit premises and carrying on his medical practice there. It appears that the defendant has been for a very long time past occupying the suit premises for these dual purposes. In my opinion, therefore, the suit premises were let out by the plaintiff to the defendant under the consent decree both for the purpose of residence and business, in other words, the purpose for which the suit premises were let out to the defendant was a composite purpose of business-cum-residence. If there was evidence to show that they were let out only for residential purpose, the defendant could not have been heard to contend that they were let out for any other purpose because by virtue of the provisions of sec. 25 of the Bombay Rent Act he could not have converted the residential premises into any other kind of premises. Mr. Vyas has, therefore, argued that since the suit premises were let out to the defendant for the composite purpose of residence-cum-business, no decree for eviction can be passed under sec. 13(1)(1) which contemplates only the acquisition of vacant possession of or construction of a suitable residence. In support of his argument, Mr. Vyas has invited my attention to two decisions of the Supreme Court.

[6] In Dr. Gopal Dass Varma v. Dr. S. K. Bhardwaj and another, A.I.R. 1963 S. C. 337, a



similar question arose under Delhi and Ajmer Rent Control Act, 1952. Sec. 13(1)(h) of that Act provided for eviction of a tenant in case the court was satisfied that the tenant has whether before or after the commencement of that Act built, acquired vacant possession of, or had been allotted a suitable residence. Sec. 13(1) (e) of that Act allowed a decree for eviction to be passed if the court was satisfied that the premises let for residential purpose were bona fide required by the landlord, the owner of such premises, for occupation as a residence for himself or his family and that he had no other suitable accommodation. It is in the context of those two provisions that the question arose before the Supreme Court whether a tenancy created for residence and profession could have been successfully terminated under sec. 13(1)(h) of that Act on the ground that the tenant had acquired or built a suitable residence. It is in that context that the Supreme Court has held that what must be proved is that the tenant has acquired a residence, that is to say, the premises which can be used for residence and that they must be suitable for that purpose. They have further observed that if the premises from which the tenant is sought to be evicted were used not only for residence but also for profession, then it would be unreasonable to hold that the tenancy which had been created or used both for residence and profession could be successfully terminated merely by showing that the tenant has acquired a suitable residence which is not suitable for profession.

**[7]** The next decision to which Mr. Vyas has invited my attention is *S. Kartar Singh v. Chaman Lai and others* A. I. R. 1969 S.C. 1288. In that case the Supreme Court was considering a similar problem which arose under Delhi Rent Control Act, 1958. The tenant in that case was found to have taken the premises on lease both for the purpose of residence as well as for the purpose of carrying on his professional work as a legal practitioner. They, therefore, accepted the findings recorded by the courts below that the premises had been let out to the tenant in that case for residential-cum-business or professional purpose. They applied the principles laid down in the case of *Gopal Dass Varma* (Supra) and held that the tenancy of the premises let out or used for residence and for carrying on the profession could not be terminated merely by showing that the tenant has acquired a suitable residence. In the case of *Gopal Dass Varma* (Supra) the premises were let out to a doctor who was an ear, nose and throat specialist. It was found that the Doctor had been using the premises with the consent of the landlord both for his residential and professional purposes. They recorded the conclusion in *Kartar Singh* 's case (Supra) that the tenancy in respect of the premises let out for residence-cum-business could not be successfully terminated on the ground that the tenant had acquired or built a suitable residence because, according to them, residence-cum-

business was a purpose different from residence. It was further argued in that case that the test of predominant intention or main purpose should be applied in order to determine whether the premises were let out predominantly for residence or predominantly for business. In that context the Supreme Court has observed that the position in England is different where premises can be let partly for business purpose and partly for residence. In England the statutory provisions lay down that where a dwelling is let partly for business and partly for residence, the Rent Act applies to the whole. It appears to me that the test of predominant intention or main purpose was not applied on account of the provisions contained in sec. 2(g) of the Delhi and Ajmer Rent Control Act, 1952. Sec. 2(g) of that Act referred to three kinds of users to which premises can be put. They were residence, commerce and any other purpose. Whereas residence and commerce are specific purposes, the expression "any other purpose" is a residuary clause which can embrace all other purposes single or composite. Similarly, sec. 2(i) of the Delhi Rent Control Act, 1958 defines the "premises" inter alia, to mean "any building or part of a building which is, or is intended to be, let separately for use as residence or for commercial Use or for any other purpose." Under both the aforesaid Acts, business-cum-residence as a composite purpose can be distinguished from residence as well as from commerce and can be placed under the residuary expression "any other purpose". So far as the Bombay Rent Act is concerned, sec. 5(8) which defines the expression "premises," does not qualify its connotation by assigning to it any such purpose. However, sec. 6(1) of the Bombay Rent Act states as follows :-

"In areas specified in Schedule I, this Part shall apply to premises let for residence, education, business, trade or storage and also open land let for building purposes.

It is not necessary for the purpose of this case to refer to two provisos to sub-sec. (1) of sec. 6. Within the meaning of sec. 6(1), residence-cum-business if construed as an independent purpose cannot be placed under any of the aforesaid five purposes. It has been argued by Mr. Nanavaty, therefore, that residence-cum-business as an independent composite purpose does not fall under any of the aforesaid five purposes and that therefore, provisions of Part II of the Bombay Rent Act do not apply to the suit premises and that, therefore, the defendant is not entitled to protection of the provisions of Part II of the Bombay Rent Act. I am unable to accede to that argument because to take any such view is to deprive thousands of hard

pressed tenants of the protection of the Rent Act which has been enacted for the benefit of the less fortunate sections of society. If residence-cum-business does not, as an independent purpose, fall under any of the aforesaid five purposes, under which of the aforesaid five purposes does it otherwise fall? Does it fall under the purpose of business ? Does it fall under the purpose of residence ? Sec. 6(1) or any other provision of the Bombay Rent Act, in the context of the purpose for which premises are let, does not use the residuary and all embracing expression "any other purpose" used by Delhi and Ajmer Rent Control Act, 1952 and by Delhi Rent Control Act, 1958. In my opinion in Kartar Singh 's case (Supra), the Supreme Court did not apply the test of predominant intention because under the provisions of that Act, the composite purpose of residence-cum-business fell within the residuary expression "any other purpose". Where the rent control legislation does not use such a residuary expression under which a purpose, otherwise not answering the description of any other specific purpose, can fall, the test of predominant intention has got to be applied. To take any other view is to defeat the legislative intention of protecting the less fortunate sections of society. I am aware of the test which I am applying to the provisions of the Bombay Rent Act. I am applying to the Bombay Rent Act the doctrine of predominant intention or main purpose which the Supreme Court did not apply to cases under Delhi and Ajmer Rent Control Act, 1952 and Delhi Rent Control Act, 1958. In my opinion, in matters under rent control legislations, the Supreme Court has not rejected the application of the aforesaid principle in absolute terms. What it has done is to hold that it cannot be applied to cases falling under the aforesaid two rent control legislations.

**[8]** Applying the test of predominant intention or main purpose, what do we find in the instant case ? It appears that the parties have not led any evidence on this point. They were not conscious of the point which has arisen before me. To say, therefore, that the plaintiff has failed to prove that the predominant intention or main purpose of letting the suit premises to the defendant was residential is to take the plaintiff by surprise and to be unfair to him. In my opinion, therefore, since both parties were not aware as to that they were required to prove, they did not lead any evidence on this point. Therefore, it becomes necessary, in the interest of justice, to set aside the decree passed by the courts below and to remand the suit for taking evidence on this new aspect which has arisen before me and to have a decision thereon. It is needless to say that if the courts



below, on taking such evidence as the parties may produce, come to the conclusion that the predominant intention or main purpose of letting the suit premises to the defendant was residence, provisions of sec. 13(1)(1) of the Bombay Rent Act would be attracted. If the courts below, on taking such evidence as the parties may produce, find that the predominant intention or main purpose was business, then it is needless to say that provisions of sec. 13(1)(1) would not apply.

**[9]** For the reasons stated above, I allow this Revision Application, set aside the decree passed by the courts below and remand the suit to the trial court for taking such fresh evidence as parties may produce on the question whether the predominant intention or main purpose of letting the suit premises to the defendant was residential or business. After having taken fresh evidence on this question, the learned trial Judge shall decide the suit in light of the observations made in this judgment and according to law. Rule is made absolute to the aforesaid extent with no order as to costs in the circumstances of the case.

Application allowed.

