

SUPREME COURT OF INDIA

David Joseph Guido

Vs.

A.C. Fernandes

(S.S. Quadri and N. S. Hegde JJ.)

29.02.2000

ORDER

S.S. MOHAMMED QUADRI, J.

1. These appeals, by Special Leave, are directed against the common order of the Bombay High Court in Civil Revision Application Nos. 1043/94 and 515/96, dated 31st July, 1998.

2. The Appellant was a member of the Armed Forces of the Union of India. He filed an application under Section 13A1 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, 'the Act') seeking eviction of the Respondent tenant from flat No.3, 'Shamrock', TPC IV, Santacruz, Bombay (for short, 'flat in question'). His plea before the Competent Authority was that he was the owner of the flat in question by virtue of the sale deed executed by his father in his favour on 10th May, 1985 and had also produced the requisite certificate from the concerned authority; he, therefore, prayed that the Respondent be evicted and he be put in possession of the said flat. The Respondent contested the petition, inter alia, on the ground that the Appellant is not the landlord and there exists no relationship of landlord and tenant between them. The Competent Authority, in the first instance, being satisfied with the requirements of Section 13A1 of the Act, ordered eviction of the Respondent from the flat in question by judgment dated 18th October, 1994. The Respondent carried the matter in revision (C.R. A. 1043/94) before the High Court. On his prayer for leave to file additional documents to show that the Appellant is not the owner of the flat in question and that the relationship of landlord and tenant does not exist between them, the High Court considered it fit to grant leave and call for a finding on issues 3(a) and 3(b), which are as follows:

3(a) Does the Applicant prove that he is the landlord of the suit premises ?

(b) Whether there exists any relationship of landlord and tenant between the Applicant and the Respondent ?

3. The High Court permitted the parties to lead evidence before the Competent Authority.

4. After giving due opportunity to the parties, the Competent Authority returned the findings on both the issues against the Appellant by an order dated 30th April, 1996. Against the findings on the said issues, C.R. A. No. 515/96 was filed by the Appellant. While confirming the findings returned by the Competent Authority, the High Court set aside the order of eviction passed against the

Respondent by common order dated 31st July, 1998 which is assailed in these appeals by the Appellant.

5. Mr. Joshi, the learned Counsel for the Appellant, vehemently contended that in view of the provisions of Sub-section (2) of Section 13A1 of the Act, the certificate granted under Sub-section (1) is conclusive proof of facts stated therein and that, therefore, it was not open for the Competent Authority or the High Court to go into the question of the ownership of the Appellant and relationship of landlord and tenant between them and record findings thereon.

6. Mr. Khanwilkar, the learned Counsel for the Respondent, submitted that Section 13A1 of the Act enables a member of the Armed Forces, working at present or retired, to claim eviction of the tenant on the basis of the certificate granted under Sub-section (1) of Section 13A1 but the question as to whether the Appellant is the owner and landlord within the meaning of the Act has to be decided by the Competent Authority; the findings recorded by the authority are confirmed by the High Court and there is no valid ground to assail the order under appeal.

7. It appears to us that the scheme for eviction of a tenant under the Act is relaxed in favour of a landlord in cases covered by Section 13A1 and the allied provisions which are inserted by Bombay Rent (Amendment) Act, 1986. The relevant portion of Section 13A1 may be extracted here.

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

(A) a landlord, who, -

(i) is member of Armed Forces of the Union or was such a member and has retired as such (which term shall include premature retirement), or

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

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

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

(i) he is a member of the Armed Forces of the Union, or that he was such a member and has retired as such, and

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

(2) Any certificate granted under Sub-section (1) shall be conclusive evidence of the facts stated therein.

8. From a perusal of Section 13A1 of the Act, it is evident that the provisions of that Section are given over-riding effect over the other provisions of the Act or any contract. It enables, inter alia a landlord who is a member of the Armed Forces of the Union or a retired member, which includes prematurely retired member, to recover possession from his tenant the possession of any premises owned by him on the ground that such premises are bona fide required for occupation by himself or by any other member of his family by making an application for the purpose of recovery of possession of the premises to the Competent Authority. Before passing an order of eviction, in case of a member of the Armed Forces of the Union, the Competent Authority has to be satisfied that he has produced a certificate signed by the authorised officer to the effect that: (i) he is a member of the Armed Forces of the Union or that he was such a member and has retired as such; and (ii) he does not possess any other premises suitable for residence in the local area where the premises are situated. The other provisions are not relevant for our discussion.

9. Such a certificate is conclusive evidence of facts stated therein vide Sub-Section (2) of the Act. It may be useful to refer to the certificate issued by the Competent Authority, which reads thus:

CERTIFICATE

Under Section 13A1 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

WHEREAS Captain D.J. Guido (00737-Z) (Retd.) has applied for a certificate under Section 13A1 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 in respect of the premises known as SHAMROCK, 14B (15B), (East Avenue) and situated at Saratchandra Chatterjee Marg, Santacruz (West) Bombay 400054 and has furnished requisite information in support of his application;

and

WHEREAS I am satisfied that the applicant is a fit person for giving the required certificate.

I, therefore, hereby certify that

(a) Captain D.J. Guido (00737-Z) (Retd.) was a member of the Armed Forces of the Union of India and is now a retired ex-serviceman; and (b) Captain D.J. Guido (00737-Z) does not possess any other suitable house in the local area where he or the members of his family can reside.

10. A plain reading of the certificate shows that the authority has certified only two facts, namely, that the Appellant was a member of the Armed Forces of the Union and had retired and that he did not possess any other suitable house in the local area where he or any member of his family could reside. The presumption of conclusive evidence applies to the facts stated in the certificate and to no other facts. Evidently ownership of the flat in dispute and relationship of landlord and tenant are not facts stated therein, so it is futile to contend that the presumption extends to those facts also.

11. To seek an order of eviction under Section 13A1, the Appellant has, in addition to the facts

stated in the certificate, to prove that he is a landlord and owner of the flat in question as contemplated under Section 13A1. These two facts are subject matter of the two issues (3(a) and (b)) on which findings were called for by the High Court. The Competent Authority as well as the High Court have gone into various facts urged before them and recorded that the Appellant could not establish his ownership to the flat in question or the relationship of landlord and tenant between him and the Respondent. The presumption of conclusive evidence which is attached to the contents of the certificate, it has already been pointed out, does not extend to the fact of the Appellant being the owner of the premises or to the existence of the relationship of landlord and tenant between them.

12. Mr. Joshi has relied on two judgments of this Court in *Shivram Anand Shiroor v. Radhabai Shantram Kowshik and Kanta Udharam Jagasia v. C.K.S. Rao* .

13. In *Shivram Anand's* case (supra), it has been held that if a landlord produces a certificate in the manner prescribed in Section 13A1 that would be conclusive proof that he does not possess any suitable residence in the local area but that would not prove his bona fide requirement and as such he has to further prove that he bona fide requires the premises for occupation by himself or any member of his family and it is only when those facts ' are established, he would be entitled to recover possession and that he would not have to further prove that greater hardship would be caused to him than to the tenant if a decree for possession was not granted.

14. In *Kanta Udharam Jagasia's* case (supra), the question was whether the landlady was a Scientific Officer within the meaning of the said Section. The Competent Authority, acting on the certificate granted by an officer of the Department, said that the Scientific Officer was entitled to the benefit of Section 13A1 of the Act, but the High Court went into the question whether she could be treated as a Scientific Officer at all. This was not approved by this Court and in that context it was observed by this Court that the certificate is conclusive proof of the fact that she was a Scientific Officer.

15. Inasmuch as both the Competent Authority and the High Court have come to the conclusion that the Appellant failed to prove his ownership of the flat in question and the relationship of landlord and tenant between him and the Respondent and as we have held above that the certificate granted under Section 13A1 shall be conclusive evidence of only the facts stated therein, we find no merit in the appeals. They are accordingly dismissed but, in the circumstances of the case, we make no order as to costs.