

SHIVRAM ANAND SHIROOR

v.

RADHABAI SHANTRAM KOWSHIK AND
ANOTHER

January 31, 1984

[O. CHINNAPPA REDDY, E.S. VENKATARAMIAH AND
R. B. MISRA, JJ.]

*Bombay Rents Hotel and Lodging House Rates Acts 1947. Section 13
A-1*

Member of Armed Forces—Flat inherited while in service—On retirement from service—Whether could eject tenant from flat on ground of bona fide requirement.

Interpretation of Statutes :

Words of statute—clear and unambiguous—No question of construction arises—Court to give effect to plain words.

Words and Phrases :

'regain possession'—Meaning of.

The appellant was a member of the armed forces of the Union from August, 1942 until August 17, 1970 when he retired from the Army. In 1964, he inherited a flat from his brother. The respondent was already the tenant of the flat. Soon after retirement, he filed a suit against the respondent for ejectment on the grounds of default, sub letting and *bona fide* personal requirement. While the suit was pending, the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 was amended in 1975 by the introduction of section 13 A-1. The appellant, therefore filed a fresh suit for eviction under section 13 A-1, and produced the required certificate.

The Rent Controller and the Appellate Authority concurrently found that the appellant *bona fide* required the flat for his own occupation and decreed the suit.

The respondent—tenant moved the High Court under Article 227, and the High Court while not interfering with the concurrent finding of the subordinate tribunals that the appellant *bona fide* required the premises for

his own occupation, set aside the decree for eviction on the ground that section 13 A-1 did not enable a member or a retired member of the armed forces to seek the remedy provided by section 13 A-1, if the premises were already in the occupation of the tenant when he became the landlord while being a member of the armed forces.

Allowing the appeal to this Court,

HELD : 1. (i) The Bombay Rent Hotel and Lodging House Rates Control Act, 1947 is a welfare legislation designed to protect tenants from harassment and unreasonable eviction by Landlords. It should, therefore be interpreted in a broad and liberal spirit so as to further and not to constrain the object of the Act. The exclusionary provisions in the Act should be construed strictly so as to give a wide amplitude to the principal object of the legislation and to prevent its evasion on deceptive grounds. But this does not mean that the intention of the legislature, expressed with sufficient vocabular clarity or gathered by reference to permissible sources, may be by-passed to accommodate individual versions of what may appear reasonable. [755B-D]

(ii) Where the words of a statute are clear and unambiguous, there can arise no question of construction. Such words ordinarily speak for themselves. [755D]

(iii) A court should give effect to plain words, not because there is any charm or magic in the plainness of such words but because plain words may be expected to convey plainly the intention of the Legislature. [755E]

2. Section 13 A-1 of the Act was introduced in 1975, relaxing the rigour of section 13 in favour of a landlord who is or was a member of the armed forces. The provision provides that if the landlord produces a certificate in the manner prescribed it shall be taken as established, without further proof that he was then a member of the armed forces of the Union or that he was such member and now a retired ex-serviceman and that he did not possess any other suitable residence in the local area where he or any member of his family can reside. All that he had to further prove was that he *bona fide* required the premises for occupation by himself or any member of his family. The certificate is conclusive proof that he did not possess any suitable residence in the local area, and not that he *bona fide* required the premises for occupation by himself or any member of his family. As soon as he established that he *bona fide* required the premises for occupation he was entitled to recover possession, and did not have to further prove that greater hardship could be caused to him than to the tenant if a decree for possession is not granted. [756D-G]

3. It is impossible on the plain language of section 13 A-1 of the Act to read down the provision as enabling a member or a retired member of the armed forces to recover possession of the premises only if he had himself originally let out the premises when he was the member of the armed forces and not if the tenancy had commenced before he became the landlord of the premises either by inheritance, partition, or any other

A mode of transfer of property. To place such an interpretation would be to virtually rewrite the provision. [757E-F]

4. The words 'regain possession' in the Statement of Objects and Reasons, merely mean 'obtain possession', and do not indicate that the member of the Armed Forces must have let the tenant into possession.

[758G]

B *Mrs. Winifred Ross and Anr. v. Mrs. Ivy Fonseca and Ors.*, [1983] (2) S.C. SCALE 900 referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2906 of 1981.

C Appeal by Special leave from Judgment and Order dated the 6th July, 1981 of the Bombay High Court in Writ Petition No. 227 of 1981.

Raju Ramachandran and Mrs. Sadhana Ramachandran for the Appellant.

D *S.B. Bhasme, K. Rajendra Choudhary and K. Sivraj Choudhary* for Respondent.

M. N. Shroff for Respondent No. 2 (NOT PRESENT)

The Judgment of the Court was delivered by

E CHINNAPPA REDDY, J. The appellant in this appeal by special leave under Art. 136 of the Constitution was a member of the Armed Forces of the Union from August, 1942 until August 17, 1970 when he retired from the Army. In 1964, he became the owner of a flat in a co-operative society in Tardeo Bombay having inherited the same from his brother. The respondent was already the tenant of the premises when the appellant inherited it as the owner. Soon after his retirement, the appellant filed a suit for ejectment against the respondent on the grounds of default in payment of rent, *bona fide* personal requirement and unlawful subletting. This was in 1971. While the suit was still pending, the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 was amended in 1975 by the introduction of sec. 13 A-1. This was a special provision aimed at enabling a member of the Armed Forces of the Union or a retired members of the said Armed Forces to recover possession of premises *bona fide* required by him for his occupation or the occupation of members of his family on the production of a certificate from the Head of the Service or the Commanding Officer. The certificate was to specify that the indivi-

dual concerned was presently a member of the armed forces of the Union or that he was such a member and was now a retired ex-serviceman and that he did not possess any other suitable residence in the local area wherever he or any member of his family could reside. It was further provided that the certificate was to be conclusive evidence of the facts stated therein. An important distinction between the general provision contained in Section 13 (1) (g) and the special provision Section 13 A-1 is that under the special provision a tenant is disabled from taking advantage of Section 13 (2) which provides that no decree for eviction shall be passed on the ground specified in Section 13 (1) (g) if the court is satisfied that having regard to all the circumstances of the case, greater hardship would be caused by passing the decree than by refusing to pass it. The appellant, therefore, preferred to file a fresh suit for eviction of the respondent under Section 13 A-1 of the Bombay Rent Act rather than pursue the suit filed in 1971. He filed a fresh suit under the new provision. He produced the certificate required to be produced under Section 13 A-1. The Rent Controller and the Appellate Authority concurrently found that the Appellant *bona fide* required the flat for his own occupation and decreed the suit. The tenant moved the High Court of Bombay under Art. 227 of the Constitution. A learned single Judge of the High Court, while not interfering with the concurrent finding of the subordinate tribunals that the landlord *bona fide* require the premises for his own occupation, nevertheless set aside the decree for eviction on the ground that Section 13 A-1 did not enable a member or a retired member of the armed forces to seek the remedy provided by Section 13 A-1 of the Bombay Rent Act if the premises were already in the occupation of the tenant when he became the landlord has appealed under Art. 136 of the Constitution.

Section 13 A-1 of the Bombay Rent Act is as follows :

"13 A-1 Notwithstanding anything contained in this Act (a) a landlord, who is a member of the armed forces of the Union, or who was such member and is duly retired (which term shall include premature retirement) shall be entitled to recover possession of any premises, on the ground that the premises are *bona fide* required by him for occupation by himself or any member of his family (which term shall include a parents or other relation ordinarily residing with him and dependent on him); and the Court shall pass a decree for eviction on such ground

A if the landlord, at the hearing of the suit, produces a certificate signed by the Head of his Service or his Commanding Officer to the effect that—

B (i) he is presently a member of the armed forces of the Union or he was such member and is now a retired ex-serviceman;

(ii) he does not possess any other suitable residence in the local area where he or the member of his family can reside;

C (b) where a member of the armed forces of the Union dies while in service or such member is duly retired as stated above and dies within five years of his retirement, his widow, who is or becomes a landlord of any premises, shall be entitled to recover possession of such premises, on the ground that the premises are *bona fide* required by her for occupation by herself of any member of her family (which term shall include her or her husband's parent or other relation ordinarily residing with her) : and the Court shall pass a decree for eviction on such ground, if such widow, at the suit, produces a certificate signed by the Area or Sub-area Commander within whose jurisdiction the premises are situated to the effect that—

D (i) she is a widow of a deceased member of the armed forces as aforesaid;

E (ii) she does not possess any other suitable residence in the local area where she or the members of her family can reside.

F Explanation 1—For the purpose of clause (a) of this section, the expression “the Head of this Service”, in the case of officers retired from the Indian Army includes the Area Commander, in the case of officers retired from the Indian Navy includes the Flag Officer Commanding-in-Chief, Western Naval Command, and in the case of officers retired from the Indian Air Force includes the Station Commander.

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Explanation 2—For the purposes of this section,
any certificate granted thereunder shall be conclu-
sive evidence of the facts stated therein”.

It is true, as pointed out by the learned Single Judge, the Bombay Rent Act is a welfare legislation designed among other matters, to protect tenants from harassment and unreasonable eviction by Landlords and it should, therefore be interpreted in a broad and liberal spirit so as to further and not to constrain the object of the Act. We also agree that the exclusionary provisions in the Act should be construed strictly so as to give a wide amplitude to the principal object of the legislation and to prevent its evasion on deceptive grounds. But this does not mean that the intention of the legislature, expressed with sufficient vocabular clarity or gathered by reference to permissible sources, may be by-passed to accommodate individual versions of what may appear reasonable. The task of an interpreter is to ascertain intention. It is often said, where the words of a statute are clear and unambiguous, there can arise no question of construction. Such words ordinarily speak for themselves. Since the words must have spoken as clearly to legislators as to judges, it may be safely presumed that the legislature intended what the words plainly say. This is the true basis of the so called golden rule of Construction that “Where the language of an Act is clear and explicit, we must give effect to it, —for in that case the words of the Statute speak the intention of the legislature”. A court should give effect to plain words not because there is any charm or magic in the plainness of such, words but because plain words may be expected to convey plainly the intention of the legislature. Bearing these general principles in mind, if we look at Section 13 A-1 against the background and in the light of the object and the remaining provisions of the Act, what do we find? As we said earlier one of the principal objects of the Act is to protect the tenant against unreasonable eviction by a landlord. So, the Act stipulates the grounds on which a Landlord may seek eviction of a tenant. Section 13' (1) (g) in particular enables a landlord to recover possession of any premises if the Court is satisfied 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. So solicitous indeed is the legislature about protecting the tenant that Section 13 (2) contains a further stipulation that :

“No decree for eviction shall be passed on the ground specified in clause (g) of sub-section (1) if the Court is satis-

A fied that, having regard to all the circumstances of the case
including the question whether other reasonable accommoda-
tion is available for the landlord or the tenant, greater
hardship would be caused by passing the decree than by
refusing to pass it", and "Where the Court is satisfied
B that no hardship would be caused either to the tenant or to
the landlord by passing the decree in respect of a part
of the premises, the Court shall pass the decree in respect
of such part only".

C Notwithstanding the expressed legislative bias in favour of the
tenant, the legislature itself made a serious departure from the general
rule so as to lean in favour of landlords who are or were members of
the armed services, and who because of the exigencies of their service
were not able to occupy their own premises during the course of
their service. Section 13 A-1 was enacted, relaxing the rigour of
Section 13 in favour of a landlord who is or was a member of the
D armed forces. It is now provided that if he produces a certificate
in the manner prescribed it shall be taken as established, without
further proof that he is presently a member of the armed forces of
the Union or that he was such member and is now a retired ex-
serviceman and that he does not possess any other suitable residence
in the local area where he or any member of his family can reside.
E All that he had to further prove is that he *bona fide* required the
premises for occupation by himself or any member of his family.
The certificate is conclusive proof that he did not possess any suitable
residence in the local area, but not that he *bona fide* requires the
same for occupation by himself or any member of his family.
F There may be cases where he does not possess any other suitable
residence in the local area and yet he does not *bona fide* require the
premises for occupation by himself or any member of his family,
being comfortably settled elsewhere with a no need or pressure to
move. But so soon as he establishes that he *bona fide* requires the
premises for occupation for his family, he is entitled to recover
possession and does not have to further prove that greater hardship
would be caused to him than to the tenant if a decree for possession
G is not granted. It is of course, implicit that the person producing
the certificate is the landlord. It is further implicit that the person
mentioned in the certificate as presently or previously a member of
the armed forces was at a simultaneous point of time both landlord
and member of the armed forces. This has been laid down recently
H by this Court in *Mrs. Winifred Ross & Anr. v. Mrs. Ivy Fonseca*

and *Others* ⁽¹⁾ where it was observed :

“Having regard to the object and purposes of the Act and in particular Section 13 A-1 it is difficult to hold that Section 13 A-1 can be availed of by an ex-member of the armed forces to recover from a tenant possession of a building which he acquires after his retirement. Since a liberal interpretation of Section 13 A-1 of the Act is likely to expose it to a successful challenge on the basis of Art. 14 of the Constitution, it has to be read down as conferring benefit only on those members of the armed forces who were landlords of the premises in question while they were in service even though they may avail of it after their retirement. Such a construction would save it from the criticism that it is discriminatory and also would advance the object of enacting it, namely, that members of the armed forces should not while they are in service feel worried about the difficulties of a long drawn out litigation when they wish to get back the premises which they have leased out during their service”.

But we find it impossible on the plain language of Section 13 A-1 to further read down the provision as enabling a member or a retired member of the armed forces to recover possession of the premises only if he had himself originally let out the premises when he was a member of the armed forces and not if the tenancy had commenced before he became the landlord of the premises either by inheritance, partition, or any other mode of transfer of property. To place such an interpretation would be to virtually rewrite the provision. The language of Section 13 A-1 which is sufficiently plain does not warrant or invite such an interpretation. Nor is there anything elsewhere in the Act which compels such a construction. The statement of object and reasons was read to us. It says,

“Defence Services Personnel are liable to transfers and to be stationed in different parts of the country. They are often posted at non-family stations. Some of these personnel, who possess their own premises either in their home towns or elsewhere have necessarily to hire them out to other persons temporarily while they are away on duty. It has been represented to the State Government by the military

A authorities that on their retirement or transfer to non-family stations the serving and ex-service personnel find it extremely difficult to regain possession of their premises which they badly require for personal occupation permanently or for housing their families for the duration of their posting at non-family stations. In case of death of a service personnel while in service or death of ex-service personnel shortly after the retirement, the widow also finds it extremely difficult to regain possession of their premises for her personal occupation or occupation of her family.

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C The case of Defence Services Personnel due to their special obligations and disabilities do need different treatment from that accorded to other landlords and in fact special provisions have been made for them in some of the States, whereby processes for each personnel to regain possession of their premises have been simplified and made more effective.

D It is considered necessary to make a special provision in the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 to enable a member or retired member of the armed forces of the Union or a widow of such a member who dies while in service, or who dies within five years of his retirement, to regain possession of their premises, when bona fide required for occupation by them or members of their families and to provide that the Court shall be bound to pass a decree for eviction on such ground if such member or widow, as landlord, produces, at the hearing of the suit, the necessary certificate signed by the Head of his Service or His Commanding Officer or the Area or Sub-Area Commander within whose Jurisdiction the premises are situated.

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F The Bill is intended to achieve these objects"

G It was said that the use of the words 'regain possession' in the statement of Objects and Reasons indicated that the member of the armed forces must have himself given possession, that is, he must have himself let the tenant into possession. We cannot read so much into the Statement of Object and Reasons and into the Statute, via the Statement of Objects and Reasons. The words 'regain possession' in the context, are merely meant to convey 'obtain possession'. To our mind, the intention of the legislature is

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expressed with sufficient clarity by the language of Section 13 A-1 and there is nothing either in the Statute or in the Statute or in the Statement of Objects and Reasons to suggest that the intention of the legislature was other than what we have said. We therefore, allow the appeal, set aside the judgment of the High Court and restore those of the Rent Controller and the appellate authority. The parties will bear their respective costs. The respondents are given time till 30th September, 1984 to vacate the premises subject to their filing within four weeks from today an undertaking which shall be in the form usually adopted in the Court.

N.V.K.

Appeal allowed.