

JANUARY 29, 1991

B [K. JAGANNATHA SHETTY AND S.C. AGRAWAL, JJ.]

*Bombay Rents, Hotel and Lodging House Rates Control Act, 1947—Section 13(1)(c)—Eviction—Whether covers non-residential premises.*

C *Bombay Rent, Hotel and Lodging House Rates Control Act, 1947—Section 13(1)(c)—“Convicted of using the premises”—Construction of—Legislative intention—Repeated user of the premises for sale of adulterated food and convicted twice—Conviction whether justified.*

D Respondent-Landlady started an eviction proceeding under Section 13(1)(c) of the Bombay Rent Act against the petitioner-tenant, running a shop, selling sweet-meats and farsen on the tenanted premises, as he was convicted twice under the Prevention of Food Adulteration Act.

E Accepting claim of the land-lady the High Court ordered eviction.

Tenant contending that “convicted of using the premises” in Section 13(1)(c) be limited to offences involving the user of the premises that the provision does not cover non-residential premises, filed the Special Leave Petition.

F Dismissing the petition, this Court,

G **HELD:** 1. Section 13(1)(c) covers both residential as well as non-residential premises. If clause (c) is not applicable to business premises, there is no other similar provision in the Bombay Rent Act relating to the business premises. The consequence would be that the tenant in business premises could use the premises for committing any offence or he could commit nuisance and annoyance to the adjoining or neighbouring occupiers and yet claim that he is not liable to be evicted on that grounds. Whereas, the tenant of residential premises would not be able to commit such offence without the penalty of eviction. Such an interpretation would render the Section vulnerable to attack under

H Article 14 of the Constitution. [155D-G]

2. The expression "convicted of using the premises" cannot be given too liberal construction so as to cover every case of conviction of the tenant. [156B]

3. Section 13(1)(c) was not intended to be a moral code of conduct for the tenant. For each and every offence committed at the premises, the tenant cannot be exposed to the risk of eviction. The crime may be forced upon the tenant at the premises by third parties. There may be casual or incidental crimes. There may be technical offences connected with the trade or licence to trade. There may be crimes where use of the premises has nothing to do except being the scene of the offence. All such cases cannot satisfy the requirements of Section 13(1)(c). [157A-B]

4. The tenant must take advantage of his tenancy of the premises and of the opportunity they afford for permitting the crime. Only such crimes could fall within the scope of Section 13(1)(c). There need not be continuous for repeated user of the premises for committing such crimes. [157B-C]

[In the instant case, the tenant used the premises for carrying out illegal sale of adulterated food along with his usual business in sweet meats and farsen. He used the premises deliberately and taken advantage of his tenancy for committing the offences in the course of his trade. He can be evicted under Section 13(1)(c).] [157C-D]

*S. Schneiders and Sons Ltd. v. Abrahams*, [1925] 1 KB 301- followed.

CIVIL APPELLATE JURISDICTION: Special Leave Petition No. 12541 of 1990.

From the Judgment and Order dated 21.8.1990 of the Bombay High Court in W.P. No. 2677 and 4128 of 1983.

U.R. Lalit, A.M. Khanwilkar and Mrs. V.D. Khanna for the Petitioner.

M.C. Bhandare, V.N. Ganpule, Satish K. Agnihotri and Mrs. Suman B. Rastogi for the Respondent.

The Judgment of the Court was delivered by

K. JAGANNATHA SHETTY, J. The shop premises belonging

- A to the respondent-landlady was taken on rent by the petitioner for business purposes. The premises are within the scope of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ('The Bombay Rent Act'). The petitioner has been carrying on business in sweet-meats and farsen. The landlady brought action to recover possession of the premises under Section 13(1)(c) on the ground that the
- B tenant has been convicted of using the premises. It is not in dispute that the tenant was convicted on three occasions, first in 1968 for selling adulterated Desi-butter and second, in 1972 for selling sugar-garlands coloured with mentanil yellow a coaltar dye which is a prohibited colouring agent. In the second judgment of conviction, it has been
- C stated that the tenant had admitted two previous convictions and in one of the cases he was sentenced to six months simple imprisonment and a fine of Rs.1,000. All the convictions and sentences were under the Prevention of Food Adulteration Act.

The Bombay High Court has accepted the claim of the landlady and ordered eviction under Section 13(1)(c).

- D The tenant seeks leave to appeal against the order of the Bombay High Court. Section 13(1)(c) of the Bombay Rent Act reads:

- E "13(1) Notwithstanding anything contained in the Act, but subject to the provisions of sections 15 and 15A, a landlord shall be entitled to recover possession of any premises if the Court is satisfied,

- F (c) that the tenant or any person residing with the tenant has been guilty of conduct which is a nuisance or annoyance to the adjoining or neighbouring occupiers, or has been convicted of using the premises or allowing the premises to be used for immoral or illegal purposes; or that the tenant has in respect of the premises been convicted of an offence of contravention of any provision of clause (a) of sub-section (1) of section 394 or of Section 394-A of the Bombay Municipal Corporation Act."

- G Underlining is ours

- H Section 13(1)(c) *inter alia*, provides that the landlord shall be entitled to recover possession of any premises if the Court is satisfied that the tenant or any person residing with the tenant has been guilty of conduct or has been convicted of using the premises or allowing the premises to be used for immoral or illegal purposes etc.

Counsel for the tenant submits that the expression "convicted of using the premises" must be limited to offences which involve the user of the premises and user of the premises must by itself be an offence under law. By way of illustration, reference was made to the Immoral Traffic (Prevention) Act, 1956 and the Bombay Prevention of Gambling Act, 1887 whereunder the use of the premises for illegal purposes has been defined as an offence and punishable. It is only such conviction, counsel contends that it would expose the tenant to the risk of ejectment under Section 13(1)(c). It is also argued that Section 13(1)(c) does not cover non-residential premises and it covers only the residential premises.

We will consider the second question first. The contention is based on the term used in clause (c), namely "that the tenant or any person residing with the tenant has been ..." and it is said that the expression "residing with the tenant" indicates that clause (c) is applicable only to residential premises. The essence of the submission is that business premises are not used for residence. A Division Bench of the Bombay High Court in a separate judgment connected with this case has not accepted that interpretation. It has expressed the view that clause (c) covers equally residential and non-residential premises and the expression "residing with the tenant" used in clause (c) only indicates that the offence contemplated in clause (c) could be committed by the tenant or any person residing with tenant. We concur with this view. Section 13(1)(c) applies to any premises. Section 5(8) defines 'premises' to mean amongst others, any building or part of a building let or given on licence separately other than a farm building. If clause (c) is not applicable to business premises, there is no other similar provision in the Bombay Rent Act relating to the business premises. The consequence would be that the tenant in business premises could use the premises for committing any offence or he could commit nuisance and annoyance to the adjoining or neighbouring occupiers and yet claim that he is not liable to be evicted on that grounds. Whereas, the tenant of residential premises would not be able to commit such offence without the penalty of eviction. Such an interpretation would render the Section vulnerable to attack under Article 14 of the Constitution. We must avoid such construction. Section 13(1)(c), in our opinion, covers both residential as well as non-residential premises.

This takes us to the more difficult question, whether the offence leading to conviction which exposes the tenant to the risk of ejectment should involve the user of premises, or is to enough if the tenant was

- A convicted for an offence committed in the premises although the conviction is not of using the premises. Counsel for the tenant contends that the Section 13(1)(c) means the former. But the acceptance of such construction would unreasonably narrow down the Section defeating the very object of the provision, since there are very few crimes that can properly be so described and brought within its operation. We
- B therefore, reject the contention. But at the same time the expression "convicted of using the premises" cannot be given too liberal construction so as to cover every case of conviction of the tenant. In this regard, we have a useful guidance from the decision in *S. Schneiders and Sons Ltd. v. Abrahams*, [1925] 1 KB 301, where a similar question arose for consideration. There the tenant was convicted of an offence
- C under Section 33 of the Larceny Act, 1916 of receiving at the demised premises the property of the landlord well knowing the same to have been stolen. The landlord brought an action to recover possession of the premises under Section 4 of the Rent & Mortgage Interest Restrictions Act, 1923. Section 4 provided that no judgment for the recovery of possession of any house to which the Act applies shall be given
- D "unless the tenant . . . . has been convicted of using the premises or allowing the premises to be used for an immoral or illegal purpose . . . . ." Bankes L.J. explaining the scope of the expression "convicted of using the premises" *inter alia*, observed that the said expression cannot be given a strictly technical construction and that would exclude so many offences which would seem naturally to fall within the
- E purview of the Section. He however, emphasised that it is necessary to show that the tenant has taken advantage of his tenancy of the premises and of the opportunity they afford for committing the offence. He also dealt with the scope of the expression "using the premises", whether it requires something more than a single act of user or a continuous, frequent or repeated use. On this aspect, he said that "it
- F may be that the mere fact of a crime being committed on the premises would not constitute a user of the premises by the tenant for an illegal purpose; for example, if the tenant was convicted of an assault upon some one who happened to be on the premises in the occupation of the tenant, and if that were the only evidence, I doubt whether the tenant could be said to have been convicted of "using the premises for an
- G . . . . illegal purpose within the meaning of Section 4." But if the tenant used the premises as coiner's den or as a deposit for stolen goods, a single instance of such user seems to me quite enough to satisfy the language of the statute". Scrutton, L.J. while agreeing with the above views has added that Section 4 was not intended to cover the conviction of a crime with which the premises have nothing to do
- H beyond merely being the scene of its commission. Atkin, L.J. has also reiterated the above views.

With due regard to these principles and giving the matter the best consideration, it seems to us that Section 13(1)(c) was not intended to be a moral code of conduct for the tenant. For each and every offence committed at the premises, the tenant cannot be exposed to the risk of eviction. The crime may be forced upon the tenant at the premises by third parties. There may be casual or incidental crimes. There may be technical offences connected with the trade or licence to trade. There may be crimes where use of the premises has nothing to do except being the scene of the offence. All such cases cannot satisfy the requirements of Section 13(1)(c). It is necessary as Banks, L.J. has observed in the *Schneiders* case that the tenant must take advantage of his tenancy of the premises and of the opportunity they afford for committing the crime. Only such crimes could fall within the scope of Section 13(1)(c). However, there need not be continuous or repeated user of the premises for committing such crimes. In the instant case, the tenant used the premises for carrying out illegal sale of adulterated food along with his usual business in sweet meats and farsen. Indeed, he has used the premises deliberately and taken advantage of his tenancy for committing the offences in the course of his trade. He cannot, therefore, legitimately contend that he is not entitled to be evicted under Section 13(1)(c).

In this view of the matter, we dismiss this petition, but we make no order as to costs.

V.P.R.

Petition dismissed.