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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3721 OF 2004

1. Shivalal Vithaldas Shah (since deceased)
through legal heirs and representatives

1A. Smt. Bhanumali Shivalal Shah
Wife, age/69

1B. Shri. Mukesh Shivalal Shah
Son, age/45

1C. Smt. Bhavna Nilesh Boldra
Daughter, age/42

1D. Smt. Rupa Jhon Alphonso
Daughter, age/35

1E. Shri.Viren Shivalal Shah
Son, Age/33
R/o at Navghar, Manikpur, Vasai
District : Thane.

2. Ambika Sales Corporation
through its Proprietor Shivalal Vithaldas
Shah No.1 abovenamed
residing at Navghar/Manikpur
Vasai, District: Thane

... Petitioners

Versus

Hasmukh Mansukhlal Shah
Adult, occupation: Business Residing at
'Satyam' Ambadi road, Vasai, Distrist : Thane.

...Respondent/
Original Plaintiff

**WITH
CIVIL APPLICATION NO. 558 OF 2019**

Hasmukh Shah

...Applicant/
Orig. Respondent/Plaintiff

Versus

Bhanumali Ben S. Shah & Ors.

...Respondents.

**WITH
CIVIL APPLICATION NO. 559 OF 2019**

Hasmukh Mansukhlal Shah

...Applicant

Versus

Shivlal Vithaldas Shah (since deceased)

through Lrs 1A Smt. Bhanumali Shivala Shah & Ors.

...Respondents.

Mr. Prasad S. Dani, Senior Advocate a/w. Adv. Jayesh M. Joshi for the Petitioners.

Mr. Prasad K. Dhakephalkar, Senior Advocate (through VC) a/w. Adv. Pranav Sampat, Adv. Yash Kataria i/b. Khaitan & Co. for the Respondent.

CORAM	: M. M. SATHAYE, J.
RESERVED ON	: 13th JANUARY 2026
PRONOUNCED ON	: 8th JUNE, 2026

JUDGMENT :

1. This Petition is filed by tenants against the Respondent/landlord under Articles 226 and 227 of the Constitution of India challenging the judgment and decree dated 05.03.2004 passed in Civil Appeal No. 96 of 1999 by Additional District Judge, Palghar by which the appeal filed by the tenants/original defendants was dismissed, thereby confirming the judgment and decree dated 25.06.1999 passed by the Joint Civil Judge, Junior Division, Vasai in Regular Civil Suit No. 236 of 1988. The Trial Court has decreed the suit partly thereby directing the Defendants/tenants to hand over the vacant

and peaceful possession of Survey No. 15-A to the Respondent/Plaintiff. The suit is dismissed in respect of Survey No. 8-A, Hissa No. 3. The Petition is arising out of provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ('Bombay Rent Act' for short).

2. The land bearing Survey No. 8-A Hissa No. 3(P) and Survey No. 15-A Hissa No. 8(P) admeasuring 927.859 and 2149.356 respectively, alongwith a house and a shed more particularly described in paragraph No. 1 of the plaint situated at Navghar, Taluka-Vasai, presently District-Palghar (at the relevant time, District-Thane) is the the subject matter property, which is hereinafter referred to as 'the suit premises'.

3. The case of the Respondent/landlord as per plaint is as under. That he became the owner of the suit premises by the sale deed dated 06/07/1984 from the earlier landlord/owner Mr. Pascal Duma Dassa. That the Defendant No. 1 was the tenant of earlier landlord on monthly rent of Rs.100/- and was running saw-mill business. That the Plaintiff requires the suit premises for construction of building and its sale. That there is a shed and house no. 12-B in Survey No. 8-A. That the open land in Survey No. 15-A is also not used by the Defendant No. 1. That some portion of shed in Survey No. 8-A was given by the Defendant No. 1 to one sub-tenant Mr. Gonsalves, who has surrendered the same to the Plaintiff. That out of the shed in Survey No. 8-A, some portion is in possession of the Defendant No. 1, who has not used it for last three years and therefore the Plaintiff is entitled for recovery of possession. That the Plaintiff has purchased the suit premises for development and for constructing building and for selling the same and requires the same for his own business. That despite demand, the Defendant No. 1 has not given possession of the suit premises. That the earlier owner, earlier landlord informed the Defendant to

pay the rent to the Plaintiff and as such the Defendant No. 1 is tenant of the Plaintiff. That portion admeasuring 10'x10' and southern portion of the shed admeasuring 20'x10' is unlawfully sub-let to the Defendant No. 2, where the Defendant No. 2 is running a business of storing and selling building materials. For this reason also the Plaintiff is entitled to recovery of possession. Therefore, the suit was filed seeking possession on various grounds under Bombay Rent Act including requirement, non-user and unlawful subletting.

4. The Defendant No. 1 filed written statement and additional written statement contending *inter alia* that after taking the entire suit property on rent since 1948, he has constructed shed in Survey No. 8-A and leased out some portion of it to a sub-tenant. That initially suit premises was used to run saw mill. That non-user of part of shed is denied. That House No. 12-B in Survey No. 8-A is used as office and wood-depot. That other land situated in the suit premises is used for residence of servants. That after taking suit premises on lease, he has constructed a shed which bears House No. 12-A and only part of this shed was given to sub-tenant. However, that portion is in possession of Plaintiff but remaining portion is in possession of the Defendant No. 1. That he has carried out repairs to the shed. The case of requirement, non-user and unlawful subletting is denied.

5. The learned Trial Judge framed various issues and found that the ground of requirement is proved partly and therefore suit is partly decreed only to the extent of Survey No. 15-A. The Defendants filed the said Appeal challenging the decree of partial eviction. By the impugned judgment and decree, the Appeal is dismissed thereby confirming the decree of partial eviction.

6. The Petition was admitted on 22.07.2004 and interim stay was granted

to the eviction decree. During the pendency of the Petition, the Petitioner/Defendant No. 1 expired and his legal heirs were brought on record.

SUBMISSIONS

7. Learned Senior Advocate, Mr. Dani appearing for Petitioners/tenants submitted as under:

7.1. That House No. 12-A was constructed by the tenant and House No. 12-B was let out to him by previous landlord. That part of House No. 12-A is surrendered to the landlord. That the entire suit premises excepting the part surrendered to landlord, is in possession of the tenant. That there is no cross-examination about purpose of letting or about letting out of shed. That no case is made out in the plaint for evidence under 13(1)(ii) of the Bombay Rent Act. That decree of eviction in respect of part of suit premises is not legal.

7.2. That the Appeal Court has erred in appreciating the facts. That Appeal Court has not considered the nature of 'appurtenant land' and unless there is conclusion about which land is 'appurtenant', partial decree could not have been passed. That Appeal Court has considered what was nobody's case. That there is no discussion about 'appurtenant land' by the Appeal Court. That Survey No. 15-A cannot be considered as 'appurtenant to Survey No. 8-A'. That the word 'appurtenant' must be applied in its primary sense and therefore, unless the Court comes to conclusion that Survey No. 8-A cannot be used without Survey No. 15-A, decree cannot be passed u/s. 13(1)(ii) of the Bombay Rent Act. He therefore prayed for setting aside the impugned decree and remanding the matter for re-consideration.

7.3. That the sanction of plan relied upon by the Respondent / Landlord for

the purpose making out requirement to construct building is not sanctioned by proper authority.

7.4. He submitted that Section 13(1)(i) of the Bombay Rent Act cannot be applied because it is not an open space. He has relied upon following caselaw in support of his case :

(a) Morarji Goculdas Deoji Trust and Others v/s Madhav Vithal Kudwa (1982) SCC OnLine Bom 283.

(b) Tayeb Abubaker Latif versus Jadhavji Mithabhai (1993) SCC OnLine Guj 493.

7.5. He submitted that the judgment of **Sakeena and Others v/s. Kusumbi and Others (1982) SCC OnLine Bom 301** is incorrectly applied by the Courts below.

8. On the other hand, learned Senior Advocate Mr. Dhakephalkar, appearing for the Respondent-Plaintiff/landlord submitted as under:

8.1. That the Court must consider the case as a whole and both the Trial Court as well as Appeal Court have granted and confirmed decree of partial eviction by which the Petitioners/Tenants are not losing entire suit premises and can still carry on their business in Survey No. 8-A regarding which suit is dismissed. That there is no evidence brought before the Court that the tenants will be required to close down their business.

8.2. That the plans which are sanctioned for the purpose of erecting/constructing new building are only in respect of Survey No. 15-A for which requirement was pleaded. That the intention of the Plaintiff/landlord was clear and requirement was only in respect of Survey No. 15-A. That suit is

composite for entire suit premises. That the Respondent/Plaintiff is the subsequent purchaser and it was for the tenant to bring the best evidence before the Court about absence of sub-letting or it being authorized.

8.3. That the suit premises are land and construction both. That the lease was composite and entire suit premises is subject matter of suit. Therefore, Section 13(1)(i) of Bombay Rent Act will not apply. That for the landlord to make out a case of requirement u/s. 13(1)(ii), no proof of bonafide requirement is required and the said section was incorporated with an object to bring appurtenant lands within its purview to encourage construction.

8.4. That the saw-mill which was being run by the Petitioners is closed. That the witness of tenant has given admissions about saw-mill being closed. No license is produced for conduct of the saw-mill. That the sub-tenant has surrendered possession of part of the shed to the landlord and entire business of tenants is in Survey No. 8-A. That there is no clear prejudice to the Petitioners/tenants. Therefore, there cannot be any hardship to the Petitioners. He submitted that the argument about Survey No. 15-A not being appurtenant is nothing but hair- splitting and there are no pleadings about it.

8.5. That whether CIDCO or local Assistant Director, Town Planning is the proper authority for sanctioning plan is not the issue involved and cannot be gone into in Writ jurisdiction arising out of landlord-tenant suit.

8.6. That the case law of **Sakeena and Others (Supra)** is properly applied by the Appeal Court. That no interference is required in the concurrent findings granting partial eviction to the landlord. That 50 years have passed and the landlord is still waiting for getting back possession and not even contractual rent is paid.

8.7. He submitted that the judgment of Gujarat High Court in case of **Tayeb Abubaker Latif (Supra)** is not applicable to the facts of this case. He submitted that in **Morarji Goculdas Deoji Trust and Others (Supra)**, the action involved was against an act of trespass and in that context the suit was filed. In the present case, the facts are completely different.

REASONS AND CONCLUSION

9. Having carefully considered the rival submissions and on perusal of the records, I find that there is no reason to interfere, for reasons recorded below.

10. At the outset, it is necessary to note that this is a Petition filed challenging concurrent findings of fact by which the suit for eviction of landlord is decreed partially only in respect of part of suit premises being Survey No. 15-A.

11. In **Morarji Goculdas (Supra)** relied upon by the learned Counsel for the Petitioners, the Division Bench of this Court was considering the meaning of land appurtenant, when it has observed as under:

“5. ~~xxxx~~ Now, though one wishes that on the question here the law was certain and succinct, it would, in the very nature of things, not be possible to formulate a precise and singular test or a principle of universal application for determining what is appurtenant. The diversity and the indeterminate nature of the term "appurtenant" and colour, form and shape it can take from case to case can be very interesting indeed. It is a term of variable import, scope and ambit. There can, therefore, be no fixed, invariable or strait-jacket approach or formula in this regard. Besides, whether a thing is appurtenant and if so, to what extent, would be a mixed question of fact and law. The resultant answer must, in each case, turn and depend upon the facts and circumstances of that case and the context in which the question arises. Nevertheless, a look at the standard references should be useful.”

(emphasis supplied)

12. This judgment of the Division Bench is then further considered by learned single judge of this Court in **Sakeena vs. Kusumbi (Supra)** reiterating that whether a particular premise is land appurtenant or not will depend on facts and circumstances of each case and there cannot be any straight jacket formula in that regard. Therefore, let us consider the facts of the present case.

13. The main plank of the argument advanced on behalf of the Petitioners/tenants is that the word 'appurtenant' must be applied in its primary sense and unless Survey No. 15-A is held to be 'land appurtenant' within the meaning of Section 5(8)(b) of the Bombay Rent Act, a decree of eviction in respect thereof could not have been passed.

14. It is therefore necessary to peruse the pleadings of the parties. It is settled position of law that law need not be pleaded and the Courts can construe the pleadings as a whole. From bare perusal of the plaint, it is seen that the Respondent/landlord has sought possession of the entire suit premises including the plots of land and structures standing thereon. The open portion of land, which is part of the suit premises is therefore duly sought possession of, and can be safely considered as demanded both under Section 13(1)(i) and Section 13(1)(ii) of the Bombay Rent Act.

15. From the averments in the written statement, it is seen that according to the Petitioners/tenants House No. 12-B was let out by previous landlord and House No. 12-A was constructed by the tenants and part of the construction from House No. 12-A (shed) was surrendered to the landlord by the sub-tenant. Therefore, it is clear that the suit premises is a composite bunch of two plots and construction thereon and therefore Survey No. 15-A will have to be considered as part and parcel of suit premises.

16. I have perused the description of the suit premises, which is also in the nature of composite suit premises including both plots and construction thereon.

17. Defendant No. 1-Shivalal Vithaldas Shah (DW-1) has stated in his examination-in-chief that the premises taken on rent was 'open space and house together'. He has stated that part of the construction is occupied by his servants and part of the construction is occupied by office. He has stated that he constructed 90'x50' shed having House No. 12-A, out of which, part was given to sub-tenant. He has further stated that in the remaining part of the shed, he keeps articles such as wood and wood cutting machine. He has also stated that in the open space, he stores wood, building materials, cement pipes, cement sheets, plastic and iron pipe etc. He has also stated that the open space is not separately divided and both the constructed portion/shed and open space is in his possession. In the cross-examination, DW-1 has admitted that, in the past, he had saw-mill license and its storage and work was conducted in the suit premises. He has also admitted that the open space is being used for storing building material.

18. Thus, the overall reading of the evidence led by Defendant No. 1- tenant indicates that the entire suit property i.e. open space alongwith structures/shed therein is in his possession under a composite tenancy, which is being used for various purposes. It is not the case of the Petitioners/Tenants that Survey No. 15-A was separately leased. In such situation, it is not possible to conclude that Survey No. 15-A is a separate demised premises.

19. Considering the evidence led by the Defendant No. 1/tenant, as discussed above, in my view, the open land (both Survey No. 8-A and 15-A) and the buildings thereon (House Nos. 12-A and 12-B) seem to have a nexus

and co-relation with each other and therefore Survey No. 15-A can be safely said to be a land appurtenant to the buildings and decree in respect of Survey No. 15-A, as granted by the Trial Court and confirmed by the Appeal Court, cannot be faulted with.

20. The Trial Court, on appreciation of evidence has held that the landlord is entitled to only part of the suit premises and accordingly eviction decree is granted only in respect of Survey No. 15-A. The Appellate Court in paragraph No. 16 of the impugned judgment has held that entire land Survey No. 8-A Part 3 and Survey No. 15-A (Hissa No. 8) was leased out to the tenant and both Survey numbers are adjacent to each other and considered part of one property. It is further noted by the Appellate Court that the Defendant has admitted that besides the portion which is in his occupation (shed and house), land is still vacant.

21. In **Morarji Goculdas (Supra)**, the suit involved was for declaration by landlord. That the tenant was committing trespass by parking his car on the open space compound of the building and suit was for permanent injunction restraining the tenant from doing so. The Division Bench on considering the definition of 'land appurtenant' under section 5(8)(b) of the Bombay Rent Act held that the tenant therein has failed to prove that as a result of said provision, there is any statutory right to park his car in the suit compound. In the present case at hand, there is no such question of trespass involved. The question is purely whether Survey No. 15-A can be considered as land appurtenant. As is held by the Hon'ble Division Bench of this Court, this question will have to be decided in the facts and circumstances of the present case.

22. The facts of **Sakeena vs. Kusumbi (Supra)** are very close to the facts of

the present case as can be seen from paragraph 3 of said judgment. In that case, the demised premises were three plots, which were required for erection of new residential buildings under section 13(1)(ii) of the Bombay Rent Act. In the present case also the requirement is pleaded for erection of new building, which is approved by the local authority. In **Sakeena vs. Kusumbi (Supra)**, the learned Single judge of this Court has rejected the argument advanced on behalf of the tenant that Section 13(1)(ii) will have to be given a restricted meaning and will have to be considered in its primary sense. The learned single Judge of this Court has accepted that the expression ‘appurtenant’ used in Section 5(8)(b) of the Bombay Rent Act will have to be considered in secondary and non-technical sense as laid down by the Division Bench of this Court in **Morarji Goculdas (Supra)**.

23. In the facts of **Sakeena vs. Kusumbi (Supra)**, it was found by the Court that the building and the plots were treated as consolidated property for the purpose of tenancy and therefore it was held that the decree granted by the Appellate Court directing eviction from the vacant land adjoining the main building, holding them as lands appurtenant, was confirmed. Therefore, in my considered view, the Appellate Court, has rightly applied the judgment of **Sakeena vs. Kusumbi (Supra)** to the facts of the present case, while confirming the decree of eviction.

24. So far as the judgment of **Tayeb Abubaker Latif (Supra)** is concerned, the learned single judge of the Gujarat High Court, considering the area and extent of the property involved therein, held that the constructed portion is tiny as compared to the portion of land and held, in the peculiar facts of that case, that it cannot be said to be appurtenant to the building let out.

The facts of the present case are completely different. The oral evidence

as discussed above clearly indicates that it was a composite tenancy with two plots having existing structure as well as large sheds constructed by tenant thereafter. According to the Petitioners/tenants themselves, as stated in the written statement, the entire suit land was admeasuring 3724 sq. yards, which is roughly about 30.7 Gunthas of land. The Defendant No. 1 has admitted that about 20 Gunthas is open land out of the total property. Considering these figures, this is also not a case where the constructed portion is a tiny or small portion compared to open land, as sought to be suggested on behalf of the Petitioners. Therefore, the judgment of **Tayeb Abubaker Latif (Supra)** will not help the Petitioners in the peculiar facts of the present case. In the said judgment, the suit for eviction was dismissed, which was confirmed by the Appeal Court and the High Court was considering a Revision Application against such concurrent findings of fact.

25. In my considered view, if the argument advanced on behalf of the Petitioners is to be accepted (about applying 'appurtenant' in restricted and primary sense) then in no case, where the buildings and open spaces are leased out as composite lease, the landlord will be able to get back possession of the open space/land leased together with the house properties. Because in each and every case, the expression appurtenant used in section 13(1)(ii) will have to be given a restricted meaning in its primary sense, as suggested by learned Counsel for the tenants. I do not think that it is the correct way of interpreting section 13(1)(ii) by the Bombay Rent Act. The said provision will have to be applied in the secondary and non-technical sense as laid down by the Division Bench in **Morarji Goculdas (Supra)**.

26. The Trial Court, on appreciation of the pleadings and evidence, has rightly held that the case is covered under section 13(1)(ii) of the Bombay

Rent Act. The Appeal Court has also considered the submission about whether the case is covered under the scope of Section 13(1)(ii) of the Bombay Rent Act. The Appeal Court has considered the Division Bench judgment of **Morarji Goculdas (supra) and Sakeena vs. Kusumbi (Supra)**. The Appellate Court having regard to the overall facts and circumstances of the case, has held that the Trial Court has struck a balance by passing decree only in respect of part of suit premises, thereby protecting the interest of both the landlord and the tenants. In my view, no fault can be found by the view taken by the Trial Court, which is confirmed by the Appellate Court.

27. As rightly submitted by learned Counsel for the Respondent/landlord, whether CIDCO or the local Assistant Director, Town Planning is the proper authority for sanctioning of building plans, is not subject matter of this Petition and no argument in that behalf can be entertained in this petition.

28. The Courts below have concurrently held that the suit premises are required by the Respondent/landlord for constructing building/flats for which plans are sanctioned. The Courts below have concurrently decreed this suit under section 13(1)(ii) of the Bombay Rent Act. The Courts below have concurrently passed a decree only in the respect of part of the suit premises (Survey No. 15-A) and the portion of land under Survey No. 8-A where the Petitioners have their structures as well as business, has not been directed to be evicted. In fact the suit is dismissed for Survey No. 8-A.

29. In the aforesaid facts and circumstances, the view taken by the Trial Court as well as Appeal Court is based on material before them and is the most probable view. There is no perversity in the impugned judgments. There is no reason to interfere in the limited Writ jurisdiction of this Court.

30. The petition is accordingly dismissed thereby confirming the judgment and decree of eviction dated 25.06.1999, as confirmed by the impugned judgment and decree dated 05.03.2004. The Petitioners are directed to hand over vacant and peaceful possession (as directed by the Courts below) within a period of 6 weeks.

31. **Rule is discharged and the Writ Petition is disposed of in about terms with no order as to costs.** In view of disposal of the Writ petition, pending Civil Applications are also disposed of.

32. At this stage, learned counsel for the Petitioners seeks continuation of interim stay to the eviction decree for a period of 6 weeks. Learned counsel for the Respondents opposes it contending that the Court has already granted time to vacate. Considering the facts and circumstances of the case, the Petitioners are directed to hand over vacant and peaceful possession within 8 weeks from today. Considering that time to vacate is being granted, the request for continuation of stay is rejected.

33. All concerned to act on duly authenticated or digitally signed copy of this order.

(M. M. SATHAYE, J.)