

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1975 OF 2014

Shri. Nana Bhikoba Nagade .. Petitioner
vs.
1. Smt. Yamunabai Dattoba Taware
(since deceased through her
legal heir and representative
1A. Mr. Ravindra A. Ingawale)
2. Shri. Shirniwas L. Raskonda .. Respondents

Mr. Ashok B. Tajane for the Petitioner.
Mr. J.S. Kini a/w. Mr. Suresh Dubey for the Respondent No.1.

AND

WRIT PETITION NO. 2528 OF 2014
WITH
CIVIL APPLICATION NO. 682 OF 2014

1. Smt. Yamunabai Dattoba Taware
(since deceased through her
legal heir and representative
1A. Mr. Ravindra A. Ingawale) .. Petitioner
vs.
Shri. Nana Bhikoba Nagade .. Respondent.

Mr. J.S. Kini a/w. Mr. Suresh Dubey for the Petitioner.
Mr. Ashok B. Tajane for the Respondent.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 30 July 2015.
Date of Pronouncing the Judgment : 10 August 2015.

JUDGMENT :-

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] These two petitions can be disposed of by common judgment and order, since both these petitions challenge the judgment and decree dated 18 April 2007 made by the District Judge-IV, Pune (Appeal Court) in Civil Appeal No. 698 of 2003.

3] Writ Petition No. 1975 of 2014 has been instituted by the tenant and Writ Petition No. 2528 of 2014 has been instituted by the legal representative of deceased landlady. There is delay of over six years and six months in instituting Writ Petition No. 2528 of 2014 and this aspect will be considered in the course of this judgment and order.

4] The landlady instituted Civil Suit No. 91 of 1998 in the Small Cause Court at Pune (Trial Court) seeking eviction of the tenant for having erected, on the suit premises, permanent structure without consent of the landlady, which is the ground contemplated by Section 13 (1)(b) of the Bombay Rents, Hotel and Lodging Houses Rates Control, 1947 Act (Rent Act) as also since the suit premises were required by her reasonably and *bona fide* under the ground contemplated by Section 13(1)(g) of the Rent Act. The Trial Court, by judgment and decree dated 10 October 2003 ordered eviction on

both the grounds urged by the landlady. The tenant appealed. The Appeal Court by the judgment and decree dated 18 April 2007 upheld the eviction on the ground of reasonable and *bona fide* requirement, but reversed the eviction on the ground concerning permanent construction. Hence, the tenant instituted Civil Revision Application No. 460 of 2007, which was by the order dated 7 February 2014, permitted to be converted into Writ Petition No. 1975 of 2014.

5] This Court, by the order dated 7 February 2014, permitted the tenant to amend the petition and to place on record the circumstance that the landlady, vide registered Sale Deed dated 19 October 2006, has sold the property and suit premises therein to one Shriniwas L. Raskonda (respondent No.2 in Writ Petition No. 1975 of 2014). In such amendment, the tenant has pleaded that the ground of reasonable and *bona fide* requirement, which was personal to the landlady no longer survives. Further, there is record that the landlady Yamunabai Taware has expired on 31 May 2010 and is succeeded by her relative, one Ravindra Ingawale, who has incidentally instituted Writ Petition No. 2528 of 2014 after delay of

six years and six months, since making of the judgment and decree dated 18 April 2007 by the Appeal Court.

6] Mr. Tajane, learned counsel for the tenant, made the following submissions in support of Writ Petition No. 1975 of 2014:

a] That the property in which suit premises are located has been declared as a '*slum area*'. No permission from the Competent Authority as contemplated by Section 22 of the Maharashtra Slum Areas (Improvements, Clearance and Redevelopment) Act, 1971 (Slum Act) was ever obtained. Therefore, in the light of the provisions contained in Section 22 of the Slum Act as also the ruling of this Court concerning the very parties to this petition as also in the context of very proceedings reported in **2006 (6) Bom.C.R. 31** and the decision of the Apex Court in case of ***Laxmi Ram Pawar vs. Sitabai Balu Dhotre and anr. - (2011) 1 Supreme Court Cases 356***, the impugned judgments and decrees are void, in excess of jurisdiction and even otherwise unsustainable;

b] The landlady was virtually the owner of about seventy tenements in the slum area. The landlady resided alone and

Ravindra Ingawale is only her relative, who has mainly surfaced after her demise. In such circumstances, the finding that the landlady required suit premises reasonably and *bona fide*, was itself perverse and in excess of jurisdiction;

c] In any case, the landlady, by registered Sale Deed dated 19 October 2006 had sold the property and the suit premises to one Shriniwas Raskonda. This virtually amounts to assignment of the eviction decree obtained on the ground of reasonable and *bona fide* requirement, which is impermissible. In any case, the landlady expired on 31 May 2010. Accordingly, the so called need of the landlady stands completely eclipsed. On basis of such subsequent events, the impugned judgments and decrees warrant interference.

7] Mr. J. S. Kini, learned counsel for Ravindra Ingawale, legal representative and heir of the landlady, however, submitted that the Sale Deed dated 19 October 2006 had made it clear that the purchaser Shriniwas Raskonda will construct and allot in favour of Ravindra Ingawale new premises in place of the suit premises. Accordingly, Mr. Kini submitted that neither the execution of Sale

Deed dated 19 October 2006 by the landlady nor her demise on 31 May 2010 are subsequent events sufficient to eclipse the decree of eviction validly made by the Trial Court and confirmed by the Appeal Court. Mr. Kini submitted that there are concurrent findings of fact which warrant no interference in the exercise of jurisdiction under Article 227 of the Constitution of India.

8] In the context of Writ Petition No. 2528 of 2014 instituted by Ravindra Ingawale in his capacity as legal representative of the original landlady, Mr. Kini submitted that there are no laches involved, particularly as Writ Petition No. 1975 of 2014 questioning the very same judgment and decree date 18 April 2007 is pending consideration. Further, the Appeal Court acted in excess of jurisdiction in ignoring relevant evidence, which clearly established that the tenant had virtually erected an additional floor upon the suit premises, without permission from the local authorities or the landlady. In so far as Civil Application No. 682 of 2014, Mr. Kini submitted that the Court should appoint a Commissioner to visit the site and report whether or not the tenant had indeed carried out permanent construction upon the suit premises.

9] The rival contentions now fall for my determination.

10] This Court is conscious that in exercising jurisdiction under Article 227 of the Constitution of India, this Court does not exercise any appellate powers. Nevertheless, the findings of fact are open to interference, where it is established that they are vitiated by perversity. Perversity can arise where a finding of fact is not supported by any evidence on record or is contrary to the weight of evidence on record. Perversity can also arise where vital and relevant evidence on record is completely excluded from consideration or where some irrelevant or even non-existing material influences the decision maker.

11] In the present case, the material on record does indicate that the landlady was the owner of almost sixty to seventy tenements in the locality, which is eventually stated to be declared as slum area. There is material on record that the landlady was residing in one of the premises and further obtained possession of one or two other premises from the locality. The material on record suggests that the landlady had no family except perhaps Ravindra Ingawale, a close relative. In contrast, the tenant resided in the suit premises himself

alongwith family members. All these factors were extremely relevant in determining whether the need of landlady was indeed reasonable and *bona fide*. Further, as is mandated by Section 13(2) of the Rent Act, no decree for eviction can be passed under Section 13(1)(g), i.e., on the ground of reasonable and *bona fide* requirement, unless the Court records satisfaction, after having regard to all the circumstances of the case, including the question whether other reasonable accommodation is available to the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it. The proviso further mandates the Court to record satisfaction in the context of making only a partial decree of eviction.

12] In the present case, there is no consideration by the Trial Court as well as the Appeal Court to the relevant and vital circumstances, mandated to be considered in the matter of making a decree of eviction on the ground of reasonable and *bona fide* requirement. The circumstance that the landlady owned almost seventy tenements in the locality, which is now stated to be a slum area; that she has no family as such ; that she had already acquired possession of one or two other premises, were vital and relevant

circumstances, which have been excluded from consideration. Even if it is assumed that the finding as to reasonable and *bona fide* requirement could have been returned despite the existence of such circumstances, there was further necessity to advert to the aspect of comparative hardship. The two Courts were required to advert to these circumstances as also various others, in the context of determining the issue of comparative hardship. This is not been done. Therefore, the eviction decree on the ground of reasonable and *bona fide* requirement is in excess of jurisdiction.

13] In any case, the subsequent events, have completely overtaken and eclipsed the so called reasonable and *bona fide* requirement of the landlady. In this case, the pleadings were that the landlady required the suit premises for her personal use. After the decree was made by the Trial Court on 10 October 2003, the landlady vide registered Sale Deed dated 19 October 2006 sold and conveyed the property including the suit premises in favour of Shiniwas Raskonda. Thereafter, the landlady expired on 31 May 2010. These two subsequent events are sufficient to eclipse the so called need of the landlady. The circumstance of sale vide registered Conveyance Deed dated 19 October 2006 was suppressed by the

landlady before the Appeal Court. The explanation that Shriniwas Raskonda is obligated to allot to Ravindra Ingawale new constructed premises in lieu of the suit premises, is hardly a circumstance which resuscitates the eclipsed need for the suit premises. If at all the suit premises were required for the purposes of construction of a new building, then obviously the provisions under Section 13(1)(hhh) of the Rent Act or such other provisions may be applicable. This is not the occasion to decide this issue since no eviction was applied for on such ground. In any case, there is material on record that even the said Ravindra Ingawale is already in possession of at least two other premises in the very locality. Therefore, even if the concurrent findings of fact as to reasonable and *bona fide* requirement are not to be interfered with, it will have to be held that the subsequent events have completely eclipsed the need in respect of the suit premises. This is an additional ground to set aside the impugned judgments and decrees.

14] There is no necessity to decide the issue of applicability of Section 22 of the Slum Act, as the eviction decrees are being set aside. That apart, such issue stands decided between the very parties and in the context of the very dispute in case of *Yamunabai*

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31.

15] Writ Petition No. 2528 of 2014 instituted by the legal representative of the original landlady is barred by delay and laches. There is really no explanation whatsoever for instituting this petition six and half years after the order dated 18 April 2007 was made by the Appeal Court. The fortuitous circumstance that the tenant had also challenged the very same order and the same was pending consideration, can hardly afford any excuse in the facts and circumstances of the present case. That apart, the Appeal Court, which is normally, final Court in so far as the facts are concerned, has disbelieved the landlady's case in the context of permanent construction without consent. The Appeal Court has held that the pleadings were sketchy, inasmuch as the status, the dimensions of the suit premises as existing prior to the alleged constructions were never disclosed. No proper material was placed on record to establish that the tenant had indeed carried out permanent construction to the suit premises located in the slum area. Perhaps, realising this position, the legal representative of the landlady, alongwith Writ Petition No. 2528 of 2014 has applied for

appointment of Commissioner to submit a report in the context of the allegation of permanent construction. Obviously, such a request cannot be entertained, at this stage. Besides, the purpose for appointment of Commissioner is not to gather evidence for the parties. There is, accordingly, no merit in Writ Petition No. 2528 of 2014 and the the Civil Application No. 682 of 2014 seeking appointment of Commissioner, accompanying the same.

16] The impugned order dated 18 April 2007 made by the Appeal Court is, therefore, set aside. Rule is made absolute in Writ Petition No. 1975 of 2014 and discharged in Writ Petition No. 2528 of 2014. Civil Application No. 682 of 2014 has no merit and in any case does not survive. Therefore, the said Civil Application No. 682 of 2014 is also disposed of.

17] In the facts and circumstances of the present case, there shall be no order as to costs.

(M.S. SONAK, J.)