

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.3240 of 2015

(Smt. Leelabai wd/o Laxmanrao Injhankar
 vs.
 Shri Harilal s/o Audhomal Ahuja and another)

 Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's Orders

Shri S.M. Pande, Advocate for the Petitioner.
 Shri N. A. Lalwani, Advocate for Respondent No.1.
 Shri S.B. Bissa, A.G.P. for Respondent No.2.

CORAM : A.S. CHANDURKAR, J.

DATE : DECEMBER 5, 2015.

Heard respective Counsel for the parties at length.

The petitioner, who is a tenant, is aggrieved by the orders passed by the Rent Controller and confirmed by the appellate authority granting permission to issue quit notice for terminating tenancy under Clause 13(3)(vi) of the C.P. and Berar Letting of Premises and Rent Control Order, 1949.

Respondent No.1 claims to be the owner of House No.948/0-6 that is occupied by the petitioner as a tenant. According to the respondent No.1, the rent was Rs.70/- per month. On 12/05/1995, proceedings were initiated for seeking permission to issue quit notice on the ground of habitual default and *bona fide* need. The claim was opposed by the petitioner by filing written statement. The respondent No.1 examined himself, but he was not subjected to cross-examination. The

Rent Controller granted permission under Clause 13(3)(vi) of the Rent Control Order and the appellate authority maintained the same.

Shri S.M. Pande, the learned Counsel for the petitioner, by relying upon the judgment of learned Single Judge in M/s. Arco Roadways Private Limited vs. Smt. Gawarajabai w/o Gangabisan Sikchi – 1994(3)Bom.C.R.120, submitted that there were no sufficient pleadings to indicate *bona fide* need of the respondent. Similarly, no enquiry under Clause 13(8) of the Rent Control Order was undertaken before permission came to be granted. The burden to prove *bona fide* need was on the respondent No.1, but he failed to discharge said burden. He, therefore, submitted that in absence of this aspect and failure to consider the same by both the authorities, the impugned orders are vitiated.

Shri N.A. Lalwani, the learned Counsel for respondent No.1 supported the impugned order. He referred to the pleadings in the application and the reply to the claim as made. He submitted that the respondent No.1 was not cross-examined and, hence, there was no challenge to his version. He, therefore, submitted that the orders passed were just and proper not requiring any interference.

In paragraph 6 of the application, the respondent has pleaded his *bona fide* need. He has stated that the need was

for himself and his son, who was without any job. He wanted to settle him in life. In reply to paragraph 6 of the application, it has been pleaded as under :

“The contents of this para are imaginary one and hence denied in toto. Applicant may be in bona fide need to any premises, but he will not be permitted to occupy the same by his illegal act and hence his bona fide need is ridiculous one.”

Before the Rent Controller, the respondent No.1 examined himself. He was not cross-examined. His version, therefore, went unchallenged.

The premises in question admeasures 10' x 10'. Considering the pleadings in paragraph 6 coupled with reply to said paragraph and the fact that the petitioner did not cross-examine the respondent No.1, due to which, his version was unchallenged, it cannot be said that grant of permission under Clause 13(3)(vi) of the Rent Control Order was bad in law. The decision in the case of *M/s. Arco Roadways Private Limited (supra)* holds that Clause 13(8) of the Rent Control Order casts an obligation on the landlord to disclose the extent of need in the application. Same has been duly done as noted in paragraph 6 of the application. Said decision further holds that an enquiry into the claim has to be held. In effect, same would mean consideration of the case of the landlord and the defence raised by the tenant. In absence of any cross-examination of the

landlord, the statement made by the respondent No.1 on oath would have to be accepted and same has been done by both the authorities.

In view of aforesaid, there is no reason to interfere in writ jurisdiction. The petition is, therefore, dismissed. No costs.

JUDGE

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