

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD  
WRIT PETITION NO.11858 OF 2014

Vinod Motilal Mandloi,  
since deceased, through legal  
representatives:

- A) Smt. Anuradha w/o Vinodkumar  
Mandloi, age: 77 years,  
Occ: Household, R/o Shiwaji  
Tejpal Chawl, Station Road,  
Chalisgaon, Taluka Chalisgaon,  
District Jalgaon.
- B) Mangeshkumar s/o Vinodkumar  
Mandloi, age: 52 years,  
Occ: Business, R/o 'Avibha',  
Plot No.16, Shanti Nagar,  
Chalisgaon, Taluka Chalisgaon,  
District Jalgaon.
- C) Sau. Vandana w/o Ashish Gangurde,  
age: 49 years, Occ: Household,  
R/o C/o Ashish Surendrakumar  
Gangurde, 361, Gandhi Nagar,  
At & Post Lalitpur, District Lalitpur  
(U.P.) 284 403.
- D) Mohankumar s/o Vinodkumar  
Mandloi, age: 47 years, Occ: Business,  
R/o Shiwaji Tejpal Chawl, Station  
Road, At Post Chalisgaon, Taluka  
Chalisgaon, District Jalgaon.
- E) Sau. Pournima w/o Umesh Patil,  
age: 42 years, Occ: Household,  
C/o Umesh Vishwasrao Patil,  
R/o F-9, Muktanagan Apartment,  
Samrat Nagar, Near Telephone Office,  
At & Post Kolhapur, Tahsil and  
District Kolhapur.

(Petitioners No.1-A to 1-C & 1-E,  
through Power of Attorney holder,  
Petitioner No.1-D.

Petitioners

Versus

01 Rikhabchand Manakchand Lalwani,  
age: 63 years, Occ: Business,  
R/o Bhagwan Mahavir Path,  
At & Post Manmad, Taluka Manmad,  
District Nashik.

02 Umakant Motilal Mandloi,  
age: major, Occ: Business,  
R/o Chamahi, Taluka and  
District Khandwa.  
(Madhya Pradesh State)

Respondents

Mr.A.P.Bhandari, advocate for the petitioners.  
Mr.G.A.Nagori, advocate for Respondent No.1.

**CORAM : S.B.SHUKRE, J.**

**DATE : 08<sup>th</sup> February, 2017**

**ORAL JUDGMENT:**

1 Issue notice to Respondent No.1 for final disposal of the matter, who is the main contesting party. Respondent No.2, being not a contesting party, no notice is required to be issued to him.

2 Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for contesting parties.

3 By this petition, legality and correctness of the judgment and order dated 04.07.2014, passed by the Principal District Judge, Jalgaon, in Civil Appeal No.165/2006, thereby

dismissing the appeal of the writ petitioner against the decree of eviction passed against him by the Rent Court, has been questioned.

4           It is seen from the impugned judgment and order that the decree of eviction has been confirmed by the appellate Court on the ground that the petitioner, in violation of Section 13(1)(b) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, has constructed a permanent structure in the nature of a latrine, bath room and one additional room, without obtaining consent of the landlord.

5           It is the contention of the learned Counsel for the petitioners that the petitioners had no knowledge that Respondent No1 had become their landlord and, therefore, there was no question of obtaining any permission from the landlord i.e. Respondent No.1, which contention has been rightly accepted by the trial Court. It is also submitted that construction of the permanent structure was never made by the petitioner and whatever he has done was only in the nature of alterations carried out to the existing construction.

6           On going through the impugned judgment and order as well as material placed on record, I am of the view that the contentions so made on behalf of the petitioners are not supported by the evidence available on record. The evidence does show that the petitioner had knowledge about Respondent No.1 being a landlord and that he had even admitted that he had constructed a latrine, bath room as well as one room. The evidence of the Court

Commissioner also shows that he had carried out inspection of the disputed structure in the presence of petitioner, which fact has also been admitted by the petitioner. In view of such evidence, present on record, I do not see that the findings recorded by the appellate court could be said to be perverse or absolutely illogical. There is, thus, no reason for me to cause any interference in the impugned order.

7           At this stage, learned Counsel for the petitioner has invited my attention to some cases decided by learned Single Judge of this Court. These cases are:

- (1)   **Dattatraya Savlaram Ghadigaonkar Vs. Satyapal Uttamchand Chaudhary**, reported in 2011 (6) Mh.L.J. 500;
- (2)   **Ramchandra Dattatraya Gandhi Vs. Pushpabai Manohar Sheth**, reported in AIR 1990 Bombay 182; and
- (3)   **Alisaheb Abdul Latif Mulla Vs. Abdul Karim Abdul Rahman Mulla and others**, reported in 1981 Mh.L.J. 734.

8           By relying upon the decisions rendered in these cases, learned Counsel for the petitioners submits that whatever the petitioner has done in this case could not be said to be a permanent structure. These cases, on the facts peculiar to them, have distinguished between what amounts to temporary structure

and what is permanent structure and also considered the principles on the basis of which a conclusion regarding nature of the structure could be reached. Broadly speaking, these principles indicate that while recording a finding about the nature of a structure, the Court must take into consideration nature of the structure, intention of the party and impact of the disputed structure on the original structure. There can be no dispute about such principles but, the evidence available in this case shows that what has been constructed is a permanent structure and, therefore, I am of the view that these cases would render no assistance to the petitioners.

9           In the result, I see no merit in the petition. There is, thus, no reason for me to cause any interference in the impugned order.

10           Writ Petition is, therefore, dismissed with costs. Rule discharged.

**S.B.SHUKRE**  
**JUDGE**

adb/wp1185814