

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1796 OF 2016**

Shyam Mokashi	...Petitioner
<i>Versus</i>	
Prakash Laxshmicand Parmar	...Respondent

Ms Sneha Phene, i/b Girish UG Menon, for the Petitioner.
Mr Uday B Nighot, for the Respondent.

CORAM: G.S. PATEL, J
DATED: 8th November 2017

PC:-

1. Heard.

2. The petition is directed against an order dated 20th November 2014 passed in Civil Appeal No. 26 of 2007. The petitioner was the appellant and also the original plaintiff who sought ejectment of the respondent/defendant of tenanted premises in Lonavala on the ground of bona fide requirement.

3. CTS No. 188 within the jurisdiction of the Lonavala Municipal Council is a tract of land of about 44,000 sq. ft. held on lease by the plaintiff. The lease runs for 101 years and was taken from the Bhonde family. The defendant is an agent of Hindustan

Petroleum. In 1982 the plaintiff and the defendant entered into an agreement in respect of 5,200 sq. ft. from out of this larger property together with a godown. This was given on rent to the defendant and while it is true that by today's standard the amount of rent is negligible, that is not the cause for complaint in the present action. The plaintiff came to Court with a specific case. He said that his son was a student at the time when the tenancy was created and the family did not then need additional area. The plaintiff said that his son is now a qualified doctor and wanted to practice in Lonavala specifically to serve the needy and down trodden. He also said that his son was dependent on him. In contract the defendant had adequate resources to take premises elsewhere.

4. Leaving aside all other discussion, the point for consideration was whether the plaintiff had been able to establish bona fide requirement. It is not a question only of showing a requirement, or a desire or a wish. What has to be established by evidence is that the plaintiff has not only the requirement, i.e., a need that is undeniable, but that this need is genuine and not something that is false or illusory. It is now far too well settled to require any supporting authority that a landlord is always the best judge of his requirement and how his property is to be enjoyed. It is not either for a tenant or the Court to dictate to the landlord in what manner he may enjoy or use his property. Once the requirement is shown had to be bona fide then the Court must address itself to an assessment of the comparative or relative hardship.

5. Now the evidence of the plaintiff is on record. His family consist of two sons and his wife. One son, Paresh, resides in Dadar

Mumbai in a flat that stands in his wife's name. The claim for the premises in question is for the second son, Mahesh, a doctor, whose evidence was led as PW2. Now the evidence of PW2 shows that he obtained his medical MBBS degree in 1996. It is at this point that the evidence becomes material. He clearly stated that he started his dispensary in a room of a bungalow itself. He went on to work at Talegaon General Hospital for two years and then moved on to set up a manufacturing industry for Ayurvedic and Herbal products. He now says that he wants to start medical practice and he wants the tenanted premises for this purpose but it is clear from his cross-examination, a copy of which is from pages 160 onwards that he himself admits that his new hospital venture can be managed out of the additional construction being undertaken by the plaintiff of an area of 1,200 sq. ft as well as in the existing bungalow. Further, Mahesh seems to have done some research work both in Pune and Mumbai. His wife is in service in Pune. He is clearly interested in continue with his research work as well. There is also evidence to show, and the Appellate Court has noted this specifically, that even till the date of recording evidence the plaintiff had constructed an additional 1,200 sq. ft. on the ground floor with an additional 1,200 sq. ft on the first floor of their existing bungalow. There were also two adjacent rooms on either side.

6. The Appellate Court was also constrained to note that during the pendency of the statutory First Appeal, the two sons Paresh and Mahesh sold a huge amount of about 28,320 sq. ft from this very CTS number along with the bungalow for a consideration of Rs. 3 crores. The document in question before the Appellate Court shows that Mahesh is a medical practitioner residing at Prabhat Road,

Erandwane, Pune. There is no question of this document being required to be excluded from consideration of the Appeal Court. Even if it is not determinative, it is certainly a significant factor against the Writ Petitioner.

7. It is not for this Court in its writ jurisdiction to re-appreciate the evidence that was before the Courts below. That was the task of the first Appellate Court and it has indeed examined the evidence sufficiently and closely. The view taken by the first Appellate Court is very far from being implausible or one that no Court could reasonably have taken on the material before it.

8. Ms Phene for the Petitioner further submits that the defendant has not produced permission for storing gas cylinders. This is no ground for eviction. It is about as vague as it is possible to be given that there is no dispute that the defendant is an authorized dealer or distributor for Hindustan Petroleum. In his response, the defendant has clearly stated that it is not made clear what permission is allegedly lacking. The tenant can certainly not be evicted on this kind of allegation.

9. In my view, there is no cause for interference. There is no merit in the Petition. It is rejected.

10. This is a fit case for the award of costs. It seems to me that what the plaintiff is doing is the rankest speculation in the legal system. He continuously gambles hoping for a favourable outcome. This is not what the Courts are meant for. Here the factor of sale of

the additional large portion of the land is material. The document is not disputed. It was produced by both sides. The explanation that this was meant to provide for the plaintiff's father is not compelling. If that be so, then there was no bona fide requirement for resuming these premises for the plaintiff's son Mahesh from this tenant. If this area or property has been sold and for a handsome consideration, the plaintiff did not need to persist with the Appeal and most certainly did not need to file the present writ petition. If this is not a fit case for awarding costs then no case is.

11. The Writ Petition is rejected accompanied by award of costs in the amount of Rs. 1,00,000/- payable by the plaintiff to the respondent within a period of two weeks from today.

(G. S. PATEL, J)