

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7628 OF 2017

Shri. Raghunath D. Wadke
(since deceased through Lrs.) .. Petitioners

vs.

Shri. Tarwin Darsingh Harbansingh Popli
(Popliya) .. Respondent

Mr. S. A. Tarale for the Petitioners.

Mr. J.S. Kini for the Respondent.

CORAM : M. S. SONAK, J.

DATE : 19 SEPTEMBER 2017.

P.C. :-

- 1] Not on board. In view of urgency taken on production board.
- 2] Heard Mr. Tarale, learned counsel for the petitioners and Mr.J.S. Kini, learned counsel for the respondent.
- 3] The petitioners-tenants challenge the concurrent orders of eviction made against them by the Trial Court and the Appeal Court on the grounds that the suit premises are reasonably and *bona fide* required by the respondent-landlord. The suit premises in this case, is a shop ad-measuring 10 x 20 sq. ft. at Budwarpeth, Pune.
- 4] Mr. Tarale, learned counsel for the petitioners, submits that the landlord has instituted thirteen previous proceedings, which met

with no success and this is the fourteenth proceeding. He submits that the only ground pleaded by the landlord is that the premises in which the landlord resides may be acquired by the Municipal Corporation, because the said premises come within the road widening area. Mr. Tarale points out that this was the apprehension expressed in the year 2006 and till date, no acquisition is forthcoming. He submits that in such circumstances, no case is made out for reasonable and *bona fide* requirement. He submits that the petitioners-tenants are ready to give undertaking to vacate the suit premises in case the landlord's premises are actually acquired by the Municipal Authorities. On this ground, Mr. Tarale submits that the impugned orders warrant interference.

5] Mr. Kini, learned counsel for the respondent, submits that there is no dispute that the present premises, which the landlord occupies come within the road widening area. An Official from Pune Municipal Corporation was examined, who has deposed to the issuance of notice issued to the landlord. Besides, Mr. Kini points out that the petitioners have purchased the entire neighbouring building and thereafter, even rent out the two shops to third party. Mr. Kini submits that this is a case of concurrent findings of fact and the

findings are supported by the evidence on record. On this ground, Mr. Kini submits that this petition may be dismissed.

6] By way of rejoinder, Mr. Tarale submits that the neighbouring building was purchased by the tenants some time in the year 1979. The premises in the building were already tenanted. Presently, there are no vacant premises available in the said building.

7] As noted earlier, this is a case of concurrent findings of fact. On basis of submissions made, no case of perversity has been made out. This is sufficient for non interference with the impugned orders. In any case, there is no dispute that the premises, which the landlord presently occupies come within the road widening area. In support of plea that acquisition is imminent, the landlord examined one Anil Karale (PW-2), an Official from Pune Municipal Corporation, who has deposed to the issuance of notice (Exhibit-46) regards proposed acquisition to the landlord. The tenant, has merely denied that such notice was ever issued to the landlord. The landlord has not only deposed to the receipt of such notice, but further had examined the Official from Pune Municipal Corporation, who has deposed to the issuance of such notice at Exhibit-46. In such circumstances, it

cannot be said that the requirement of the landlord is not *bona fide* or reasonable.

8] That apart, if the petitioners-tenants, are in a position to purchase the entire neighbouring building, then, the issue of comparative hardship is also required to be answered against the tenants. Assuming that the building was tenanted at the time of its purchase, nothing really prevented the tenant from instituting proceedings for eviction against the tenants on the ground that the landlord in the present case, had instituted proceedings seeking recovery of the suit premises. In this case, the eviction decree was made by the Trial Court on 1st January 2013. The Appeal has been dismissed on 13th February 2017. The proceedings itself instituted in the year 2008. From 2008 onwards, the petitioners, could have very well taken steps to secure from their tenants, the premises said to be in their possession. The petitioners have done nothing of this sort. Accordingly, the issue of comparative hardship is required to be answered against the petitioners. There is no case made out to entertain the present petition.

9] Accordingly, this petition is dismissed. There shall however, be no order as to costs.

10] At this stage, learned counsel for the petitioners applies for continuance of interim relief for a period of eight weeks. Subject to the petitioners filing usual undertaking in this Court within a period of two weeks from today and subject to the petitioners depositing within two weeks from today the arrears of compensation, if any, in terms of the order made by this Court on 23rd August 2017, the interim order is directed to continue for a period of eight weeks from today. In case, no undertaking is filed or no arrears deposited within two weeks from today, the interim order to stand vacated without any further reference to the Court.

11] In case, the petitioners fails to obtain any interim relief from the Hon'ble Supreme Court, the amount deposited by the petitioners in this Court to be transferred to the Trial Court, where, the proceedings are pending for determination of mesne profits. The amount shall then abide by the orders that will be made by the Trial Court in such proceedings.

(M. S. SONAK, J.)