

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2003 OF 1996
(old Writ Petition No.5051/1990 at Mumbai)

Shri Dwarkadas Rameshwar Vyas,
residing at Kumarnagar Room No.5,
Taluka and District Dhule.

SINCE DECEASED THROUGH HIS L.RS. :-

- 1 Smt.Vimaladevi w/o Dwarkadas Vyas (Gaud),
Age : 78 years, Occupation : Household.
- 2 Jayprakash s/o Dwarkadas Vyas (Gaud),
Age : 59 years, Occupation : Service.
- 3 Ishwar s/o Dwarkadas Vyas (Gaud),
Age : 53 years, Occupation : Nil.

All R/o Kumarnagar Room No.5,
Taluka and District Dhule.

- 4 Sow.Uma d/o Dwarkadas Vyas (Gaud),
Age : 56 years, Occupation : Household,
R/o Punshi Complex, Station Road,
Chalisingaon, District Jalgaon.
- 5 Sow.Seema d/o Dwarkadas Vyas (Gaud),
Age : 47 years, Occupation : Household,
R/o Marvadi Galli, Bagal Kot,
District Bagal Kot (Karnatak).

Legal heirs brought on record as
per order dated 05.09.2015 in
Civil Application No.8658/2014.

...PETITIONERS

-VERSUS-

Shri Pukharaj Amarchand Chopade,
residing at CTS No.1735, Agra Road,

Dhule, District Dhule.

SINCE DECEASED THROUGH HIS L.RS.:-

- 1 Pistabai Pukharaj Chopda,
Age : 65 years, Occupation : Household.
- 2 Santoshkumar Pukharaj Chopda,
Age : 48 years, Occupation : Business.
- 3 Rajendrakumar Pukharaj Chopda,
Age : 46 years, Occupation : Business.
- 4 Manishkumar Pukharaj Chopda,
Age : 39 years, Occupation : Business.
- 5 Indubai Shrichand Tatiya,
Age : 52 years, Occupation : Household.

All R/o 12, Nilkamal Housing Society,
Agrawal Nagar, Dhule.

Legal heirs brought on record as per
order dated 02.12.2012 passed in
Civil Application No.9535/2012.

...RESPONDENTS

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Shri B.R.Warma, Advocate for the Petitioners.
Shri S.N.Pagare, Advocate for the Respondents.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 30th August, 2018

Oral Judgment :

1 The Petitioners, who are the legal heirs of the original Defendant/ Tenant Shri Dwarkadas Rameshwar Vyas (now deceased), are aggrieved by the concurrent judgments delivered by the Trial Court on

23.12.1983 in Regular Civil Suit No.393/1980 and by the judgment dated 18.04.1989 delivered by the Appellate Court in Civil Appeal No.153/1984.

2 This petition was lodged at the Principal Seat bearing Writ Petition No.5051/1990. On transfer to this Bench, the new number has been allotted.

3 The Petitioners have put forth the following prayer in the petition :-

“(b) *The judgment and decree passed by the Civil Judge Junior Division, Dhule in Regular Civil Suit No.393/1980 and confirmed by the IIIrd Additional District Judge, Dhule in Civil Appeal no.153/1984 be quashed and set aside.*”

4 Ad-interim relief was granted by this Court on 29.11.1990 and the said relief was subsequently confirmed while admitting the petition on 18.01.1991.

5 I have considered the strenuous submissions of the learned Advocates for the respective sides, who have put forth their submissions in view of the record and proceedings available before the Court. With their assistance, I have gone through the depositions of various witnesses and the documents exhibited.

6 The submissions of the learned counsel for the Petitioners/ original Defendant/ Tenant can be summarized as under :-

(a) Two blocks bearing Nos.5 and 6 were said to have been rented out to the tenant, admeasuring in all 1000 square feet.

- (b) The rent lastly paid by the tenant was at the rate of Rs.90/- per month for the two blocks.
- (c) From 01.04.1972, the rent was not paid as the tenant claimed to have purchased the property by auction.
- (d) A notice was issued by the landlord on 18.03.1978 as regards non payment of the rent.
- (e) The tenancy was said to have been terminated by notice dated 18.07.1980.
- (f) RCS No.393/1980 was filed by the Respondents / original Plaintiff/ landlord which was decreed on 23.12.1983.
- (g) The landlord had claimed eviction of the tenant on the basis of bonafide requirement and on account of default in payment of rent.
- (h) Rent receipts were placed on record and the tenant denied having voluntarily signed on the counterfoils of the receipts.
- (i) The notice of terminating the tenancy was never served on the tenant.
- (j) Exhibits 62 and 63 are said to be the acknowledgment receipts, which in fact are RPAD receipts.
- (k) The Defendant/ tenant was in the service of the business firm owned by the Plaintiff/ landlord.
- (l) A false plea has been put forth by the Plaintiff/ landlord that

he purchased the suit property on 26.03.1966.

- (m) The tenant has been residing in the suit property since 1966 and the legal heirs to the extent of the widow and two sons along with their families reside even today in the said property.
- (n) The Petitioner/ original Defendant has actually purchased the suit property in auction proceedings and the Plaintiff was only shown for the purposes of the transaction as being the owner of the suit property.
- (o) The Defendant agreed for entering the name of the Plaintiff as an owner in the property records since the Defendant was an employee of the Plaintiff and was, therefore, under pressure of the Plaintiff.
- (p) The postman was examined by the Plaintiff as his second witness and service of notice of termination of tenancy dated 18.07.1980, has not been proved before the Trial Court.
- (q) Bonafide requirement has not been established by the Plaintiff and as such, the impugned judgments deserve to be quashed and set aside on both the grounds raised by the Plaintiff.

submits as under :-

- (a) The plaintiff has purchased the suit property by virtue of the sale deed dated 29.03.1966 by paying the price of the property to the earlier landlord, namely, Nandlal Dasumal.
- (b) It was not a benami transaction and the suit property was legally purchased by the plaintiff.
- (c) No record pertaining to any auction purchase of the property has been brought on record by the defendant.
- (d) A false stand has been taken by the defendant that he stopped paying rent from April, 1972 as he had purchased the suit property.
- (e) In the absence of any documentary record indicating that the defendant purchased the suit property and the claim that he purchased it in March, 1966, disproves the contention of the defendant that he stopped paying rent from April, 1972 when he purchased the suit property.
- (f) When no documentary record could establish the purchase of the suit property by the defendant and the fact that he stopped paying rent from April, 1972, indicates that the tenant has defaulted in paying the rent.
- (g) Rent receipts were issued by the landlord to the defendant as and when he paid the rent amount and obtained his signature

on the counterfoil of the rent receipts.

- (h) It is not the case of the tenant that the signatures on such counterfoils are not his signatures, inasmuch as, it is not his case that his signatures were obtained forcibly on blank rent receipt counterfoils.
- (i) The original Plaintiff has passed away and his legal heirs i.e. present Respondents are residing in the rented premises as on date since their own premises are being occupied by the legal heirs of the Defendant/ Tenant.
- (j) Reliance is placed upon the following judgments :-
 - (i) ***Bhupinder Singh Bawa vs. Asha Devi, (2016) 10 SCC 209.***
 - (ii) ***M/s Green View Radio Service vs. Laxmibai Ramji and another, AIR 1990 SC 2156.***
 - (iii) ***Ashok Kumar vs. Ved Prakash, AIR 2010 SC 330.***

8 I have considered the above recorded submissions of the learned Advocates. I have perused the depositions of the witnesses.

9 The Trial Court had framed the following issues with it's findings set out in the impugned judgment :-

Sr.No.	Issues	Findings
1	Does plaintiff prove that he is the landlord of the suit premises and that the defendant is the tenant?	Yes

2	Whether the defendant is the defaulter?	Yes
3	Does plaintiff prove that he requires the suit premises reasonably and bonafide for personal use and occupation?	Yes
4	To whom greater hardship would be caused by passing the decree than by refusing to pass it?	Yes
5	Whether the plaintiff entitled to the possession of the suit premises?	Yes
6	What amount if any is due to plaintiff by way of arrears of rent, damages in view of rent, notice charges, etc?	Rs.3315/- only.
7	What order regarding future mesne profits?	As per final order.
8	Does the defendant proves that the plaintiff had obtained his signature on blank rent receipts during the period the defendant was in service of the plaintiff?	No
9	Is the suit tenable in the present form in view of the contentions raised by the defendant?	Yes
10	What relief, order and costs?	As per final order below.

10 The rent receipts that are placed on record date back to 1966 onwards. The counterfoils indicate the signature of the tenant above the printed words “पैसे देणाऱ्याची सही” (Signature of payer). The last receipt issued is upto to the period 31.03.1972 and the receipt date is 09.04.1972. Certain blank receipts are also placed on record. The said receipts have a perforation in the middle of the page thereby, converting the said receipt page in the receipt book into two parts. On one part, which is issued to the tenant, it bears the words “पैसे घेणाऱ्याची सही”

(signature of money receiver) to indicate that the landlord has signed on the said receipt after receiving the rent amount and that portion is then separated by virtue of the perforation and handed over to the tenant. The counterfoil is retained in the receipt book as noted above. It was thus, established before the Trial Court that the tenant stopped paying rent from April, 1972.

11 The witness of the plaintiff Wasudev Trimbak Adavadkar, who was 79 years old as on 11.10.1983, is the stamp vendor and bond writer since 1928. He perused the sale deed and admitted that the material written on the stamp paper while selling it, is under his handwriting. He then admitted that the contents of the sale deed were also written by him under the instructions of the Plaintiff. The parties to the document and witnesses were present, who also signed in the presence of the stamp vendor. The cross examination conducted by the defendant is of no consequence as the testimony of the said witness is not disturbed.

12 The postman, namely, Gopinath Nattu Wawade was also examined. He stated that he knew the defendant who was in employment with Vijay Trading Company, which is situated in Beat No.2, the area in which, he was discharging his duties as a postman. He identified the signature of the defendant from the record available after delivering the registered envelope. The said witness, however, has not stated as to

whether, the notice of termination of the tenancy dated 18.07.1980 has been served upon the tenant. However, Exhibits 61, 62 and 63 appear to be the RPAD receipts by which, the registered envelopes were dispatched to the defendant. The record reveals that two registered envelopes were returned, which are not connected with the notice of termination of tenancy. The remark on the said envelopes of the Post Department indicates that the tenant had left the address, when in fact, he continued to reside in the said premises.

13 As such, the Trial Court had three main issues before it. Firstly, as to whether, the plaintiff proves that he is the landlord and not the defendant, who is a tenant. Secondly, whether, the defendant is a defaulter and thirdly, whether, the plaintiff requires the suit premises for bonafide personal use.

14 The Trial Court analyzed the oral and documentary evidence and concluded that the plaintiff had proved that he had purchased the suit property from the earlier owner. The tenant could not prove that he had purchased the suit property in an auction proceeding or that it was a benami transaction indicating the employer/plaintiff as the owner of the property.

15 I also find that the record clearly indicates that the tenant was continuously paying the rent at the rate of Rs.45/- per block from 1966 till March, 1972. If he had actually purchased the suit property, he would not

have paid the rent to the plaintiff. It is also not the case of the tenant that this was a “make believe arrangement” and rent shown to have been paid by him, was subsequently reimbursed to him by the landlord.

16 Insofar as the service of notices is concerned, several registered envelopes sent by the landlord on the suit premises occupied by the tenant, were returned with the postal remark “left”/ “left, address not known” when the tenant was residing at the same place. One acknowledgment receipt with regard to the notice sent by the plaintiff appears to bear a signature which is scratched subsequently. The plaintiff contends that the said signature is of the defendant. However, the defendant admitted that he had received the letter in 1980 at the suit premises, which he was occupying. The said RPAD envelope bears the number 1612. The acknowledgment receipt bears the date 25.07.1980. This document proved that the defendant had received the notice dated 18.07.1980 from the plaintiff. Having established that the defendant was a defaulter, the ground for seeking his eviction was established.

17 Insofar as the bonafide requirement is concerned, the plaintiff specifically stated that he was residing with his family earlier in the house of one Champalal Motilal in Gopal Nagar on the Agra Highway. As a portion of the rented premises collapsed, he moved to another house owned by one Parmanand Jethamal. Though the defendant suggested that the plaintiff has his own bungalow on the Chalisgaon road, there was no

evidence brought on record to prove the said contention. Considering the growing family of the plaintiff and they residing in the rented premises, the Trial Court concluded that the plaintiff requires the suit premises for bonafide occupation.

18 The Appellate Court considered the record and proceedings threadbare and concluded that the judgment of the Trial Court could not be branded as being perverse or erroneous. By a detailed judgment, the conclusions of the Trial Court were affirmed.

19 In *Bhupinder Singh Bawa* (supra), the Honourable Supreme Court concluded that the concurrent findings of the courts below ordering eviction of the tenant on the basis of evidence and material on record, cannot be interfered with. It is for the landlord to decide which premises are required for bonafide occupation and the landlord is free to choose one amongst his available premises as being suitable for bonafide occupation.

20 In *Ashok Kumar* (supra), the Honourable Supreme Court concluded that the ground of bonafide requirement though is restricted by the Act to evict the tenant from the residential premises, would equally apply to non residential premises. It was further held that on account of the death of the landlord, that it cannot be said that the bonafide requirement has perished and the suit stands abated.

21 Considering the above, I do not find that the impugned

judgments could be termed as being perverse or erroneous.

22 Before commencing the dictation of this judgment in open Court, after the learned Advocates stated that they have concluded their submissions, the learned counsel for the Petitioners/ Defendants was called upon to state as to whether, he would desire to make a statement with regard to the duration within which he may agree to vacate the suit premises. The learned counsel submitted that at least six months may be granted and the Petitioners would vacate the premises.

23 The learned counsel for the landlord opposed the said request and contended that three months period may be granted.

24 In the light of the above, I am of the view that as the Diwali festival happens to fall in November, 2018, the request of the Petitioners could be accepted and time could be granted for vacating the premises till 31.12.2018.

25 In view of the above, this Writ Petition is dismissed. Rule is discharged.

26 The directions of the Courts below shall be complied with by the Petitioners/ tenant and the suit premises shall be handed over peacefully to the Respondents/ landlord, in any case, on or before 31.12.2018. The Petitioners/ tenants shall also clear all arrears of rent, if not already paid, on or before 31.12.2018. No request for extension of time for vacating the premises or for paying the arrears of payment, would

be entertained. The Petitioners shall not create any third party interest or encumbrances in the suit property and shall comply with the above directions scrupulously.

kps

(RAVINDRA V. GHUGE, J.)

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Prakash
Sangvikar

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