

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

**WRIT PETITION NO. 4178 OF 2001
WITH
CIVIL APPLICATION NO. 2848 OF 2002**

Kamgar Kalyan Kendra
Chalisgaon Dist. Jalgaon
through

1. Kamgar Kalyan Ayukta
Kendra Bhavan Senapati
Marg, Parel, Mumbai.

2. Kamgar Kalyan Kendra,
Netaji Chowk, At Post,
Chalisgaon, Tq. Chalisgaon,
District Jalgaon.

**...Petitioners.
(Ori. Defendants).**

:: Versus ::

1. Shri Kashinath Brindavan Bundelkhandi,
Age : 73 years, occ. Agriculture,
..Struck of as per order dtd. 22/03/2002.

2. Shri Madankumar s/o Brindavan
Bundelkhandi, Age 50 years,
Occ. Agriculture,

3. Shri Vishwanath s/o Brindavan
Bundelkhandi, (since deceased)
Through His Lrs.

a. Smt. Ramrati w/o Vishwanath
Bundelkhandi,
Age 68 years, Occ. Household,

b. Shri Mohan s/o Vishwanath
Bundelkhandi, Age 50 years,
Occ. Agri.,

c. Girish s/o Vishwanath
Bundelkhandi, Age 38 years,
Occ. Agri.,

d. Shri Sudhir s/o Vishwanath 2

Bundelkhandi, Age 33 years,
Occ. Agri.,

All r/o Tilak Chowk, Chalisgaon,
Tq. Chalisgaon, Dist. Jalgaon.

**...Respondents
(Ori. Plaintiffs),**

...

Advocate for the Petitioners : Shri S. M. Godsay
Advocate for Respondent No. 2 : Shri S. S. Bora

**WITH
CIVIL APPLICATION NO.1222/2016**

1. Shri Kashinath Brindavan Bundelkhandi,
Age : 73 years, occ. Agriculture,
..Struck of as per order dtd. 22/03/2002.
2. Shri Madankumar s/o Brindavan
Bundelkhandi, Age 50 years,
Occ. Agriculture,
3. Shri Vishwanath s/o Brindavan
Bundelkhandi, (since deceased)
Through His Lrs.
 - a. Smt. Ramrati w/o Vishwanath
Bundelkhandi,
Age 68 years, Occ. Household,
 - b. Shri Mohan s/o Vishwanath
Bundelkhandi, Age 50 years,
Occ. Agri.,
 - c. Girish s/o Vishwanath
Bundelkhandi, Age 38 years,
Occ. Agri.,
 - d. Shri Sudhir s/o Vishwanath
Bundelkhandi, Age 33 years,
Occ. Agri.,

All r/o Tilak Chowk, Chalisgaon,
Tq. Chalisgaon, Dist. Jalgaon.

**...Applicants
(Ori. Plaintiffs)**

:: Versus ::

Kamgar Kalyan Kendra
Chalisgaon Dist. Jalgaon
through

1. Kamgar Kalyan Ayukta
Kendra Bhavan Senapati
Marg, Parel, Mumbai.

2. Kamgar Kalyan Kendra
Netaji Chowk, At Post,
Chalisgaon, Tq. Chalisgaon,
District Jalgaon.

Respondents
(Ori. Defendants)

...

Advocate for Applicant No.2 : Shri S. S. Bora
Advocate for Respondents : Shri S. M. Godsay

...

CORAM : RAVINDRA V. GHUGE, J.
DATED : 2nd AUGUST, 2018.

...

ORAL JUDGMENT :

1. The petitioner, original defendant/tenant, is aggrieved by the judgment and order dated 11/09/2000 delivered by the Appellate Court, by which, Civil Appeal No. 10/1996 filed by the respondents- landlords has been allowed. The judgment and decree of the Trial Court dated 30/11/1995 in RCS No. 262/1990 has been set aside to the extent of protecting the possession of the tenant and the plaintiffs are held to be entitled to recover the possession of the suit premises. The petitioners- defendants were directed to deliver the vacant possession of the suit premises within 6 months from the date

of the order. The defendants were also directed to pay an amount of Rs. 2454/- to the plaintiffs as reimbursement of the payment of taxes to the Municipal Council, Chalisgaon.

2. The learned Advocate for the petitioners- tenants has strenuously contended that the Appellate Court has erroneously upset the findings on facts arrived at by the Trial Court. He has drawn my attention to the 12 grounds formulated by him in the memo of the petition. He submits that the Trial Court concluded that though the suit property is required for bonafide and reasonable occupation of the plaintiffs, a greater hardship would be caused to the defendants who happen to be the Kamgar Kalyan Kendra, which is operated by the Labour Department of the State of Maharashtra at several places in the State. He, therefore, submits that though the plaintiffs may have a bonafide requirement, if the hardships suffered by the tenant by eviction are greater than the comforts of the plaintiffs, then the tenants cannot be effected and the Trial Court has rightly refused to do so.

3. He further submits that the Appellate Court has wrongly interfered with the conclusions of the Trial Court. The Appellate Court was carried away by the bonafide requirement of the plaintiffs and by ignoring the comparative hardships suffered by the tenants, the Appellate Court has granted the possession to the landlord.

4. It is further submitted that the petitioners have vacated the suit premises some time in 2012-13 as the premises were not worthy of continued occupation since the entire building was in a dilapidated condition. No person could utilize the said premises in the said condition. The petitioners have, therefore, found a different accommodation for operating the Kamgar Kalyan Kendra. However, the said premises are too small for accommodating the petitioners and the various activities that they conduct every year for the benefit of the labourers and their children. Such centres are actually operated for the upliftment of the working class and their children. The various welfare schemes undertaken by the petitioners under the Maharashtra Labour Welfare Fund Act, for the workers, their families and their children are set out

below paragraph No. 2 in the affidavit in reply to the Civil Application No. 1222 of 2016.

5. The learned Advocate for the plaintiffs have relied upon the contents of their Civil Application, by which, the demand for bonafide occupation is reiterated. It is stated that the landlord has a large family and is residing in rented premises. The property which belongs to the landlord and which he desires to develop for the personal occupation of ever growing family, is not being handed over to him despite a desperate need of the landlord and his family. It would be travesty of justice that such a property belonging to the landlord is not to be utilized by him and from family and he is compelled to reside in rented premises.

6. It is further submitted that the petitioner has selected a new premises for occupation sometime in 2012-2013. For the last more than 5 years, all the activities that the petitioners conduct, are being conducted in those premises. If the petitioners would have found that the newly occupied premises are too small or cannot cater to the needs of the

welfare centre, they would have searched for a larger accomodation. The Taluka Chalisgaon is quite a large Taluka and the petitioners would have easily found a proper accommodation.

7. It is then contended that the Trial Court has itself drawn a conclusion that the plaintiffs have a reasonable and bonafide requirement. The issue framed on that count is answered in the affirmative. It is only that the Trial Court got swayed by the social activities which the petitioners are conducting and keeping the social objective in mind, the Trial Court concluded that the tenant would suffer hardships in comparison to the hardships suffered by the plaintiffs. He submits that social objectives cannot be achieved at somebody else is caused and surely not at the cost of the landlord who has a genuine bonafide need for his large family to be accommodated in the said premises which can be developed.

8. In support of the case of the plaintiffs, reliance is placed upon the following judgments of the Honourable Apex Court :-

1. *Bhupinder Sing Bawa Vs. Asha Devi,*

(2016) 10 Supreme Court Cases 209,

2. Anil Bajaj and another Vs. Vinod Ahuja,

(2014) 15 Supreme Court Cases 610,

3. Gaiv Dinshaw Irani and others Vs.

Tehmatan Irani and others, (2014) 8 Supreme Court Cases 294.

9. I find from the record that both the Courts have arrived at a concurrent finding that the landlord genuinely needs the premises for accommodating his large family and the requirement is bonafide and reasonable. These conclusions have not been challenged by the petitioners before the Appellate Court. The answer to issue No. 1 by the Trial Court in favour of the plaintiffs has not been questioned by the petitioners before any Court.

10. While considering the comparative hardships, the case of the petitioners cannot be equated with the case of any tenant whose business or profession is dependent upon the business activities that are being carried out in the rented premises. The place of practicing a profession, the clientele built by such a tenant etc. are some of the factors which need to be considered while dealing with comparative hardships in

between the litigating sides.

11. In the instant case, the petitioners are conducting social activities under the Maharashtra Labour Welfare Fund Act. These activities are not linked with the place where the welfare centre has occupied rented premises. If they desire to shift the centre which they have so done some time in 2012-2013, such social activities can be arranged at such a place. A large gathering of workers, their families and their children in the heart of city would create different problems even for the localities in that area. As such, the contention of the petitioners that if they move to any other place, the activities would be hampered, is an unsustainable submission.

12. In *Bhupender Singh (Supra)*, the Honourable Apex Court has concluded that the landlord has the freedom and the right to choose more suitable premises amongst the available alternative accommodations and this requirement cannot be subjected to the dictates of the tenant. In the present case, there is nothing on record to indicate that the plaintiffs have other residential places or houses and that the family has

split up into smaller families and they are all living separately. Without oral and documentary evidence on record to establish these aspects, there cannot be a presumption against the tenant.

13. In *Anil Bajaj (supra)*, the Honourable Apex Court has once again concluded that the tenant cannot dictate to the landlord as to how he should utilize his premises.

14. I am, therefore, of the view that the conclusions drawn by the Trial Court with regard to the reasonable and bonafide requirement of the plaintiffs cannot be faulted and cannot be branded as being perverse or erroneous merely because a second view could be formed and more so when the tenant has accepted conclusions. Consequentially, considering the comparative hardships, the directions issued by the Appellate Court cannot be held to be unsustainable.

15. In so far as the subsequent events are concerned as regards the petitioners admittedly having moved out of the suit premises and have been operating their activities more

than 5 years in another rented premises, such subsequent events can be taken into consideration by the Court. The Honourable Apex Court has relied upon the judgment of the Honourable Supreme Court of America in ***Patterson V. Alabama, 294 US 600 (1935)*** which was followed in ***Lachmeshwar Prasad Shukul Vs. Keshwar Lal Chaudhuri , AIR 1941 FC 5*** and has then delivered a judgment in ***Pasupuleti Venkateshwarlu V. Motor and General Traders (1975) 1 SCC 770*** and has concluded in paragraph No. 4 as under :-

"4. ...It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fair play is violated, with a view to promote substantial justice---subject, of course, to the absence of other disentitling

factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed".

16. In **Ramesh Kumar V/s. Kesho Ram, 1992 Supp.(2) SCC 623**, the Honourable Apex Court held in Paragraph No. 6 as under :-

"6. The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the court is not

precluded from taking a 'cautious cognizance' of the subsequent changes of fact and law to mould the relief."

17. The issue of payment of taxes during the pendency of the litigation is an issue which can be considered under Section 15(2) of the Maharashtra Rent Control Act. The learned Advocate for the plaintiffs submits, on instructions, from the plaintiff present in the Court that rent amounts have not been paid by the petitioners and especially after the suit premises were vacated. The learned Advocate for the petitioners submits, on instructions, from the Officer present in the Court that the petitioners have attempted to pay the rent to the landlord by post and the landlord is not accepting the said rent. The learned Advocate for the landlord relies upon the Full Bench Judgment of this Court (to which I am a party), in the matter of ***Babulal Vs. Suresh and others, 2017(4) MhLJ 406***, wherein it is concluded that the rent amounts have to be paid even during the pendency of the proceedings before the Court if the tenant desires to seek the protection under Section 15(2) of the Rent Control Act.

18. I am not required to deal with this issue any further for the reason that I have concluded that no interference is called for in the concurrent conclusions of both the Courts with regard to the reasonable and bonafide requirement of the plaintiffs and the conclusions of the Appellate Court thereby directing the eviction of the tenants.

19. This petition being devoid of merit is, therefore, dismissed. Rule is discharged.

20. Keeping in view, the above and taking into account the petitioners have already vacated the premises, no further directions for vacating the premises are required to be issued.

21. Pending Civil Applications do not survive and stand disposed off.

(RAVINDRA V. GHUGE, J.)

shp/-