

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7420 OF 2018

P. B. Chandawale (since decd) through LRs ... Petitioners
Vs.
Raghavendra Swami Math through its Manager
Koparesacharya Kattacharya Joshi ... Respondent

Mr. A. V. Anturkar, Senior Advocate i/b. Mr. Amol Gatne for Petitioners.
Mr. Kedar Ghongade i/b. Mr. S. C. Wakankar for Respondent.

CORAM : R. G. KETKAR, J.
DATE : AUGUST 21, 2018

P.C. :

Heard Mr. Anturkar, learned Senior Counsel for the petitioners and Mr. Ghongade, learned Counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and decree dated 17.07.2017 passed by the learned District Judge-12, Pune in Regular Civil Appeal No.278 of 2007 and Regular Civil Appeal No.237 of 2015. The learned District Judge dismissed both the appeals. Regular Civil Appeal No.278 of 2007 was preferred by the petitioners challenging the judgment and decree dated 09.02.2007 passed by the learned 6th Additional Judge, Small Causes Court, Pune in Civil Suit No.13 of 2000. By that order, the learned trial Judge decreed the Suit instituted by the respondent under Section 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Act') and directed the petitioners, who are heirs and legal representatives of original defendant to handover vacant and peaceful possession of one room situate on the ground floor of C.T.S.No.556, Sadashiv Peth, Pune, more particularly described in paragraph 1 of the plaint (for short 'suit premises'). Aggrieved by that decision, the legal representatives of the original defendant preferred

appeal. During the pendency of the appeal, they filed application under Order XLI, Rule 27 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for adducing additional evidence namely, documentary as well as oral. By order dated 11.05.2014, the learned District Judge allowed the application and permitted the defendants to lead documentary and oral evidence on the points set out in the application. The learned District Judge transmitted the record and proceedings to the trial Court for recording findings on the issue of bonafide requirement after the evidence is adduced by the parties. In pursuance thereof, the learned trial Judge permitted the parties to adduce evidence and by order dated 13.02.2015, decreed the Suit. Aggrieved by that decision, defendants preferred Civil Appeal No.237 of 2015. By the order dated 17.07.2017, the learned District Judge dismissed both the Appeals.

3. In support of this Petition, Mr. Anturkar raised following contentions:

- (i) even if the averments made in the plaint are accepted at its face value, Section 13(1)(g) is not attracted;
- (ii) devotee's requirement will not be covered by the expression "requirement of family member of the landlord";
- (iii) in paragraph 4 of the plaint, plaintiff asserted that the present premises in occupation of the endowment is highly insufficient for various activities of the endowment and plaintiff has decided to build a new structure for the purpose of its activities such as for holding religious functions, coaching students who follow the sect of the plaintiff and various other activities of the endowment. In short, the Suit is not under Section 13(1)(g) but is under Section 13(1)(hh) of the Act;
- (iv) if the Court is not inclined to accept his first contention then in that case, the plaintiff has made out altogether new case in

the evidence. In other words, plaintiff has not proved the requirement pleaded in the plaint; and

(v) the person, who has verified the plaint, and the person, who has given evidence, had no authority.

4. Elaborating these submissions, Mr. Anturkar invited my attention to paragraph 4 of the plaint. He submitted that in order to establish the bonafide requirement, plaintiff did not produce constitution of the Trust to substantiate the activities undertaken by the Trust. The plaintiff also did not examine any trustees of the Trust. In other words, the plaintiff has not pleaded the requirement of the Trust but has pleaded requirement for accommodating employees and their family members, students admitted in Gurukul and their teachers. He invited my attention to paragraph 9 of the examination-in-chief of Gunjalli Teekachar, who was examined as plaintiff's witness. In paragraph 9, it is stated that there are 14 - 15 number of children taking education. There was a teacher who used to teach them and there were 6 number of families staying in the premises and 2 to 3 number of bachelors staying in the premises. In the first place, in the plaint, no reference is made to number of bachelors staying in the suit premises. Secondly, the teacher was also earlier in the employment of the plaintiff Trust and the very fact that plaintiff's witness deposed that there was a teacher indicates that the said teacher is no more in service. He invited my attention to paragraph 8 of the written statement dated 28.02.2013. He submitted that the Suit is essentially under Section 13(1)(hh) of the Act and not under Section 13(1)(g). He submitted that the defendant is ready and willing to vacate the suit premises subject to the plaintiff demolishing the existing premises and accommodating defendant in the newly constructed premises.

5. Mr. Anturkar submitted that in the evidence, altogether new case

is made out. He has taken me through paragraph 3 of evidence of K. K. Joshi where he has referred to various Sevas offered by the plaintiff Math as also various rituals followed by the plaintiff Trust. The said case is not made out in the plaint. In paragraph 3, the requirement deposed is of devotees and not of either employees, students or their teachers. He has taken me through paragraphs 8 to 11 of his evidence to contend that not a single document was produced by the plaintiff to establish that the suit premises are required for the purpose of the plaintiff Trust. In paragraph 17 of the cross-examination, the said witness admitted that plaintiffs are desirous to demolish old structure and construct new building and the present condition of the premises is not useful for satisfying the purposes of the Trust. He, therefore, submitted that the Courts below were not justified in passing the decree under Section 13(1)(g) of the Act.

6. Lastly, Mr. Anturkar submitted that the plaint was not verified by the authorized person and evidence was not given by the person authorized by the plaintiff Trust. He submitted that plaint was verified by R. Krishnacharya. However, Power of Attorney in favour of R. Krishnacharya was not produced on record.

7. On the other hand, Mr. Ghongade supported the impugned orders. He submitted that plaint was verified by R. Krishnacharya on 05.11.1999. It has come on record that R. Krishnacharya died in December 2000. He invited my attention to the application at exhibit-119 filed before the trial Court for leading secondary evidence for production of photocopy of Power of Attorney issued in favour of R. Krishnacharya as the original Power of Attorney was not traceable. By order dated 19.11.2014, the learned trial Judge allowed the application and accordingly, photocopy of the Power of Attorney dated 05.11.1999

given in favour of R. Krishnacharya was placed on record along with the list of documents at exhibit-3. The said order was not challenged. He submitted that the requirement pleaded by the plaintiff is essentially under Section 13(1)(g) of the Act and Section 13(1)(hh) has no application in the facts of the present case, as admittedly, the suit premises is ground floor plus three floors. He has taken me through paragraph 4 of the plaint, paragraph 8 of the written statements dated 11.09.2002 and 28.02.2013 as also cross-examination of the plaintiff's witness to contend that the plaintiff has established that its requirement is, both, reasonable as also bona fide. The Courts below, after appreciating the evidence on record, have concurrently decreed the Suit and therefore, no case is made out for invocation of powers under Article 227 of the Constitution of India.

8. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. In paragraph 4 of the plaint, plaintiff has asserted that plaintiff wants to use the premises for the purpose and promotion of its endowment. The plaintiff has number of employees working in Pune and they have no premises to stay. The plaintiff wants to provide residence to employees and their families. The plaintiff is also running a 'Gurukul' for imparting education to young children who are followers of Raghavendra Swami. For the residence of the students as also for residence of the teachers teaching in the 'Gurukul', the premises are required. The plaintiff have decided to build a new structure for the purpose of its activities such as for holding religious functions, coaching students who follow the sect of the plaintiff and various other activities of the endowment. The plaintiff specifically craved leave to elaborate those activities and expansions at the time of adducing evidence. A perusal of paragraphs 8 of the written statements dated 11.09.2002 and

28.02.2013 shows that defendants have simply denied the requirements pleaded by the plaintiff. In support of plaintiff's case, plaintiff filed affidavit of evidence of K. K. Joshi, who was working as a Manager in the plaintiff's Math. In paragraph 3, he has given details of the Sevas offered and the various rituals followed by the plaintiff Math. In paragraphs, 8 to 12, the witness has referred to imparting education in the Gurukul as also in paragraph 10, the witness has referred to appointment of a Manager and that the plaintiff has to provide residence to the Manager and his family. In paragraph 11, the witness has referred to staff members, who have to be provided residence and due to constraint of existing space, it is insufficient for the plaintiff to provide residence for his staff and family members.

9. A perusal of the cross-examination of this witness does not indicate that any attempt was made by the defendant to falsify the case deposed by the witness. The plaintiff also examined another witness Gunjalli Teekachar who also reiterated the requirement of the plaintiff to promote its endowment. He deposed that in Gurukul, students taking education in Gurukul reside in the same premises of the plaintiff Math. However, due to the lack of sufficient premises, it was impossible for the plaintiff to accommodate all the children. By order dated 09.02.2007, the learned trial Judge decreed the Suit. Aggrieved by that decision, defendant preferred appeal in the District Court and pending the appeal took out application exhibit-19 under Order XLI, Rule 27 of the C.P.C. By order dated 11.03.2014, the learned District Judge allowed the application and permitted parties to adduce evidence before the trial Court. In pursuance thereof, plaintiff examined Nakhate Shyamprasad Vitthalrao, who was Power of Attorney Holder of plaintiff Math and was authorized to depose on behalf of the plaintiff. He had produced original Power of Attorney at exhibit-124. He also reiterated the requirement of

the plaintiff Trust. After considering the evidence on record, by order dated 13.02.2015, the learned trial Judge held that plaintiff has established its bona fide requirement. Aggrieved by that decision, defendant preferred Civil Appeal No.237 of 2015. Both these appeals were dismissed by the learned District Judge. Thus, the Courts below, after considering the evidence on record, have concurrently held that plaintiff has established its requirement and that greater hardship will be caused to the defendant in case the eviction decree is not passed.

10. Mr. Anturkar submitted that the Suit is not covered under Section 13(1)(g) of the Act but is essentially under Section 13(1)(hh) of the Act. Section 13(1)(g) and 13(1)(hh) read thus,

“13. When landlord may recover possession.-(1) Notwithstanding anything contained in this Act but subject to the provisions of section 15 and 15A, a landlord shall be entitled to recover possession of any premises if the Court is satisfied-

(g) that the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held or where the landlord is a trustee of public charitable trust that the premises are required for occupation for the purposes of the trust: or

...

(hh) that the premises consist of not more than two floors and are reasonably and bona fide required by the landlord for the immediate purpose of demolishing them and such demolition is to be made for the purpose of erecting new building on the premises sought to be demolished; or”

11. It has come on record that the suit premises consists of ground plus three floors. In view thereof, it cannot be said that the plaintiff invoked ground under Section 13(1)(hh) of the Act. A perusal of Section 13(1)(g) extracted hereinabove shows that where the landlord is a trustee of the Public Charitable Trust and comes with the case that premises are required for occupation for the purposes of the Trust then the case is essentially covered by Section 13(1)(g) of the Act. In the present case,

after considering the material on record, the Courts have held that suit premises is required for occupation for the purposes of the Trust and decreed the Suit under Section 13(1)(g) of the Act. In view thereof, I do not find that the Courts below committed any error in decreeing the Suit. Equally, I do not find any merit in the submission of Mr. Anturkar that in the facts and circumstances of the present case, Section 13(1)(g) is not attracted and Section 13(1)(hh) is applicable.

12. In the present case, admittedly, plaintiff is a Trust. The learned trial Judge permitted plaintiff to file photocopy of Power of Attorney given to R. Krishnacharya. Witness K. K. Joshi was working as Manager of the plaintiff Trust. As far as witness Nakhate Shyamprasad Vitthalrao is concerned, he produced original Power of Attorney at exhibit-124. In view thereof, I do not find any merit in the submission of Mr. Anturkar that the person, who verified the plaint was not authorized. It also cannot be said that persons who were not authorized gave evidence in favour of the plaintiff. The defendants are not in a position to demonstrate that the findings recorded by the Courts below are perverse, being based upon no evidence or that they are contrary to the evidence on record. Defendants are also not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the Courts below. Merely because on the evidence on record, another view is possible, that itself is no ground for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

13. At this stage, Mr. Gatne orally applies for stay of the eviction decree for a period of 10 weeks from today. He assures that within two weeks from today, defendants and all adult members using the suit premises will give usual undertaking with advance copy to the other side, incorporating therein that,

- (a) they are in possession and nobody else is in possession of the suit premises;
- (b) they have neither created third party interests nor parted with possession of the suit premises;
- (c) they will hereafter neither create third party interests nor part with possession of the suit premises;
- (d) they will clear the arrears of rent, if any, within 2 weeks from today and will go on paying rent till handing over of possession;
- (e) in case they are unable to obtain suitable orders from the higher Court within ten weeks from today, they will hand over vacant and peaceful possession of the suit premises to the respondents;

14. In view thereof, notwithstanding dismissal of the Petition, eviction decree shall not be executed for a period of 10 weeks from today subject to the defendants filing the undertaking in the aforesaid terms and clearing arrears of rent, if any, within two weeks from today, with advance copy to the other side. It is expressly made clear that in case the undertaking is not filed in the aforesaid terms within two weeks from today and/or in case defendants commit breach of any of the conditions of the undertaking, the ad-interim order shall stand vacated without further reference to the Court. In case, defendants are unable to obtain suitable orders from higher Court within a period of ten weeks and do not hand over possession of the suit premises to the respondent, the respondent will be at liberty to proceed with the matter in accordance with law. Order accordingly.

15. List the Petition for 'reporting compliance' on 12.09.2018 at 3.00 p.m.

(R. G. KETKAR, J.)