

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1997 OF 1995
WITH
CIVIL APPLICATION NO. 2274 OF 2017

Ranjanwadi Shikshan Trust and ors. .. Petitioners
vs.

Govind N. Naidu (since deceased
through L.Rs
1A.Ashok G. Naidu and ors.) & ors. .. Respondents

AND
CIVIL APPLICATION NO. 1351 OF 2017

Govind N. Naidu (since deceased
through L.Rs
1A.Ashok G. Naidu and ors.) & ors. .. Applicants/
org. Respondents.
vs.

Ranjanwadi Shikshan Trust and ors. .. Respondents
/Org.Petitioners

Mr.Owen Menezes a/w. Mr. Ibrahim Merchant I/b I.Z.
Merchant for the Petitioners.
Mr. P.B. Shah a/w. Gunjan Shah for the Respondents.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 6th December 2018.

Date of Pronouncing the Judgment: **21st December 2018.**

JUDGEMENT. :-

- 1] Heard the learned counsel for the parties.
- 2] The challenge in this petition is to the judgments and

decrees dated 18th August 1989 and 11th July 1994 made by the Civil Judge Junior Division, Wai (Trial Court) and the IIIrd Additional District Judge, Satara (Appeal Court) dismissing the petitioners (landlords') Civil Suit No. 18 of 1979 seeking the eviction of the respondents (tenants) from the suit premises by resort to the provisions in the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Said Act).

3] Mr. Menezes, the learned counsel for the petitioners, at the outset, made it clear that the petitioners– landlord now press for eviction of the respondents from the suit premises only on the following two grounds, even though, several other grounds had also been raised before the Trial Court and the Appeal Court. The two grounds now being pressed are as follows:

- (a) The acquisition of alternate suitable premises by respondent – tenant (section 13 (1) (l) of the said Act);
- (b) Reasonable and *bona fide* requirement of the petitioners– landlords (sec.13 (1) (g) of the said Act).

4] Mr. Menezes submits that there is overwhelming

material on record to establish that the respondents – tenants have acquired suitable alternate residential and commercial premises in and around the same locality in which the suit premises are situated. He refers to the various Hotels, Canteens, Paan Shops, Lodges, Khanawals and other businesses which the respondents-tenant operate through such alternate and suitable premises acquired by them. He also refers to certain residential premises in which the respondents and their family members reside. On basis of this material as also some additional material which the respondents seek to produce by resort to the provisions of Order 41 Rule 27 of the Code of Civil Procedure, 1908 (CPC), Mr. Menezes submits that the ground of acquisition of alternate suitable premises by the respondents -tenants was made out and the the findings recorded by the two Courts that such ground was not made out suffer from perversity. Mr. Menezes submits that the relevant evidence in this regard has not even been looked into by the two Courts and the impugned judgments and orders are based on surmises and conjectures. Mr. Menezes submits that failure to even look into the relevant material on record or base findings on

mere surmises and conjectures are good grounds to warrant interference with the impugned judgments and orders. Mr. Menezes therefore, submits that eviction of the respondents was required to be ordered on the ground contemplated by section 13 (1) (l) of the said Act.

5] Mr. Menezes submits that there is overwhelming evidence on record to establish the ground of reasonable and bonafide requirement. He submits that the two Courts, on the basis of irrelevancies, surmises and conjectures have completely glossed over this overwhelming evidence on record. He submits that there is clear failure to read the true and correct “objects clause” of the Petitioner-trust. Based upon misreading of this clause, the two Courts have wrongly held that the Petitioner-trust cannot even commence a school for religious instruction or cannot admit students from other Mohallas. He submit that these findings are ex-facie contrary to the evidence on record and therefore suffer from perversity.

6] Mr. Menezes submits that the approach and reasoning

of the two Courts is contrary to the law laid down by the Apex Court and this Court in matters of bonafide requirement. He submits that findings like students may not be interested in joining Petitioner school in this modern age where emphasis is on academics or that the Petitioners lack financial means to commence a school are nothing but surmises and conjectures. Such reasoning is clearly in the arena of irrelevancies as well.

7] Mr. Menezes submits that the findings on the issue of comparative hardships are also vitiated by perversity. There is ample evidence on record to establish that the Respondents have several premises which they use for residential and commercial purposes. The financial capacity of the Respondents is also extremely strong. The Respondents are politically influential persons. All this evidence has been glossed over without assigning any cogent reasons.

8] Mr. Menezes submits that there were no proper denials of the case for bonafide requirement pleaded by the

Petitioners. He submits that evasive denials are no denials. He relies on ***Gian Chand and Brothers and anr. vs. Rattan Lal Alias Rattan Singh – (2013) 2 SCC 606*** to contend that evasive denials are no denials at all.

9] Mr.Menezes also submitted that the evidence produced by the respondents by taking out separate application under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (CPC) may be considered since, this evidence establishes that even in the meantime the respondents have acquired several residential and commercial premises. He relies on ***Syed and Company and ors. vs. State of Jammu and Kashmir and ors. - 1995 Supp (4) Supreme Court Cases 422*** and ***Andisamy Chettiar vs. Subburaj Chettiar - 2016 (1) Bom.C.R. 792*** and ***Surjit Singh and ors vs. Gurwant Kaur and ors. - (2015) 1 SCC 665*** in support of his contention that such evidence should be considered in a matter of this nature.

10] Finally Mr. Menezes relies on (a) ***Shiv Sarup Gupta***

vs. Dr. Mahesh Chand Gupta, (1999) 6 SCC 222; (b) Akhileshwar Kumar and ors. vs. Mustaqim and ors. - (2003) 1 SCC 462; (c) Yogesh Dattaram Pathak vs. Shrikrishna Shriram Joshi - 2003 (3) Mh.L.J. 684; (d) Madhusudan Bhimrao Nandurkar (since deceased) through his L.Rs. Smt.Bhagirathibai Madhusudan Nandurkar & Ors. vs Pursushottamdas Pranjivandas Suratwala (since deceased) through his L.Rs. Smt. Hansaben Purshottamdas Suratwala and ors - 2017 (2) Mh.L.J. 28; (e) Rameshwar N. Parajapl vs. Sundrabai K. Ghadage - 2013 (2) Mh.L.J. 178; (f) Mohd. Ayub and anr. vs. Mukesh Chand – (2012) 2 SCC 155; (g) Vilaschand s/o. Deochand Khedikar (Jain) (Deceased) vs. Shri. Bhimchand s/o. Pannasao Jain - 2011 (6) ALL MR 248; (h) J.Marathe and anr. vs. P.V. Kaloke – 2009 (4) Mh.L.J. 908; (I) Mahadeo Shriniwas Naik vs. Ratanchand Doshi (deceased through L.Rs.) & ors. 2004 (1) ALL MR 100; & (j) Suhasini A. Parab & ors vs. B.H. Khatu and ors. 2003 Vol.105 (2) Bom.L.R.178 in support of his contentions.

11] For all the aforesaid reasons, Mr. Menezes submits that the impugned judgments and decrees be set aside and the suit instituted by the Petitioners be decreed on ground set out in sections 13(1)(1) and 13(1)(g) of the said Act.

12] Mr. P.B. Shah, the learned counsel for the respondents, at the very outset, points out that the respondent – tenants had expressly denied the case pleaded by the petitioners – landlords by filing a detailed written statement. He therefore, submits that this is not a case of any evasive denials or admissions.

13] Mr. Shah submits that there is ample evidence on record to establish that the suit premises were let out for residential as well as commercial purposes. He therefore submits that the ground under section 13(1)(l) of the said Act was not even attracted since such ground applies only to premises let out for residential purposes. He relies on ***Bhavarlal Sukhlal Soni by L.Rs. vs. Lakshminarayan Deo Public Trust -1994 Mh.L.J. 843*** in support of this contention.

14] Mr. Shah submits that the so called requirement of the Petitioners was neither reasonable nor bonafide. He submits that the objects clause of the Petitioner-trust does not even authorize it to commence a school or to admit any students beyond Ranjanwadi. He submits that the Petitioners do not have any existing school and therefore the question of expansion is only hypothetical. He submits that since it was the case of the Petitioners that the suit premises are dilapidated, it is apparent that the suit premises are not suitable to commence any school. He relies on ***Agasara Yallappa vs. D. S. Sathyendra Rao – (2007) 15 SCC 711*** in support of this contention.

15] Mr. Shah, on the aspect of comparative hardships submits that the Respondents are a joint family and therefore merely because some of the members may have acquired alternate premises, the hardships of defendant No. 3 who operates a restaurant on the ground floor and resides on the first are in no manner diluted. Mr. Shah submits that the trustees of the Petitioner are members of the Jamat and the Jamat has several properties on which the Petitioners

can always commence a school if they sincerely desire. He submits that the material produced on record by the respondents may therefore be considered by invoking of provision of Order 41 Rule 27 of CPC.

16] Finally Mr. Shah submits that this is a case where two Courts have recorded concurrent findings of fact and since there is no case of perversity made out, this Petition under Article 227 of the Constitution is liable to be dismissed. He relies on ***Gulshera Khanam vs. Aftab Ahmad - (2016) 9 SCC 414*** in support of his contention.

17] The rival contentions now fall for determination.

18] The petitioner in the present case is Ranjanwadi Shikshan Trust, which is a public trust registered under the Bombay Public Trust Act, 1950 some time in December 1958. However, there are pleadings as well as evidence that the trust was formed and commenced its educational activities some time in the 1940s.

19] The Petitioners are admittedly the owners of two ground plus one storey house properties bearing Municipal Nos. 106 and 107 in properties bearing CTS No. 129 and 130 within municipal limits of Mahabaleshwar (suit premises) which the Petitioners let out to the Respondents some time in the year 1963 on consolidated monthly rent of Rs. 135/-.

20] The Petitioners instituted Civil Suit No. 18 of 1979 seeking eviction of the respondents on several grounds, including grounds that respondents have acquired suitable alternate premises and that petitioners require suit premises reasonably and *bona fide* for the purposes of expanding /establishing a school for imparting religious instructions.

21] The Trial Court vide judgment and order dated 18th August 1989 dismissed the suit and the Appeal Court vide judgment and order dated 11th July 1994 affirmed dismissal by the Trial Court. Hence, the present petition by the petitioner – landlords. The petitioners now press for eviction only on the grounds contemplated under section 13(1)(l) and section 13(1)(g) of the said Act.

22] Section 13(1)(l) of the said Act reads as follows:-

“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-

...
...

*(l) that the tenant after the coming into operation of this Act has built, acquired vacant possession of or been **allotted to suitable residence.**”*

(Emphasis supplied)

23] The pleading in petitioner's Civil Suit No. 18 of 1979 was that the suit premises were exclusively let out for residential purposes. However, it was always the case of the respondents that portion of ground floor premises at and was let out and used for commercial purposes. This position stands substantially established even from the evidence on record. The petitioners had in fact raised the change of user of the suit premises as one of the grounds for seeking eviction of the respondents. However, such ground was negatived by the two Courts and in the present petition, such a ground is not even pressed. All this is sufficient to infer that the suit premises were not exclusively let out for

residential purposes or that the suit premises were let out for partly residential and partly commercial purposes.

24] Section 13(1)(l) of the said Act *inter alia* provides that the landlord shall be entitled to recover possession of any premises if the Court is satisfied that the tenant after the coming into operation of the said Act has built, acquired vacant possession of or been *allotted to suitable residence*.

25] In ***Gajanand vs. Rashtriya Girni Kamgar Sangh – 1982 (1) BomC.R. 259*** and ***Dattatraya Pandit Kharote vs. Pandurang Maruti Jadahv – 1991 Bom. R.C. 60***, the two learned Single Judges of this Court had taken a view that the provision in section 13(1)(l) of the said Act applies only to premises taken on lease for residential purposes. However, in ***Madhukar Vishnu Sathe vs. Vithoba Ramji Thorat – AIR 1992 Bom. 272***, another learned Single Judge of this Court took the view that the provisions in section 13(1)(l) of the said Act will also apply to premises taken for commercial purposes. This conflict was noted by yet another learned Single Judge of this Court (Srikrishna J., as His Lordship then

was) and a reference was proposed to the Division Bench in case of *Bhavarlal (supra)*.

26] In *Bhavarlal Soni (supra)*, this Court after consideration of the conflicting views held that *Madhukar Sathe (supra)* does not lay down the law correctly & that *Dattatray Kharote (supra)* & *Gajanand (supra)* have correctly stated the legal position that provisions in sec.13(1)(l) of the said Act will apply only to premises let out for residential purposes.

27] The issue as to whether the provisions of section 13(1)(l) of the said Act will apply to premises which are let out partly for residential purposes and partly for commercial purposes was not even raised by Mr. Menezes in the present petition. This was possibly because a partial eviction decree might not have served the purpose of the petitioner trust of expanding or establishing a school for imparting religious instructions. Accordingly, at least in this matter, it will not be appropriate to go into the issue as to whether provisions in section 13(1)(l) of the said Act apply to premises which may have been partly let out for residential purposes and partly

for commercial purposes. Rather, in the present case, it will be safer to follow the ruling in *Bhavarlal Soni (supra)*. Accordingly, Mr.Menezes's first contention seeking eviction of the respondents on the ground contemplated under section 13(1)(l) of the said Act, will have to be rejected.

28] The petitioners also seek eviction of the respondents on the ground that the suit premises are reasonably and *bona fide* required for occupation by themselves or by any person whose benefit the premises are held or where the landlord is a Trustee of a Public Charitable Trust and the premises are required for occupation for the purposes of Trust. This a ground contemplated by section 13(1)(f) of the said Act.

29] Section 13(1)(g) of the said Act reads as follows:

“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 a public charitable trust that the premises are required for occupation for the purpose of the trust;

30] There is absolutely no dispute that the petitioners are a Public Charitable Trust and therefore, if they are able to establish that the suit premises are required for their occupation for the purposes of the Trust, then, the petitioners could be entitled to a decree of eviction on the ground as contemplated by section 13(1)(g) of the said Act. No doubt, such requirement will have to be reasonable and *bona fide*.

31] In the plaint, the petitioner trust has averred that it is engaged in the work of imparting religious education to boys. It is stated that in the year 1963 the activities of the trust were few and the petitioners was therefore, not in grave need of the suit premises which were consequently let out to the respondents for residential purposes. However, the respondents commenced hotel business in the suit premises. The petitioners have pleaded that main object of the trust was to give religious education to Muslim boys and to make

them Maulavi, Hafiz and Kazi. There was no provision for imparting such education in Mahabaleshwar and the petitioner trust was the only Muslim community trust imparting such education. The petitioner has also pleaded that day by day the activities of the trust are progressing and the scope of work is increasing. The petitioner has pleaded that number of boys are also taking religious education as well as education of Arabic language. The petitioners had pleaded that petitioners therefore require the suit premises not only to impart education but also to provide facility of hostel for outstation students. Petitioners have also pleaded that on account of lack of space they are unable to progress or expand & even have to deny admission to students.

32] The petitioners have further pleaded that the respondents are not at all in need of the suit property because they neither reside nor use the same. The petitioners have pleaded that the respondents have purchased their own properties and are residing there. The petitioners have pleaded that the respondents have illegally sub-let portions of suit premises because they are not in need of the same.

The petitioners have pleaded that they do not own any other property and therefore, they are in dire need of the suit premises. They pleaded that in contrast, the respondents have several other properties in Mahabaleshwar for purposes of residence as well as business in which they are actually reside and carry on business. Therefore, if eviction of the respondents is ordered, there will be no inconvenience to the respondents. However, if the eviction is not ordered the petitioners will face great inconvenience and irreparable loss which cannot be compensated in terms of money. The petitioners therefore pleaded that greater hardships will be caused to them than the respondents.

33] The petitioners, on the basis of the aforesaid pleadings, applied for decree of eviction on the grounds that they reasonably and *bona fide* require the suit premises for their occupation for the purposes of trust.

34] The respondents filed written statement in which they stated that the suit premises are located on properties owned by Ranjanwadi Mosque and names of the seven Trustees of

the Mosque have been recorded on the property card extract. However, they pointed out that the said Trustees have not filed the suit for eviction and therefore, the same is not maintainable.

35] The respondents have also pleaded that the suit premises were let out to Govind N. Naidu who was the Manager of respondents joint family and the suit premises were taken on rent for both residential as well as commercial purposes. The respondents have denied that the main object of the petitioners trust is to give religious education to the children in the society and have asserted that the suit premises are owned by a public Mosque whose main object is prayers. The respondents have pleaded that the petitioners have established not a single school or hostel and there are no children seeking admission with the petitioners. On this basis, the respondents have contended that there are no bona fide in the need now pleaded by the petitioners. The respondents, at paragraph 9 of their written statement have pleaded that the “*respondents will not get another premises for residing and carrying out business*”. Therefore, more

hardship will be suffered by the defendants. The respondents have also pleaded that the petitioners trust was and is never having any provision for education and the petitioners' submission that the trust is in need of premises for school is not true but fraudulent. The respondents have further pleaded that the petitioner trust is only a Mosque and there is sufficient place for saying prayers and therefore, the case that suit premises are required for school is “*only scam*”.

36] From the perusal of the pleadings, it is apparent that the petitioners have pleaded sufficient facts, which, if established, will entitle them to seek a decree of eviction on grounds contemplated by section 13(1)(g) of the said Act.

37] However, Mr. Menezes is not right in his submission that the respondents have not denied the pleadings of the petitioners or that the respondents' denials are quite evasive and therefore, the suit for eviction ought to have been decreed on the ground that such denials are not at all denials in the eyes of law. In *Gian Chand (supra)*, the Apex Court has no doubt held that a defendant is obliged to deal

with each allegation in the plaint and evasive denials are not denials in the eyes of law. However, on perusal of the pleadings in the plaint as well as in the written statement, it cannot be said that this is a case where the respondents have failed to deny the pleadings on the issue of reasonable and *bona fide* requirement or that the denials are evasive and therefore, no denials in the eyes of law. Therefore, the principle in *Gian Chand (supra)* is not applicable to the state of pleadings in the present case.

38] On behalf of the petitioners, Mohammad Yusuf Daud Attar, one of the Trustees deposed to the pleadings in respect of reasonable and *bona fide* requirement. He deposed that they were about 30 students staying at the Trust initially when it was established in the year 1940. The suit premises came into the possession of the Trust in 1940 itself. However, as number of students were less, the suit premises were let out to the respondents. He deposed that the petitioners have no other property to start a school for religious teaching or to have a hostel for outstation students. He deposed that the petitioner trust has every intention to start teaching and to

impart religious degrees like Moulavi, Hafees, Kari etc.. He has given particulars of what such education involves. He has deposed that in Mohalla, there is no other institute imparting this kind of education. He has categorically deposed that at the time of his deposition, there are about 80 students taking education with the trust. About 200 students from Gouri Mohalla, Nakinda, Maharola, Malusar, Bhekavali intend to joining the Trust for such education but the Trust is unable to accommodate all such students for want of space. This witness has deposed that presently they teach the students in Masjid of Ranjanwadi by obtaining permissions from the Masjid Trustees. One Moulavi is engaged for imparting religious education. The premises in the Masjid are not sufficient even for the 80 students presently learning with the trust. Besides, their education is constantly disturbed at the time of prayers at Masjid five times in a day. He has deposed that in case the petitioners do not secure the suit premises, they will not be in a position to continue with imparting education to the students.

39] Mohammad Yusuf Daud Attar (PW-1) has also deposed

very clearly to the several premises acquired or owned by the respondents in which they reside and / or carry on their businesses like Hotel Poonam, Poonam Lodge, Lokapriya Khanaival etc. He has deposed to the financial status of the respondents and even produced documents/property extract in respect of businesses carried out by the respondents.

40] In the cross-examination of the PW-1, the case set out by the respondents is that the respondents were having joint family in the year 1963 and thereafter solely and gradually the brothers started separate businesses. In the cross-examination, PW-1 has given details about schools in nearly area imparting elementary religious education. Thereafter, some suggestions were put to this witness about objects of the Trust being amended and that the figure that 200 students intend to join the school being fictitious. Significantly, no suggestions were put to this witness that presently the trust was not engaged in any activities of imparting religious education to students or that the trust was not presently training 80 students at the mosque. This is significant because the respondents, in their pleadings

virtually denied that the petitioner trust was engaging in any kind of educational activity and even the Trial Court has, in the impugned judgment and decree at one stage observed that the petitioner Trust is not engaged in any religious educational activity whatsoever.

41] The petitioners also examined Gajanan Chitnis (PW-2) as their witness, but his evidence is really not relevant on the issue of reasonable and *bona fide* requirement of the petitioners. This witness was examined in the context of various other grounds like change of user etc., which were raised by the petitioners in their suit. Significantly, no questions were posed to this witness, who was admittedly a B-Civil Degree Holder and RCC Designers, Engineers, contractor and Consultant as to whether the suit premises were suitable for establishing of a school to impart religious training. This was relevant because now Mr. Shah contends that the suit premises are dilapidated and therefore not suitable to commence any school or hostel.

42] The petitioners also examined Hasan Alli Warunkar

(PW-3) who clearly deposed to the population of the Muslim Community in village and the fact that the petitioners were indeed engaging religious educational activities in the Masjid premises. This witness deposed that he had himself approached the Ranjanwadi Masjid seeking permission to allow the students to study Kuran. He deposed that the Trustees were not admitting students because there was shortage of space and the Trustees even promised this witness to admit the students from this witness's village once they acquire suit premises. He deposed that for want of premises, the students of his village cannot get education, which is being imparted by the petitioner trust. In the cross-examination, there was no much dent to his deposition.

43] The petitioner trust also examined Maulana D. Ansari (PW-4), a Teacher, who has deposed in great details as to the religious teaching activities carried out by the petitioner trust. He has stated that he actually teaches about 70 students at the Masjid premises. He has deposed to interruptions on account of prayers which are held five times in a day. He has given details about the size and dimension

of the premises available at the Masjid and he has also deposed that the students cannot be accommodated in the Mosque at Namaz timing. He has deposed that Masjid premises are not at all sufficient for education of the 70 students who are all residents of Ranjanwadi. He has deposed that the students from villages of Machutar, Nakinda, Malusar, Bhekavali, Marola had come to him for allowing them to take education in the Masjid but he was not able to permit them on account of shortage of space. He deposed to his qualification for imparting religious training. Though, PW-4 was cross-examined, there was really no dent to his deposition.

44] Ashok G. Naidu deposed on behalf of the defendant No.1, heirs of defendant No.2 and defendant No.3. Significantly, though it was stated that it is defendant No.3 who is running the hotel from the suit premises and the defendant No.3 is in dire need of the suit premises, the defendant No.3 did not step in the witness box. Ashok Naidu is the son of defendant No.1. He has deposed on several aspects. On the aspect of reasonable and *bona fide*

requirement this witness has stated that even the Masjid property is in fact owned by the petitioner – trust and the same is sufficient for their purposes. *He has also deposed that need of the petitioners will be satisfied if that can construct the three rooms on 1st floor of C.T.S. No. 130 (one of the suit premises) and that the petitioners do not need the remaining suit premises for purposes of their school.* He has also deposed that there are some other schools in the locality and it is not within the jurisdiction of the petitioner school to give education of Kari, Muftim, Moulavi. He has also deposed that the petitioners will not be able to get students for such studies and they will not be able to afford the financial expenses involved for imparting such studies. He has deposed that it will be impossible for the petitioner to get more than two to three students for studies from places like Machutar since the distance between Machutar and Ranjanwadi is about 6 Kms. *He has deposed that the petitioners will need only two to three rooms for their study, meaning starting a study course.* He has then deposed that *first and ground floor of the suit premises, I.e, CTS No.129 is in tenantable condition.* He has also deposed that the ground

floor on CTS No. 130 is also in tenantable condition. He has deposed that the repairs carried out by the respondents after notices were received from the Municipal Corporation. He has deposed that the premises in CTS No. 129 are in good condition. He has deposed that walls of Kitchen premises situated in CTS No. 130 have no cracks and they are in good condition. He has deposed that the staircase to the first floor has constructed in stone. He has deposed that there is wooden railing to the staircase which was little bit damaged but is now repaired. All this is relevant because now the respondents contend that the suit premises are dilapidated or not suitable for use for starting school to impart religious instructions.

45] The witness Ashok Naidu in his cross-examination had admitted that there is Lokapriya Eating House in the suit premises. *He admitted that he has Poona Hotel and his brother Dinesh had Shere Punjab at Mahabaleshwar. He admitted that Shere Punjab had permit room though he denied suggestion that this Hotel had 16 to 25 well furnished rooms. He admitted that his uncle Laxman who died in the year 1977*

had got property in Mahabaleshwar. He admitted that even defendant No.2 had property in Mahabaleshwar on which he had erected a building 7 years ago. He admitted that he has Country Liquor Shop at Mahabaleshwar in rented premises since 1983. He admitted that his Uncle Sambhaji Nagappa runs Hotel Blue Heaven since last 15 to 16 years. He admitted that Himalaya Ice-factory is owned by Shivaji. He admitted that the petitioners are an educational Trust. He however denied that Ranjanwadi Masjid does not belong to the petitioner trust or that there is no facility for teaching Arabi language or imparting education of Kuran. He stated that he does not know whether the students accommodated in the premises of Masjid, for imparting education of Kuran. Finally, he stated that it does not correct that the petitioner trust requires whole of the building.

46] The purpose for referring to the aforesaid depositions, is not to reassess or reevaluate the evidence on record. The only purpose for reference is to note that all such evidence on the issue of *bona fide* requirement and comparative hardship has virtually been ignored by the two Courts, which proceeded to

deny the the petitioners decree of eviction on the ground of reasonable and *bona fide* requirement by adverting to some completely irrelevant considerations and at times even misreading, if not misconstruing the evidence on record.

47] From the impugned judgments and decrees it is evident that the decree of eviction on the ground of reasonable and bonafide requirement has been denied to the Petitioners on grounds that the objects of the Petitioner trust do not authorize commencement of a school or in any case admission of students beyond the Ranjanwadi Muhalla; that the Petitioners presently have no school and therefore there can be no question of any expansion; that the Petitioners have no financial capacity to commence or expand the school; that since there are several schools imparting elementary education in Mahabaleshwar, there will be no students who will enroll themselves in Petitioner school; there is no necessity of any school to impart higher religious instruction at Mahabaleshwar taking into consideration the population of Muslims in Mahabaleshwar; that in todays world it is unlikely that students would prefer religious

instructions to academic education which is necessary “*to live life*”; that since there is no school, the question of hostel is only hypothetical and the Petitioners ought not to be “*worried about commencing a hostel*”.

48] On the aspect of comparative hardships, the Courts have held that though the respondents have several properties and businesses but since the petitioners have failed to allege that “*particular defendant has got such and such property and carrying out business and resides somewhere*” any decree for eviction will cause hardships to the respondents who will have to ultimately stop their business and earnings. On this basis, the issue of comparative hardship had been answered in favour of the respondents.

49] In the written statement filed by the respondents, there was a vague denial to the specific case pleaded by the petitioner that objects of the petitioner trust authorised the petitioner trust to undertake religious educational activities. The Appeal Court after adverting to application of petitioner

trust for registration of the Trust at Exh-100 has quoted only one of the objects of the petitioner trust namely to defray the expenses for the Masjid and to spend 1/4th of its total income for the educational purposes of the students.

50] Though the entire record was scanned, the learned counsel for the parties were unable to point out from where the Appellate Court quoted the aforesaid object of the petitioner trust. The respondents have themselves produced on record documents relating to registration of the petitioner trust, in which, the following two objects have been specified.

- (i) To make arrangement for educating Muslim boys for Ranjanwadi;
- (ii) To meet the expenses of the Mosque at Ranjanwadi;"

51] The Trial Court and the Appeal Court have returned perverse findings to the effect that the objects of the petitioner trust did not entitle the petitioner trust to undertake any religious educational activities. Since, one of the objects of the trust is to make arrangement for education

of the Muslim boys for Ranjanwadi, such object would obviously entitled the petitioner trust to undertake activities of imparting religious education. Besides, the evidence on record overwhelmingly bears out that the petitioner trust since 1940 was already engaged in this kind of activity. It is true that the trust may have been registered in the year 1958, but the objects clause very clearly entitles the petitioner trust to undertake such activities or to continue to undertake such activities.

52] It is apparent that the two Courts have referred to some objects clause which is not even a part of the record or in any case, the learned Trial Judge, has only looked at the second object of the petitioner trust, i.e., meet the expenses of Mosque at Ranjanwadi. The finding, that because the object of the Trust refers to making arrangement for educating the Muslim boy of Ranjanwadi and therefore, the petitioner trust will not even been entitled to admit students from other Mohalla, is again, vitiated by perversity.

53] On such basis, the two Courts were not at all entitled to

deny the petitioners a decree of eviction on the ground of reasonable and *bona fide* requirement. Incidentally, it is necessary to mention that the respondents, in their pleadings had not even raised such contentions. No questions were posed to any of the witnesses on such issues. Rather, D.W. 1 the only witness who deposed on behalf of Respondents stated that only 2 to 3 rooms out of the suit premises would suffice to set up the proposed school. The two Courts were therefore, clearly in error in denying a decree of eviction to the petitioners on the ground that all the objects of the petitioner trust do not entitle the petitioner trust to impart religious education to Muslim boys.

54] The two Courts also misdirected themselves in law in going into the issue as to whether the petitioners will get enough students to attend their school, should they secure suit premises and thereafter actually commence the school or hostel facilities therein. The two Courts clearly misdirected themselves into surmising and conjecturing that Muslim students will not be interested in joining such a school but would rather prefer to join studies in which academic

instruction is imparted. The two Courts also misdirected themselves in proceedings on assumption, which is more in the nature of surmises and conjectures that the petitioners will not have financial capacity or means to start a school of the nature which they proposed to start.

55] The two Courts have failed to even advert to, much less evaluate and assess the evidence on behalf of the petitioner in relation to the issue of reasonable and *bona fide* requirement. The evidence of the petitioners was quite consistent with the case pleaded by them. The evidence of Ashok Naidu, in fact, in no manner refutes the petitioners' case, but rather suggest that the petitioners can commence school in a portion of the suit premises. The respondents' witness Ashok Naidu suggest that 2-3 rooms from out of suit premises will suffice the petitioners need. This means that even this witness does not dispute about the needs of the petitioner trust. This witness also does not comment upon reasonableness or *bona fides* of such need but merely states that such needs can be satisfied by commencing a school in 2-3 rooms from out of suit premises.

56] It is almost settled position in law that it is not for the tenants to dictate or even to advise the landlords as to the manner in which they should use their premises. This is also not a case where the respondents, right in the beginning offered to suffer a partial decree. In any case, from the material on record, it is quite clear that the petitioners would require the entire suit premises, if they have to start a school and hostel facility. Partial eviction in this case would actually not suffice the purpose of the petitioners.

57] Mr. Shah did contend that since it was the case of the petitioners themselves that the suit premises were dilapidated and since the witness on behalf of the petitioners refused to state whether the petitioner desire to repair or reconstruct the suit premises, this court should hold that the suit premises were not at all suitable for starting of a school. Mr. Shah submitted that to start a school in such premises would amount to endangering the life of students.

58] In the facts of the present case, it is not possible to accept Mr. Shah's aforesaid contention. In the first place,

there were no pleadings in the written statement to the aforesaid effect. The witness on behalf of the respondents Ashok Naidu has not only deposed that a school can be started in 2-3 rooms within the suit premises, but, has further deposed to the excellent state of suit premises. The witness adverted that Defendant No. 3 was running a hotel/restaurant on the ground floor and residing on the front floor. He has, as noted earlier, deposed that the suit premises are in good order and therefore, there is no case made out for ordering eviction of the respondents on the ground that some notice has been received from the Municipal authorities. The two Courts have accepted this position and therefore, such contention, which was perhaps for the first time raised in this Court, lacks merit and deserves no acceptance.

59] In *Agasara Yallappa (supra)* the Apex Court has held that suitability of the premises is to be judged with a view to find out whether the requirement of the landlord was *bona fide* and reasonable. If the premises itself were not suitable for the purpose for which eviction was sought, then it follows that the requirement itself was not *bona fide*. In the present

case, the respondents nowhere pleaded that the suit premises were not suitable for starting of a school to impart religious instructions. Ashok Naidu, the sole deponent on behalf of the respondents in fact stated that the school could be started in 2-3 rooms from out of the suit premises. He also deposed that the suit premises are in very good order. In the absence of any pleadings and proof that the suit premises were not suitable to start a school or a hostel, this authority is of no assistance to the respondents.

60] Besides, in *Agasara Yallappa (supra)* the landlord being an Orthopedic Surgeon had applied for eviction of Dhobi from premises which were so small that it was impossible to believe that the landlord could have commenced Orthopedic surgery and consultancy in the suit premises. The fact situation in the present case is entirely different. As the suit premises comprises two houses having ground plus one storey each not to mention the land in and around the same, the decision in *Agasara Yallappa (supra)* is therefore, not clearly inapplicable to the facts of the present case.

61] The approach and reasoning of the two Courts on the issue of reasonable and bonafide requirement is contrary to several decisions of the Apex Court and this Court.

62] In *Shiv Sarup Gupta (supra)* the Apex Court has held that what is *bona fide* requirement may not have been defined in the Act. However, the words “*need*” and “*require*” both denote a certain degree of want with a thrust within demanding fulfillment. Bona fide or genuine need and the landlord are two expressions which are interchangeable in practice and carry same meaning. They refer to a state of mind. Requirement must not be a mere desire. The degree of intensity contemplated by “*requires*” is much higher than mere desire. The phrase “*requires bona fide*” is suggestive of legislative intent that a mere desire which is the out come of whim or fancy, is not taken note of by rent control legislations. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek

ejection of the tenant. In such a situation, the judge of facts should place himself in the armchair of the landlord and then ask the question to himself whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bona fide. Once the Court is satisfied of the bona fides of the need of the landlord for the premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the Court. The Court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose, the Court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.

63] In *Rameshwar Prajapal (supra)*, the learned Single Judge of this Court held that it is for the landlord to consider what is his *bona fide* requirement and it is not for the tenant or for the Court to dictate what is bona fide requirement of the landlord. The learned Single Judge relied upon the ruling of the Apex Court in ***Prativa Devi vs. T.V. Krishnan – 1987 DGLS (Soft) 321***, in which, the Apex Court had made the following observations:

“it is well settled law that the landlord is the best Judge of his residential requirement and has a complete freedom in the matter. It is no concern of the Courts to indicate to the landlord how and in what manner he should live or to prescribe for him a residential standard of their own. The High Court was not justified in giving such a gratuitous advice to her which was uncalled for. There is no law which deprives the landlord of the beneficial enjoyment of his property.”

64] In *Mohd. Ayub (supra)*, the Apex Court has reiterated that the landlord need not be a dire necessity. Similarly, the greater affluence of the landlord is also an irrelevant consideration. The Apex Court held that the Court cannot direct the landlord to do particular business in particular area or imagine that he could profitably do a particular business rather than the business she proposes to start. It is for the

landlord to decide which business he wants to do and Courts cannot advise in such matter. In this case, the Apex Court also noted that there was nothing on record show that during pendency of the litigation, the tenant made any genuine attempts to find out any alternate accommodation. The Apex Court in fact set aside the perverse findings of the Courts below on the aspect of the comparative hardship.

65] In *Vilaschand Khedikar (Jain)* (*supra*), the learned Single Judge of this Court held that the plea of comparative hardship must be raised by the tenant in the written statement and then only the trial Court is obliged to make an inquiry.

66] In the present case, there is overwhelming material on record which establishes that the issue of comparative hardship is required to be decided in favour of the petitioners. The Trial Court has virtually proceeded on the basis of surmises and conjectures on the issue of comparative hardship. Merely because the petitioner may not have specified which of the respondents had acquired which

alternate premises, the two Courts were not at all justified in even not advertng to the overwhelming material on record, which establishes the number of premises were acquired both for residential as well as commercial purposes by the respondents. In fact, there are admissions in the deposition of Ashok Naidu, the sole witness who deposed on behalf of the respondents as to acquisition of such premises for both residential and commercial purposes. All these evidence has not even been looked into whilst deciding the issue of comparative hardship. From the material on record, it is apparent that the respondents are much more affluent than the petitioner trust.

67] In *Mahadeo Shriniwas Naik (supra)* the learned Single Judge of this Court (Dr. D.Y. Chandrachud,J., as His Lordship then was) as *very clearly held that the landlord requiring suit premises for expansion of his business and it is not necessary for the landlord to produce material to demonstrate his financial capacity for the expansion of his business.* The two Courts in the present case by holding that the petitioner trust may not have the financial capacity to

start such a school or construct a hostel have clearly mis directed themselves in law. Their view is in direct conflict with the decision of this Court in *Mahadeo Naik (supra)*.

68] In *Suhasini A. Parab (supra)*, the learned Single Judge of this Court (Mr. A.M.Khanwilkar, J., as His Lordship then was) has clearly held that while considering the issue of comparative hardship the Court may also take into account the financial position of the party. However, the financial constraints of the tenant cannot be the only basis on which such issue can be answered. *The Court has to take into account all the attending circumstance and if the tenant has failed to plead and prove the fact that it is impossible to get alternate accommodation in same locality or for that matter in the same city, then the issue will have to be answered against the tenant.* In the present case, the material on record indicates that the respondents are much more affluent than the petitioner trust. Besides, the witness on behalf of the respondent had admitted to the acquisition of several premises through which they undertake several business like hotels, lodgings, permit rooms, country liquor hotel etc.

69] From the perusal of the impugned judgments and orders, it is clear that the two Courts misdirected themselves in law and proceeded on the basis of surmises and conjectures. The reasoning for denial of decree in favour of the petitioner – landlords are based upon clear irrelevancies and are contrary to several decisions relied upon by the petitioners, some of which, have been referred to above.

70] In *Shiv Sarup Gupta* (supra) the Apex Court has held that jurisdiction under section 115 of CPC can be exercised where the Courts ignoring weight of evidence, proceed on a wrong premise of law or deriving such conclusion from the established facts as betray a lack of reason and/or objectivity would render the findings vulnerable. The Apex Court has observed that the judgment leading to a miscarriage of justice is not a judgment according law.

71] In ***Achutanana Baidya vs. Prafulla Kumar Gayen and ors. - (1997) 5 SCC 76*** the Apex Court has held that the High Court in exercise of its jurisdiction under Article 226/227 of the Constitution of India can interfere with the

findings of fact arrived at by the subordinate court if not based on any evidence or based on manifest misreading of the evidence. In the present case, on the issue of objects of the petitioner trust, the findings recorded by the two Courts are based on no evidence or in any case based upon manifest misreading of the evidence. Clearly, therefore, such perverse findings warrant interference under Article 227 of the Constitution of India.

72] In *Gulshera Khanam (supra)* which was relied upon by Mr. Shah, the learned counsel for the respondents, the Apex Court has reiterated that the landlord is sole judge to decide as to how much space is needed to start or expand any of his/her activity. Since, the High Court had overlooked this aspect and interfered with findings recorded by the two Courts, the Apex Court held that the concurrent findings of Courts below could not be interfered with under Article 227 of the Constitution unless the same are perverse to the extent that no judicial person could ever reach to such conclusion or the findings are against any provision of law or contrary to the evidence adduced.

73] The aforesaid decision, in fact assists the case of the petitioners rather than the case of the respondents. This is because in the present case, the two Courts have virtually usurped the prerogative of the landlord to decide how much space is needed to start or expand the activity proposed. Besides, this is the case where the findings recorded by the two Courts are vitiated by perversity in the sense that they are contrary to law as well as the evidence on record. The findings are based upon manifest misreading of the evidence on record and also are vitiated by the vice of not even advertent to the overwhelming evidence on record.

74] The petitioners as well as the respondents have taken out applications under Order 41 Rule 27 of the CPC seeking to produce additional evidence at this stage. The petitioners have placed on record the material to indicate that the respondents have acquired several other premises for the purposes of residence as well as business. The respondents have sought to produce the material to show that the Trustees are nothing but the members of the Muslim Jamaat and since the Muslim Jamaat has several other properties

from where the petitioner can start a school, their requirement is not reasonable or *bona fide*.

75] Having considered the respective applications, according to me, there is no necessity for adverting to this additional evidence. This is because in the present case, there is enough material on record to not only establish the reasonable and *bona fide* requirement of the petitioners, but also to decide the issue of comparative hardships against the respondents and in favour of the petitioners. The respondents in their application or for that matter in their reply to the application made on behalf of the petitioners have not produced any material to indicate that the petitioner trust owns any other property from where they can start the school.

76] To say that the Trustees of the petitioners are also members of the Jamaat and that Jamaat had several other properties, is certainly an irrelevant consideration. As long as, there is no material produced on record, this Trust itself owns any suitable property from where it could start the

school, the issue of comparative hardship certainly cannot be decided in favour of the respondents. Besides, in the present case, considering the number of business activities which the respondents carry out through various premises located in Mahabaleshwar itself, the issue of comparative hardship will have to be decided against the respondents. Civil Applications under Order 41 Rule 27 of the CPC are therefore, disposed of.

77] For all the aforesaid reasons, the impugned judgments and decrees dated 18th August 1989 and 11th July 1994 are set aside and the respondents are ordered to be hand over the vacant and peaceful possession of the suit premises to the petitioners on the ground that the petitioners reasonably and *bona fide* require the same within a period of three months from today.

78] Rule is accordingly made absolute in terms of prayer clause (a) of this petition. The Civil Applications are also disposed of.

79] Pending Civil Applications, if any, do not survive and the same are disposed of.

80] There shall be no order for costs.

(M. S. SONAK, J.)