

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

**919 CIVIL REVISION APPLICATION NO.13 OF 2017
WITH
CA/9145/2017**

JAGDISH LAXMINARAYAN OZA AND OTHERS
VERSUS
DEVANG KOSHTI SAMAJ MANDIR TRUST THROUGH TRUSTEES
GULAB SAKARAM DHOLE AND OTHERS

...
Advocate for Petitioners : Mr. V. J. Dixit, Senior Counsel h/f
Mr. S. S. Kulkarni
Advocate for Respondent : Mr. V. S. Bedre

CORAM : M. S. KARNIK, J.

DATE : 22nd AUGUST 2019

PER COURT

Heard learned senior counsel for the petitioners and learned counsel for the respondent.

2. The petitioners are tenants of the suit properties, which comprises of two rooms admeasuring 1000 Sq. ft. The respondent/landlord is Devang Koshti Samaj Mandir Trust, registered under the Bombay Public Trust Act. The landlord issued a notice terminating the tenancy of the petitioners. The suit was filed for eviction on the ground of default in payment of rent and for *bona fide* requirement of the Trust under section 13(1)(g) of the Bombay

Rent Act. The Trial Court decreed the suit on the ground of default in payment of rent as well as *bona fide* requirement. The Trial Court further came to the conclusion that more hardship would be caused to the landlord/Trust if the decree is not passed in favour of the landlord.

3. The petitioners preferred an appeal before the first Appellate Court. The said appeal came to be dismissed.

4. Learned senior counsel for the petitioners invited my attention to the plaint. According to him, the landlord/Trust did not state any specific details or specifically pleaded as to what is the *bona fide* requirement for which the premises are required. Inviting my attention to para No.4 of the plaint, learned senior counsel submits that the landlord only pleaded that the plaintiff being a public trust, the premises in question are required for the *bona fide* use of the plaintiff Trust for the members of its community. Learned senior counsel would submit that mere plea in the plaint that the premises are required bonafide for the use and occupation of the plaintiff is

not sufficient. He would invite my attention to the findings recorded by the courts below which proceeds on the footing that the premises in question are required by the landlord/Trust for constructing a Marriage Hall for use of other religious activities of the community also. He further submits that such plea is not found in the plaint. He pointed out that this has come for the first time in the deposition of PW-1 Gulabrao.

5. Learned senior counsel would further urge that apart from the evidence on record not being sufficient to prove the case of reasonable and *bona fide* requirement of the landlord/Trust, even as per the own case of the landlord/Trust, the premises in question are required for constructing a Marriage Hall. It is therefore his submission that the landlord/Trust wants to change the user of the said premises from residential to non-residential. It is his submission that such a conversion is impermissible in view of Section 25 of the Bombay Rent Act. Relying on the decision of the Apex Court in the case of ***Bapubhai Mohanbhai Vs. Mahila Sahakari Udyog Mandir,***

reported in (1975) 2 SCC 492, learned senior counsel would submit that, as per Section 25(1), landlord/Trust cannot convert use of premises from residential to non-residential purpose. He therefore submits that there can be no decree on the ground of *bona fide* requirement as the residential premises are intended to be used for constructing a Marriage Hall. The said requirement would be contrary to the statutory provisions contained in Section 25 of the said Act and therefore, also the plea under Section 13(1)(g) must fail according to him.

6. Learned senior counsel would also rely upon the decision of this court in the case of ***Bandu Ravji Nikam Vs. Acharyaratna Deshbushan Shikshan Prasark Mandal, reported in 2003(3) Mh.L.J. 472*** to support his submission. In the present case as the said premises are required for constructing a Marriage Hall. According to him, this is a clear case of conversion of residential use to non-residential use, and therefore also Courts below have committed an error in decreeing the suit.

7. Learned senior counsel would then invite my attention to the deposition of PW-1. Learned senior counsel would submit that in view of deposition of PW-1, it is more than clear that the premises in question are intended to be used for a commercial purpose, as a Marriage Hall would necessarily earn income for the Trust.

8. Learned senior counsel also assailed the orders passed by the Courts below decreeing the suit on the ground of default in payment of rent. It is his submission that a composite notice which form the basis for filing the suit is not recognized under Section 12(3) of the said Act.

9. Per contra, learned counsel for the respondent invited my attention to the findings of the Courts below. He would submit that the premises in question are required for the purpose of Trust's *bona fide* use and occupation. He would invite my attention to the evidence of PW-1 who has deposed about the *bona fide* and reasonable requirement of the Trust. Learned counsel also relied upon the decision in the case of **Bandu**

Ravji (*supra*), to submit that eviction of the petitioners from the premises in question can always be sought to construct a Marriage Hall for benefit of the community where there is no intention on the part of the Trust to derive any profit income or from the said user. He would submit that the hall in question is intended to be used for marriage and other religious purpose. He would submit that the Courts below have concurrently found in favour of the respondent/Trust, and therefore, the scope of this Court to interfere with the findings of the Courts below is very limited.

10. I have heard learned counsel. In my opinion, the impugned order does not call for any interference for the following reasons.

11. The respondent is a registered public trust. In the plaint, it is pleaded that the plaintiff Trust requires the premises bonafide for their use and occupation. Learned counsel for the respondent is justified in placing reliance on **Bandu Ravji**

Nikam (*supra*) in which it is held that, for a public charitable trust, the requirement of pleading as well as proof to establish the ground under Section 13(1)(g) of the Act would be different than the one required by any other landlord which is not a public charitable trust.

12. I have gone through the evidence of PW-1. In his deposition, PW-1 has categorically deposed that for the *bona fide* need of the Trust, the premises are required for constructing a Marriage Hall for religious purposes apart from performing *Bhajan* and *Kirtan* etc. From the deposition, it is seen that the said premises is just opposite to the temple of the community. If in such circumstances, the respondent *bona fide* needs the premises for constructing a Marriage Hall and using it for religious and other objects of the community, it cannot be said that the requirement of the respondent is not *bona fide*. There is nothing on record to indicate that the requirement is for earning income. On the contrary, PW-1 in his cross-examination has denied the suggestion that the Trust

wants to construct a Marriage Hall with the object of earning income. This being a position, in my opinion, there is no force in the argument advanced on behalf of the petitioner that the decree is hit by the provisions of Section 25 of the Act. The concurrent finding as regards more hardship to the landlord also does not call for any interference as the same cannot be said to be perverse.

13. Even as regards the issue of default is concerned, the Courts below concurrently found that the petitioners committed default in payment of rent. I have gone through the findings recorded by the courts below. In my opinion, the findings of the Courts below cannot be said to be perverse or unreasonable so as to warrant interference. The present Revision Application is therefore dismissed with no order as to costs.

14. At this stage, learned counsel for the petitioner, on instructions of petitioner No.2 who is present in the court,

requested that he may be granted a reasonable time to vacate the suit premises. The request seems to be reasonable. The petitioners are residing in the suit premises for quite a long time. Learned counsel for the petitioners submits that the petitioners are willing to file the usual undertaking within two weeks from today. Subject to the petitioners filing the usual undertaking to this Court within two weeks from today that they would vacate the suit premises within a period of one year and hand over vacant and peaceful possession of the suit premises to the landlord, one year's time is granted to occupy the suit premises.

15. In view of dismissal of Civil Revision Application, Civil Application No.9145 of 2017 stands disposed of.

(M. S. KARNIK, J.)

vsm/