

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 844/2012

(KIRTIKUMAR CHIMANBHAI PATEL & OTHERS **VERSUS** SHAMRAO SAOJI YELNE & OTHERS)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Harnish Gadhia, counsel for petitioners.
Shri Abhijit Sambaray, counsel for respondents.

CORAM : A.S. CHANDURKAR, J.

DATE : JUNE 24, 2019.

Heard finally with consent of counsel for the parties.

The petitioners are the tenants who are aggrieved by the decree for eviction as passed by the Appellate Court.

The facts relevant for adjudicating the writ petition are that it is the case of the respondents-plaintiffs that they are the joint owners of half portion of House No.139 situated at Bhandara Road, Itwari, Nagpur. The said right was determined in a suit for partition that was filed amongst the family members. The said house was let out to one Chimanbhai Patel and the petitioners herein are his legal heirs. The rent payable was Rs.175/- per month and the plaintiffs were receiving half amount of monthly rent. The plaintiffs sought eviction of the defendants on the ground that the defendants were in arrears of rent for the period from 01.03.1998 to 28.02.2000 and that they had *bona fide* need of the suit premises. According to them, plaintiff nos.1, 2, 4 and 5 were carrying of flower business at rented premises that were owned by the Municipal Corporation. In the year 2003, a notice was issued by the Municipal Corporation seeking to acquire the said premises for widening of the road. Consequently, the premises were acquired

and the shops were also demolished. The said plaintiffs therefore did not have any other place for doing their business. On these counts, suit for eviction came to be filed on 17.03.2001.

In the written statement, the claim as made by the plaintiffs was denied. It was firstly pleaded that the defendants were not in arrears of rent and no notice demanding such arrears was ever issued. It was further pleaded that the need of the plaintiffs was not *bona fide* as the family had other places of business. Greater hardship was likely to be caused to the defendants as they were doing tobacco business as well as other petty business from the suit premises and they had no other place to do business. It was thus pleaded that the suit was liable to be dismissed.

Before the trial Court, the plaintiffs examined the plaintiff no.4 as well as an engineer in support of their claim. The defendants examined defendant no.2 and placed documents on record. The trial Court after considering the said evidence recorded a finding that the defendants were in arrears of rent. However as no notice under Section 15 of the Maharashtra Rent Control Act, 1999 (for short, 'the said Act') was issued, the defendants were not liable to be evicted on that ground. It was however held that the plaintiffs had failed to prove that they required possession of the suit premises reasonably and that their need was *bona fide*. It was also held that greater hardship would be caused to the defendants. Being aggrieved, the plaintiffs filed an appeal and the Appellate Court after re-appreciating the evidence was pleased to hold that the need of the plaintiffs was *bona fide* and that greater hardship was likely to be caused to them if the decree was not passed. After allowing the appeal, the suit for eviction came to be decreed. Being aggrieved, the defendants have filed the present writ petition.

Shri Harnish Gadhia, learned counsel for the petitioners submitted that the Appellate Court erred in recording a finding that the need of the plaintiffs was *bona fide*. Referring to the evidence on record, it was submitted that while the first plaintiff was a paralytic and hence bedridden, the second plaintiff was doing some business. The third plaintiff was in service while the fourth plaintiff had been examined on behalf of all the plaintiffs. The fifth plaintiff was doing flower business at Sitabuldi while the sixth plaintiff was the married sister. In the light of the fact that plaintiff nos.2 to 5 were already doing flower business coupled with the fact that the tobacco business of the defendants was well established, the defendants were not liable to be evicted. According to the learned counsel, there was merely a desire on the part of the plaintiffs to have the suit premises and the need in question was not *bona fide*. There was a distinction between a mere desire and genuine *bona fide* need. In that regard, he placed reliance on the decisions in *S.J. Ebenezer Versus Velayudhan* [AIR 1998 SC 746] and *Baldev Singh Bajwa Versus Monish Saini* [AIR 2006 SC 59]. Mere fact that the premises that were occupied by some of the plaintiffs were required to be demolished could not be said to be a ground to evict the defendants. It was then submitted that the plaintiffs had admitted that in the area where the suit property was located, no flower business was being done and this indicated that the suit premises were not suitable for doing flower business. Since the defendants depended upon the tobacco business, greater hardship was likely to be caused to them if they were evicted. In the light of the fact that the plaintiffs had not given a clear picture about their actual holdings and the places where they were doing business, no decree in their favour ought to be passed. He also referred to the decision

in *Tarachand Hassaram Shamdasani Versus Durgashankar G. Shroff & Others* [2004 Supp. BCR 333] and *Vasant Mahadeo Gujar Versus Baitulla Ismail Shaikh & Another* [2016(4) All MR 174] in that regard. It was thus submitted that the judgment passed by the Appellate Court was liable to be set aside and the suit was liable to be dismissed.

On the other hand, Shri Abhijit Sambaray, learned counsel for the respondents supported the decree for eviction. According to him, the need of the plaintiffs was duly held to be proved. Mere fact that two brothers were doing flower business could not have been a reason for holding that the need of the plaintiffs was not *bona fide*. The premises from where the brothers were doing flower business were required to be vacated as those premises were demolished by the Municipal Corporation for the purposes of road widening. The family itself was doing flower business and the desire to extend the same was *bona fide*. The learned counsel submitted that the defendants had infact purchased half share in the suit building from the brothers of the plaintiffs. This would indicate that even if the defendants were evicted from the half tenanted portion they were not likely to face any hardship and they could continue their business in the portion owned by them. As a result of the decree for eviction only a small portion of the premises that was owned by the plaintiffs would be available for doing business. The trial Court had failed to consider the material on record in the proper perspective resulting in dismissal of the suit. The Appellate Court corrected that error and rightly decreed the suit. It was thus submitted that the Appellate Court having considered the entire material in the proper perspective, the writ petition was liable to be dismissed.

I have heard the learned counsel for the parties at length and I have also gone through the material placed on record. In the plaint, it was pleaded by the plaintiffs that the defendants had become owners of half portion of the tenanted house and they were in occupation of the same. The plaintiffs required the half portion owned by them for doing flower business in the light of the fact that the shops in which plaintiff nos.1, 2, 4 and 5 were carrying on flower business came to be demolished for widening the road. Except that portion, said plaintiffs did not have any other place to do their business. In support of that plea, the plaintiff no.4 examined himself. He deposed that the premises were a double storeyed building. The ground floor was being used for business purpose and the first floor was being utilized for residential purpose. In his cross-examination, the said witness admitted that the plaintiff no.5 was doing business at a flower shop at Sitabuldi. He also admitted that there were no shops selling flowers in the area where the suit premises were located. They were presently doing business in a shop at Itwari that was admeasuring about 12 square feet and that the family required about 1000 square feet area for the shop. The Executive Engineer examined by the plaintiffs deposed that a notice was issued by the Competent Authority for acquiring portion of the plaintiffs' premises for road widening. The area with the plaintiffs was reduced after such acquisition.

On behalf of the defendants, the defendant no.2 came to be examined. He deposed that the family of the defendants had purchased half portion of the suit premises from the cousins of the plaintiffs on 30.05.1988. He further deposed that there was no flower business being done in the area where the suit premises were located. He admitted that the four shop blocks that were with

the plaintiffs came to be demolished and presently there were no shop blocks with the plaintiffs. He also admitted that the total constructed area comprising of the ground floor and first floor was admeasuring 62 square meters and the plaintiffs were concerned only with 31 square meters. He further admitted that the suit premises were suitable for doing business and that the business of flowers was the main source of income of the plaintiffs.

From the aforesaid evidence on record, it can be seen that flower business was the family business of the plaintiffs. The family members were doing said business in about four shop blocks which came to be subsequently acquired and demolished for widening of the road. The plaintiff no.5 alone was having his flower business at Sitabuldi area. The defendants by virtue of purchase of half portion of the building in question were in occupation of 31 square meters area as its owners and were tenants of the remaining 31 square meters. In the light of aforesaid, it can be seen that the plaintiffs required the suit premises for doing flower business and that need has been found by the Appellate Court to be *bona fide*. There is no reason to doubt the *bona fides* of the plaintiffs. By virtue of demolition of the four shop blocks, the area of the plaintiffs was substantially reduced. The family of the plaintiffs consists of five brothers and one sister. One of the brothers doing business at Sitabuldi would not mean that that the need of the family was satisfied. There does not appear to be any reason to deny possession of the tenanted premises to the plaintiffs. It cannot be said that the need of the plaintiffs was merely a desire and that such need was not genuine. The ratio of the decisions relied upon by the learned counsel for the defendants on this aspect therefore do not support his contentions.

On the aspect of hardship, it is rightly submitted that the defendants even after being evicted from the tenanted premises could continue to do their business from the remaining half portion of the building that was owned by them. It was only a question of making some adjustments in that regard. The need of the plaintiffs having been duly proved and it being obvious that the defendants would not be fully displaced from their business indicates that greater hardship would be caused to the plaintiffs if the decree for eviction was not passed. The Appellate Court has rightly held that greater hardship would be caused to the plaintiffs if the decree for eviction was not passed.

Though it was sought to be urged on behalf of the defendants that the flower business was not possible in the area where the tenanted premises was situated on the ground that nobody was doing flower business there, the Appellate Court was justified in observing that it would all the more be necessary and fruitful for the plaintiffs if they start their flower business there. It is for the plaintiffs to decide the nature of business proposed to be done by them in the premises owned by them. The same would therefore not be a reason to refuse any relief to the plaintiffs.

In that view of the matter, it is found that the Appellate Court has rightly taken into consideration the entire material on record before granting a decree for eviction on the ground of *bona fide* need. In absence of any jurisdictional error, there is no reason to interfere in writ jurisdiction. The writ petition is accordingly dismissed with no order as to costs.

The petitioners shall deliver possession of the premises in question to the respondents subject to decision of final decree proceedings in S.C.S. No.57/1977.

Order accordingly.

JUDGE

APTE