

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR**

**WRIT PETITION NO.2040/2017**

Hiralal S/o Ruplal Jaiswal

..Vs..

Sanjay S/o Rajendra Chowksey and another

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

Court's or Judge's orders

-----  
Shri A.M. Ghare, Advocate for the petitioner.  
Shri Mohammad Moin, Advocate for the respondent Nos.1 and 2.

**CORAM : Z.A. HAQ, J.**

**DATE : 8.1.2019.**

Heard.

The petitioner / tenant has challenged the judgment and decree passed by the subordinate Courts concurrently upholding the claim of the respondents / landlord for decree for eviction of the tenant and possession of the suit premises on the ground of *bona fide* need.

The submission on behalf of the tenant is that after the civil suit was decided and appeal was pending before the District Court, Prakash Masram and Akash Darshansingh, who occupied blocks admeasuring 200 Sq. Ft. each as tenant of the plaintiff had vacated the blocks and the block vacated by Akash Darshansingh was again leased out by the plaintiff to Ram. According to the petitioner / tenant, Ramesh Baburao Fule who was occupying block as tenant of the respondents vacated the block in July, 2013 and it is in possession of the landlord. According to the petitioner / tenant, Dr. Milind Mane

who occupied a block admeasuring 300 Sq. Ft. vacated block in 2013 and this block is also in possession of the landlord. The petitioner / tenant had filed an application (Exh. No.25) under Order VI Rule 17 of the Code of Civil Procedure before the District Court which was dismissed by order dated 12<sup>th</sup> February, 2016. This order dated 12<sup>th</sup> February, 2016 is also challenged in this petition. According to the petitioner, the subsequent developments are relevant for considering whether the petitioner is required to be evicted or the need of the landlord is satisfied.

The learned Advocate for the respondents / landlord has pointed out that the claim made by the tenant about the subsequent events is false and mischievous. From the cross-examination of the tenant, it is pointed out that the tenant himself is not sure as to whether the persons who have vacated the premises / blocks were tenants of the respondents or were tenants of uncle of the respondents. It is further pointed out that Prakash Masram occupied a block on the second floor and the block occupied by the petitioner / tenant is on first floor, that the respondents / landlord are also occupying premises on the first floor and the landlord requires the block on first floor.

Both the Courts have recorded that the plaintiff No.2 is married and is residing in rented premises paying rent of Rs.2,000/- per month. The subordinate Courts have recorded that the evidence on record shows that the defendant is having his own house

at Sugat Nagar, Nagpur. The subordinate Courts have recorded that the defendant has admitted in his cross-examination that the landlord is residing in one hall on first floor. The point of comparative hardship is also dealt with. The subordinate Courts have recorded that the tenant has failed to establish that he would suffer greater hardship if decree for ejectment is passed against him and he is evicted from the suit premises.

If the matter is examined in the light of the evidence as considered by the subordinate Courts, it cannot be said that the learned District Judge has committed any error by rejecting the application filed by the tenant seeking permission to amend the written statement. Similarly, it cannot be said that the subordinate Courts have committed any illegality or error of jurisdiction by granting decree in favour of the respondents / landlord. I do not see any reason to interfere with the impugned judgment and decree.

The writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE