

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

WRIT PETITION NO.4265/2017

Smt. Jyoti Wd/o Chandu Kanojiya and others

..Vs..

Shirish S/o Mahadeorao Mahajan

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

Court's or Judge's orders

Shri K.M. Kuthe, Advocate for the petitioners.
Shri A.M. Ghare, Advocate for the respondent.

CORAM : Z.A. HAQ, J.

DATED : 16.7.2019.

Heard.

The respondent / landlord had filed application under the provisions of C.P. and Berar Letting of Premises and Rent Control Order, 1949 (for short “the Rent Control Order, 1949”) seeking permission to terminate the tenancy of the petitioners. House Rent Controller granted permission to the respondent / landlord to terminate the tenancy of petitioners, under Clause 13(3)(i)(ii)(iv) and (ix) of the Rent Control Order. The order passed by the House Rent Controller was challenged by the petitioners before the Additional Collector in appeal which was dismissed. The petitioners have challenged the orders passed by the Authorities under the Rent Control Order, 1949 before this Court in Writ Petition No.4455/2010 which is admitted and is pending for final hearing. Learned Advocates for the respective parties submitted that

interim order is not granted by this Court in that writ petition.

After House Rent Controller granted permission to the respondent / landlord to terminate the tenancy of the petitioners, the respondent / landlord issued notice dated 3rd July, 2003 as per Section 106 of the Transfer of Property Act and as petitioners failed to comply with the requirements of notice, the respondent / landlord had filed the civil suit praying for decree for eviction and for other ancillary reliefs. By judgment dated 24th March, 2009 trial Court decreed the civil suit filed by the respondent / landlord. Petitioners had challenged the judgment passed by the trial Court by filing appeal which is dismissed by the District Court by impugned judgment.

Learned Principal District Judge has examined all the relevant aspects, including the legality of notice under Section 106 of the Transfer of Property Act and service of notice on the petitioners. Learned Principal District Judge has also recorded that respondent / plaintiff has proved that permission of competent Authority under Section 22 of the Maharashtra Slum (Improvement, Clearance and Re-development) Act, 1971 was granted as per the certificate (Exh. No.22). The petitioners have not been able to point out any illegality or error of jurisdiction which necessitates interference by this Court in the extra-ordinary jurisdiction.

The only submission made on behalf of the

petitioners which requires consideration is that the petition filed by the petitioners to challenge the orders passed by the Authorities under the Rent Control Order, 1949 is pending and if that petition is allowed, the decree cannot be executed. Admittedly, there is no interim order in Writ Petition No.4455/2010. At this stage, I am not required to examine the issue of executability of the decree. I have to only examine the legality of the judgment and decree passed by the subordinate Courts. As I find that the impugned judgment and decree does not suffer from any illegality or error of jurisdiction, I see no reason to interfere in the matter. Writ petition is **dismissed** with costs quantified at Rs.10,000/- to be paid by the petitioners to the respondent. The petitioners shall pay the costs and produce the receipt on record of this petition within one month.

JUDGE