

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.3419/2018

Dilip Ramchandra Ingle and another
Versus
Lakshman Namdeo Bhople and another

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri R.G.Kavimandan, Advocate for petitioners.
Shri N.B.Kalawaghe, Advocate for respondent no.1.
Shri A.A.Choube, Advocate with Shri A.A.Naik, Advocate for respondent no.2.

CORAM : A.S.CHANDURKAR, J.
DATED : June 18, 2019

In view of notice for final disposal issued earlier, the learned counsel for the parties have been heard at length.

2. The petitioner are the tenants who are aggrieved by the decree for eviction as passed in the suit filed by the respondent no.1 herein. That decree stands confirmed by the appellate Court.

3. The facts giving rise to the present proceedings are that it is the case of the respondent no.1 - landlord that he is the owner of a portion of plot no.4 wherein a structure admeasuring 12 feet x 20 feet has been constructed. The petitioner no.1 was inducted as tenant in the year 1998 and rent payable was Rs.700/- per month. It is the case of the landlord that

the amount of rent came to be increased subsequently to Rs.1,800/- per month. Insofar as the petitioner no.2 is concerned it is the case of the landlord that similar area was let out to him in January 2009. The rent payable by him was Rs.1,100/- per month. According to the landlord, both the tenants were in arrears of rent and hence on 16.08.2012 he had issued a notice to them calling upon them to clear arrears of rent. A reply was filed on their behalf on 06.09.2012 in which it was stated that a partition suit between the landlord and his family members was pending and therefore the landlord alone had no right to initiate the proceedings for their eviction. The landlord thereafter filed a suit bearing R.C.S.No.270/2012. The eviction of the tenants was sought on the ground of they being in arrears of rent and that the landlord had bonafide need of the suit premises. Written statement was filed denying the reliefs as sought. The trial Court after considering the evidence on record held that the tenants were in arrears of rent since July 2012. It was further held that the landlord had proved he had bonafide need of the suit premises and that greater hardship would be caused if the decree for eviction was not passed. On these counts, the trial Court decreed the suit. The appellate Court after re-appreciating the evidence confirmed the said decree. The same is challenged in the present writ petition.

4. Shri R.G.Kavimandan, learned counsel for the petitioners submitted that the petitioners were not in arrears of rent. According to him as the amount of rent was not being accepted by the landlord and as there

was a dispute in the family of the landlord in that regard, the tenants had filed R.C.S.No.10/2012 in which they had deposited an amount of Rs.twenty thousand towards arrears of rent. If that amount was taken into consideration it was clear that when the notice under Section 15 of the Maharashtra Rent Control Act, 1999 (for short, 'the said Act') was issued the tenants were not in arrears of rent. He further submitted that the entire arrears were cleared by the tenants during pendency of the appeal before the District Court. No eviction was therefore warranted on the ground that the tenants were in arrears of rent. As regards eviction on the ground of bonafide need is concerned, it was submitted that the title of the landlord had not yet been proved. The suit for partition was filed and the decree therein had not become final. A second appeal challenging the decree for partition was pending in this Court and hence until the respondent no.1 had title in the suit property, he would not be entitled to seek eviction of the tenants. Further the need as pleaded was not bonafide and that it was merely projected for evicting the tenants. Since the petitioners were in occupation of the premises for long period, greater hardship would be caused to them if they were evicted. Placing reliance on the decisions in *Vinayak Narayan Deshpande and others Vs. Deelip Pralhad Shisode, 2010(3) Mh.L.J.807* and *Babulal s/o Fakirchand Agrawal Vs. Suresh s/o Kedarnath Malpani and others, 2017(4) Mh.L.J. 406*, it was submitted that the decree for eviction was liable to be set aside and the suit ought to be dismissed.

5. Shri N.B.Kalawaghe, learned counsel for the respondent no.1 on the other hand supported the decree for eviction. According to him, after the notice demanding arrears of rent was issued under Section 15(2) of the said Act, the arrears of rent with interest were not paid to the landlord. In fact, the landlord was required to move an application seeking directions to the tenants to deposit the arrears of rent. The same indicated absence of readiness and willingness on the part of the tenants in paying the rent. As both the Courts had held that the tenants were in arrears of rent, there was no reason to interfere with that finding. As regards bonafide need of the landlord, it was submitted that the premises were required by the landlord for starting his own business. There was sufficient evidence led by the landlord in that regard and the need was duly proved. The aspect of hardship was also considered by both the Courts and since it was held that the need of the landlord was genuine, there was no reason to deny the decree for eviction as passed. In support of his submission that one of the co-owners could seek eviction of the tenants, the learned counsel placed reliance on the decision in *Dhanraj Bhuddsingh Gupta since deceased by Legal representatives of deceased tenant Shashilata Vs. Dinesh Purshottam and others, 2002(3)Mh.L.J. 666*. It was thus submitted that the writ petition was liable to be dismissed.

6. I have heard learned counsel for the parties at length and I have perused the documents placed on record. Insofar as the entitlement of the landlord to seek eviction of the tenants is concerned, according to the

tenants since there was no title with the landlord and his rights were not yet determined, he was not entitled to initiate proceedings for their eviction. Pendency of the second appeal challenging the decree for partition is sought relied upon in that regard. In this context it is to be noted that there is no dispute that the respondent no.1 is a co-owner of the property. Both the tenants were inducted by the respondent no.1 herein. As there was a relationship of landlord and tenant between the parties, the respondent no.1 was entitled as the landlord to seek eviction of the tenants on the grounds available under the provisions of the said Act. The requirement under the said Act was of being the landlord and not the owner of the tenanted premises. The learned counsel for the respondent no.1 is justified in relying upon the observations in paragraph 4(C) of the decision in *Dhanraj Gupta* (supra). The respondent no.1 therefore was entitled to seek eviction of the tenants.

7. As regards the arrears of rent, it is undisputed that after the landlord issued a notice demanding arrears of rent on 16.08.2012, the arrears of rent were not tendered within a period of 90 days as required. Similarly as required by Section 15(3) of the said Act, the arrears of rent along with interest @15% per annum was not tendered in the Court by the tenants. The amount of Rs.twenty thousand that was deposited by the tenants was not sufficient to clear the amount of arrears that were demanded as per notice dated 16.08.2012. Since the tenants failed to comply with the provisions of Section 15(3) of the said Act which provisions

have been held mandatory in nature by the Full Bench in *Babulal Fakirchand Agrawal* (supra), no fault can be found with the decree for eviction on that count. The deposit of the arrears of rent in appeal cannot be a ground to overcome the requirement of Section 15 (3) of the said Act especially when there was failure on the part of the tenants to deposit the arrears along with permitted increases and interest @15% per annum. The decree for eviction on that count cannot be faulted.

8. Insofar as bonafide need of the landlord is concerned, both the Courts have taken into consideration the evidence in that regard and have found that the landlord desired to sell fruits from the trees that were grown by him at his village. The document at Exhibit 26 indicating the holdings of the landlord was referred to. The desire to settle his educated son is natural and there is no reason to doubt the same. The landlord being the best judge of his need, he was entitled to seek eviction of the tenants on that count. Similarly the aspect of hardship has been considered by both the Courts in proper perspective. There was no reason to deny the possession of the suit premises to the landlord on that count. All relevant material has been taken into consideration by both the Courts.

9. Thus in the light of aforesaid discussion, it is found that both the Courts after examining the entire material on record were satisfied that the tenants were in arrears of rent and were liable to be evicted under Section 15 of the said Act. Similarly the need of the landlord having been duly

proved and there being likelihood of greater hardship being caused to the landlord, the decree for eviction under Section 16(1)(g) read with Section 16(2) of the said Act is also justified. In absence of any jurisdictional error, there is no reason to interfere with the adjudication by both the Courts. The writ petition is thus dismissed.

The petitioners are however granted time to vacate the suit premises by 30th September, 2019. The petitioners shall file an undertaking to that effect in this Court within a period of four weeks from today.

Order accordingly.

JUDGE

Andurkar.