

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

Writ Petition No.7204/2018

**(Smt. Pushpamala Dayashankar Warake .vs. Ashwin W. Golechha and
another)**

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

Court's or Judge's orders.

Mr. P.B. Agrawal, Advocate for Petitioner.

Mr. Yash Maheshwari, Advocate for Respondents.

CORAM : Manish Pitale, J.

DATED : January 23, 2019.

By this writ petition, the petitioner (tenant) has challenged concurrent orders passed by the two Courts below, granting the suit for ejectment, possession and mesne profits filed by the respondents (landlords).

2. The suit property in the present case, is a house located on plot No.45, Near Mata Mandir Road, Dharampeth, Nagpur, which was purchased by the respondents on 7.9.2006 and the petitioner herein admittedly paid rent to the respondents, thereby showing that there was a relationship of landlords and tenant between the parties. The respondents filed Regular Civil Suit No. 129 of 2011 on 28.04.2011 before the Court of Small Causes, Nagpur (trial Court) against the petitioner, seeking her ejectment from the suit property on the ground of bona fide need as well as arrears of rent. As regards the issue of bona fide need, the respondents pleaded in their plaint that they

required the suit property as they were intending to live together along with old aged parents and further that the respondents had two children each, whose needs were also increasing by the day. It was further pointed out that the office of the respondents was also located in the same locality and that, therefore, the suit property was ideally situated for their residence. The respondents led evidence in terms of the pleading made in their plaint.

3. The petitioner resisted the suit filed by the respondents by denying the claims towards the bona fide need made on behalf of the respondents bringing on record in cross-examination of the witnesses of the respondents that they were engaged in the business of construction. On this basis, it was contended on behalf of the petitioner that the respondents being builders by profession, had sufficient number of properties in the city and that the bona fide need projected on their behalf was not genuine.

4. On the basis of such pleadings and evidence on record, the trial Court considered the suit filed by the respondents. By judgment and order dated 7.2.2017, the trial Court found that the petitioner had failed to dispel the material brought on record on behalf of the respondents pertaining to bona fide need projected by them in their pleading. It was found that the respondents had succeeded in placing on record the material and that the petitioner had failed to shatter evidence in cross-examination and she had failed to

place on record any material to show that the need projected by the respondents was not genuine. It was recorded, merely because the respondents were in the business of construction, it could not be said that the need projected by them was not bona fide, particularly when the petitioner had failed to support her contention that there were other properties available for the respondents to satisfy their need. On the aspect of comparative hardship also, the trial Court found in favour of the respondents, recording that other than claiming that she would face hardship, the petitioner had failed to place on record any material to support her contention.

5. Aggrieved by the said judgment and order of the trial Court, the petitioner filed Regular Civil Appeal No.473 of 2017 before the Court of District Judge, Nagpur (appellate Court). By the impugned judgment and order dated 11.04.2018, the appellate Court has dismissed the appeal and confirmed the decree passed by the trial Court. In its judgment and order, the appellate Court has also observed in appeal on the aspect of bona fide need and the comparative hardship and while holding in favour of the respondents, the appellate Court has found that the need projected by the respondents could certainly not be said to be mala fide and that there was sufficient material on record to show that the trial Court had correctly granted decree in their favour on the ground of bona fide need. It was recorded that the landlord was the best Judge of his need and that neither the tenant nor the Court could

dictate as to how the landlord was to use the property in question.

6. Having considered the concurrent findings rendered by the two Courts below, this Court found that the evidence and material brought on record, has been properly appreciated by the two Courts below to render findings in favour of the respondents. The findings so rendered cannot be said to be perverse and the petitioner herein has failed to demonstrate as to why this Court should exercise writ jurisdiction to interfere with the said concurrent findings rendered by the two Courts below.

7. In the light of the above, the writ petition is found to be without any merit and it is dismissed. The petitioner is granted time of three months to vacate the suit property. It is directed that the petitioner shall clear arrears of rent, if any, and shall pay regular rent to the respondents while continuing in possession for a period of three months, as granted by this Court. The petitioner shall not induct any third person in the suit property during the aforesaid period.

8. Accordingly, the writ petition is dismissed with the aforesaid observations.

JUDGE