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

WRIT PETITION NO. 4803/2019

(TRANSPORT CORPORATION OF INDIA LIMITED TRUST, NAGPUR & ANOTHER **VERSUS** NAGPUR SHAHAR VINKAR KOSHTI SAMAJ, NAGPUR)

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

Ms N.A. Biala, counsel for petitioners.
Shri S.P. Bhandarkar, counsel for respondent.

CORAM : A.S. CHANDURKAR, J.
DATE : OCTOBER 07, 2019.

The petitioners are aggrieved by the decree for eviction as passed by the trial Court and affirmed by the Appellate Court.

The respondent is the original plaintiff that had filed a suit for eviction under the provisions of Section 16(1)(g) of the Maharashtra Rent Control Act, 1999 (for short, 'the said Act'). According to the respondent, it was a Trust registered under the provisions of the Maharashtra Public Trusts Act, 1950 and it was the owner of the building standing on Plot No.95. The ground floor premises admeasuring about 2252 square feet had been let out to the petitioner no.1-Corporation for its use and occupation. Since the Trust was running a school on the upper floors and it intended to increase the activities of the said school, possession of the premises occupied by the petitioner no.1-Corporation was sought. The suit was accordingly filed in August-2012. In the written statement, it was denied that the claim of the petitioner no.1-Corporation was *bona fide*. It was pleaded that during pendency of the proceedings, possession has been delivered by other tenants to

the Trust which thus satisfied its need. Before the trial Court, the Trust examined its President and another witness. Various documents including the permission granted to run the school were placed on record. On behalf of the petitioner no.1-Corporation, its Officer was examined. After considering that evidence, the trial Court recorded a finding that the need of the Trust was *bona fide* and that greater hardship would be caused to it if the decree was not passed. In the appeal preferred by the petitioner no.1-Corporation, the Appellate Court reiterated the said findings. Being aggrieved by the decree for eviction the present writ petition has been filed.

Ms N.A. Biala, learned counsel for the petitioners submitted that the documents on record were not sufficient to warrant a decree for eviction as passed by the Courts. The permission to run the said school was in the name of Paradise Public School and it was not shown that the Trust was concerned with the said school. In some of the documents, the permission granted by the Education Officer was in respect of Satyavati English Primary School which again did not have any connection with the Trust. The trial Court without verifying the relevant documents proceeded to hold that the Trust was entitled to receive possession of the premises in question. It was submitted that the petitioner no.1-Corporation was in possession since last forty years and its eviction would result in greater hardship. By referring to the rejoinder sought to be placed on record, it was submitted that all trustees the were not impleaded as plaintiffs in the suit. Moreover, the resolution dated 30.09.2009 was not signed by all the trustees on the basis of which the suit had been filed. The learned counsel placed the reliance on the decision in *Atmaram Rachhodbhai Versus Gulamhusein Gulam Mohiyaddin & Others* [AIR 1973

Guj.113] to submit that in absence of all trustees being parties, the suit was not liable to be entertained. Reference was also made to Exhibit 18 to indicate dispute with regard to the affairs of the Trust. It was thus submitted that the decree for eviction as passed was liable to be set aside.

Shri S.P. Bhandarkar, learned counsel for the respondents supported the decree for eviction. According to him, the need of the Trust had been duly proved as it intended to extend its activities and the premises were sought to be used for educational purposes. Documents at Exhibit 29 to 31 indicated the permission granted to run the school and that permission indicated the names of Satyavati/Paradise Public School. He further submitted that in the written statement as filed, the contentions now sought to be urged by the petitioner no.1-Corporation were not raised. If such pleadings would have been raised, the respondents could have taken appropriate steps in that regard. He referred to the evidence on record to indicate that the same was rightly appreciated by both the Courts. Hence, according to him no interference was called for.

I have heard the learned counsel for the parties and I have perused the documents on record. In the plaint, it is the specific case of the Trust that with a view to extend its activities possession of the ground floor premises was required. It was stated that there was an increase in the number of students and for accommodating the same, additional area was required. In the written statement as filed except for denial of the pleadings in the plaint, there is no specific plea as raised. The maintainability of the suit on the ground that all trustees were not parties has also not been raised therein. Such ground is also not found in the memorandum of appeal. There is also no cross-examination by the

defendant in that regard. The evidence led by the parties clearly indicates the growing need of the Trust. The documents at Exhibits 29 to 31 indicate sanction of permission to increase number of classes and the fact that the premises in question were insufficient. Possession of some rooms received during pendency of the proceedings has not been found to be sufficient to satisfy the need of the Trust. On the other hand, it has been found that the evidence led by the petitioner no.1-Corporation was insufficient to substantiate its defence.

Under the provisions of Section 16(1)(g) of the said Act, the yardstick for ascertaining the need of the Trust is only restricted to the extent that the premises are required for the purposes of the Trust. Reference in this regard may be made to the decision in *Mohanlal K. Agrawal & Others Versus Ajitnath Jain Shwetambar Mandir Trust* [**2011(2) Mh.L.J. 512**] wherein it has been held that the rigorous standards that are required to be applied to the case of a private landlord while examining his bona fide need cannot apply to a public trust. In the present case, the evidence on record indicates that the possession was sought for extending the educational activities. Though it is a fact that the petitioner no.1-Corporation was in occupation since long, that alone is not sufficient to hold that greater hardship would be caused to it than the Trust.

It is thus found that both the Courts have considered all relevant material while holding in favour of the Trust. There is no jurisdictional error committed in passing the decree for eviction. However, considering the fact that the petitioner is in occupation and is undertaking activities therefrom, it is liable to be granted time to vacate the premises.

In that view of the matter, there is no reason to interfere with the impugned judgment. The writ petition is accordingly dismissed. However, considering the long occupation by the petitioners, they are granted time to vacate till 31.03.2020 subject to furnishing an undertaking that vacant possession would be handed over by 31.03.2020 and it would continue to pay occupation charges till that date. The undertaking shall be filed within a period of four weeks from today. No costs.

JUDGE

APTE