

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

**WRIT PETITION NO.5668/2017**

Mujib Qureshi Khan and anr.  
Vs.  
Moreshwar Ramkrushna Parate.

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

Court's or Judge's Orders.

Shri S. P. Kshirsagar, Advocate for petitioners.  
Shri S.N. Bhattad, Advocate with Shri P.B.Jathar, Advocate, for  
respondent sole.

**CORAM : A.S.CHANDURKAR, J.**

**DATED : May 04, 2019**

Heard finally with the consent of learned counsel for  
the parties.

2. The petitioners are the original defendants in the suit for eviction filed by the respondent herein. The respondent-landlord is the owner of various shop blocks, out of which Shop No.3 admeasuring about 12 feet X 8.3 feet on the ground floor was occupied by the petitioners-tenants since the year 1985. Rent payable initially was Rs.400 per month which was thereafter enhanced to Rs.500/- per month. According to the respondent his family consisted of his wife, daughter as well as his younger brother and his wife who were dependent on him. Two major sons of the plaintiff were residing away due to their employment. The plaintiff had bona fide need of the suit premises on the ground that his younger daughter had acquired necessary qualifications in the medical field and desired to start her own practice. Similarly, the respondent's younger brother was possessing technical knowledge but he had no permanent

source of income and hence the respondent intended to establish his younger brother in some business. On this count, the respondent filed a suit for eviction on 29.06.2010 under the provisions of Section 16(1)(g) of the Maharashtra Rent Control Act, 1999 ( for short, the said Act).

3. In the written statement as filed by the petitioners the claim as made was denied. It was stated that the need of the plaintiff in respect of his daughter and younger brother was not bona fide. Though the defendants were inducted in the year 1985, the respondent had let out the other shop blocks thereafter. It was further pleaded that no other shop premises were available for the petitioners and they were doing their business on the foot-path of Bhandara road and were using shop block as a godown. Since the respondent was having possession of major portion of the suit house, the claim as made was not liable to be granted.

4. In support of his claim for eviction, the plaintiff examined himself as well as his younger brother. The plaintiff also examined his daughter to substantiate her need. The petitioners examined the defendant no.2 as well as another witnesses from the Office of the Nagpur Municipal Corporation as a plea was raised by the petitioners that the suit house was falling in slum area. After considering the entire evidence on record, the learned trial Judge recorded a finding that the respondent had proved his bona fide need of the shop block and that greater hardship would be caused to the respondent, if the decree for eviction was not passed. On that basis, the suit was decreed by the judgment dated 02.05.2015. The petitioners filed an appeal under Section 34 of the said Act and by the judgment dated 13.07.2017, the appellate Court dismissed the

said appeal and confirmed the decree for eviction. Being aggrieved, the petitioners have filed the present writ petition.

5. Shri S.P.Kshirsagar, learned counsel for the petitioners submitted that both the Courts erred in granting the decree for eviction on the ground of bona fide need. He referred to the pleadings of the parties as well as the evidence on record to submit that the premises already in occupation of the respondent to the extent of 250 square feet was sufficient to satisfy his need and the decree for eviction of the petitioners was unwarranted. According to him the shop block in question was admeasuring about 12 feet X 8.3 feet which was a smaller area than the area available to the respondent. The shop block was being used as a godown and the decree for eviction would result in causing greater hardship to the petitioners. It was submitted that since other shop blocks were available for occupation by the respondent, no decree for eviction could have been passed against the petitioners. He referred to the additional affidavit on record dated 29.04.2019 and submitted that the daughter for whose need the suit was filed was not residing at Nagpur and that she had started residing elsewhere. It was, therefore, clear that need of the respondent does not survive. He also referred to the affidavit of a neighbour, Shri Mukesh Chandak in that regard. It was thus submitted that without considering various admissions of the respondent and his witnesses, the decree for eviction had been passed. The same was liable to be set aside.

6. Shri S.N.Bhattad, learned counsel for the respondent supported the decree for eviction. According to him, both the Courts had recorded a finding that the need for the respondent was bona fide. The same was a finding of fact which was not liable to be interfered in writ jurisdiction. It was submitted that

separate proceedings for eviction of other tenants had been filed and it was not open for the petitioners to urge that the respondent should only seek eviction of other tenants. According to him as the need of respondent's daughter and respondent's brother had been pleaded, the premises available as urged were insufficient to satisfy the need of the respondent. A mere statement that an area admeasuring 250 square feet was available would not deprive the respondent of possession of the suit block. He also placed on record the affidavit of the daughter of the respondent in which it was stated that she was unmarried and was residing with her parents. It was reiterated that her need subsisted. It was thus submitted that there was no reason to interfere with the decree for eviction.

7. I have heard learned counsel for the parties at length and with their assistance I have perused the material placed on the record. In the plaint as filed the need of the landlord's daughter as well as landlord's younger brother was pleaded. According to the respondent his daughter had completed her medical education and hence, she needed the premises for starting her own medical practice. The said daughter has also been examined in support of that need. She deposed that after obtaining post-graduate qualifications she desired to start her own medical practice to support the family. The respondent also examined his younger brother who stated that he was unemployed and he intended to conduct some petty business to earn his livelihood. Though it was submitted by the learned counsel for the petitioners that the younger brother of the respondent was aged about 60 years, that by itself would not a factor to disregard the need of the said younger brother. It was stated on oath that he had no other source of income and the respondent was maintaining him. If the said younger brother

desired to do some petty business to support his family and his elder brother with whom he was living, that intention would be sufficient to support the claim for eviction. There is nothing on record to indicate that the claim as made for the need of the younger brother was not bona fide. Similarly, the need of the daughter is also found to be bona fide by both the Courts. In her deposition, she had stated that she desired to do her medical practice in the premises, if available. In the subsequent affidavits filed by the parties in the present proceedings, it was stated by the petitioners the said daughter had been married and had started residing elsewhere. This aspect was controverted by the daughter by filing her own affidavit in which it is stated that she was unmarried and she was residing with her parents. There is no reason to disbelieve the said statement made on oath by the respondent's daughter. The finding as to bona fide need of the respondent is a finding of fact and there is nothing on record to conclude that the said finding is perverse in any manner.

8. As regards the contention based on the admission of the plaintiff that area admeasuring 250 square feet was available to the plaintiff, that by itself is not sufficient to disregard the case of the plaintiff. The need as pleaded is for the younger brother as well as the daughter of the plaintiff. Eviction proceedings have been initiated against all tenants and therefore the landlord being the best judge of his need, there is no reason to disregard his need. The admission in that regard by the daughter of the respondent therefore is not sufficient to non-suit the plaintiff.

9. As regards the aspect of hardship is concerned, it has come on record that the petitioners were using shop block as

godown and were doing business on the main road. In the light of the fact that the bona fide need of the landlord has been duly proved, the balance would shift in his favour especially when the need was in respect of his daughter and younger brother. Moreover, it was admitted by the tenants in their cross-examination that even after the suit was filed no attempt was made to search for any alternate premises. In that view of the matter the finding as regards hardship also does not deserve to be interfered with.

10. It is thus found that both the Courts after considering the entire evidence on record have recorded a finding of fact that the need of the respondent was bona fide and that greater hardship would be caused to the respondent, if the decree for eviction was refused. In exercise of writ jurisdiction under Article 227 of the Constitution of India, it would not be permissible to re-appreciate the entire evidence on record. Both the Courts have taken a reasonable view of the matter in the light of the evidence on record. In absence of any jurisdictional error, I do not find any reason to interfere with the impugned judgments. The writ petition is, therefore, dismissed with no orders as to costs.

11. The petitioners are granted time of **three months** from today to vacate the suit premises.

JUDGE

Andurkar.