

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

WRIT PETITION NO. 14 OF 2018

Shri. Ramesh Mahadeo Maraskolhe

vs.

Late Rao Bahadur Devineni Laxmanswami Ashram (Hostel), Nagpur

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

Court's or Judge's orders

None for the petitioner.
Shri. Masood Shareef, counsel for respondent.

CORAM : MANISH PITALE J

DATED : 21/11/2019

On 11/11/2019, this Court passed following
order :-

“ None for the petitioner

2. List this petition for final disposal on 21/11/2019.

3. It is made clear that if there is no representation on behalf of the petitioner on the said date also, this Court will go ahead to hear and dispose of the writ petition on merits.”

2. When the writ petition is called out for hearing today again none has appeared for the petitioner, while the learned counsel for the respondent

is present in Court. As per the order dated 11/11/2019 this writ petition is taken up for hearing today.

3. A perusal of the documents filed with the writ petition shows that the respondent trust had filed a petition for eviction of the petitioner from the suit premises on the ground of bonafide need under Section 16(1)(g) of the Maharashtra Rent Control Act, 1999. The Court of Small Causes, upon appreciation of the evidence and material on record, found that the respondent trust had made out a case for grant of decree of eviction on the ground of bonafide need. By its judgment and order dated 12/02/2015, the Small Causes Court decreed the suit, directing the petitioner to vacate the suit premises and further directed the petitioner to pay arrears of rent to the respondent trust, apart from directing an inquiry into mesne profits.

4. Aggrieved by the same, the petitioner filed an appeal under Section 34 of the aforesaid Act before the District Court at Nagpur. By the judgment and order dated 24/07/2017, the Court of Adhoc District Judge-5, Nagpur (Appellate Court) confirmed the findings rendered by the Small Causes Court on the question of bonafide need, as also maintainability of the suit filed by the trust. The Appellate Court found that the direction to pay arrears of rent in clause (iv) of the order passed by the Small Causes Court was not sustainable, because there was no specific prayer in that regard had been made on behalf of the respondent trust. Accordingly, the

appeal was partly allowed and clause (iv) of the order passed by the Small Causes Court was set aside, while rest of the judgment and decree stood confirmed.

5. Aggrieved by the same, the petitioner filed the present writ petition. As noted above, the learned counsel for the petitioner failed to appear to argue in support of this writ petition on 11/11/2019, as well as today and therefore, this writ petition was taken up for consideration on merits. Heard the learned counsel appearing for the respondent trust and perused the documents and material on record.

6. A perusal of the judgments and orders passed by two Courts below shows that findings have been rendered concurrently in favour of the respondent trust. The petitioner raised certain grounds of challenge before the Appellate Court for the first time. This included objection regarding the manner in which the trust was established in pursuance of a will executed by one D.Laxmanswami. It was claimed that the Joint Charity Commissioner had erred in passing the order while establishing the respondent trust and therefore, the suit for eviction filed by the respondent trust ought not to have been entertained by the Small Causes Court. The Appellate Court found that such a contention was never raised before the Small Causes Court and that, in any case, the Appellate Court was not sitting in appeal over the order passed by the Joint Charity Commissioner in application No.06/2007 whereby the respondent trust

was created as a charitable endowment in pursuance of the aforesaid will.

7. The petitioner also raised a challenge regarding the ownership of the respondent trust in the suit property. The Appellate Court found that no such contention was ever raised by the petitioner before the Small Causes Court and it was being raised for the first time before the Appellate Court. On this basis the said ground of appeal raised by the petitioner was not entertained.

8. The petitioner also claimed that in view of the grounds raised for the first time before the Appellate Court, the matter ought to have been remanded to the Small Causes Court for fresh consideration. This was also rejected by the Appellate Court.

9. The petitioner also contended that the suit ought to have been filed by all the trustees and it being filed through only one trustee, rendered the same ineffective. In this regard, the Appellate Court referred to the fact that resolution was duly passed by the trust enabling one of the trustees to file the eviction suit and that therefore, no error could be attributed to the Small Causes Court in entertaining such suit. Apart from this, it was noted that the scheme of the trust itself provided for such a contingency where a particular person could initiate proceedings before the Court. On this ground the said contention raised on behalf of the petitioner was

rejected. On the question of bonafide need and comparative hardship, the Appellate Court has referred to the evidence on record and found that on this crucial aspect there was no cross-examination of the witness who had appeared on behalf of the trust. It was also found that the trust required the suit property for establishing a hostel for poor and deserving students. On this basis, the Appellate Court confirmed the findings rendered by the Small Causes Court on the question of bonafide need as well as comparative hardship. It was only on the question pertaining to payment of arrears of rent that the Appellate Court found that such direction could not have been given in view of the fact that no specific prayer had been made on behalf of the respondent trust in that regard.

10. The Appellate Court and the Small Causes Court considered the rival contentions and arrived at findings after proper appreciation of the evidence and material on record. The Appellate Court was justified in rejecting the grounds raised on behalf of the petitioner for the first time in appeal. In the writ petition, the petitioner has failed to raise any convincing ground while seeking interference with the concurrent orders passed by the two Courts below. This Court exercising writ jurisdiction is required to examine the legality, correctness, propriety and regularity of the order under challenge and this Court is obviously not sitting in appeal over the findings rendered by the two Courts below.

11. In view of the material on record and the contentions raised on behalf of the petitioner in the writ petition and after hearing the learned counsel appearing for the respondent trust, this Court is of the opinion that no case for interference in writ jurisdiction is made out. Accordingly, the writ petition is dismissed.

JUDGE

KOLHE/P.A.