

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

WRIT PETITION NO. 5723 OF 2018

Shakuntalabai wd/o Kamalkishor Pasoria and another

vs.

Hukumchand Mangilal Jain (since deceased) through his LRs
Ashok Hukumchand Jain and others

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

Court's or Judge's orders

Shri. Rohit Joshi, counsel for petitioners.
Shri. J. J. Chandurkar, counsel for respondents.

CORAM : MANISH PITALE J

DATED : 09/12/2019

By this petition, the petitioners (original defendants) have challenged concurrent orders passed by the two Courts below granting degree of eviction in favour of the respondents herein.

(2) The respondents (hereinafter referred as '**landlord**') filed Regular Civil suit No.98/2002, before the Civil Judge Junior Division, Amravati, (Trial Court) seeking eviction of the petitioners (hereinafter referred to as '**tenant**'), on the grounds under Section 16(1)(g), (i), (k) and (n) of the Maharashtra Rent Control Act, 1999. According to the landlord, the tenant was not using the suit premises, further since there was a notice of demolition issued by the Municipal Corporation, the premises were in immediate need of demolition for which possession was required and lastly that the

landlord required the suit property for his bonafide need. The landlord projected bonafide need on the ground that his family was large requiring the suit property for business as well as residential purpose, contending that the existing premises in possession of the landlord were not sufficient to satisfy the need. It is undisputed that the landlord was in possession and continues in possession of a premises across the road from the suit property.

(3) The grounds for eviction raised on behalf of the landlord were disputed by the tenant and the parties led oral and documentary evidence in respect of their contentions. By judgment and order dated 03/09/2010, the Trial Court decreed the suit in favour of the landlord on the ground of bonafide need under Section 16(1)(g) of the said Act.

(4) Aggrieved by the said judgment and decree passed by the Trial Court, tenant approached the Court of District Judge, Amravati (Appellate Court), whereby the Appellate Court by impugned judgment and order dismissed the appeal and confirmed the decree passed against the tenant.

(5) While issuing notice in this writ petition on 05/09/2018, this Court had granted interim relief in favour of the tenant. The learned counsel appearing for the petitioners (tenant) submitted that the two Courts below failed to appreciate that the pleadings and

evidence in the present case placed on record on behalf of the landlord were not sufficient to make out a case under Section 16(1)(g) of the aforesaid Act, particularly when possession was sought for demolition of the existing tenanted structure for construction of a new building to satisfy the need of the landlord. It was submitted that when the Trial Court had rejected the ground raised by the landlord under Section 16(1)(i) of the aforesaid Act, the Courts below ought to have examined pleadings and evidence led on behalf of the landlord more critically, particularly to examine as to whether sufficient material had been placed on record by the landlord to show availability of means to construct the new structure and as to the nature of structure sought to be constructed, so as to satisfy the alleged need of the landlord. It was submitted in the absence of pleadings and evidence in this regard, the Courts below committed an error in granting decree in favour of the landlord.

(6) It was further submitted that the question of hardship was also not considered in the correct perspective by the two Courts below while granting the decree in favour of the petitioner. Reliance was placed on the judgments of the Hon'ble Supreme Court in the cases of **Jagat Pal Dhawan vs. Kahan Singh (DEAD) by LRs and others** reported in (2003) 1 SCC 191 and **Vishwamitra Ram Kumar vs. Vesta Time Company** reported in (2007) 14 SCC 374. Judgment of this Court

in the case of **Rajendrakumar Sharandas Sharma vs. Shrikrushna Babanrao Guhe (dead) through Legal heirs Asha d/o Shrikrushna Guhe and another** reported in **2010(5) Mh.L.J. 150** was also referred.

(7) On the other hand, the learned counsel for the respondents (landlord) submitted that the reasoning given by the two Courts below concurrently was based on law laid down by the Hon'ble Supreme Court that the landlord is the best judge of his need and that the Court would be slow to interfere with concurrent orders passed by the two Courts below while considering a writ petition challenging such concurrent orders.

(8) Heard learned counsel for the rival parties and perused the material on record. There is no doubt about the fact that the grounds sought to be made out on behalf of the landlord under Section 16(1)(i) of the aforesaid Act were not accepted by the Trial Court and the only ground on which the two Courts below have concurrently held in favour of the landlord is the ground of 16(1)(g) of the aforesaid Act concerning bonafide need of the landlord for seeking eviction of the tenant.

(9) In the present case, a perusal of the pleadings and evidence led on behalf of the landlord demonstrates that it was the case of the landlord that existing premises in which the family of the landlord was residing, was not sufficient for him and his family for residence and business. It was the case of the landlord

that the tenanted premises in possession of the tenant were bonafide required for the needs of the family of the landlord. It was on this basis that possession of the tenanted premises was sought in order to undertake construction of a new structure so that the bonafide need of the landlord was satisfied. The Trial Court found that the landlord had placed on record sufficient material to support his case of bonafide need and the findings rendered by the Trial Court have been confirmed by the Appellate Court in the impugned judgment and order. A perusal of the judgment of the Appellate Court shows that the question of bonafide need is considered by the Appellate Court in paragraphs 12 to 20 and the question of comparative hardship is considered in paragraph 21 and 22 of the judgment. In the elaborate discussion that the Appellate Court has undertaken, the aspect of the landlord requiring the tenanted premises for residential and business purposes for his two sons and himself is discussed. Reference is made to the area of the property in possession of the tenant and also the fact that the property in possession of the landlord across the road is not sufficient to the need of the family of the landlord. The Appellate Court has discussed in detail about the members of the family of the landlord and it has proceeded on the basis that landlord is the best judge of his need. The Appellate Court has also referred to the concept of bonafide need requiring a practical approach, which is instructed by realities of life. On the basis of the number of members of the family of a landlord and need

projected in the pleadings and evidence, the Appellate Court has come to a conclusion that ground under Section 16(1)(g) was made out that the finding rendered by the Trial Court in favour of the landlord deserved to be confirmed.

(10) On the question of hardship also, the Appellate Court has referred to the material on record and found that the landlord had been able to make out a case on the question comparative hardship also in his favour.

(11) In this backdrop, it needs to be examined whether the contentions raised on behalf of the tenant can be accepted, so as to set aside the concurrent findings by the two Courts below. The emphasis in the contentions raised on behalf of the tenant is lack of pleadings and evidence on the part of the landlord to show that he was having the means to undertake construction after possession of the premises was given to him and that details of the proposed construction were not brought on record to support the ground of bonafide need raised on behalf of the landlord.

(12) These contentions were raised to demonstrate that the need projected by landlord was not bonafide in the facts and circumstances of the present case and that pleadings and evidence in respect of the said aspects was, therefore, necessary to ensure that the landlord did not abuse the ground of Section 16(1)(g) of

the aforesaid Act to throw out the tenant.

(13) A perusal of the relevant provisions of the aforesaid Act shows that under Section 16(1)(g), the landlord has to show bonafide requirement of the tenanted premises for occupation by himself or any person for whose benefit the premises are held and under Section 16(1)(i) of the said Act, the landlord needs to show that the premises are reasonably and bonafide required by the landlord for immediate demolition for erecting new building. In the present case though the landlord could not make out a case under Section 16(1)(i) of the aforesaid Act, he was found to have made out a case under Section 16(1)(g) thereof. There can be no dispute about the fact that the Court has to proceed on the basis that the landlord is the best judge of his need. In the present case, as found by the two Courts below, there was sufficient material on record in the form of pleadings and evidence to show that a case for bonafide requirement of the tenanted premises was made out. The pleadings and evidence elaborately demonstrated that the landlord bonafide required the tenanted premises and therefore, a decree of eviction was required to be granted. In this situation, this Court is of the opinion that it would be in the facts and circumstances of a particular case where the bonafide need of the landlord itself appears to be doubtful that a detailed enquiry into the question of means available to the landlord to undertake new construction or details of

the proposed construction would be required.

(14) Although the learned counsel appearing for the tenant sought to distinguish judgment of this Court in the case of **Rajendrakumar** (supra), relied upon by the Trial Court, to contend that even if the said position of law is accepted, in the facts and circumstances of the present case, the landlord was required to lead evidence on the aforesaid aspects. This Court finds that the law laid down by this Court in the aforesaid judgment applies on all fours to the facts and circumstances of the present case. The relevant portion of the said judgment reads as follows :-

“11. Section 16[1][g] speaks of reasonable and bonafide need of landlord for his occupation. Thus the reasonable and bonafide requirement of landlord for self occupation is the factor on which the said provision operates. If that need is proved, the decree for eviction can be passed against the tenant. The phrases and words used in Sections 16[1][g] and 16[1][i] clearly shows that under section 16[1][i], the premises are not required for his occupation by landlord. The moment landlord shows that the premises are needed by him for his own occupation, there is no question of therefore going to Section 16[1][i] and it is section 16[1][g] which is only applicable. The need of demolishing the house in occupation of tenant or desire not to restore the possession of tenant, cannot be a circumstance, to doubt the bonafide personal requirement proved by the landlord. Here the landlord is stating that he wants to construct a house for self-occupation on suit plot, after tenant vacates it. There is no question of doubting his bonafides in this situation. In the process if he is constructing a big house and if he wants to let out portion thereof, either for residential or for commercial purposes, that action will not dilute the bonafides of or reasonableness of his need. Such design by him may be on account of various contingencies but that is not relevant to hold that clause 16[1][g] is not attracted. In a given case he

may be required to arrange for finance and make provision for its repayment. Such planning cannot be viewed as indication of any bad faith or malafides. I find that it is the need for his self-occupation which is of prime importance and all material ingredients in the scheme of Section 16[1] [g] are established here and once such ingredients are established there is no need to go to other provisions of section 16.”

(15) Applying the said position of law to the facts and circumstances of the present case, this Court is of the opinion that insistence of the tenant on requirement of pleadings and proof on behalf of the landlord on the aforesaid aspects is misplaced. Similarly, reliance placed by the learned counsel appearing for the tenant on the judgments of the Hon'ble Supreme Court in the case of **Jagat Pal Dhawan** (supra) and **Vishwamitra Ram Kumar** (supra) is also misplaced. A perusal of the said judgments would show that they have been rendered in the context of rent control legislations that may be akin to but are different from the aforesaid Act with which this Court is concerned. In this case, Section 16(1)(g) and 16(1)(i) of the aforesaid Act require different sets of consideration to be applied by the Court to examine whether a decree of eviction can be granted. Perusal of the said provisions would show that when a landlord under Section 16(1)(g) makes out a case that tenanted premises are reasonably and bonafide required by the landlord and the Court finds that such evidence and material has been indeed placed on record by the landlord, there would be no reason to necessarily require the landlord to place on record evidence as to means

available with him or her to undertake the new construction or the exact nature of structure sought to be constructed by the landlord after eviction of the tenant. It is only when the need projected by the landlord itself appears to be not bonafide that the Court may have to examine the aforesaid aspect.

(16) As noted above, in the facts and circumstances of the present case, the two Courts below have found concurrently that the landlord had indeed made out his case under Section 16(1)(g) of the aforesaid Act. This Court in writ jurisdiction does not find any glaring error in the findings of the Courts below or any jurisdictional error committed by the Courts. Hence, there is no merit in the present writ petition.

(17) Accordingly, the writ petition is dismissed and the orders passed by the two Courts below are confirmed. No order as to costs.

(18) At this stage, the learned counsel appearing for the tenant submitted that reasonable time of three months may be granted to vacate the said premises. In the facts and circumstances, this Court directs the petitioners (tenant) to vacate the suit premises on or before 31st March 2020.

JUDGE