

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

WRIT PETITION NO.1031/2019

Manikrao s/o Harishchandra Rangari (since deceased through his legal representatives)
Smt. Vithabai wd/o Manikrao Rangari and others
Vs.
Smt. Shalini w/o Shivcharan Gaikwad and another.

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

Court's or Judge's Orders.

Shri P.S.Khubalkar, Advocate for petitioners.
Shri Y.B.Mandpe, Advocate for respondents.

CORAM : A.S.CHANDURKAR, J.

DATE : March 22, 2019

The petitioners are the legal representatives of the original defendant against whom suit for eviction under the provisions of Section 15 and Section 16(1) (g) of the Maharashtra Rent Control Act 1999(for short, the said Act) has been filed. The eviction of the tenant was sought on the ground that he was in arrears of rent. As regards bona fide need, it was pleaded that the son of the plaintiff no.1 was to be married and with a view to live in their own house after constructing it on the suit plot, the eviction of the defendant was sought. In the schedule of property the same was described as Corporation House bearing No. 1739, admeasuring 1500 sq. feet. In the written statement the claim as made was denied. It was denied that the tenant was in arrears of rent or that there was a bona fide need of the suit premises.

The trial Court after considering the evidence on record held that the plaintiffs had proved that the defendant was in arrears of rent. It was further held that the plaintiffs had bona fide need of the suit premises and that greater hardship would be

caused to the plaintiffs if the decree was not passed. In the appeal by the tenant the appellate Court did not accept the ground of eviction insofar as arrears of rent is concerned. The finding with regard to bona fide need was however upheld. Being aggrieved, the legal representatives of the defendant have filed this writ petition.

Shri P.S.Khubalkar, learned counsel for the petitioners submitted that in view of provisions of Section 7 (9) of the said Act, the property in question did not fall within the definition of the expression “premises”. It was submitted that an open plot of land was let out to the defendant and therefore eviction under the provisions of the said Act could not have been directed. According to him even though the said plea was not raised either in the suit or in the appeal, it being a question of law it could be raised for the first time in the writ petition. In that regard, learned counsel placed reliance on the decision in *Savitribai Vishnupati Vaske and others Vs. Faruk Abdulrahim Patel and others*, 2010 (5) Mh.L.J.357, *M/s. Auto Hirers and anor. Vs. Commerce Centre Co-operative Society Ltd.* 2018 (3) Mh.L.J. 942 and *Kamla Devi Vs. Laxmi Devi* (2000) 5 SCC 646. It was then submitted that the pleadings with regard to bona fide need in para 10 of the plaint were insufficient. According to him the plaintiffs had entered into an agreement for sale of the said plot in question. But this fact was not brought on record. Even if that agreement was cancelled, it was necessary for the plaintiffs to have pleaded about the same as eviction was sought on the ground of bona fide need. In that regard, relying on the decision in *Adil Jamshed Frenchman (dead) by LRs. Vs. Sardar Dastur Schools Trust and others*, (2005) 2 SCC 476, it was submitted that need of the plaintiff was not bona fide. It was thus submitted that a decree for eviction was liable to be set aside.

Shri Y.B.Mandpe, learned counsel for the respondents supported the

impugned judgment. According to him in the written statement no such plea was raised that the premises in question did not fall within the expression of 'Premises' as defined in Section 7(9) of the said Act. He submitted that the suit property was duly proved to be a corporation house and the Small Causes Court had jurisdiction to entertain the suit. It was further submitted that though an agreement was entered into for sale of the suit property in the year 2007, that agreement was cancelled prior to the filing of the suit. As this aspect was not relevant, it was not pleaded. He also submitted that the plaintiff no.2 was yet to be married and bona fide need of the plaintiff still continued. Hence, no interference was called for with the concurrent findings.

Heard the learned counsel for the parties and perused the documents placed on record. As noted above, the suit property has been described as corporation house bearing no. 1739. In the written statement, there is no such plea raised that the suit property is an open plot and hence is not a premises within the meaning of Section 7(9) of the said Act. The question whether the suit property is an open plot is a question of fact which was required to be duly pleaded by way of defense. In absence of there being any foundation for this aspect, it will not be permissible to raise the same for the first time in this writ petition especially when the defendant seeks to oust the jurisdiction of the Small Causes Court. The scope for interference under Article 227 of the Constitution is limited and questions of fact cannot be sought to be raised for the first time before this Court. On that count, I am not inclined to examine the said aspect.

As regards bona fide need of the plaintiffs, the said fact has been duly pleaded in para 10 of the plaint. The Courts have recorded a finding that the plaintiff no.2 was unmarried and he wanted to start his own business by making construction on the suit plot. This evidence has been accepted by both the Courts. There is no reason to

disregard this finding as recorded. It is informed that the plaintiff no.2 is still unmarried.

Insofar as the aspect of hardship is concerned, it has been found that there were no specific pleadings in that regard pleaded by the tenants/petitioners. Moreover, the plaintiffs were found to be residing in rented premises and hence the aspect of hardship was answered in their favour. This finding also does not deserve to be interfered with. The ratio of the decisions relied by the learned counsel for the petitioners therefore does not support his contention.

The agreement to sell of the suit property was much prior to the filing of the suit. That agreement was also cancelled prior to the filing of the suit. The same was therefore not very relevant for determining the aspect of bona fide need of the plaintiffs. It is thus found that both the Courts have taken into consideration all relevant aspects while holding in favour of the plaintiffs. There is no jurisdictional error to warrant interference under Article 227 of the Constitution of India. Hence the writ petition stands dismissed.

In the light of the fact that the petitioners are in possession of the suit property they are granted time till the end of **August 2019** to vacate the same. They shall file undertaking within a period of **four weeks** that they shall not create any third party rights on the suit property and shall continue to pay monthly rent to the plaintiffs till that date.

JUDGE

Andurkar.