

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

WRIT PETITION NO.2524/2020

Chandrashekhar s/o Parrappa Mali

-VERSUS-

Smt. Sunita wd/o Shrishail Mali

WRIT PETITION NO.2702/2020

Ganesh Pyarelal Jaiswal

-VERSUS-

Smt. Sunita wd/o Shrishail Mali

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

Court's or Judge's Orders

Shri R.G. Kavimandan, Advocate for the petitioner.

CORAM : MANISH PITALE, J.

DATE : 24/11/2020.

Hearing was conducted through Video Conferencing and the learned Counsel agreed that the audio and visual quality was proper.

2. These two writ petitions are filed by tenants who are occupying shops in a shopping complex. The respondent landlady had filed suits for eviction of the petitioners herein, in the year 2009 claiming eviction on the ground of arrears of rent and bona fide need. The Trial Court in the first instance granted decree on both grounds.

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3. Aggrieved by the same, the petitioners approached the Appellate Court i.e. the District Court, Buldhana to challenge the decrees passed against them. The appeals were only partly allowed when the Appellate Court set aside the findings given by the Trial Court on the question of arrears of rent, but on the question of bona fide need held in favour of the landlady.

4. The petitioners approached this Court in an earlier round by filing Civil Revision Applications, on the ground that subsequent events that had occurred during the pendency of the matter, were not taken into consideration by the Appellate Court, due to which, the judgment and orders passed by the Appellate Court, were rendered erroneously. On 14/02/2018, this court passed common judgment and order in the Revision Applications, holding that the Appellate Court had erred in failing to take into consideration subsequent events that were indeed placed on record on behalf of the petitioners herein. On this basis, the judgments and orders passed by the Appellate Court were set aside and matters were remitted to the Appellate Court for fresh consideration.

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5. The respondent landlady had challenged the common judgment and order of this Court before the Hon'ble Supreme Court. But, Special Leave Petitions were dismissed on 15/10/2019, as a result of which the Appellate Court proceeded to consider the appeals filed by the petitioners afresh, in the light of the directions given by this Court.

6. The respondent landlady also placed on record, by way of amendment, the facts pertaining to the subsequent events on which reliance was placed by the petitioners. In addition, respondent landlady also placed on record bona fide need in the context of her children. It was claimed by the respondent landlady that her daughter was now an Ayurvedic Doctor and that her son had got married, who also required larger premises. The parties led their evidence on the basis of such subsequent events being brought on record.

7. By the impugned judgments and orders, the Appellate Court has dismissed the appeals filed by the petitioners. While doing so, the Appellate Court has taken into consideration the subsequent events brought on record by the rival parties and the effect of such subsequent events on the

claim as made by the rival parties. The Appellate Court has found on facts that despite certain portion of the shopping complex consisting of two shops being vacated by a tenant during the pendency of the proceedings, the bona fide need projected on behalf of respondent landlady was not adversely affected. The Appellate Court also found that the need projected by way of amendment on behalf of respondent landlady pertaining to her children, further justified the decree of eviction passed in her favour. On this basis, appeals were dismissed and the decrees of eviction were confirmed.

8. The petitioners have filed the present writ petitions challenging the said judgments and orders passed by the Appellate Court.

9. Shri R.G. Kavimandan, learned counsel for the petitioners submitted that the Appellate Court committed a grave error in appreciating the amended pleadings and the evidence on record, while holding in favour of the respondent landlady. It was submitted that the respondent landlady had number of shops in her possession in the shopping complex in question and that the need sought to be projected on her

behalf was artificial in nature, which the Appellate Court completely failed to appreciate. It was further submitted that crucial admission was given by the daughter of the respondent landlady in cross-examination, to the effect that three new shops came in possession of the landlady. It was further submitted that the appreciation of the subsequent events in the context of the amended pleadings and the evidence led on behalf of the rival parties was not appreciated in the correct perspective by the Appellate Court while dismissing the appeal. The learned counsel placed reliance on the judgment of Hon'ble Apex Court in the case of **M.M. Quasim Vs. Manohar Lal Sharma and others**, AIR 1981 SC 1113 and judgment of this Court in the case of **Vasant Mahadeo Gujar Vs. Baitulla Ismail Shaikh and another** 2015 (5) BOM C.R. 243.

10. This Court heard the learned counsel appearing for the petitioners at length. This Court also perused the evidence on record, particularly the amended complaints, amended written statements and also the evidence adduced by the rival parties, particularly in the context of the subsequent events.

11. A perusal of the amended claims would show that the respondent landlady had stated initially that when she had filed suits in the year 2009, she bonafide required the suit shops in order to start business of stitching ladies garments and selling the same from the suit shop. By way of amendment, the respondent landlady brought on record the fact that during the pendency of litigation, shops that were occupied by the Maharashtra Industrial Development Corporation were vacated, but the same were occupied by another branch of the office of the Maharashtra Small Scale Industrial Development Corporation. It was further pleaded in the amended plaint that even otherwise the said shops were situated on the rear side of the suit shops and there was no direct access to the same, thereby being unsuitable for commercial activities proposed by the respondent landlady. It was further brought on record that the daughter of the respondent landlady had completed her B.A. M.S. Course in the year 2015 and that she was now an MD in Ayurveda Medicine. It was further stated that the said Doctor had started clinic, panchakarma and yoga center on the first floor of the premises. The respondent landlady further stated that

the daughter required open spaces and corridors for the purpose of medicine storage and manufacturing activities. It was further brought on record that son of the respondent landlady got married in the year 2019 and that room on the northern side was being used by him as a bed room, whereas the southern side room was in the occupation of the daughter of the respondent landlady. Thus, pleadings of this nature were on record for considering the subsequent events on which much emphasis was placed by the petitioners.

12. The petitioners had also amended their written statements and sought to refute the claims made by the respondent landlady. It was claimed that there were number of rooms in possession of the respondent landlady in the entire complex and that no ground of bona fide need was actually made out by her.

13. The parties led evidence in support of their respective stands and such material was before the Appellate Court when the appeals were considered, upon being remanded by this Court in the earlier round.

14. A perusal of the impugned judgments and orders passed by the Appellate Court would show that the rival pleadings as well as evidence led by the parties has been taken into consideration. The Appellate Court has also referred to the position of law as canvassed on behalf of the rival parties. In the case of the petitioner in writ petition no. 2524/2020, the Appellate Court has found that in cross-examination itself the petitioner had admitted the fact that the shops that stood vacated during the pendency of the litigation were situated on the rear side on the suit shop. It was also noted that the said petitioner admitted that the said shops were then let out to the DIC were on the upper floor of the residential house of the respondent landlady. It was further noted in paragraph no.22 onwards in the impugned judgment and order concerning Writ Petition No.2524/2020, that admissions given on behalf of petitioner himself clearly indicated that the shops on which the petitioner had placed much emphasis, that were in occupation of MIDC, were not suitable for the commercial purpose for which the respondent landlady was seeking eviction of the petitioner. On this basis, the Appellate Court came to a considered conclusion that even

if the said subsequent events were to be taken into consideration, it did not dent the claim of the respondent landlady in the context of her bona fide need.

15. Thereafter, the Appellate Court also took into consideration the specific need of the children of the respondent landlady brought on record. It was found that there was no serious dispute about the fact that the daughter was now an Ayurvedic Doctor and further that the son of the respondent landlady had got married. After taking into consideration the said subsequent events, the Appellate Court came to the considered conclusion that the petitioners had failed to make out any case for interference in the eviction decree. Additionally, it was found that the petitioner in Writ Petition No. 2524/2020 had admitted that he was owning his own shop in another shopping complex and he had three shops that were leased out as godown. On this basis, the Appellate Court dismissed the appeal filed by the said petitioner.

16. Insofar as the petitioner in Writ Petition No.2702/2020 is concerned, the impugned judgment and

order shows that the Appellate Court took into consideration the subsequent events from paragraph No.22 onwards. It was found that sufficient pleadings and evidence were brought on record on behalf of the respondent landlady to show that the subsequent events did not in any manner adversely affect the bona fide need projected on her behalf. In fact, it was found that in the subsequent events enured to the benefit of the respondent landlady and that no case was made out by the petitioner for interference in the eviction decree.

17. This Court is of the opinion that the pleadings and the evidence on record have been correctly appreciated by the Appellate Court, particularly in the context of subsequent events. It was precisely for the reason of appreciating such evidence in the context of the subsequent events, that this Court had remitted the matters to the Appellate Court. A perusal of the impugned judgments and orders shows that the Appellate Court has indeed carried out a detailed exercise of appreciation of the amended pleadings and evidence brought on record in that context by the rival parties. This Court is of the opinion that no error can be attributed to the findings

rendered by the Appellate Court for the reason that the Court cannot supplant or substitute its own opinion with regard to the bona fide need projected by the landlady. It has come on record that although certain shops were indeed vacated by tenants and then the said shops were further given on rent, but, at the same time it has come on record that the said shops could not be said to be suitable for the specific need projected on behalf of the respondent landlady. The admission of daughter of the respondent landlady regarding possession of three shops is also of no consequence because suitability of suit shops for the projected need was sufficiently proved by the evidence and material on record. Therefore, it cannot be said that the Appellate Court committed any error in passing the impugned judgments and orders.

18. This Court has perused the aforesaid judgments on which reliance has been placed by the learned counsel appearing for the petitioners. The judgment of the Hon'ble Supreme Court in case of **M.M. Quasim Vs. Manohar Lal Sharma and others** (supra) lays down that subsequent events have to be taken into consideration in cases raising the

question of bona fide need and that the effect of such subsequent events ought to be taken as a factor while rendering findings on the question of bona fide need. This Court is of the opinion that there cannot be any quarrel with the aforesaid proposition. In the instant case, the Appellate Court has specifically referred to the pleadings and evidence pertaining to subsequent events placed on record by the rival parties. It is not as if the Appellate Court rendered findings by being oblivious of the subsequent events. In fact, findings have been rendered specifically after taking into consideration the amended pleadings and the evidence brought on record by the rival parties in that context. Therefore, the aforesaid judgment of the Hon'ble Supreme Court cannot be of any assistance of the petitioners herein.

19. Insofar as the judgment of this court in the case of **Vasant Mahadeo Gujar Vs. Baitulla Ismail Shaikh and another** (supra) is concerned, this Court has considered the ratio of the said judgment. A perusal of the detailed reasoning given in the said judgment does not in any manner help the petitioners in upsetting the findings rendered by the Appellate

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Court in the present cases. Even otherwise, every case is to be decided on its own facts.

20. This Court is of the opinion that the Appellate Court being the last Court on facts, has taken into consideration all the relevant material on record while rendering findings against the petitioners herein. This Court has also taken note of the fact that the respondent landlady is a widow whose two children have now grown up and she has been pursuing her suits for eviction against the petitioners herein since the year 2009. This Court is of the opinion that since no ground for interference is made out by the petitioners herein, writ jurisdiction cannot be exercised in their favour.

21. In view of the above, the writ petitions are dismissed. No costs.

JUDGE