

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2404 OF 1995

1. Shri Sikhwal Samaj, Jalgaon,
Registered Public Trust,
Jalgaon.
 2. Badrilal Uderam Joshi (Deceased),
 3. Nandlal Govindram Vyas,
Aged 54 years,
 4. Sitaram Purshottam Tiwari,
Age 64 years,
 5. Rameshchandra Shivdayal Oza,
Age 51 years,
 6. Tikkamchand Kanhaiyalal Tiwari,
Age 58 years,
 7. Shankarlal Badrilal Vyas (Deceased)
All are businessman and
R/o Shani Peth, Jalgaon,
District Jalgaon.
- ... **Petitioners**

Versus

1. Smt. Kalyanibai Parsharam Tiwari,
Age 56 years, Occu. Household,
R/o Balaji Galli, Bhusawal,
Jalgaon.
2. Umakant Parsharam Tiwari,
Age 37 years, Occu. Business,
R/o Balaji Lane, Bhusawal.
3. Shashikant Parsharam Tiwari,
(Petition is dismissed against R.No.3).
4. Ramkishan Chunilal Nagla,
(Since deceased through his LR.s.)

- 4A. Gopal Ramkishan Nagla,
Age 56 years, Occu. Service,
R/o 114, Shani Peth, Jalgaon,
District Jalgaon.
- 4B. Pradeep Ramkishan Nagla,
Age 52 years, Occu. Service,
R/o 114, Shani Peth, Jalgaon,
District Jalgaon.
- 4C. Anand Ramkishan Nagla,
Age 55 years, Occu. Business,
R/o 114, Shani Peth, Jalgaon,
District Jalgaon.
- 4D. Suraj Ramkishan Nagla,
Age 50 years, Occu. Service,
R/o 114, Shani Peth, Jalgaon,
District Jalgaon.
5. Ramlal Dhanraj Purohit,
Age 46 years, Occu. Business,
6. Jagdishchandra Hazarimal Vyas,
(Petition is dismissed against R.No.6).
7. Onkar Purohit,
(Petition is dismissed against R.No.7),
- Respondent Nos.3, 5, 6, 7 R/o 114,
Shani Peth, Jalgaon.

... **Respondents**

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Mr. P. R. Katneshwarkar, Advocate for Petitioners.
Mr. V. D. Gunale, Advocate for Respondent Nos.4A and 4B.
Mr. A. N. Sabnis, Advocate for Respondent Nos.4C and 4D.
Writ Petition is dismissed against Respondent Nos.3, 6 and 7.

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CORAM : V. K. JADHAV, J.

RESERVED ON : 14.01.2021
PRONOUNCED ON : 26.04.2021

JUDGMENT :-

1. The petitioners are the original plaintiffs. Petitioner No.1 is a Public Trust registered under the Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947 and Rules, 1948 (herein after referred to as 'Bombay Rent Act') for the upliftment and betterment of Sikhwal Samaj. According to the petitioners / plaintiffs, the petitioner / trust does social work like education of children of Sikhwal Samaj and their marriages. Petitioner Nos.2 to 7 are the registered trustees with the charity authorities. At present, petitioner Nos.2 and 7 are dead and petitioner Nos.3, 4, 5 and 6 are the only trustees. According to the petitioners / plaintiffs, one Ganpat Devram Pardeshi was the original owner of the suit property municipal house No.104. He had leased out that property to Parsharam Chunnilal Tiwari on yearly rent of Rs.200/-. However, it was not registered lease and as such the same was treated as a lease from month to month. The said Ganpat Pardeshi had sold the suit house to one Premraj Nandram Tiwari under the registered sale deed dated 28.03.1966. The said Parsharam Chunnilal had sublet the property to respondent No.4 late

Ramkishan. Thus, the said Premraj Tiwari had given a notice to Parsharam and Ramkishan for vacating the premises. Parsharam died on 17.07.1973 and respondent Nos.1 to 3 are his legal heirs.

2. It is further case of the petitioners / plaintiffs that on 24.08.1973, petitioner No.1 / trust had purchased the suit house for a consideration of Rs.15,000/- from said Premraj Tiwari and since then petitioner No.1 become the owner and landlord of the suit property. Respondent No.4 late Ramkishan himself is a sub tenant and also given the portion of the suit property to defendant Nos.5, 6 and 7 as his sub tenants. According to the petitioners / plaintiffs, respondent Nos.1 to 3 had agreed to vacate the premises but it was respondent No.4 late Ramkishan, who refused to vacate the premises. Respondent No.4 late Ramkishan himself is a sub tenant had also given the portion of the suit property to defendant Nos.5, 6 and 7 as his sub tenants. Respondent No.4 Late Ramkishan is the contesting respondent. Respondents are in arrears of rent of Rs.1195/- and they are also liable to pay permitted increases @ Rs.431/- per year for three years. Thus, the petitioners are entitled to claim Rs.2,419.89 from the

respondents. However, the claim is restricted to certain amount which is within limitation.

3. The petitioner / trust decided to construct a Mangal Karyalay (Marriage Hall) for the benefit of the Samaj. The petitioners have therefore instituted civil suit bearing Regular Civil Suit No.136 of 1978 for possession of the suit house against all the respondents on the ground of default of payment of rent for more than six months, subletting by respondent Nos.1 to 3 to respondent No.4 and by respondent Nos.5 to 7 and also on the ground of requirements of plaintiff / public trust under Section 13(1)(g) of the Bombay Rent Act for the occupation for the purpose of the trust.

4. Respondent Nos.1 to 3 / original defendant Nos.1 to 3 have not contested the suit. They had agreed to hand over the possession. Respondent Nos.5 and 6 / original defendant Nos.5 and 6 have not filed their written statement. Respondent No.7 / original defendant No.7 has filed the written statement at Exh.7 stating therein that he is not a sub tenant on any part of the suit premises and no portion of the suit property is in his possession. He had not taken any

portion of the suit house on rent as a sub tenant from respondent No.4 late Ramkishan.

5. Respondent No.4 / original defendant No.4 late Ramkishan is the only contesting defendant. He has filed written statement at Exh.20. According to him, he is a lawful tenant of the suit premises. His grandfather Chunnilal was the original tenant since 2002. He was paying Rs.136/- for built portion and Rs.65/- for open space around it and in all Rs.201/- per year. He was residing and doing business of Dalphad under the name and style as "Chunnilal Devakram Nagla". According to him, Chunnilal had three sons i.e. (i) Devakram (ii) Parsharam and (iii) Ramkishan (defendant No.4). Devakram was already separated. Parsharam was the father of respondent Nos.1 to 3 / original defendant Nos.1 to 3. Chunnilal died on 27.06.1958. At the time of his death, defendant No.4 was residing with him along with Parsharam. According to defendant No.4 late Ramkishan, as Parsharam was elder brother, the rent receipts were taken in his name, thereafter Parsharam left Jalgaon and went to reside at Bhusawal. He was therefore not interested in the suit premises. Respondent No.4 is the lawful tenant of the suit premises.

Defendant No.4 paying rent to the landlord and the same was being accepted. However, Premraj (purchaser of the suit property in the year 1966) had refused the money orders sent on 19.07.1973 and sold the suit property to the petitioner / public trust. According to defendant No.4 late Ramkishan, the petitioners / landlords are trying to take advantage of the fact that the rent receipts were in the name of Parsharam and accordingly denied the status of respondent No.4 as a tenant. The petitioners had also join hands with heirs of Parsharam. Therefore, defendant No.4 late Ramkishan had filed Regular Civil Suit No.13 of 1976. In the said suit, respondent No.4 was declared as a tenant of the suit premises. It is further contended by respondent / defendant No.4 that there was no notice of demand issued to him. It was given to said Parsharam, who has no interest in the suit premises. He has deposited all the rent in the court. Respondent No.4 has also contended that the petitioner / trust do not require the premises for the public purpose or the Mangal Karyalay.

6. By judgment and order dated 02.06.1983, the learned Joint Civil Judge Junior Division, Jalgaon has decreed the Regular Civil suit No.136 of 1978 and directed defendant No.4

to deliver the possession of the suit premises to the petitioners / plaintiffs. Defendant No.4 was also directed to pay Rs.1824.89 to the plaintiffs with notice charges of Rs.30/- and the cost of the suit. He was also directed to pay the pending and future mesne profit at the same rate from the date of filing of this suit till the possession is delivered.

7. Being aggrieved by the same, respondent / defendant No.4 late Ramkishan has preferred the Civil Appeal No.36 of 1984 before the District Court, Jalgaon. The learned 4th Additional District Judge, Jalgaon by judgment and order dated 27.06.1994 allowed the Civil Appeal No.36 of 1984, quashed and set aside the judgment and decree passed in Regular Civil Suit No.136 of 1978 and dismissed the suit as against respondent / defendant No.4. Hence, this writ petition.

8. The learned counsel for the petitioners submits that the notice of demand as required under Section 12(2) of the Bombay Rent Act was given to respondent / original defendant Nos.1 to 3, who are the legal representatives of deceased Parsharam in whose name the rent receipt was given. As

respondent / defendant No.4 claims to be the tenant along with deceased Parsharam and respondent Nos.1 to 3, no separate notice of the demand of rent is necessary. The learned counsel submits that notice to any one of the joint tenants is a valid notice. The learned counsel for the petitioners submits that it is also the pleadings and the evidence led by respondent / original defendant No.4 to that effect that deceased Parsharam resided in the suit premises along with him and after he went to reside at Bhusawal, respondent / original defendant No.4 started residing in the suit premises along with his mother. Admittedly, the rent receipts were issued in the name of deceased Parsharam. Respondent No.4 late Ramkishan had tried to explain that the rent receipts were obtained in the name of deceased Parsharam as he was the elder brother, however, the fact remained that the deceased Parsharam resided in the suit house along with respondent / defendant No.4 late Ramkishan. The learned counsel submits that whether the tenancy is a joint or separate, no inflexible rule or straitjacket formula can be laid down and the case has to be decided on the facts and circumstances thereof. The learned counsel submits that there is a sufficient evidence to indicate

that the tenancy was joint and in view of the same, demand notice to any one of the joint tenant is sufficient compliance of the provisions of Section 12(2) of the Bombay Rent Act. The learned counsel submits that none of the respondents had paid the rent within one month of the receipt of the notice and hence they are the willful defaulters under Section 12(3)(a) and (b) of the Bombay Rent Act. The learned counsel submits that even the respondents did not deposit the amount regularly in the Court during the pendency of the suit and therefore, they are also liable to be evicted under Section 12(3)(b) of the Bombay Rent Act.

9. The learned counsel for the petitioners submits that in terms of the provisions of 13(1)(g) of the Bombay Rent Act, the petitioner / landlord being a public trust is entitled for the possession of the premises for its own requirements. Thus, the petitioners / plaintiffs are required to plead and prove only the premises required for the occupation for the purpose of trust and nothing more. Even respondent No.4 late Ramkishan has also admitted in his cross-examination that the petitioners / plaintiffs being a public trust is in need of the premises to fulfill the object of the trust. The learned counsel submits that thus

the judgment and decree passed by 4th Additional District Judge, Jalgaon in Civil Appeal No.36 of 1984 dated 27.06.1994 is liable to be quashed and set aside and decree for possession passed by the Joint Civil Judge Junior Division, Jalgaon in Regular Civil Suit No.136 of 1978 dated 21.06.1983 required to be restored.

10. The learned counsel for the petitioners in order to substantiate his contention placed his reliance on the following cases :

(a) Ashok Chintaman Juker and others Vs. Kishore Pandurang Mantri and another reported in (2001) 5 Supreme Court Cases 1.

(b) Bandu Ravji Nikam Vs. Shri. Acharyaratna Deshbushan reported in 2003 (1) ALL MR 198.

(c) Babulal Fakirchand Agrawal Vs. Suresh Kedarnath Malpani & others, Civil Revision Application No.76 of 2010.

11. The learned counsel for the respondent / defendant No.4 late Ramkishan (now respondent No.4A to 4D legal heirs of deceased Ramkishan) submits that all the trustees are not before this Court and only some of the trustees have filed writ petition as well as proceedings in the lower Court, therefore,

on this ground, the suit itself is not tenable. The learned counsel submits that most of the trustees of the said trust are expired. There are no elections to the Managing Committee Members of the said trust. There are no activities of the said trust nor the said trust is functioning.

12. The learned counsel for the respondent / defendant No.4 late Ramkishan submits that the petitioner / trust has not issued any notice to deceased Parsharam prior to his death on 17.06.1973. The petitioner / trust has also not issued any notice to respondent / defendant No.4 till the filing of the suit. The learned counsel submits that respondent No.4 late Ramkishan is declared as a statutory tenant of the suit property in view of the judgment and decree passed in Regular Civil Suit No.13 of 1976 and the said judgment and decree was also confirmed in the appeal. Respondent / defendant No.4 late Ramkishan never sublet the suit property to respondent Nos.5, 6 and 7 / defendant Nos.5 to 7 as alleged.

13. The learned counsel for respondent No.4 submits that the Trial Court has rightly held that respondent No.4 is lawful tenant of the suit premises. However, Trial Court has wrongly

held that defendant No.4 late Ramkishan is a defaulter of payment of rent for more than six months. The learned counsel submits that respondent No.4 late Ramkishan is not defaulter in payment of rent in terms of the provisions of Section 12(2) of the Bombay Rent Act and the learned Judge of the Lower Appellate Court has recorded the findings in the affirmative to that effect. The learned counsel submits that the petitioner / trust has also failed to prove the requirement of the possession of the suit premises for its personal bonafide views. The greater hardship will be caused to respondent / defendant No.4 late Ramkishan more than the petitioner / trust if the suit is decreed.

14. The learned counsel submits that respondent / defendant No.4 late Ramkishan had instituted the Regular Civil Suit No.13 of 1976 which was decreed on 22.09.1980 and he was declared as a statutory tenant. Being aggrieved by the same, the petitioner / trust has preferred the Civil Appeal No.27 of 1980 which was dismissed on 20.06.1983. The said judgment and decree passed in Regular Civil Suit No.13 of 1976 has attained the finality. The petitioners are therefore cannot claim that respondent No.4 late Ramkishan is not

tenant of the suit premises. The learned counsel submits that the father of respondent / defendant No.4 late Ramkishan was yearly tenant and thereafter respondent / defendant No.4 late Ramkishan became the yearly tenant. The learned counsel submits that in terms of the provisions of Section 12(2) of the Bombay Rent Act, 1947 the demand notice is necessary in the manner as provided in Section 106 of the Transfer of Property Act, 1882 and after receipt of the said notice, if the tenant did not pay the rent within 30 days a decree of the possession can be claimed in terms of the said provisions.

15. The learned counsel for respondent / original defendant No.4 (now respondent No.4A to 4D legal heirs of deceased Ramkishan) submits that so far as the bonafide requirement is concerned, there is vague pleading in the plaint and it is merely stated that the trust is required the premises for building a Mangal Karyalaya and other social institutions and except the bare words on behalf of the petitioners / plaintiffs, there is no further evidence led on this point. There is no resolution of Samaj / Trust for construction of the marriage hall on the suit premises. Furthermore, there is no provision for raising the funds of the required construction of marriage

hall. The petitioners / plaintiffs have not prepared any plan for the construction nor approval and / or sanction for construction from the charity authorities produced on record. The learned counsel submits that even in terms of provisions of Section 13(1)(g), it is incumbent upon the petitioners / plaintiffs to prove that the premises are required for occupation for the purpose of the trust. The learned counsel submits that there is no substance in this writ petition. The Lower Appellate court has rightly appreciated the evidence in its proper context. There is no reason to interfere the well reasoned judgment and order passed by the Lower Appellate Court.

16. The learned counsel for respondent No.4 in order to substantiate his contention placed his reliance on the following cases :

- (a) Sitaram Narayan Shinde and others Vs. Ibrahim Ismail Rais and others reported in 2005 (1) Mh.L.J., 35.
- (b) Mani Nariman Daruwala @ Bharucha (Deceased) through LRs. and others Vs. Phiroz N. Bhatena and others reported in (1991) 3 Supreme Court Cases 141.

17. I have carefully considered the submissions advanced by the learned counsel for the respective parties. With their able assistance, I have perused the pleadings, the grounds taken in the petition, annexures thereto and the reply filed by the respondent.

18. The petitioners / plaintiffs have instituted the suit bearing Regular Civil Suit No.136 of 1978 seeking eviction of the defendants / tenants from the suit property as detailed in paragraph No.1 of the plaint on two grounds (i) Default in paying the rent and (ii) The premises are required for occupation for the purpose of the trust.

19. It is necessary to repeat the history in brief :

One Ganpat Devram Pardeshi was the original owner of the suit house property. In the year 1966, the said Ganpat Pardeshi had sold the suit house property to Premraj Tiwari under the registered sale deed dated 28.03.1966. On 24.08.1973, the petitioner / trust had purchased the suit house property for consideration of Rs.15,000/- from Premraj Tiwari and since then undisputedly the petitioner / trust become the owner / landlord of the suit property.

20. According to the petitioners / plaintiffs, the said Ganpat Pardeshi / original owner had given the suit property to Parsharam Tiwari on yearly rent of Rs.200/- for the purpose of his trade business. However, it was not registered lease and as such the same was treated as a lease from month to month. The said Parsharam Tiwari died on 17.07.1973 and respondents / original defendant Nos.1 to 3 are his legal heirs. Though respondents / original defendant Nos.1 to 3 had agreed to vacate the premises, respondent / defendant No.4 late Ramkishan on 01.11.1973 had given a notice under Section 5(11)(c) to the petitioners / plaintiffs stating therein that he is a statutory tenant. In anticipation of the eviction suit from the petitioners / plaintiffs, respondent / original defendant No.4 late Ramkishan had filed an application bearing Misc. Application No.208 of 1973 in Jalgaon Court for declaration and since the said application found to be not maintainable, respondent / original defendant No.4 late Ramkishan has converted the said application into Regular Civil Suit No.13 of 1976 for declaration of his status as a tenant in terms of the provisions of Section 5(11)(c) of the Bombay Rent Act, so also for a decree of perpetual injunction.

However, the petitioners / plaintiffs on 26.12.1973 had issued a demand notice for claiming the rent from 28.03.1972 to respondents / original defendant Nos.1 to 3 and also stated therein about termination of the tenancy, however, respondents / original defendant Nos.1 to 3 have shown their ready and willingness to vacate the premises. According to the petitioners / plaintiffs, respondent / defendant No.4 late Ramkishan has no concern with the suit property. The said deceased Parsharam was a statutory tenant and respondent / defendant No.4 never resided with him nor he was the member of his family. Accordingly, the petitioners / plaintiffs have instituted the suit for possession of the suit property along with decree of the arrears of rent.

21. Respondent / original defendant No.4 late Ramkishan has only contested the suit. According to him, the father of original owner deceased Ganpat Devram Pardeshi namely Devram Pardeshi had given the suit property on yearly rent consisting the building and the open space to the father of respondent / defendant No.4 namely Chunnilal. In the said premises, the father of respondent / defendant No.4 late Ramkishan had started the business under the name and style

as "Chunnilal Devkaran Nagla". The father of respondent / defendant No.4 namely Chunnilal died on 27.06.1957. At that time, respondent / defendant No.4 late Ramkishan along with his mother was residing with him in the said suit premises. Respondent / defendant No.4 has explained the genealogy. Admittedly, Chunnilal has wife namely Nanibai (wife) and three sons namely Devkaran, Parsharam, Ramkishan (defendant No.4). Deceased Parsharam survived with a wife and two sons, those are respondents / defendant Nos.1 to 3 in the suit. Repondent / defendant No.4 has further explained that after the death of their father, deceased Parasharam had come to Jalgaon and started residing with them. He was an elder brother and therefore, they have started taking the receipts of the rent from the owner in his name. After some time, deceased Parsharam went to Bhusawal and started residing with Premraj. Deceased Parsharam thus had not resided in the suit premises for more than 18 years and respondent / defendant No.4 was only residing in the suit premises as a tenant. As such, respondent / defendant No.4 is the statutory tenant and his status as a statutory tenant is now

confirmed in terms of the judgment and decree passed in Regular Civil Suit No.13 of 1976.

22. The petitioners / plaintiffs and respondent / defendant No.4 led the oral and documentary evidence. Though the Trial Court has decreed the suit of the petitioners / plaintiffs in terms of its prayers, however, the Appellate Court has allowed the appeal and dismissed the suit on two grounds (i) there is no demand notice of arrears of rent in terms of the provisions of Section 12(2) of the Bombay Rent Act and (ii) the petitioner / trust could not establish its bonafide requirements of the suit property in order to pass the decree under the provisions of Section 13(1)(g) of the Bombay Rent Act.

23. The learned 4th Additional District Judge, Jalgaon seems to have been impressed by the judgment and decree passed in the suit bearing Regular Civil Suit No.13 of 1976 instituted by respondent / defendant No.4 late Ramkishan.

24. I have carefully gone through the judgment and decree passed in the said Regular Civil Suit No.13 of 1976 marked at Exh.62. There is a specific pleadings raised by respondent / defendant No.4 in the said suit in terms of provisions of

Section 5(11)(c) of the Bombay Rent Act. There is no reference in the said suit that after the death of their father Chunnilal, only respondent / defendant No.4 late Ramkishan along with his mother started residing in the suit premises exclusively. In the instant suit, though respondent / defendant No.4 has raised a specific plea that out of three brothers of Chunnilal, brother Devkaran was residing separately in the life time of Chunnilal, however, deceased Parsharam was residing at Hyderabad. According to respondent / defendant No.4 late Ramkishan (third son of Chunnilal), after the death of father Chunnilal, deceased Parsharam also started residing at Jalgaon in the suit premises. It appears from the pleadings and the oral evidence led by respondent / defendant No.4 that the rent receipts came to be issued in the name of deceased Parsharam (elder brother of respondent / defendant No.4 late Ramkishan).

25. Though there are different pleadings from both the sides as to who was the actual tenant, however, it appears that even assuming that the father of deceased Parsharam and respondent / defendant No.4 late Ramkishan namely Chunnilal was the original tenant and after his death, if the said deceased

parsharam and respondent / defendant No.4 late Ramkishan along with widow of Chunnilal started residing in the suit premises, in terms of the provisions of Section 5(11)(c) of the Bombay Rent Act, they are the members of the tenant's family residing with him at the time of his death or undisputedly they are the heirs of deceased tenant.

26. Respondent / defendant No.4 late Ramkishan has deposed that in the year 1966, the original owner Ganpat has sold the suit property to Premraj Tiwari, who is his uncle and he was paying rent to him, however, taking the receipts in the name of Parsharam. Exh.58 is the legal notice issued to deceased Parsharam Tiwari by Premraj Tiwari along with original owner Ganpat Pardeshi. On perusal of the same, it appears that the purchaser Premraj Tiwari along with the original owner Ganpat Pardeshi had given notice to deceased Parsharam that the suit property came to be purchased by Premraj Tiwari and hence forth deceased Parsharam has to pay the monthly rent to said Premraj Tiwari. The said notice has been issued on 28.03.1966. In the said notice, neither there is a reference of original tenant Chunnilal as contended by respondent / defendant No.4 late Ramkishan nor any reference

to respondent / defendant No.4 late Ramkishan. The said notice Exh.58 is placed on record by the petitioners / plaintiffs. In view of the above, at the most in terms of the provisions of Section 5(11)(c) of the Bombay Rent Act, respondents / defendant Nos.1 to 3, who are the legal heirs of deceased Parsharam can be said to be the tenants.

27. Respondent / defendant No.4 late Ramkishan has deposed that his father Chunnilal died in the year 1957 and after the death of his father, Parsharam had come to Jalgaon and after the funeral, deceased Parsharam went to Bhusawal. The said Premraj Tiwari, who happened to be uncle had purchased the property in the year 1966 from the original owner Ganpat Deoram Pardeshi. In view of the same, there was no reason for respondent / defendant No.4 to get the rent receipts in the name of deceased Parsharam. Even in the notice at Exh.58 as referred above, there is no reference of name of respondent / defendant No.4 late Ramkishan.

28. Thus, considering the oral and documentary evidence as discussed above and even after giving due weightage to the judgment and decree passed in Regular Civil Suit No.13 of

1976, at the most, the inference can be drawn about the joint tenancy. In my considered opinion, the learned 4th Additional District Judge, Jalgaon has ignored this material aspect while deciding the appeal.

29. In a case, *Ashok Chintaman Juker and others Vs. Kishore Pandurang Mantri and another reported in (2001) 5 Supreme Court Cases 1* relied upon by the learned counsel for the petitioners, the Supreme Court has held that in case of a joint tenancy, notice to any one of the tenants is valid and the suit impleading one of the defendant is maintainable. The decree passed in such a suit is binding on all the tenants. In paragraph No.10 and 11, the Supreme Court has made the following observations :

"10. In sub-section (11) of Section 5 of the Act the expression "tenant" means any person by whom or on whose account rent is payable for any premises and includes: (a) such sub-tenants and other persons as have derived title under a tenant before the coming into operation of this Act; (b) any person remaining, after the determination of the lease, in possession, with or without the assent of the landlord, of the premises leased to such person or his predecessor who has derived title before the coming into operation of this Act; (c) any member of the tenant's family residing with him at the time of his death as may be decided in default of agreement by the court. The language of the provision indicates that the definition of the term is an inclusive one and wide in its amplitude. In the present case

we are concerned with clause (c) of sub-section (11) of Section 5 which provides that "tenant" includes any member of the tenant's family residing with him at the time of his death as may be decided in default of agreement by the court. There are two requisites which must be fulfilled before a person is entitled to be called a "tenant" under clause (c); firstly, he must be a member of the tenant's family and secondly, he must have been residing with the tenant at the time of his death. Besides fulfilling these conditions he must have been agreed upon to be a tenant by the members of the tenant's family; in default of such agreement the decision of the court shall be binding on such members. The further question that arises for consideration is whether a member of the family of the original tenant who claims to have been residing with the tenant at the time of his death can resist execution of a decree passed against a member of the tenant's family who undisputedly was accepted by the landlord as a tenant on the death of the original tenant."

"11. The question that arises for consideration in such cases is whether the tenancy is joint or separate. In the former case notice on any one of the tenants is valid and a suit impleading one of them as a defendant is maintainable. A decree passed in such a suit is binding on all the tenants. Determination of the question depends on the facts and circumstances of the case. No inflexible rule or straitjacket formula can be laid down for the purpose. Therefore, the case in hand is to be decided in the facts and circumstances thereof."

30. In the instant case, even if the pleadings and evidence is considered as a whole, it appears that it is a single tenancy and the tenancy rights devolve on the heirs of the deceased tenant. There is no division of the premises or of the rent payable any time. It is necessary to mention here that the legal heirs of

deceased Parsharam respondent / original defedant Nos.1 to 3 herein had not contested the suit and they have agreed to vacate the premises. Thus, no separate notice was required to be issued to respondent / original defendant No.4 late Ramkishan for default in payment of the rent. Even assuming that the status of respondent / defendant No.4 late Ramkishan was determined in the suit bearing Regular Civil Suit No.13 of 1976 as a tenant, however, till then there is a default of payment in rent from 1973-1974 till 1978. In view of the same, the learned Judge of the Trial Court has rightly passed decree for recovery of the rent as against the respondent / original defendant Nos.1 to 4.

31. So far as the notice under Section 106 of the Transfer of Property Act to be issued to the tenant is concerned, the Supreme Court in a case *V. Dhanapal Chettiar Vs. Yesodai Ammal* reported in *AIR 1979 Supreme Court 1745* has observed that in order to get the decree or order for eviction against a tenant under any State Rent Control Act it is not necessary to give notice under Section 106 of Transfer of Property Act. The Supreme Court has further observed that determination of a lease in accordance with the Transfer of

Property Act is unnecessary and a mere surplusage because the landlord cannot get eviction of the tenant even after such determination. The tenant continues to be so even thereafter. That being so, making out a case under the Rent Act for eviction of the tenant by itself is sufficient and it is not obligatory to issue notice in accordance with Section 106 of the Transfer of Property Act. In paragraph No.9 by giving reference to the Provisions of the Bombay Rent Act the Supreme Court has made the following observations :

"Adverting to the provisions of the Bombay Rents, Hotels and Lodging House Rents Control Act, 1947 it would be found from the definition section 5 that any person remaining in the building after the determination of the lease is a tenant within the meaning of clause (11). Section 12 of the Bombay Act says that the landlord shall not be entitled to the recovery of possession of any premises so long as the conditions mentioned in sub-section (1) are fulfilled nor any suit for recovery of possession shall be instituted by a landlord against a tenant on the happening of the events mentioned in sub-section (2) until the expiration of one month next after the notice is served on the tenant in the manner provided in section 106 of the Transfer of Property Act, as required by the said sub-section. Section 13 provides that a landlord may recover possession on certain grounds. Is it not plain then that on the happening of the events or on the fulfillment of the conditions mentioned in sections 12 and 13 etc. the landlord becomes entitled to recover possession from the tenant, otherwise not. It will bear repetition to say that under the Transfer of Property Act in order to entitle the landlord to recover possession determination of the lease is necessary as during its

continuance he could not recover possession, while under the State Rent Act the landlord becomes entitled to recover possession only on the fulfillment of the rigour of law provided therein. Otherwise not. He cannot recover possession merely by determination of tenancy. Nor can he be stopped from doing so on the ground that he has not terminated the contractual tenancy. Under the State Rent Control Acts the concept of the contractual tenancy has lost much of its significance and force. Identical is the position under the Bihar Act. The definition section permits the tenant to continue as a tenant even after the determination of the contractual tenancy. Section 11 gives him protection against eviction by starting with a non- obstante clause and providing further that he shall not be liable to eviction from any building except in execution of a decree passed by the Court for one or more grounds mentioned in Section 11. Does it not stand to reason to say that a decree can be passed if one or more of the grounds exist and such a decree can be passed against an existing tenant within the meaning of the State Rent Act? Similar is the position under the Kerala Lease and Rent Control Act, 1965 and the East Punjab Urban Rent Restriction Act, 1949. We shall refer to the provisions of the Madhya Pradesh and Andhra Pradesh State Rent Acts when we come to review the decisions of this Court in relation to those Acts."

32. The learned counsel for respondent / defendant No.4 has placed his reliance in a case *Sitaram Narayan Shinde and others Vs. Ibrahim Ismail Rais and others reported in 2005 (1) Mh.L.J., 35*, however, the facts of the present case is altogether different and the ratio laid down cannot be made applicable to the facts and circumstances of the present case. The learned counsel for the respondent / defendant No.4 has placed his

reliance in a case *Mani Nariman Daruwala @ Bharucha (Deceased) through LRs. and others Vs. Phiroz N. Bhatena and others reported in (1991) 3 Supreme Court Cases 141*, however, the issue about jurisdiction of the court to entertain the suit on an application depends upon the averments contained in the plaint was considered, the said issue is not involved in this case. Furthermore, in paragraph No.18, the Supreme Court has observed that the High Court's interference with findings of facts of an inferior court not called for in absence of any perversity. In the instant case, however, the Lower Appellate Court's decision suffers from perversity and as such the interference is necessary to restore the judgment and decree passed by the Trial Court.

33. So far as the requirement of the suit property by the petitioners / plaintiffs are concerned, admittedly the petitioner / plaintiff is a trust in terms of the provisions of Section 13(1)(g) of the Bombay Rent Act, if the landlord is a trustee of the Public Charitable Trust, it would be sufficient if the premises are required for occupation for the purpose of the trust. Section 13(1)(g), which is necessary for the present discussion is reproduced herein below :

"13. When landlord may recover possession. -

(1) Notwithstanding anything contained in this Act [but subject to the provisions of sections 15 and 15A,] a landlord shall be entitled to recover possession of any premises if the Court is satisfied -

(a)

(b)

(c)

(d)

(e)

(f)

(g) that the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit, the premises are held [or where the landlord is a trustee of a public charitable trust that the premises are required for occupation for the purposes of the trust; or "

34. In a case, *Bandu Ravji Nikam Vs. Shri. Acharyaratna Deshbushan reported in 2003 (1) ALL MR 198*, this Court has held that where landlord a Public Charitable Trust, requirement of pleading and proof to establish ground under Section 13(1)(g) different from one required for any other landlord. The trust succeed required to plead and prove only that premises is required for occupation for the purposes of trust and nothing more. Relevant paragraph No.4 of the judgment is reproduced herein below :

"4. Having considered the rival submissions, I shall first deal with the plea that there is no pleading whatsoever with regard to the purpose of requirement of the respondent trust in the plaint. As rightly contended by the respondent, since

the respondent is a Public Charitable Trust, the requirement of pleading as well as proof to establish the ground under section 13(1)(g) of the Act would be different than the one required by any other landlord which is not a Public Charitable Trust. This can be spelt out from the plain language of section 13(1)(g) of the Act which reads thus:

"13. When landlord may recover possession.
"(1) Notwithstanding anything contained in this Act, a landlord shall be entitled to recover possession of any premises if the Court is satisfied ---

(g) that the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held or where the landlord is a trustee of Public Charitable Trust that the premises are required for occupation for the purposes of the trust; or"(Emphasis supplied)

On plain language of this provision, when the landlord is a Public Charitable Trust, what is required to be pleaded and proved so as to succeed on this ground is only that the premises are required for occupation for the purposes of the trust and nothing more. Our High Court in the case of (Kishinchand Marjimal & others v. Bai Kalavati & others), reported in A.I.R. 1973 Bom. 46 (para 21) has held thus:

"Thus second contention of Mr. Chitale is that the finding of the two courts that the trustees require the premises for their use is contrary to law as they have not recorded a clear finding that the trustees reasonably and bona fide require the premises. This submission is also not tenable because in amending section 13(1)(g), if the legislature intended that the requirement of the trustees should also be proved to be bona fide and reasonable they would have stated so. Instead they have merely used the words "or where the landlord is a trustee of a Public Charitable Trust that the premises are required for occupation for the purposes of the trust". It is an alternative ground in respect of premises belonging to Public Charitable Trusts added to the ground which originally stood in Clause (g) of section 13(1), by Bombay Act 61 of 1953 to advance the cause of public charity by not

allowing it to suffer for want of accommodation. The ground merely required the trustees to establish that there is some requirement importing an element of necessity which compels them to file a suit for eviction. Such a requirement has adequately established in the facts and circumstances of the present case. I do not think that anything more was required by law. The two courts below are therefore, right in holding that the trustees satisfied the requirement of section 13(1)(g)."

35. In the facts of the present case, petitioner No.6 herein on behalf of the petitioner has deposed before the Trial Court. According to him, the trust required the suit premises for construction of the marriage hall. The purpose of the trust is to perform work for social benefits. In cross-examination, in response to a question, the petitioner No.6 has deposed that the trust has no other property except the suit property. According to him, the trust has passed the resolution to construct the marriage hall. He has admitted that no arrangements were made for raising the funds required for construction of the proposed marriage hall. He has also admitted that the trust has not prepared the plan nor applied to the Municipal Council for sanction of the plan for the proposed marriage hall. Respondent / defendant No.4 has admitted in his cross-examination that the Samaj (trust) is doing the social work and the said social work is like education

of the children and the marriage of the young people. He has further admitted that the trust needs the premises for the said purpose. He has also admitted in his cross-examination that the rental premises is available at Jalgaon and he will get the rental premises. He has shown his ignorance as to whether there is marriage hall in existence for Sikhwal Samaj for the benefits for which the trust was established, though residing in Jalgaon since last 40 years. Even he has shown his ignorance as to how many houses of Sikhwal Samaj people in Jalgaon and whether there are 5000 people of Sikhwal Samaj residing in Jalgaon.

36. The learned Adhoc District Judge has observed in paragraph No.14 of the judgment that though such type of admissions given by respondent / defendant No.4, the same is not going to prove the bonafides of the plaintiff / trust. Even the learned District Judge has observed that the greater hardship would be caused to defendant No.4 compared to the plaintiff / trust as the plaintiff / trust could not establish his bonafide requirements. In my considered opinion, the said observations are contrary to the provisions of 13(1)(g) of the Bombay Rent Act.

37. In terms of the provisions of Section 13(1)(g), the petitioner / trust is not required to prove its bonafide requirement. The petitioners / plaintiffs have established that there is some requirement importing an element of necessity which constrained the petitioner / trust to institute the suit for eviction. There is no dispute that the petitioner / trust has objectives like the upliftment of the people of their Sikhwal Samaj, spread education amongst them and to arrange the marriages of young people from their community. Thus, the petitioner / trust requires the said property to fulfill the objects of the trust. In view of the same, the observations made by the learned 4th Additional District Judge, Jalgaon are perverse in nature and the judgment and decree passed in Civil Appeal No.36 of 1984 is thus liable to be quashed and set aside by restoring the judgment and order passed by the Trial Court. Hence, I proceed to pass the following order :

ORDER

1. The Writ Petition is hereby allowed.
2. The judgment and decree passed by 4th Additional District Judge, Jalgaon in Civil Appeal No.36 of 1984, dated 27.06.1994 is hereby quashed and set

aside and the Judgment and decree passed by the Joint Civil Judge Junior Division, Jalgaon in Regular Civil Suit No.136 of 1976 dated 21.06.1983 stands confirmed.

3. Rule made absolute in the above terms.
4. Writ Petition is accordingly disposed off.

(V. K. JADHAV, J.)

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vmk/-