

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

**WRIT PETITION NO.124/2010**

**PETITIONER :** Shriram Budhaji Thakre,  
aged about 66 years, Occupation :-  
business, 6, Dr. Ambedkar road, Gurukripa,  
Gurunanakpura, Nagpur.

**...VERSUS...**

**RESPONDENTS :**

1. Additional District Collector (empowered with the power to try appeal under the Rent Control Order, 1949), collectorate premises, Nagpur.
2. Rent Controller, Nagpur, collectorate premises, Nagpur.
3. Sardar Bhupendrasingh s/o Sardar Ratansingh Arneja, aged :- major.
4. Sardar Baijendrasingh s/o Sardar Ratansingh Arneja, aged : Major.
5. Sardar Dilipsingh s/o Sardar Ratansingh Arneja, aged :- Major.
6. Sardar Satnamsingh s/o Sardar Ratansingh Arneja, aged : Major.

All resident of Gurukripa, Dr. Ambedkar  
road Gurunanakpura, Nagpur.

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Shri R.B. Dhore, Advocate for petitioner  
Ms Tajwar Khan, AGP for respondent nos.1 and 2  
Shri S.V. Purohit, Advocate for respondent nos.3 to 6

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**CORAM : AVINASH G. GHAROTE, J.**

**DATE : 27/08/2021**

**ORAL JUDGMENT**

1. Heard Shri R.B. Dhore, learned Counsel for the petitioner, Ms Tajwar Khan, learned Assistant Government Pleader for the respondent nos.1 and 2 and Shri S.V. Purohit, learned Counsel for the respondent nos.3 to 6.

2. The tenanted premises are two blocks, block no.6 admeasuring 100 x 120 sq.ft. and block no.7/1 admeasuring 9 x 14 sq. ft., situated on the ground floor of the Municipal House No.881, situated at Dr. Ambedkar Road, Gurunanakpura, Pachpaoli, Nagpur. The respondent nos.3 to 6 had purchased the said property from its erstwhile owner by sale-deed dated 4/12/1978 and the notice of attornment came to be issued to the petitioner on 6/12/1978. The ground floor of the house no.881 initially had eleven shops and four shops were later on constructed making the total fifteen. In the year 1978-79, proceedings were initiated for eviction against the petitioner bearing Revenue Case No.473/A-71(2)/1978-79, which came to be dismissed on 10/4/1980 for want of jurisdiction. The respondent nos.3 to 6 thereafter instituted Regular Civil Suit

No.481/1983 on the ground that the tenancy of petitioner was void and claimed possession, which came to be dismissed by judgment dated 21/6/1985, which came to be challenged by way of Regular Civil Appeal No.67/1986, in which on 13/6/1986, the rent for the period from 1/1/1983 to 31/6/1986 amounting to Rs.10,500/- came to be deposited. Regular Civil Appeal No.67/1986 was also dismissed.

3. The respondents-landlords thereafter initiated proceedings under the C.P. & Berar Letting of Houses and Rent Control Order, 1949 (for short, “the Rent Control Order, 1949”, hereinafter), claiming permission to terminate the tenancy of the petitioner under Clause 13 (3) [(ii)-habitual default], [(vi)- bonafide need] and [(vii)-carrying essential repairs which cannot be made without vacating tenant]. This came to be numbered as Revenue Case No.542/1987-88, which came to be dismissed in default on 11/4/1991.

4. The respondents-landlords thereafter instituted Revenue Case No.264/A-71(2)/95-96 on 11/6/1996 under Clause 13 (3) (ii) (iii) (v) (vi) (viii) and (ix) of the Rent Control Order,

1949, seeking permission to terminate the tenancy. In these proceedings, one of the landlords, namely Sardar Bhupendrasingh s/o Sardar Ratansingh Arneja had examined himself and deposed about the requirement of the tenanted premises on account of the need to shift their business, which was carried out in four tenanted premises at Central Avenue under the name “Bombay Scooter Agency”, at Hanuman Nagar under the name “Bombay Scooter Centre” and at Sitabuldi under the name “New Bombay Scooters”. He further deposed that the tenancy was commenced on 5<sup>th</sup> of each English calender month and the rent was payable in advance, which was never paid. He relied upon the proceedings instituted before the Civil Court in Regular Civil Suit No.481/1983 for recovery of rent, which was decreed and Regular Civil Appeal No.67/1986 in which a sum of Rs.10,250/- on account of arrears of rent was deposited by the tenant. He, however, admitted that the tenant was paying the rent by money order, which was being received by him.

5. On behalf of the petitioner, the tenant examined himself and opposed the claim of the landlords. The evidence of the tenant has not been placed on record in the present petition.

6. The learned Rent Controller, by his order, dated 20/11/2004 rejected permission under Clause 13 (3) (viii) and (ix) of the Rent Control Order, 1949, however, granted permission to issue notice to terminate the tenancy under Clause 13 (3)(ii) (iii) (v) and (vi) of the Rent Control Order, 1949. The petitioner being aggrieved by the same, preferred an appeal under Clause 21 of the Rent Control Order, 1949. The Additional Collector, Nagpur by the judgment dated 30/12/2006 partly allowed the same and set aside the permission granted under Clause 13 (3) (iii) and (v), but maintained the permission as granted under Clause 13 (3) (ii) and (vi) of the Rent Control Order, 1949 .

7. The landlords issued a notice to quit on 25/11/2004 and filed a suit for eviction and possession before the learned Judge Small Causes, which came to be decreed on 6/8/2007 against which an appeal came to be filed, which has been stayed by this Court while admitting the present matter.

8. Shri Dhore, learned Counsel for the petitioner submits that the authorities below ought not to have granted permission

under Clause 13 (3) (ii) and (vi) of the Rent Control Order, 1949 also. He submits that in so far as the grant of permission under Clause 13 (3) (ii) of the Rent Control Order, 1949 is concerned, the landlord in his evidence has admitted that he was receiving rent from the tenant by way of money order. The decree for arrears of rent as passed in Regular Civil Suit No.481/1983, was long back in the future and thereafter also the landlord continued to accept the rent by money order from the tenant, which would indicate that the landlord had never insisted the rent to be paid by particular date in advance every month. He submits that the conduct of the landlord in accepting the rent, as tendered by money order without any demur, would indicate absence of the ground under Clause 13 (3) (ii) of the Rent Control Order, 1949. He submits that in case the landlord wanted the rent to be paid by particular time in advance, it was necessary for the landlord to have issued notice in this regard making such a demand and absence of such notice clearly indicates otherwise. He, therefore, submits that there was absolutely no material on record for the authorities below to have arrived at a finding of requirement of Clause 13 (3) (ii) of the Rent Control Order, 1949 having been satisfied.

9. In so far as Clause 13 (3) (vi) of the Rent Control Order, 1949 is concerned, Shri Dhore, learned Counsel submits that the evidence of the landlord in this regard is contradictory in as much as, he, in his evidence states regarding shifting of the shop at Hanuman Nagar as well as the shop at Sitabuldi, whereas in the application there is no mention regarding shifting of the shop at Hanuman Nagar. Learned Counsel further submits that there are as many as 15 shops on the ground floor and there is nothing on record, to indicate that the shop blocks occupied by the present petitioner are most suitable. He, therefore, submits that on this ground also, the permission granted under Clause 13 (3) (vi) of the Rent Control Order, 1949 cannot be sustained. Shri Dhore, learned Counsel for the petitioner places reliance upon ***Rashik Lal and others Vs. Shah Gokuldas, AIR 1989 SC 920*** to contend that the conduct of the landlord in accepting the rent offered belatedly without any protest would indicate the absence of the requirement in respect of a ground under Clause 13 (3) (ii) of the Rent Control Order, 1949. Further reliance is placed on ***Vinodkumar Atmaramji Choudhary Vs. Resident Deputy Collector, Amravati and another, 1998 (1) Mh.L.J. 632*** to contend that in absence of a notice by the

landlord, asking the tenant to make payment of rent regularly every month, the plea of habitual defaulter cannot be sustained. He further relies upon *Dwarkadevi wd/o Jagdishprasad Choudhary Vs. Narsingdas Rampratap Sharma, 1987 SCC OnLine Bom 15* to submit that mere desire of the landlord is not enough to prove bonafide need and there must be certain element of necessity.

10. Shri Purohit, learned Counsel for the respondent Nos.3 to 6 - landlords on the other hand submits that the institution and prosecution of Regular Civil Suit No.481/1983 for recovery of the arrears of rent was a sufficient indication to the tenant that the landlord had insisted the payment of rent by a particular date every month. He further submits that there was no requirement for issuance of any notice at any point subsequent thereto as the intention of the landlords clearly stood manifested by their earlier conduct.

11. In so far as the need was concerned, learned Counsel Shri Purohit submits that the landlords were carrying business in four different locations in tenanted premises, which position was

not disputed and therefore, the need to shift to their own premises in the occupation of the petitioner indicated that the need was genuine. The pursuance of the legal proceedings against the petitioner tenant since 1978-79, according to him, indicates the existence and intensity of the need. Learned Counsel also submits that nothing has been brought on record by the tenant regarding the other shops in house no.881, which were already occupied by the other tenants. Relying upon *Gulshera Khanam Vs. Aftab Ahmad, (2016) 9 SCC 414*, learned Counsel submits that an enquiry under Article 226 is required to be confined to an examination as to whether there was any jurisdictional error committed by the lower authorities and the Writ Court is not permitted to sit as an Appellate Court while considering the judgments of the lower authorities. He further submits that under the erstwhile Rent Control Order, 1949, it was the landlord who was to be the sole judge of his need and the tenant could not dictate as to what premises would satisfy the need of the landlord. He, therefore, submits that the impugned orders could not suffer from any jurisdictional error and merely because another view could be possible, based upon the facts and circumstances, the same ought not to be taken. He further submits

that even if there is an error of fact, still this Court ought not to interfere, for which reliance is placed upon *Indian Scientific Glass Industries Vs. M. K. Mahipalsingh, 2018 (2) Bom. C.R. 539 (para 36)*. He, therefore, submits that the impugned orders are required to be maintained.

12. In so far as the plea regarding grant of permission under Clause 13 (3) (ii) of the Rent Control Order, 1949 of the tenant being in habitual defaulter is concerned, admittedly, in the instant matter, the proceedings earlier initiated for termination namely, Revenue Case No.542/1987-88 came to be dismissed in default on 11/4/1991, which were later in point of time to the payment of rent in Regular Civil Appeal No.67/1986, in which the rent for the period from 1/1/1983 to 31/6/1986 was paid. However thereafter, the landlord had been accepting the rent as tendered by the petitioner by money order, which position is not disputed. No notice whatsoever had been issued by the landlord, as contemplated by *Vinodkumar Atmaramji Choudhary* (supra), putting the tenant on notice that he would be requiring the payment of rent on or before a particular date in advance, every month. That being the

position, in view of the conduct of the landlord in continuing to accept the rent, as tendered by the petitioner-tenant, the permission under Clause 13 (3) (ii) of the Rent Control Order, 1949 ought not to have been granted by the authorities below, as the same is clearly contrary to the law laid down by the Hon'ble Apex Court in ***Rashik Lal*** (supra) and ***Vinodkumar*** (supra). The permission therefore under Clause 13 (3) (ii) of the Rent Control Order, 1949, as granted by the authorities below, cannot be sustained and is accordingly quashed and set aside.

13. In so far as the permission granted under Clause 13 (3) (vi) of the Rent Control Order, 1949 is concerned, it is not in dispute that the landlords are carrying out their business in four different areas of the city, which are tenanted premises. It is not a case that there is a single landlord. The family of the landlord comprises of four persons as respondent nos.3 to 6 and their family. The need to shift the business of sale of scooters spares, from a tenanted premises to a premises, owned by the landlords, cannot be said to be a need, which is illusory or not imminent. The authorities below on this ground have concurrently held that the need was genuine

and had granted permission. Nothing has been brought in the cross-examination of the landlord to indicate otherwise. The contention of learned Counsel Shri Dhore, that there is no pleading in the application, seeking permission, regarding shifting of the business from the tenanted premises to the premises in question, is incorrect for the reason that in para 5 of the application, a specific plea has been raised that the applicants/landlords intend to shift their business in the premises at Sitabuldi and Central Avenue to the premises in question. The further submission that the landlord in his evidence states that the shop at Hanuman Nagar and the two shops at Central Avenue are required to be shifted, is not of such a consequence so as to denude the plea of bonafide need, as the plea of shifting of the shops at Central Avenue was already there in the application. The contention of Shri Dhore, learned Counsel for the petitioner, that the landlord has not brought on record the area of the business premises which was in his occupation and the area available in the tenanted premises, relying upon *Dwarkadevi* (supra), is also of no avail for the reason that area of the tenanted premises is already on record, which has been indicated above. In so far as the area of the shops occupied by the landlord in the tenanted

premises in four different locations is concerned, it is not necessary that the areas of those shops need to be disclosed, as it is not the case of the landlords that all the four shops would be closed down and shifted to the tenanted premises. The reliance therefore on *Dwarkadevi* (supra) is clearly misplaced, also for the reason that the nature of the business, which is being conducted by the landlord in the tenanted premises is on record.

14. That being the position, I do not see any reason to interfere with the findings rendered by the authorities below in so far as grant of permission to terminate the tenancy of the tenant on the ground of bonafide need as contemplated under Clause 13 (3) (vi) of the Rent Control Order, 1949. The writ petition is, therefore, partly allowed in the above terms. Rule accordingly. In the circumstances, there shall be no order as to costs.

(AVINASH G. GHAROTE, J.)