

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

WRIT PETITION NO. 5321/2021

**Nemichand Punamchand Sancheti and ors...Versus... Smt. Savitribai
Bhairulal Varma thr L.Rs and ors**

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

Court's or Judge's orders

Mr. S.R.Deshpande, Advocate for petitioner

CORAM : AVINASH G. GHAROTE, J.

DATE : 16/12/2021

Heard Mr. Deshpande, learned counsel for the petitioner, who raises three grounds, (1) that the suit as filed by the respondent/landlord before the learned Trial Court for eviction on the ground of bonafide need under clause 16(1)(g) of the Maharashtra Rent Control Act was hit by the principle of *res judicata* as contained in Section 11 of C.P.C., on account of earlier proceedings instituted under the C.P and Berar Letting of Houses and Rent Control Order, 1949 on the ground under clause 13(3)(vi) being dismissed, which dismissal was confirmed by this Court in WP No. 2629/1989, by judgment dated 25.4.1995. The second ground is that the findings regarding bonafide need do not take into consideration the factum of sale of properties by the plaintiff/landlord, both before and after the institution of the suit. The third ground, is regarding comparative hardship, which, in the submission of the learned counsel for the petitioner, has not been properly answered.

In so far as the plea regarding *res judicata* is concerned, I do not find any merits in the same for the reason that the proceedings under the C.P and Berar Letting of Houses and Rent Control Order were instituted by Bhairulal Balmukund Varma, the father of the respondent during his life time on 27.1.1986. The father of the respondent is no more and the present suit has been filed by the respondent for his need as well as that of his son. It is therefore evident that the question of any applicability of the principle of *res judicata* would not arise in the present matter, as the need of the father of the respondent and his son are two distinct and separate needs altogether and therefore, it was always permissible for the respondent to have instituted proceedings for eviction of the petitioner on account of his own need as well as that of his son.

In so far as the second ground is concerned, the respondent/landlord in the suit had specifically pleaded the need for expansion of his existing business as well as the need for his son to start a business of hardware, which, considering the fact that the premises occupied by the depts/petitioners are immediately adjacent to the shop being occupied by the landlord from where his existing business is being run, cannot be said to be unreasonable or unjustified. The plea that the plaintiff has sold certain properties before and after the institution of the suit has been considered by the Courts below by

rendering a finding that the sale of the shop was in the year 2004, whereas the suit for eviction was instituted on 29.9.2008, much later than the sale took place. In so far as the sale after the institution of the suit is concerned, the Courts have found that the same was in respect of agricultural land and therefore, did not deter from the need pleaded by the landlord.

In so far as the third ground of comparative hardship is concerned, the Court has rendered a finding that the defendant/petitioner was having an alternate place for his business in the ancestral family premises situated at Naswala Chouk, Malkapur, which was available.

Considering the above position, I do not see any reason to interfere in the well reasoned judgments of the Courts below, which considered the issue of the need by the landlord of the adjacent premises on account of expansion of the existing business and the commencement of the business of the son. The petition therefore in my opinion is without any merits and is dismissed.

At this juncture the learned counsel for the petitioner seeks stay to the judgment passed by the learned Trial Court for a period of six months so as to enable the petitioner to approach the Hon Apex Court. However considering that the proceedings have been

going on since 2008 and has ultimately culminated in favour of the landlord after passage of 13 long years, I do not see any reason to stay the judgment of the Trial Court. The request is declined.

JUDGE

rvjalit