

**THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

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WRIT PETITION NO.339 OF 2020

Mr. Chandrakant Virbhadra Desai ..Petitioner
Versus
Shri. Vasant Maruti Khatape & Ors. ..Respondents

**WITH
WRIT PETITION NO.4395 OF 2022**

Shri. Vijay Nivrutti Pawar & Ors. ..Petitioners
Versus
Shri. Vasant Maruti Khatape & Ors. ..Respondents

Mr. Deval K. Anja, for the Petitioner in in WP No.339/2020.
Mr. Jaydeep Deo a/w Anvil Kalekar, for the Petitioners in WP
No.4395/2022.
Mr. Pramod J. Pawar, for the Respondent Nos.1 & 2 in both
Petitions.

CORAM : NITIN W. SAMBRE &

DATE : 16th DECEMBER, 2022.

PC.

1. In both these petitions the challenge is to the judgment and order dated 4th December, 2019 passed by the District Judge-9, Pune in Civil Appeal No.158 of 2008, so also the judgment and order dated 12th December, 2007 passed by the Small Causes Court, Pune in Civil Suit No.722 of 1998.

2. The facts necessary for deciding these writ petitions are as under :-

The petitioners in Writ Petition No.4395 of 2022 are the defendant Nos.2 to 7. The petitioner in Writ Petition No.339 of 2020 is defendant No.9 to the said suit. The respondent Nos.1 and 2 initiated Regular Civil Suit No.722 of 1998 seeking eviction on the ground of default in paying rents, for illegally carrying out modification in the original structure, induction of defendant Nos.1 to 14 as sub-tenants, nuisance and bonafide need.

3. The said suit came to be decreed vide judgment and order dated 12th December, 2007 delivered by Small Causes Court, Pune.

4. After the aforesaid decree, it appears that the present petitioners feeling aggrieved preferred Civil Appeal No.158 of 2008 by defendant Nos.2 to 7 and Civil Appeal No.163 of 2008 by other defendant, namely Fakruddin Kapuswala, Civil Appeal No.183 of 2008 by defendant No.9, Civil Appeal No.190 of 2008 by Mr. Arun Raghunath Savant i.e. defendant No.11. All these appeals were dismissed vide judgment and order dated 4th December, 2019. As such, these writ petitions.

5. As far as the claim which is agitated by the petitioners is only in regard to the termination of tenancy of

petitioners/defendants on the ground of bonafide need and as such the arguments to the present petitions are confined to the said issue.

6. The contentions of counsel for the petitioners are, the orders impugned are not sustainable, particularly, when the respondents/plaintiffs have failed to establish bonafide need. So as to substantiate the said contentions, counsel for the petitioners would invite attention of this Court to the provisions of Section 13(1)(i) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as “the rent Act” for the sake of brevity). He would urge that for proving bonafide need merely pleadings are not sufficient. According to him, the respondents must establish that there is reasonable and bonafide requirement independent of the only pleadings. According to him, the requirement under Section 13(1)(i) of the rent Act is at all not satisfied by the plaintiffs. In addition his contentions are, the Court below has failed to consider the issue of the comparative hardship. As such, according to him, the judgments impugned are not sustainable. Similar arguments are adopted by the counsel for petitioner Mr. Deval Anja in Writ Petition No.339 of 2020.

7. While countering the aforesaid submissions, learned counsel for the respondents/landlords would support the order impugned. It is claimed by respondents that the genuine need of the respondents/plaintiffs is very much established not only from the pleadings but also from the evidence which was brought on

record. He would urge that there are no malafides on the part of the respondents in seeking eviction of the petitioners from the suit property. As such, he has sought dismissal of the petitions.

8. The plaintiffs/respondents in support of the plaint for bonafide needs have specifically pleaded that their family consists of wife, son and daughters. It is also claimed that the plaintiff No.2, his wife, two sons and daughter, so also parents are residing in very small house. As such, it is specifically claimed that the suit property is required by them for their bonafide need. According to respondents/plaintiffs, it is specifically pleaded that by demolishing existing structure they are planning to reconstruct the property and have already submitted a plan for sanction to that effect to the planning authority. According to respondents, in the wake of requirement of bonafide need i.e. family of the respondents/plaintiffs being large in number, the respondents/ plaintiffs will suffer greater hardship than the present petitioners/ defendants.

9. As far as the aforesaid claim in the plaint is concerned, defendant Nos.3 to 7 have filed their written statement at Exh.18 and in paragraph 13 of the written statement have denied the aforesaid claim of the large family of the plaintiffs. It is also as such denied by the petitioners about the requirement of the respondents/plaintiffs and their plan to construct/develop the suit property. It is claimed that the need of the plaintiffs is not genuine and the issue of hardship was also denied thereby stating that the petitioners will

suffer greater hardship. Similarly, defendant No.9 in paragraph 8 of its written statement has denied the claim of the plaintiff of bonafide need. According to petitioner/defendant No.9, there is sufficient alternate space available to the plaintiffs who are businessmen. He has also denied the issue of comparative hardship in favour of the plaintiffs. In the backdrop of aforesaid pleadings of the plaintiffs and the defendant, the Trial Court framed issues at Exh.118. The issue No.5 specifically deals with the case of the plaintiffs about requirement of the suit premises reasonably and bonafide for erection of new building. The said issue was answered in favour of the respondent Nos.1 and 2/plaintiffs. The Trial Court while dealing with the said issue has categorically referred to provisions of Section 13(1)(i) of the Rent Act. While analyzing the claim of the plaintiffs based on the pleadings and the evidence on record, it has been specifically appreciated by the Trial Court about bonafide/genuine need to the plaintiffs of the suit property for their own use, their intention to develop the property for their own accommodation and they having approached the planning authority for getting the sanction for construction.

10. It appears that the suit property i.e. land City Survey No.975 was an open land which was let out to deceased Nivrutti Pawar by the erstwhile landlord Mr. Purandare. The said fact is admitted one. It is also brought on record that said Nivrutti Pawar, a tenant has constructed some sheds on the open plot and has let out the same to the other defendants i.e. defendant Nos.8 to 14. It

is also brought on record that in the aforesaid background, the Courts below have considered the requirement of the respondents/plaintiffs under Section 13(1)(i) of the Rent Act. In support of the claim for requirement of bonafide need, the plaintiff No.2 in his affidavit of evidence stated that his family is consisting of 14 members and the premises at the time of filing of suit they were residing was insufficient. According to plaintiffs, construction plan has been approved by the Pune Municipal Corporation/ planning authority on 07/02/2006. It is also brought on record that the plaintiffs are armed with sufficient funds for carrying out development and the estimate prepared by them was also produced on record. The NA permission granted at Exh.250 was also considered by the Court below. The fact about the steps taken by the plaintiffs/respondents has prevailed before the Court below to establish which is genuine need of the suit premises. The plaintiffs have also produced the copy of the sanctioned plan at Exh.240 and commencement certificate at Exh.239. During the cross-examination of the present petitioners, though it is claimed by them that plaintiffs are owners of different properties, however, same was not established by the petitioners. The respondents/plaintiffs through Exh.241 and 242 i.e. notarized consent letters have established their financial capacity to carry out construction.

11. In this view of the matter, the Trial Court rightly proceeded to appreciate and grant the prayer for eviction on the ground of bonafide need.

12. In the evidence of the plaintiffs, it is specifically brought on record that the land which was given to the petitioners was an open piece of land and the petitioners/defendants have inducted sub-tenants in the property. It is also brought on record that the family of the plaintiffs consists in all 14 members and as such, the place where they are residing is insufficient. As such, they need the property for their own accommodation by carrying out construction on the same. In the cross-examination of the plaintiffs, they have specifically stated about the insufficiency of the space. The petitioners/original tenants have failed to extract anything in the cross-examination which will be useful for them to demolish the case of the respondents/plaintiffs. The defendant No.9 who is petitioner in other petition has also tried to extract the material so as to demolish the case of the bonafide need to which the respondents stood by through their case for requirement of the suit premises for bonafide need. As against above, the petitioners/defendants were unable to demolish the alleged demand of the respondents/plaintiffs of the premises in question for bonafide need. In the aforesaid background, if this Court appreciates the very scheme of Section 13(1)(i) of the rent Act, which provides for the requirement of the premises, a land for reasonable and bonafide requirement by the landlord i.e. respondents herein for erection of new building.

13. In the aforesaid background, the respondents/plaintiffs, in my opinion, have duly established (a) that the plaintiffs have a

joint family which consist of more than 14 members; (b) that the existing structure where the plaintiffs' family is residing is not sufficient; (c) the plaintiffs have enough technical expertise and financial position to execute new construction; and (d) there are no malafides on the part of the plaintiffs to seek eviction of the petitioners.

14. The Appellate Court in its impugned judgment has re-appreciated the entire evidence in the backdrop of the provisions of Section 13(1)(i) of the rent Act and noticed that the plaintiffs have established their case. Rather the First Appellate Court has noticed that the petitioners have failed to establish that the intentions of the respondents/plaintiffs are malafide in seeking decree for eviction on the ground of bonafide need.

15. In the aforesaid background, considering the nature of oral evidence brought on record and the other evidence, it cannot be said that the plaintiffs have failed to demonstrate the case of requirement of the suit property for bonafide need for erection of building.

16. The reliance placed by Mr. Jaydeep Deo on the judgment of this Court in the matter of *Surjabai Kevalchand Dhadiwal (since deceased by heirs and LRs.) Vs. Sadashiv Sawalaram Gaikwad (since deceased through LRs.)* reported in *2010(1) Mh.L.J. 1006*, so as to claim that the plaintiffs have failed to establish the

reasonableness and bonafide character of requirement of the cannot be inferred. In the said judgment, it has been held by this Court that the plaintiff must prove his bonafide and reasonable requirement for the erection of new building. The plaintiffs in the case in hand have specifically pleaded about the insufficiency of existing premises and the requirement of erection of building on the suit property that too when they are ready with financial and technical sanctions. As such, the Courts below were justified in granting the prayer of the respondents/plaintiffs, particularly, when the suit property which was let out was an open piece of land.

17. In this background, both these writ petitions which are against concurrent findings lack merits and same are dismissed.

18. Considering the longstanding possession of the petitioners over the suit property, as prayed by counsel for the petitioners/tenants, interim relief is continued for a period of eight weeks from today, though resisted by the respondents/decreed holders. However, continuation of interim relief is subject to petitioners clearing entire arrears within a period of two weeks from today. The entire amount with calculation shall be deposited before the Small Causes Court.

[NITIN W. SAMBRE, J.]