

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

WRIT PETITION NO.203 OF 2019

Ramesh s/o Kanhaiyalalji Laddha,
 Aged about 62 years, R/o Malgujaripura,
 Wardha, Tah. & Dist.Wardha. **PETITIONER**

...V E R S U S...

1. Uma Nilkanthraoji Naydu,
 Aged about 63 years,
 Occ: Household.
2. Pratima w/o Daya Sagar,
 Aged about 46 years,
 Occ: Household.
3. Namrata Bhushan Kumar,
 Aged about 44 years,
 Occ: Household.
4. Rekha w/o Ateen Dasgupta,
 Aged about 42 years,
 Occ: Household.

Respondents Nos.1 to 4 through their
 power of attorney holder Mr. Rahul
 s/o Nilkantharao Naydu, Aged about
 42 years, Occu: Business,
 No.1 to 5 R/o Jajuwadi, Wardha.

5. Rahul s/o Nokanthrao Naydu,
 Aged about 42 years,
 Occu: Business.
 No.1 to 5 R/o Jajuwadi, Warhda

(Respondent Nos. 1 to 5 are original
 plaintiff nos.1 to 5). **RESPONDENTS**

Mr. R. M. Bhangde, Advocate for Petitioner.
 Mr. Abhijit Deshpande, Advocate for Respondents 1 to 5.

CORAM: **ROHIT B. DEO, J.**
DATE: **22nd FEBRUARY, 2022.**

ORAL JUDGMENT:

Heard. **Rule.** With consent, the petition is heard finally.

2. The petitioner is the tenant who has suffered decree under Section 16 (1)(i) of the Maharashtra Rent Control Act (Act), which is confirmed in appeal. The respondents – landlord have filed on record affidavit dated 17.12.2021, the relevant portion of which reads thus:

11. Now, almost 17 years have passed after lapse of the valid sanction granted in 2003 to the Respondent – Plaintiffs for reconstruction of the suit property. When the aforesaid Suit was filed in the year 2003, the Respondent – Plaintiffs not only had a valid sanction but also had requisite funds to demolish and re-erect the suit property. However, in last 17 years, there has been enormous hike/increase in every aspect related to the construction activity / re-erection of the suit property including development charges, sanction fees etc. to be paid to Civic Authorities apart from enormous increase in the building and construction material / cost of construction so also there are changes in rules of Town Planning, hence considering all above reasons said project is not economically viable for Respondents-Plaintiffs.

14. It is, respectfully submitted that, now, the Respondents – Plaintiffs do not want to commence

and conclude the work of demolition and reconstruction of the suit property [for which they were otherwise ready in the year 2003/2004] as a result of economic non viability of project.

3. In view of the unwillingness of the landlord to go ahead with the proposed construction, it is common ground that the judgment impugned will have to be set aside, in view of the provisions of Section 16 (6) of the Act, which reads thus:

(6) No decree for eviction shall be passed on the ground specified in clause (i) or (j) of sub-section (1), unless the court is satisfied—

(a) that the necessary funds for the purpose of the erection of new building or for erecting or raising of a new floor or floors on the terrace are available with the landlord,

(b) that the plans and estimates for the new building or new floor or floors have been properly prepared;

(c) that the new building or new floor or floors to be erected by the landlord shall, subject to the provisions of any rules, bye-laws or regulations made by municipal authority contain residential tenements not less than the number of existing tenements which are sought to be demolished;

(d) that the landlord has given an undertaking,—

(i) that the plans and estimates for the new building or new floor or floors to be erected by the landlord include premises for each tenant with

carpet area equivalent to the area of the premises in his occupation in the building sought to be demolished subject to a variation of five per cent in area;

(ii) that the premises specified in sub-clause (i) will be offered to the concerned tenant or tenants in the re-erected building or, as the case may be, on the new floor or floors;

(iii) that where the carpet area of premises in the new building or on the new floor or floors is more than the carpet area specified in sub-clause (i) the landlord shall, without prejudice to the liability of the landlord under sub-clause (i), obtain the consent 'in writing' of the tenant or tenants concerned to accept the premises with larger area; and on the tenant or tenants declining to give such consent the landlord shall be entitled to put the additional floor area to any permissible use;

(iv) that the work of demolishing the premises shall be commenced by, the landlord not later than one month, and shall be completed not later than three months, from the date he recovers possession of the entire premises; and

(v) that the work of erection of the new building or new floor or floors shall be completed by the landlord not later than fifteen months from the said date:

Provided that, where the court is satisfied that the work of demolishing the premises could not be commenced or completed, or the work of erection of the new building or, as the case may be, the new floor or floors could not be completed, within time, for reasons beyond the control of the landlord, the court may, by order, for reasons to be recorded, extend the period by such further periods, not exceeding three months at a time as

may, from time to time, be specified by it, so however that the extended period shall not exceed twelve months in the aggregate.

4. The judgments impugned are quashed.
5. The petition is allowed in the aforestated terms.

JUDGE

NSN