

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

WRIT PETITION NO. 967 OF 2022

Shri. Padam S/o Roshanlal Ghai and others -- Petitioners

Vs.

Dr. Balasaheb S/o Wasudeorao Motghare -- Respondent

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

Court's or Judge's orders

Mr.C. R. Khurana, Advocate h/f Mrs. Pushpa D. Sood, Advocate for
Petitioners

Mr. A.A. Sambaray, Advocate for Respondent

CORAM : MANISH PITALE, J.

DATE : 7th SEPTEMBER, 2022

Heard learned counsel for the petitioners.

2. By this petition, the petitioners (original tenants and judgment debtors), have challenged order dated 20/02/2021, passed by the Executing Court, whereby objection raised on their behalf has been rejected with costs of Rs.3000/-.

3. The present writ petition is another illustration of how judgment debtors and particularly tenants tend to keep the decree holder i.e. landlord caught up in legal wrangles for years together, in order to frustrate the decree. The chronology of events in the present case which led the Hon'ble Supreme Court to make specific adverse observations against the petitioners

would indicate to what extent the petitioners have gone in the present case to harass the respondent. The cause title itself shows that the respondent – decree holder at the time when this petition was filed was 85 years old senior citizen.

4. In the present case, the respondent had initiated eviction proceedings against the petitioners, wherein decree for eviction was granted concurrently by the Trial Court as well as the Appellate Court. Writ Petition No.6985/2016 and Writ Petition No.5287/2017, came to be filed by the petitioners challenging the said eviction decree. After hearing the petitioners at length, by a well-reasoned judgment and order, dated 12/07/2019, this Court dismissed both the writ petitions, thereby confirming the eviction decree. This Court granted time till 31/10/2019, to the petitioners to vacate the suit premises.

5. Aggrieved by the said judgment and order of this Court, the petitioners filed Special Leave Petition (Civil) No. 23300/2019, along with Special Leave Petition (Civil) No.23204/2019. By order dated 03/10/2019, the Hon'ble Supreme Court dismissed both the petitions and on a request made on behalf of the petitioners, allowed them further time till 31/03/2020, to vacate the premises subject to filing usual undertaking within four weeks.

6. Thereafter, the petitioners filed review application in the aforesaid two Writ Petitions that was dismissed by judgment and order dated 12/07/2019.

7. By an order dated 12/02/2021, this Court held that while the review application was indeed maintainable because the Special Leave Petitions had been dismissed by way of summary rejection, it was found that there was no substance in the review application and accordingly the review application was dismissed. The petitioners then carried the said order in challenge before the Hon'ble Supreme Court by filing Special Leave Petition (C) Nos. 3754/2021 and 3810/2021.

8. By a reasoned order, dated 04/03/2021, the Hon'ble Supreme Court dismissed the Special Leave Petitions and made specific observations against the petitioners. The relevant observations are found in paragraph Nos.4 to 8, which read as follows :

“4. In the aforesaid facts of this case, it is absolutely clear that the petitioners, as tenant, are wanting to cling on to the property in question, even after having lost from all the Courts, including this Court.

5. The Special Leave Petitions against the Order of the Writ Court was dismissed on 03.10.2019, whereby they were directed to vacate the premises by 31.03.2020. The Review Petition was also filed on flimsy ground that some compromise has been entered into in 1979 between the father of the petitioners on one side and the respondent. The same has been dismissed by the High Court after noticing that the suit for eviction was filed by the plaintiff respondent in the year 2009, which was 30 years after the alleged compromise is said to have been entered into in 1979. It has also been rightly held that the aspect of *res judicata* will not apply when eviction is sought on the

ground of *bona fide* need. We see no ground to interfere with the said Order passed by the High Court.

6. Accordingly, these Special Leave Petitions are dismissed.

7. From the facts as narrated above, it is clear that the petitioners are trying to cling on the property, even though the petitioners have lost from all Courts. In the earlier Special Leave Petitions, petitioners were directed to vacate the premises by 31.03.2020, which they have not vacated. Thus, we are of the opinion that the petitioners have abused the process of law in managing to remain in possession of the property in question, especially after the direction of this Court's Order dated 03.10.2019 passed while dismissing earlier Special Leave Petitions of the petitioners.

8. In the aforesaid circumstances, while dismissing these Special Leave Petitions, we impose cost of Rs.50,000/- (Rupees Fifty Thousand), which shall be paid to the plaintiff-respondent and also direct that petitioners shall vacate the premises in question within 1 month from today, failing which, the respondent shall be at liberty to initiate proceedings for contempt against the petitioners."

9. Therefore, it becomes clear that the Hon'ble Supreme Court not only dismissed the Special Leave Petitions, but, imposed costs of Rs.50,000/-, for the conduct of the petitioners and directed that the petitioners shall vacate the premises in question within one month from the date of the order. Despite the aforesaid emphatic order of the Hon'ble Supreme Court, the petitioners continued to pursue their efforts to somehow frustrate the decree passed against them and in that process

raised objections before the Executing Court, which were ultimately dismissed by the impugned order dated 20/02/2021. In the said attempt on the part of the petitioners to somehow frustrate the decree, all kinds of grounds and objections were raised, including a ground that the respondent was not the absolute owner of the suit property.

10. Even while arguing in support of the present petition, the learned counsel appearing for the petitioners kept on harping on the aspect that certain documents were received under the Right to Information Act, 2005, which according to the petitioners indicated that the respondent was not the absolute owner of the suit property. On this basis, it was claimed that fraud was allegedly played on the Court, while obtaining the decree for eviction.

11. The material placed on record indicates that the petitioners have left no stone unturned to cling on the property, as observed by the Hon'ble Supreme Court in the above quoted order. The efforts on the part of the petitioners have continued despite imposition of costs of Rs.50,000/-, by the Hon'ble Supreme Court and a specific direction to vacate the tenanted premises within one month from 04/03/2021.

12. On a pointed query put to the learned counsel appearing for the petitioners as to whether they had abided by the direction of the Hon'ble Supreme Court for vacating the premises, it was submitted that even today, the petitioners continued in possession of the suit premises. At this stage, it is

submitted that the petitioners are now in the process of vacating the suit premises.

13. The narration of the above events clearly indicates that the present petition is nothing but an abuse of the process of law. Despite specific observations made by the Hon'ble Supreme Court against the petitioners, they have continued to litigate and they have not abided by the specific positive directions given by the Hon'ble Supreme Court to vacate the suit premises. The present petition, apart from being meritless is a clear example of repeated attempts being made by the petitioners to defy the orders of the Courts, including those passed by the highest Court of the land. Therefore, even for the conduct of the petitioners, the present petition deserves to be thrown out at the threshold, with appropriate costs.

14. In view of the above, the writ petition is dismissed. The petitioners shall deposit costs of Rs.1,00,000/- (Rs. One Lakh), in this Court within four weeks from today. The petitioners shall also vacate the premises in question within four weeks from today.

15. The amount of costs to be deposited by the petitioners shall be made over to the respondent by the Registry of this Court.