

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

WRIT PETITION NO. 1956 OF 2022

Pushpalata wd/o Mahadeo Gupta and others

vs.

Rukminidevi wd/o Laltaprasad Gupta and others

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

Court's or Judge's Orders.

Mr. J. M. Gandhi, Advocate for petitioners.
Mr. S. P. Hedao, Advocate for respondents.

CORAM : MANISH PITALE J.

DATE : 15/07/2022

By this petition, the petitioners have challenged concurrent orders passed by the two Courts below, whereby the petitioners have been directed to handover vacant possession of a suit shop to the respondents.

2. In the present case, an initial proceeding under the C.P. and Berar Letting of Houses and Rent Control Order, 1949, was initiated as far back as in the year 1979, wherein permission was sought for issuing quit notice to the petitioners under the provisions of the Rent Control Order on the ground of bonafide need. The said proceedings culminated in a judgment and order dated 09/01/2013, passed by

this Court, whereby the respondents were granted permission to issue quit notice to the petitioners-tenants under clause 13(3)(vi) and (vii) of the said Rent Control Order.

3. Aggrieved by the said order, granting such direction to issue quit notice, the petitioners approached the Division Bench of this Court by filing Letters Patent Appeal No.265 of 2013, which was dismissed on 22/08/2013, thereby indicating that the matter attained finality, insofar as grant of permission to issue quit notice was concerned. As was typical to the litigation under the said Rent Control Order, it was only after a long drawn struggle to receive permission to issue quit notice that the respondents issued such a quit notice to the petitioners and thereupon filed Regular Civil Suit No.99 of 2013 before the Court of Small Causes at Nagpur.

4. The aforesaid suit was resisted by the petitioners and upon framing issues and granting sufficient opportunity to the parties to lead oral and documentary evidence, by judgment and order dated 19/01/2017, the Small Causes Court decreed the suit in favour of the respondents and directed that the petitioners shall be evicted from the suit shop block situated in the busy Sitabuldi Market of the City of

Nagpur. The petitioners were directed to hand over vacant and peaceful possession of the suit shop block to the respondent within 30 days of the date of the order and inquiry into mesne profit was directed.

5. Aggrieved by the same, the petitioners filed Regular Civil Appeal No.152 of 2017, before the District Court at Nagpur. By a detailed judgment and order dated 09/10/2021, the appeal was dismissed and it was held that the respondents were entitled to withdraw the entire amount of occupational charges deposited by the petitioners during the pendency of the appeal, which would be adjusted in the event a decree of mesne profit was to be passed in the near future.

6. It is against the said concurrent orders passed by the two Courts below that the present writ petition has been filed.

7. This petition was adjourned on at least five occasions at the admission stage when adjournments were sought on one ground or the other on behalf of the petitioners. The respondents entered appearance suo-motu through counsel and hence learned counsel for both the sides were heard today when the petition was considered on merits.

8. Mr.Gandhi, learned counsel for the petitioners, initially sought to make submissions touching upon the question on bona fide need and it was submitted that even in the subsequent round, the petitioners were entitled to re-argue the question of bona fide need and that the Courts below ought to have revisited the findings given in the first round, because the respondents had allegedly committed fraud on the Courts.

9. It was further submitted that the quit notice was also bad for the reason that sufficient material was not placed on record to prove that it was duly served and that the suit was filed thereafter. Attempts were made by the learned counsel for the petitioners by referring to portions of the evidence led on behalf of the respondents to contend that within the family of the respondents, there were dissensions and that even a partition suit had been filed, indicating that the quit notice was defective. On this basis, it was submitted that the impugned judgment and decree passed in favour of the respondents deserved to be interfered with.

10. On the other hand, Mr.Hedao, learned counsel appearing for the respondents relied upon the judgments of the learned Single and Division

Bench of this Court in the first round, whereby permission to issue quit notice under the said Rent Control Order was granted by this Court. It was further submitted that thereafter in the second round leading upto filing of the present writ petition, only the question of validity of the quit notice could be examined by the Court. By referring to the orders passed by the Small Causes Court and the appellate Court, the learned counsel submitted that no interference was warranted.

11. This Court has heard the learned counsel for the rival parties and perused the material on record. As noted above, the findings regarding permission to issue quit notice under Clause 13(3) (vi) and (viii) of the Rent Control Order, admittedly attained finality by dismissal of Letters Patent Appeal No.265 of 2013, by a Division Bench of this Court. It was in pursuance of the said permission to issue quit notice granted in favour of the respondents that such a quit notice was indeed issued, on the basis of which suit came to be filed before the Small Causes Court on behalf of the respondents. Record shows that sufficient opportunity was granted to the parties to lead oral and documentary evidence in respect of their respective stands and thereupon, the Small Causes Court passed the decree against the

petitioners. A perusal of the judgment and order passed by the Small Causes Court shows that issues were properly framed and findings were rendered upon analysis of the material placed on record and it was found that the quit notice was duly served on the petitioners and that the tenency was validly terminated from the midnight of 20/02/2013. On an attempt made by the petitioners to reopen the question of bona fide need, it was correctly repulsed by the Small Causes Court.

12. The appellate Court also found on facts as regards the validity of the quit notice and against the petitioners. There was no ground made out before the two Courts below to assail the validity in of the said quit notice issued by the respondents on the basis of permission granted under the provisions of the aforesaid Rent Control Order. Before the appellate Court also an attempt was made on the part of the petitioners to invite the Court to re-visit findings pertaining to the question of bona fide need, which were correctly repulsed by the appellate Court.

13. Even before this Court, the learned counsel for the petitioners attempted to rake up the same issue pertaining to the bona fide need. This Court is not in agreement with the learned counsel

for the petitioners that by merely using expressions like “fraud” and “suppression”, this Court would be impressed to reopen the findings that have attained finality. There is nothing on record to show that the petitioners could be permitted to reopen such findings which had attained finality. Use of words like “fraud” and “suppression” like a mantra cannot be permitted when on facts the Courts below have returned findings against the petitioners.

14. Insofar as the quit notice is concerned, this Court is satisfied that the findings of fact rendered by the two Courts below concurrently as regards the notice having been duly served on the petitioners are justified and that the tenancy was indeed validly terminated from the midnight of 20/02/2013. No case is made out by the petitioners for interference in the impugned judgments and orders passed by the two Courts below.

15. At this stage, the learned counsel for the petitioners submitted that reasonable time may be granted to the petitioners to vacate the suit shop block on an appropriate undertaking being filed in this Court.

16. In view of the above, the writ petition is dismissed.

17. The decree passed against the petitioners is confirmed.

18. The petitioners are granted time till **31st October, 2022** to vacate the suit shop block on usual undertaking to be filed before this Court within two weeks from today. Failure to file such an undertaking in this Court, with an advance copy served on the learned counsel for the respondents, will result in the said time granted for vacating the suit shop block being withdrawn.

19. Needless to say, the undertaking shall include a specific clause that the petitioners shall not create any third party interest before vacating the suit shop and that they will not create unnecessary hindrances in vacant and peaceful possession of the suit shop being handed over to the respondents.

JUDGE