

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

WRIT PETITION NO.5087 OF 2008

Abdul Gani s/o Alauddin Rangari
(Dead) through LRs

1. Abdul Aziz s/o Abdul Gani
Aged about 61 years, Occ: Business,
2. Md. Asraf s/o Abdul Gani,
Aged about 58 years, Occ: Business,
3. Md. Shakil S/o Abdul Gani,
Aged about 50 years, Occ: Business
4. Md. Shafique s/o Abdul Gani
Aged about 48 years, Occ: Business,

All R/o Station Road, Malkapur,
District Buldhana.

...PETITIONERS

---VERSUS---

Amrutlal Namichand Chaware
(Dead) through LRs

- 1a. Smt. Kamalbai Wd/o Amrutlal Chaware
- 1b. Praful s/o Amrutlal Chaware
- 1c. Prashant s/o Amrutlal Chaware

All resident of Radha Kisan Chawl,
Malkapur, Distt. Buldhana.

...RESPONDENTS

Ms Archana Lanjewar, Advocate h/f Shri N.R. Saboo, Advocate for the
petitioners.

Shri J.J. Chandurkar, Advocate for respondents.

CORAM	: AMIT B. BORKAR, J.
RESERVED ON	: 24th JUNE, 2022.
PRONOUNCED ON	: 6th JULY, 2022.

JUDGMENT :

1. **Rule.** Rule is made returnable forthwith. Heard finally by consent of the parties.

2. This writ petition arises out of proceedings under C.P and Bearar Rent Control Order, 1949 (for short, "Rent Control Order"). The petitioner is the owner of suit shop admeasuring 5 X 33 feet on the ground floor. The respondent is monthly tenant, who according to the petitioner was in arrears in more than three months and habitual defaulter on the date of filing of the application. The petitioner therefore filed an application for permission to issue quit notice to respondent-tenant under clause 13(3) (vi) and (vii) in the year 1995. In addition to the ground of arrears of rent, the petitioner pleaded *bonafide* need of his son Shafique to start cloth business.

3. Initially, the Rent Controller by order dated 30.01.2003 granted permission to the petitioner under clause 13(3) (v) (vi), (vii) of the Rent Control Order. The said order was confirmed by the Additional Collector, Buldana by order dated 19.12.2003. The respondent challenged the order dated 19.12.2003 before this

Court by way of Writ Petition No.1820 of 2004. This Court by order dated 23.03.2005 remanded the matter to Rent Controller to decide afresh. After remand, the Rent Controller by order dated 22.07.2005 rejected the application of the petitioner. The said order was challenged by the petitioner by way of an appeal under clause 21 of the Rent Control Order. The Appellate Authority by impugned order dated 27.03.2008 dismissed the appeal of the petitioner. The petitioner has therefore filed present petition challenging the impugned order.

4. Learned Advocate strenuously pressed the ground of habitual default under clause 13(3) (ii) of Rent Control Order. The findings arrived at by the Authorities below in regard to the same are concurrent findings of fact which cannot be said to be perverse on the basis of material on record. It is therefore not open for me to disturb the same in writ jurisdiction. Therefore, the contention as regards ground under clause 13(3) (ii) fails.

5. As regards ground under clause 13(3) (vi) of Rent Control Order *bonafide* requirement is concerned, it is the contention of the petitioner that the findings recorded by the authorities below are perverse and not according to the law laid down by the Apex

Court and this Court. The submission is that both authorities have acted in excess of their jurisdiction in examining the case of landlord under clause 13 (vi). It is not in dispute that the landlord has pleaded *bonafide* requirement of his son Shafique for the purpose of starting cloth business. It is also not in dispute that on the date of filing of application the son of landlord was not carrying on any other business in any other premises. This Court and Apex Court have taken consistent view that primarily the landlord is the best judge of his own requirement. The evidence on record in the form of witness of applicant proved that son of petitioner was unemployed on the date of requirement. He had experience of five years of cloth business on the date of evidence of petitioner. The said evidence remained unimpeached. In absence of proof that son of landlord was doing any other business or having any other premises on the date of filing of application, the authorities below were not justified in recording the finding that the petitioner has failed to prove his *bonafide* requirement. The authorities below have rejected the case of landlord under clause 13(3) (vi) of Rent Control Order on the basis of a finding that in the cross-examination the petitioner has admitted that the premises of one Dr. Firke was made available to the landlord and

said premises can be used by the petitioner. It is undisputed fact that the premises in possession of Dr. Firke is on 3rd floor of the same building where suit premises is situated. Considering the nature of business i.e. cloth business to be carried out by the son of the petitioner, landlord is justified in pressing ahead his need of *bonafide* requirement for suit premises as it is on the ground floor of a busy market.

6. In the case of **Maganlal s/o Kishanlal Godha Vs. Nanasaheb s/o Udhaorao Gadewar**¹ the Apex Court in context of ground under clause 13(3) (vi) of Rent Control Order observed as under:

“25. It is common experience in our country that especially landlord-tenant litigations prolong for a long time. It is true that neither can the person who has started the litigation sit idle nor can the development of the event be stopped by him. Therefore, the crucial event should be taken as on the date when the suit for eviction was filed, unless the subsequent events materially change the ground of relief.”

7. In the case of **Mohd. Ayub and another Vs. Mukesh Chand**² the Apex Court was considering the ground of *bonafide* requirement for starting business of son of landlord. The Apex

1 (2008) 13 SCC 758

2 2012(2) SCC 155

Court observed that it is well settled that landlord's requirement need not be dire necessity. The Court cannot direct the landlord to do particular business or imagine that he could profitably do a particular business rather than the business proposed to start, it is for landlord to decide which business to do.

8. The Apex Court in the case of **Meenal Eknath Kshirsagar Vs. Traders And Agencies**¹ has held that the landlord is the best judge of his needs and it is for him to decide which business has to be done.

9. The learned Advocate for the tenant placed reliance upon the judgments in the cases of **Narendra Zade Vs. Shiocharan Gupta**², **M.M. Quasim Vs. Manohar Lal Sharma and others**³.

10. Both the judgments, considering the facts of each case, held that *bonafide* requirement is not proved. Once it is undisputed that the premises vacated by Dr. Firke is on the 3rd floor of the building and the suit premises is on the ground floor. The authorities below were not justified in dismissing the application of the petitioner based on the said fact.

1 (1996) 5 SCC 344

2 2011(1) Mh.L.J. 839

3 (1981) 3 SCC 36

11. In my opinion, the findings recorded by the authorities below holding the applicant failed to prove *bonafide* requirement are perverse. They have failed to apply the law laid down as regards under clause 13(3) (vi) of Rent Control Order. In the result, writ petition is **partly allowed**.

12. The impugned order dated 27.03.2008 passed by the Additional Collector in Appeal No.BRA/Malkapur/2005-06 and order dated 22.07.2005 passed by the Sub-Divisional Officer and Rent Controller, Malkapur in R.C. No.BRA/Malkapur/6/1994-95 are quashed and set aside.

13. The petitioner is permitted to give quit notice to respondent under clause 13(3) (vi) of Rent Control Order.

14. Rule is made absolute in above terms. No costs. Pending civil application (s), if any, stand disposed of.

JUDGE

Wagh