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

WRIT PETITION NO. 7058 OF 2018
Keshavlal Vallabhdas Ganatra Vs. Devsing Nathusing Rane

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

Mr. J.B.Gandhi, Advocate for petitioner
Mr. U.J.Deshpande, Advocate for Respondent

CORAM : AVINASH G. GHAROTE, J.
DATE : 19/08/2022

1] Heard Mr. Gandhi, learned counsel for the petitioner and Mr. Deshpande, learned counsel for the respondent.

2] The petition challenges the judgment dated 20.4.2018 (page 18) passed by the learned appellate Court, whereby the decree for eviction passed by the learned trial Court in the suit for eviction filed by the petitioner/landlord has been set aside and the suit for eviction has been dismissed.

3] Mr. Gandhi, learned counsel for the petitioner has taken me through the judgment of the learned trial Court as well as that of the appellate Court and so also the evidence of PWs 1 and 2 and contends that a case for bonafide need was made out and has been rightly held to have been established by the learned trial Court. He contends that the learned appellate Court was

not justified in upsetting the findings of the learned trial Court, on the ground that the premises in occupation of the respondent/tenant were not required by the petitioner/landlord for any bonafide need, but was a ruse to evict the tenant. Relying upon **Nilkanthrao Raghunathji Chute vrs. Dattatraya Narayanrao Balakhe, (2019) 4 ALL MR 854** (para 13), it is submitted that the landlord is the best judge of his need and therefore, the learned appellate Court could not have held to the contrary.

4] Mr. Deshpande, learned counsel for the respondent supports the impugned judgment and submits that the learned appellate Court has rightly held that the need put forth was illusory and was for the purpose of evicting the tenant and was not genuine and bonafide.

5] The factual position on record indicates that the petitioner is the owner of house property bearing Nazul Sheet No. 28-8 Plot No. 82/2, situated at Akot, which comprises of one shop and 4 rooms with toilet and bathroom on the ground, with open land abutting, the first floor comprising of 4 rooms with toilet and bathtoom and the second floor comprising of a room and open space. The respondent is a tenant on the first floor.

6] The petitioner has three sons and one daughter, the daughter being married and residing at her matrimonial place. One, out of the three sons, is serving outside. Plot No. 50, another property belongs to the younger son of the petitioner, which comprises of three rooms on the ground floor and five rooms on the first floor in which presently the petitioner and the family of his two sons are residing.

7] A perusal of the evidence of the petitioner indicates that 4 rooms on the ground floor of the suit premises have been standing vacant since long, may be even prior to the filing of the suit. However, no attempt has been made by the plaintiff to make use of the said rooms by occupying them. This clearly reflects upon the claim of bonafide need being made by the petitioner/ plaintiff. It is not the case as if these rooms on the ground floor of the plot No. 82/2 are not habitable, as there is no such pleading or averment either in the plaint or the evidence. The only need pleaded is that PW-2 Girish, one of the sons of the petitioner, was not on good terms with the other sons and therefore, they were required to be separated. Even if this position is accepted, nothing prevented the petitioner from asking PW-2 to occupy the ground floor of the house constructed on plot No. 82/2, which is lying vacant and is in possession of the plaintiff since long. The learned appellate Court has rightly considered this position in the impugned judgment.

8] Though it cannot be disputed that the landlord is the best judge of his requirement as held in **Nilkant** (supra), relied upon by the learned counsel for the petitioner, however, at the same time the provisions of Section 16(2) of the Maharashtra Rent Control Act cannot be lost sight of while considering the question of bonafide need. Since it is an admitted position on record that 4 rooms on the ground floor of the house on Plot No. 82/2, as well as the room on the second floor of the same house are lying vacant and are available for the petitioner for shifting the family of his son PW-2, which has not been done, the plea of bonafide need, in my considered opinion, does not appear to be genuine, as rightly held by the learned appellate Court. I therefore do not see any reason to interfere in the impugned judgment by the learned appellate Court. The petition is therefore without any merits and is dismissed. No costs.

JUDGE

Rvjalit

Digitally sign byRAJESH VASANTRAO JALIT
Location:
Signing Date:19.08.2022 20:06