

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

WRIT PETITION NO. 6732 OF 2019

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| <ol style="list-style-type: none">1. Kanhaiyyalal S/o Jairamdas Jethwani
Aged about 67 years, Occ. Business2. Hemantkumar S/o Jairamdas Jethwani
Aged about 57 years, Occ. Business3. Maheshkumar S/o Jairamdas Jethwani
Aged about 55, Occ. Business
All above c/o Green Watch Company,
Opp.Khadim Shoes, Main Road, Sitabuldi,
Nagpur | } | .. Petitioners |
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Versus

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| <ol style="list-style-type: none">1. Smt. Rukminidevi wd/o Laltaprasad Gupta
Aged about 78 years Occ. Household work2. Manojkumar s/o Laltaprasad Gupta
Aged about 56 years, Occ. Business3. Arunkumar s/o Laltaprasad Gupta
Aged about 53 years, Occ. Business
Nos.1 to 3, R/o 11, Buty Chawl Main Road,
Sitabuldi, Nagpur4. Santoshkumar s/o Laltaprasad Gupta
Aged about 63 years, Occ. Business5. Anupkumar s/o Laltaprasad Gupta
Aged about 51 years, Occ. Business
No. 4 and 5 r/o Gupta Bhawan Purshottam
Sathe Marg, Dhantoli, Nagpur | } | .. Respondents |
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Mr. H. D. Dangre, Advocate for petitioners.

Mr. S. P. Hedao, Advocate for all the respondents.

CORAM : MANISH PITALE, J.

DATE : 13/09/2022

ORAL JUDGMENT

Heard. **Rule.** Rule made returnable forthwith.
Heard finally with the consent of the learned counsel for the rival parties.

(2) By this petition, the petitioners i.e. the original tenants have challenged orders passed by the two Courts below, whereby, the petitioners have been evicted from the tenanted premises.

(3) In the present case, the proceedings were initiated by filing an application under the C. P. and Berar Rent Control Order, 1949, whereby permission was sought to issue quit notice to the petitioners. This was a proceeding initiated way back in the year 1978-79 and eventually the Rent Controller passed an order dated 30/10/1998, granting permission to the respondent to terminate the tenancy of the petitioners under clause 13(3)(vi) and (vii) of the Rent Control Order, 1949.

(4) Pursuant to the aforesaid order passed by the Rent Controller, the respondents issued a quit notice to the petitioners on 02/11/1998, which was received by the petitioners, but they claimed that only the first page of the notice was received. Thereafter, on a challenge raised in an appeal filed by the petitioners against the aforesaid order of the Rent Controller, a stay order came to be passed on 13/11/1998. Thereafter, on 17/11/1998, the respondents issued another quit notice to the petitioners, which was returned. Such notice was also issued by Registered Post A.D., which the petitioners refused. It is an admitted position that the aforesaid order of the Rent Controller dated 30/10/1998, granting permission to the respondents to issue quit notice to the petitioners was confirmed by the dismissal of the appeal and eventually by dismissal of writ petition by this Court.

(5) In pursuance of the aforesaid notices issued by the respondents, the eviction proceedings commenced and culminated in favour of the respondents and the petitioners were directed to be evicted from the tenanted premises. This was by a judgment and order dated 31/03/2017, passed by the Court of Additional Judge, Small Causes Court, Nagpur. Aggrieved by the same, the petitioners challenged the order before the District Judge, Nagpur. The appeal

was dismissed on 29/06/2019, confirming the eviction decree. The present writ petition was filed, challenging the concurrent orders passed by the Small Causes Court and the District Court. This Court issued notice in the present writ petition and the respondents entered appearance through counsel.

(6) Mr. H. D. Dangre, learned counsel appearing for the petitioners raised only one point while arguing the present petition. It was submitted that in the admitted facts of the present case, the quit notice itself was invalid and that therefore, proceedings initiated before the Small Causes Court were vitiated and on this ground itself, the suit for eviction ought to have been dismissed. It was submitted that the District Court also failed to appreciate the said aspect of the matter.

(7) In support of the aforesaid contention, the learned counsel appearing for the petitioners submitted that the quit notice dated 02/11/1998, issued by the respondents was not a complete document and only the first page was received by the petitioners, thereby indicating that the said notice could not be said to be a valid notice, despite permission granted by the Rent Controller by order

dated 30/10/1998, to issue such a quit notice. Then it was submitted that the subsequent quit notice dated 17/11/1998, issued by the respondent was a stillborn document, because it was issued admittedly after order passed by the appellate authority on 13/11/1998, granting stay to the order of the Rent Controller. It is submitted that this aspect was highlighted before the Courts below, but reliance was placed on a judgment of this Court in the case of *Hari Prasad and another vs. Nathmal Chunilal*, 1974 Mh.L.J. 637, to reject the said contention.

(8) According to the learned counsel appearing for the petitioners, the said case was clearly distinguishable, because in the present case there was a specific stay order operating in respect of the order of the Rent Controller, while the factual position in the said case of *Hari Prasad vs. Nathmal Chunilal* (supra) was that pendency of appeal against the order of the Rent Controller till the appeal stood disposed of finally was discussed and it was held that merely because challenges against the order of the Rent Controller were filed and pending, it could not be said that quit notice could not be issued or suit in pursuance thereof could not be filed.

(9) It was submitted that since there was stay of the

order of the Rent Controller, the notice issued during the currency of the stay order itself hit at the very validity of the quit notice, which the Courts below failed to appreciate. It was further submitted that the Courts below erroneously took into consideration both quit notices dated 02/11/1998 and 17/11/1998, thereby indicating that the suit filed in pursuance thereof was vitiated and it was not clear as to which of the two notices was held to be a valid quit notice for granting the decree of eviction.

(10) On the other hand, Mr. Hedao, learned counsel appearing for the respondents submitted that there is clear distinction between stay of an order and quashing and setting aside of the same. He relied upon the judgment of a Division Bench of this Court in the case of *Aditya Construction Company vs. State of Maharashtra and others, 2022 (4) Mh.L.J. 190*, in support of the said contention. He further referred to the judgment of this Court in the case of *Hari Prasad vs. Nathmal Chunilal* (supra), to contend that the law laid down therein was correctly relied upon by the Courts below to hold against the petitioners.

(11) Heard learned counsel for the petitioners in the

backdrop of the aforesaid submissions and the material placed on record. It is an admitted position that the first quit notice was issued on 02/11/1998, pursuant to the order of the Rent Controller granting permission dated 30/10/1998. The material on record indicates that although the notice was received, only the first page thereof was received by the petitioners and this was pointed out to the respondents. Thereupon, the respondents issued second quit notice dated 17/11/1998, terminating the tenancy of the petitioners w.e.f. 01/10/1998. The petitioners refused to receive the said notice, which was also sent by Registered Post A.D.

(12) The crucial question that arises for consideration is, whether the quit notice dated 17/11/1998, could be said to be invalid, because it was issued after the order passed by the Rent Controller was stayed on 13/11/1998, by the appellate authority. Much emphasis was placed on the fact that grant of stay would mean that there was absence of permission to issue such quit notice and that therefore, quit notice was rendered invalid and the suit for eviction filed pursuant thereto was a stillborn exercise.

(13) This Court has considered the rival contentions in

the backdrop of the judgment in the case of *Hari Prasad vs. Nathmal Chunilal* (supra). Although the learned counsel for the petitioners is justified in submitting that there is a factual distinction between the said case and the present case, inasmuch as there is no discussion on any interim order or the effect thereof, while discussing the issue that arose in the said case, nonetheless a perusal of the judgment in the case of *Hari Prasad vs. Nathmal Chunilal* (supra) would show that this Court considered the effect of pendency of appeal and further challenges to an order passed by the Rent Controller granting permission for termination of tenancy. Eventually it was held that the proceedings for eviction ought not to wait till various rounds of challenges against the order of the Rent Controller had reached finality.

(14) In the present case, it is an admitted position that the respondents initiated proceedings for grant of permission from the Rent Controller to terminate the tenancy of the petitioners as far back as in the years 1978-79. The proceedings initiated in the years 1978-79 culminated in the order dated 30/10/1998, passed by the Rent Controller granting such permission under specific clauses of the Rent Control Order. The procedure under the said Rent Control Order was

a typical two tier procedure, first requiring the landlord to seek permission under the Rent Control Order to issue quit notice and thereafter, to initiate an eviction proceeding upon permission being granted by the Rent Controller. The said two tier procedure resulted in pendency of such proceedings for number of years as the original order granting permission by the Rent Controller was challenged by the tenants in accordance with law.

(15) It was seen that such challenges lasted years together and after the challenges were exhausted and the order granting permission by the Rent Controller was upheld, the second round of litigation started for the landlord to seek eviction of the tenants.

(16) The question is whether in such an onerous two tier procedure, it can be said that when stay order is granted by the appellate authority or any other superior authority to an order of the Rent Controller granting permission to terminate the tenancy on specific clauses of the Rent Control Order, any quit notice issued during the currency of the stay order itself is rendered invalid.

(17) Considering the law laid down by this Court in the case of *Hari Prasad vs. Nathmal Chunilal* (supra) and the concern shown by this Court in such situations and the predicament of landlords under the typical two tier procedure, this Court is of the opinion that grant of stay of the order of the Rent Controller granting permission to terminate the tenancy ought not to result in rendering the quit notice invalid, because such a stay order would necessarily have the effect of only staying the eventual result of issuance of such a quit notice. The stay order would necessarily protect the tenant from the adverse effects of such quit notice or any eviction proceedings initiated in pursuance thereof. But, it cannot be said that issuance of the quit notice itself would be rendered invalid, because stay of the order of the Rent Controller is granted either by the appellate authority or in any further challenges raised on behalf of the tenant.

(18) Holding otherwise would be a travesty of justice. It would also be illogical for the reason that during the journey of the proceedings initiated by the tenant to challenge the order of permission granted by the Rent Controller to terminate the tenancy, there would be phases of time periods where there would not be any interim order staying the order passed by the Rent Controller. If the

contention raised on behalf of the petitioners is to be accepted, any quit notice issued during the interregnum when there is no such stay order would be valid, but the moment stay is granted, any such notice issued by the landlord would have to be held to be invalid. The fluctuation of the fortune of the litigants at interim stage in a pending proceeding before the Courts ought not to result in such an adverse impact on the landlord who, in fact, in accordance with law does have permission from the Rent Controller to terminate the tenancy, particularly when eventually the order of the Rent Controller granting permission is upheld and it attains finality.

(19) In this context, the learned counsel appearing for the respondents is justified in relying upon the judgment of a Division Bench of this Court in the case of *Aditya Construction Company vs. State of Maharashtra* (supra), wherein a distinction is made between stay of an order and the order being set aside. Following the position laid down therein, this Court is of the opinion that when stay of the order of the Rent Controller dated 30/10/1998, was granted by the appellate authority on 13/11/1998, it had the effect of merely staying the adverse result that the tenant would have to suffer in pursuance of the quit notice and initiation of eviction proceedings in pursuance

thereof, if at all such proceedings reached culmination during the pendency of the challenge before the appellate authority or further challenges raised by the petitioners (tenants).

(20) As noticed herein above, holding otherwise would be a travesty of justice and it would place unnecessary burden on the landlord, who had initiated proceedings in the typical two tier process under the Rent Control order. In this case the respondent initiated proceedings years ago i.e. 1978-79 and having succeeded at both the stages in the two tier process, his claim cannot be denied merely because the quit notice was issued during currency of a stay order against the order passed by the Rent Controller.

(21) This Court is not convinced that it would be in the interest of justice to accept such a contention raised on behalf of the petitioners. It is found that such a contention is another desperate attempt on the part of the appellant to cling to the tenanted premises, which this Court in writ jurisdiction shall not permit.

(22) Insofar as the contention regarding the alleged confusion as to which of the quit notices was valid and the Courts

below were not clear about the same, this Court is very clear that the quit notice dated 17/11/1998, which the petitioners refused to accept, was indeed the basis for filing the eviction proceedings, which eventually resulted in the eviction decree against the petitioners. The said contention is also found to be without any substance.

(23) In view of the above, the writ petition is dismissed.
No order as to costs.

(24) At this stage, Mr. Dangre, learned counsel appearing for the petitioners submitted that since the tenanted premises are commercial in nature and the petitioners are running business therein, time of one year may be granted for vacating the said tenanted premises.

(25) Considering the fact that in the present case, the respondent initiated the proceedings for eviction of the petitioners by seeking permission of the Rent Controller to terminate the tenancy, way back in the years 1978-79, this Court is not inclined to accept the said prayer made on behalf of the petitioners. Hence, the prayer is rejected and the petitioners are directed to handover vacant and

peaceful possession to the respondents on or before **30th November, 2022.**

(26) Rule is discharged.

[MANISH PITALE J.]