

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

WRIT PETITION NO.219 OF 2020

Raju s/o Mahadeorao Latekar,
 Aged 45 years, Occu: Business,
 R/o Babre Layout, Mangrulpir,
 Tq. Mangrulpir, District Washim. **PETITIONER**

..V E R S U S..

Namdeo s/o Honaji Chavhan
 Aged 50 years, Occu: Service in Army,
 R/o Mangrulpir, Tq. Mangrulpir,
 District Washim.
 Presently R/o R.E.L.T. Record,
 Secundarabad, Dist. Secundarabad
 (Andhra Pradesh) **RESPONDENT**

AND

WRIT PETITION NO.300 OF 2020

Shantaram s/o Narayan Mokade,
 Aged 40 years, Occu: Business,
 R/o Near Government Hospital,
 Bypass Chowk, Mangrulpir,
 Tq. Mangrulpir, District Washim. **PETITIONER**

..V E R S U S..

Namdeo s/o Honaji Chavhan
 Aged 50 years, Occu: Service in Army,
 R/o Mangrulpir, Tq. Mangrulpir,
 District Washim.
 Presently R/o R.E.L.T. Record,
 Secundarabad, Dist. Secundarabad
 (Andhra Pradesh) **RESPONDENT**

 Mr. A. P. Tathod, Advocate for Petitioner.
 Mr. B. N. Mohta, Advocate for Respondent.

CORAM: ROHIT B. DEO, J.
DATE: 4th JANUARY, 2022.

COMMON JUDGMENT:

These petitions involve common issues and are heard and decided by this common judgment.

2. The common facts are that the petitioners are tenants who occupy separate shop blocks owned by the respondent Mr. Namdeo Chavhan.

3. Mr. Namdeo Chavhan, who shall be referred to as the land-lord, instituted separate suits against the petitioners for recovery of arrears of rent, removal of encroachment and possession.

4. The petitioners, who shall be referred to as the tenants, filed applications under Section 29 (2) (3) (4) and (5) of the Maharashtra Rent Control Act, 1999 (Act) contending that the land-lord had blocked the entry to their shops by constructing an iron wire compound. The tenants sought a direction to the land-lord to remove the said compound.

5. The learned trial court rejected the applications preferred by the tenants reasoning that the applications were not maintainable.

6. The tenants preferred separate revisions under Section 34 of the Act challenging the order of rejection rendered by the learned trial Judge.

7. While the appellate court disagreed with the learned trial Judge on the issue of maintainability of the application, and held that depriving the tenants of free access to the premises would bring into play the said provision, on facts, the appellate court found that the access of the tenants to their respective shops was not hampered. The appellate court duly considered certain photographs placed on record by the tenants and the land-lord and recorded a *prima facie* finding of fact that the access or entry to the tenanted shop is not obstructed and there is sufficient distance between the wire compound and the shops concerned.

8. The order of rejection of direction to remove the wire compound is rendered on 23.06.2016. The fact that the tenants are apparently conducting business from the tenanted premises

since then, would *prima facie* suggest, that the entry to the tenanted premises is not blocked. In any event, discretion which is exercised by the courts below, albeit for reasons different, cannot be termed as arbitrary. The other aspect of the matter, which is highlighted by Mr. Mohta, the learned counsel for the land-lord is that the petitioners have filed Regular Civil Suit 44/2016 seeking temporary and mandatory injunction for removal of the iron wire compound, and the temporary injunction application preferred therein is rejected by the learned trial Judge vide order dated 14.07.2016.

9. In the totality of the circumstances, I do not see any reason to interfere with the orders impugned, in exercise of writ jurisdiction. The petitions are dismissed. No order as to costs.

JUDGE

NSN