



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

WRIT PETITION NO.715 OF 2018

Mangalserry S/o. Ouseph Kochupoila (Dead)
Through its Legal Representatives.

- 1) ~~Ritha Kochupoila Mangalserry~~
~~Aged about 75 yrs, Occ :- Housewife.~~
- 2) Elizabeth Sahu Benu
Aged about 48 yrs, Occ:-Housewife.
- 3) Jojo Kochupoila Mangalserry
Aged about : - 46 yrs, Occ:- Business.
- 4) Jojee Kochupoila Mangalserry
Aged about 42 yrs, Occ:- Business
R/o. 110-B, Yogendranagar,
Katol Road, Nagpur

Deleted as per Court's order
dated 17.02.2025

Correction is carried out as per
Court's order dated
17.02.2025

.... PETITIONER/S

// VERSUS //

Sukumar s/o D. Sarkar (Dead) Legal
Representative of Deceased

- 1) Smt. Meena D/o Sukumar De. Sarkar,
Aged about 76 yrs, Occ : - Nil.
- 2) Sandeepa D/o Sukumar De Sarkar
Aged about 42 yrs, Occ:-Service.
- 3) Sanjay S/o Sukumar De Sarkar
Aged about 40 yrs, Occ :- Service
All R/o. 6, Kapileshwar, Nagar,
Behind Police Line Takli, Nagpur.

... RESPONDENTS

Shri R.L. Khapre, Senior Advocate a/b Mohd. Ateeque, Advocate for the
Petitioner/s

Shri M.A. Vishwarupe, Advocate for the respondent No.1 to 3

CORAM : ANIL S. KILOR, J.

JUDGMENT RESERVED ON : 05.06.2023

JUDGMENT PRONOUNCED ON : 26.07.2023.

JUDGMENT :

1. Heard.
2. **Rule.** Rule made returnable forthwith. Heard finally by consent of the parties.
3. The judgment and decree dated 13.12.2007 of eviction on the ground of bonafide need passed by the Small Causes Court, Nagpur and confirmed by District Judge-IV, Nagpur vide judgment and decree dated 29.09.2017, against the petitioners/tenants, is under challenge in this writ petition.
4. I have heard the learned counsel for the parties.
5. Shri Khapre, learned Senior Advocate for the petitioners, makes following submissions:

(a) The normal rule is that, in any litigation rights and obligations of the parties are adjudicated upon as they obtained at the commencement of the lis. But this is the subject to an exception. Wherever subsequent events of facts or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the molding of the relief occur, the court is not precluded from taking cognizance of the same;

(b) After the death of the original plaintiff and the landlord, the decree on the ground of bonafide need ought not to have been passed by both the Courts-below as the suit premises was sought to be vacated on the ground of personal need. It is submitted that because of death of original plaintiff, the said need does not subsist;

(c) Both the Courts below failed to consider and appreciate the case of the petitioners on the issue of comparative hardship;

(d) There was a settlement between the petitioners and the respondents about the sale of the suit house and the said change in circumstance and the fact that the suit house is no more needed by the legal heirs of the original plaintiff, was not considered by both the Courts below.

6. Shri Khapre, learned Senior Advocate for the petitioners has placed reliance upon the judgments of the Hon'ble Supreme Court of India in the cases of *Jai Prakash Gupta...v....Riyaz Ahamad*¹ and *Sheshambal ...v... Chelur Corpn. Chelur Building*².

7. On the other hand, Shri Vishwarupe, learned counsel for the respondents/landlords, makes following submissions:

(a) On bonafide need specific pleadings are made that the suit house is needed for personal need of the original plaintiff as well as his family, therefore, even after the death of the original plaintiff, the need subsists.

(b) Though there was a settlement and it was intended to sell the suit house, however, the decision was subsequently,

1 (2009) 10 SCC 197

2 (2010) 3 SCC 470

changed and now the respondents needed the suit house for their bonafide need.

(c) Both the Courts have rightly considered the issue of comparative hardship.

8. Shri Vishwarupe, learned counsel for the respondents/landlords has placed reliance upon the judgment of the Co-ordinate Bench of this Court in the case of *Balwant P. Doshi Vs. Shantaben*³.

9. In light of the rival contentions, I have perused the record and the both the judgments and decree passed by both the Courts below.

10. Taking the issue of bonafide need first, on perusal of the plaint, particularly para 9 of it, shows that specific pleadings were made by the original plaintiff about the bonafide need to the effect that the original plaintiff required the premises in question reasonably and bonafide for his own occupation and for the

3 2002(4) Mh.L.J. 473

occupation of the persons namely his family members for whose benefit also, the property was built.

11. Thus, there are sufficient pleadings as regards bonafide need of the original plaintiff and all his family members, who are respondents as legal heirs of him.

12. In the above referred backdrop, the death of original plaintiff will not amount to cessation of bonafide need, in this matter. In that view of the matter, the judgments cited by Shri Khapre, learned Senior Advocate for the petitioners in the cases of *Jai Prakash Gupta* (supra) and *Sheshambal* (supra) are of no help to the petitioners.

13. As far as settlement is concerned, it has come on record that the petitioners have failed to act upon the terms and conditions of the settlement. Even this Court repeatedly granted opportunity to the petitioners in that regard, however, the petitioners failed to avail such opportunity. In the said backdrop, subsequently change of decision by the landlords not to sell the property does not amount to cessation of a need of the landlords.

14. Moreover, the subsequent events have been considered by the learned lower Appellate Court and thereupon, rejected the contention of the petitioners that in change circumstance the need of the landlords does not subsist.

15. The Co-ordinate Bench of this Court in the case of *Balwant P. Doshi* (Supra), has held that the Courts cannot ordinarily doubt the bonafide need of the landlord nor the Courts can dictate to the landlord as to how the premise owned by him should be used. It is sufficient for the landlord to express his desire to occupy the premises owned by him. It is not necessary for the landlord to establish the dire necessity but it is enough to show that some need exists.

16. This Court has further held that the landlords who are staying in the rented premises desire to stay in their own accommodation, then the Court, as a rule should not refuse the decree.

17. Admittedly, the landlords are staying in a rented premises since long and they are in need of the suit house for their personal occupation. Both the Courts below have rejected the case of the

petitioners that the suit house is beside a slum area and drain water comes there and therefore, the respondents do not want to reside in the suit house.

18. Furthermore, after examining the oral as well as documentary evidence, it sufficiently establishes that, both the Courts below have rightly held on the point of comparative hardship in favour of the landlords.

19. In the circumstance, I do not find any error committed by both the Courts below in decreeing the suit for eviction. Accordingly, the petition is **dismissed**.

Rule is discharged. No costs.

20. At this stage, Mr. Ateeque, learned counsel for the petitioners prays for withdrawal of Rs.10,00,000/- deposited in this Court, permission is granted.

[ANIL S. KILOR, J.]