



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

WRIT PETITION NO. 2558 OF 2022

1. Shri Virchand S/o. Indrasain Hingle,
Aged about 73 years, Occupation :
Business, Resident of Apartment No.
106, 'Nirmal Enclave', Gajanan Nagar
Nagpur – 440 015 – NAGPUR
(Org- NA -1)
2. Shri Devendra S/o. Indrasain Hingle,
Aged about 71 years, Occupation :
Business, Resident of 220-D,
Chindwara Road, Near IBP Petrol
Pump, 'Rachana Madhuban Apartments',
Faras, Mankapur, Nagpur – 440 030
(Org- NA -4)
3. Shri Jatinder S/o. Indrasain Hingle,
Aged about 69 years, Occupation :
Business, Resident of Flat No.A/11,
Canal Road, 'Vandana Society',
Ramdaspath, Nagpur – 440 010
(Org- NA-2)
4. Shri Tribhuvan S/o. Indrasain Hingle,
Aged about 67 years, Occupation :
Business, Resident of Plot No.41,
'Ganesh', Madhav Nagar, Nagpur-
440 010 (Org- NA -3)
5. Shri Naresh S/o. Indrasain Hingle,
Aged about 65 years, Occupation :
Business, Resident of Plot No.16,
Surana Layout, Opp. Durga Temple,
Rajnagar, Katol Road, Nagpur-440003
(Org-NA-6)

6. Shri Rakesh S/o. Indrasain Hingle,
Aged about 61 years, Occupation :
Business, Resident of Apartment
No. 203, 'Kalash Enclave', 260,
Dharampeth Extension, Nagpur -
440 010 (Org- NA -7)

Petitioners 1 to 6 through their Duly
Constituted Power of Attorney holder
Shri Ramesh Inderasain Hingle
(Org. NA-7)

7. Shri Ramesh S/o. Indrasain Hingle,
Aged about 63 years, Occupation :
Business, Resident of Plot No.7,
Behind Vivekanand Centre,
Atrey Layout, Near Pratap Nagar,
Nagpur-440 022 (Org- NA-5)

.... **PETITIONERS.**

// **VERSUS** //

1. ~~Mr. Balkrishna Marotrao Deogade,~~
(Org. Applicant)
(Since Dead through LRs)
- i) Smt. Vijayalaxmi Wd/o. Balkrishna Deogade,
aged about 74 Years, Occupation:Household,
Resident of Plot No.59, Verma Layout,
University Campus, Nagpur – 440 033.
- ii) Smt. Minakshi W/o. Hiranman Gaidhani,
Aged about 54 Years, Occupation:Household,
Resident of 3D, Titas Apartment, 30A-101,
Baghajatin Place, Circus Avenue, Kolkata,
West Bengal – 700 086.

- iii) Smt. Nilakshi W/o.Sudhakar Titare,
Aged about 53 Years, Occupation:Household,
Resident of Flat No.13/14, Shubhasankalpa
Society for Lingayat Colony, Datta Mandir
Road, Nashik- 422 101.
 - iv) Shri Prashant S/o. Balkrishna Deogade,
Aged about 47 Years, Occupation: Business,
Resident of Plot No.59, Verma Layout,
University Campus, Nagpur – 440 033.
 - v) Shri Chaitanya S/o. Balkrishna Deogade,
Aged about 45 Years, Occupation: Private,
Resident of Plot No.59, Verma Layout,
University Campus, Nagpur – 440 033.
- 2. The Additional District Collector,
Civil Lines, Nagpur.
 - 3. The Rent Controller,
Collector Officer, Civil Lines,
Nagpur.

.... **RESPONDENTS.**

Shri U.A.Gosavi, Advocate for Petitioners.

Shri A.S.Kesari, Advocate for LR's of Respondent No.1.

Ms Mukta Kavimandan, A.G.P. for Respondents/State.

CORAM : ANIL S. KILOR, J.

DATED : OCTOBER 18, 2023.

ORAL JUDGMENT :

1. Heard.

2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the parties.

3. This pertains to a landlord-tenant dispute. The petitioners are the tenants, whereas the respondent No.1 (original applicant) was the owner of the shop in dispute. The Rent Controller as well as the Additional Collector held in favour of the landlord and granted permission to determine the tenancy. Hence, the order dated 24/07/2013 passed by the Rent Controller, Nagpur and the order dated 28/09/2018 passed by the Additional Collector, Nagpur, are under challenge in this writ petition.

4. The respondent No.1 filed an application under Clause 13, Section 3(i), (ii) and (vi) of the C.P. & Berar Letting of Houses and Rent Control Order, 1949 (hereinafter referred to as the "Rent Control Order") for termination of tenancy on the ground of arrears of rent, habitual default and bonafide need. As far as payment of

rent is concerned, in the cross-examination the landlord has admitted that he has not filed any copy of the notice claiming arrears of rent from the petitioners. He further admits that the way in which the petitioners used to pay the rent, the same way they paid the rent to him till the date of filing of the suit. It has come on record that for subsequent period the rent was sent through money order to the respondent. Thus, in absence of any evidence showing that any notice was issued as regards the arrears of rent and further on considering the above referred admission given by the landlord in the cross-examination, I have no hesitation to hold that the respondent has failed to establish the case as regards default in payment of rent or the case of habitual default in making payment of rent.

5. As far as bonafide need is concerned, the relevant pleadings are as follows:

“3.That, the applicant about ten years back started business of sale of Electronic goods in the name of wife, and the business is managed by his wife and sons. This shop is situated one block of the said

house of the applicant. As is usual with every business, the business of the applicant has also developed with great speed. The result is that the shop premises need additional space for godown purposes to store electronic goods for smooth running of the shop. And he needs bonafide additional place for godown which is available in his own house, said above.”

6. Thus, it is evident from the pleadings that the possession of the suit shop was asked for the purpose of additional space for godown to store the electronic goods.

7. In the cross-examination the respondent denied the fact about sale of the shop in which he was running a business of selling the electronic goods. However, the learned counsel for the petitioners has produced a copy of the sale deed of the said shop which was executed on 15/01/2001. Admittedly, the cross-examination was conducted on 22/02/2002. The learned counsel for the respondent is not disputing the said document. The copy of the said Sale Deed, tendered in the Court, is taken on record and marked as Article “X” for identification.

8. Thus, it is apparent that despite the fact that the suit shop, wherein the respondent was running his business of sale of the electronic goods, he denied the said fact, suppressing the fact that the shop was sold out in the year 2001.

9. The possession of the suit shop was sought for the purpose of godown of the said business of sale of electronic goods and as the business was closed down by selling the shop in which the respondent was running the business of sale of electronic goods, no amendment was made to the application pointing out that after the sale of the said shop, still bonafide need exists.

10. Thus, considering the subsequent events, which has bearing in the present matter, I am of the opinion that the respondent has failed to point out that there is any bonafide need in existence after 2001.

11. Hence, I have no hesitation to hold that the respondent has also failed to establish his case on the bonafide need.

12. In the circumstances, I pass the following order:

- i) The Writ Petition is allowed.
- ii) The impugned order dated 28/09/2018, passed by the Additional Collector, Nagpur and the impugned order dated 24/07/2013 passed by the Rent Controller, Nagpur, terminating the tenancy, are hereby quashed and set aside.

Rule is made absolute accordingly. No order as to costs.

(ANIL S. KILOR, J)

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