

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

Writ Petition No.2634/2021

(Madhavdas and others V Benishyam and others)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr. D.L. Dharmadhikari and Mr. R.M. Pande, Advs for petitioners.
Mr. S.V. Purohit, Adv for resp. nos.1 to 3.

CORAM : AVINASH G GHAROTE, J.
DATE : 08-03-2023

Heard Mr. Dharmadhikari, learned Counsel for
the petitioners/tenants.

2. The petition challenges the judgment and decree for eviction u/s 16(1)(g) of the Maharashtra Rent Control Act, 1999, passed by the learned trial Court dated 23-06-15 (pg 83) which has been affirmed by the appellate Court by dismissing the appeal by judgment dated 11-02-21 (pg 168).

3. The learned Counsel for the petitioners submits that the need which is claimed, is not genuine and bonafide, but is illusory. He submits that there are no relevant and material pleadings regarding the need spelt out in the plaint nor there is sufficient evidence in this regard. He submits that though the respondent no.1/landlord, was the resident of Tumsar and the premises in question was situated at Gondia, there is no statement made that the respondent no.1/landlord for the purpose of

the business which is sought to be commenced in the suit premises was willing to shift his residence to Gondia. It is further contended that the son of respondent no.1 namely Abhinav, who was supposed to have assisted him in the businesses, was already employed at Bangalore and therefore the question of need claimed did not survive. It is further contended that Abhinav did not enter into the witness box, rather on the contrary, Apruv, the second son had entered into the witnesses box whose evidence cannot be considered, as there is contrary need pleaded. He therefore states that there is no genuine and bonafide need, but simply a desire for the premises to be vacated. It is also contended, that there was no proof of any concluded scheme to indicate the commencement of the business of Super Bazar as was the need pleaded and therefore, the respondent no.1 did not even have finances for the business which was proposed to be commenced to which reliance is placed upon *Esoof Shoeb Contractor and others Vs Mridangraj Hiralal Suchak Alias Barfiwala (2019 DGLS (Bom.) 1038)*. It is also contended that the question of comparative hardship has been incorrectly answered by the Courts below in favour of the respondent/landlord, as the issue is clearly spelt out in favour of the petitioner.

4. Mr. Purohit, learned Counsel for the respondents, opposes the contention and submits, that the need for use of the premises for opening Super Bazar has been pleaded in the plaint and has also been substantiated in evidence. He contends that the need was that of the respondent no.1 and as the role of his sons, was merely of

that of Assistance in the businesses, it would not mean that in case one of the sons was not able to assist him, the need would vanish. He further submits that the petitioners, already have premises available to them at Gondia itself, and though they are termed as residential premises, the same could have also been used for commercial purposes as Kirana shop as well as wholesale dealership could also be commenced from the said premises. It is also contended that there was open space available to the petitioners besides their premises which could be converted for the purpose of the businesses which they were running and therefore the question of comparative hardship has rightly been answered.

5. The suit property consists of Plot No.20, admeasuring 1850 sq.ft with Municipal House No.38/241, constructed thereupon having a five rooms, in Deshbandhu Ward, Ganj Bazar, Sabji Mandi, Gondia. The entire property is occupied by the petitioners.

6. The plaint para 5 depicts the need of the premises for starting business by the respondent no.1 for himself and his son Abhinav. It is further pleaded that though his son Abhihav was at that time serving at Pune, he had granted his consent to assist the respondent no.1 in commencing and carrying on the business in the suit premises. It is also pleaded that the respondent no.1/plaintiff no.1 required the premises for starting his own business of running a Super Bazar in the property with the association of his family members. It is also pleaded that

the plaintiffs had sufficient means, finances, experience and knowledge of running the business. The need as pleaded has been countered by the defendants/petitioners in their written statement. The need has been justified in evidence led by respondent no.1-Benishyam (PW 1) at Exh-89 in paragraph 4 (pg 187). Though, it has been brought out in his cross-examination that the plaintiff nos. 2 and 3 his brothers had their own business of fabrication work at Butibori, Nagpur, nothing has been elicited regarding any business being conducted by the respondent no.1. The need pleaded is that of the respondent no.1, and therefore the fact that his brothers were having their independent business at Butibori, Nagpur, cannot come, in the way of the need of the respondent no.1. The son of the respondent no.1 namely Apruv has also been examined as PW-3 at Exh-91. In his evidence, he has categorically stated that the respondent no.1/landlord was unemployed and therefore the need for starting the business of a Super Bazar at the suit premises was paramount. He has also asserted that in case such business is started, he would be willing to assist his father in such a business. His cross-examination indicates that nothing has been elicited to support the claim of the petitioners/tenants.

7. The learned trial Court has, in para 15 of his judgment has recorded, that the suit property is the only property owned and possessed by the respondents at Gondia as against which it also has been recorded that the petitioners owned two residential properties at Gondia at Sr. Nos. 2 and 3, table -C, in para 15 of the judgment of the

learned trial Court, which would indicate that there is open land admeasuring 800 sq.ft abutting to one residential property. The trial Court has further recorded that the respondent no.1, earlier in point of time was running a Rice Mill which has long since been shut down and the respondent no.1 had no business of his own. It is further recorded that though the properties owned by the defendants/petitioners, indicated that they were Nazul properties, nothing prevented them to use the same for the purpose of running a Kirana shop in retail or business of food-grains and wholesale and therefore on this ground the need has been answered in the positive and comparative hardship being negative.

8. The appellate Court in its judgment has also concurred with these findings.

9. The question of pleading insofar as bonafide need is concerned, cannot be encapsulated in a straight jacket formula for the need would vary and depend from person to person, business to business and premises to premises, based upon the nature of the need. Considering this position, the need which is pleaded for the premises in question, that of starting a Super Bazar, in my considered opinion, amounts to a sufficient pleading in law. The question of the finances necessary to put it to the use for which it is sought to be taken, is something not necessary to be pleaded as the requirement for the same is always subsequent in point of time and therefore to demonstrate the need as pleaded, it would not be necessary for the

plaintiffs/landlord to plead and prove a concluded scheme of finance, to substantiate the need pleaded. In Esoof Shoeb Contractor (supra), relied upon does not spell out that there should be a well financed scheme for the bonafide need pleaded to be spelt out in the plaint.

10. Since it is an admitted position that the respondent no.1/plaintiff was not doing anything from 1992 to 2008, the contention of Mr. Dharmadhikari, learned Counsel for the petitioners/tenants that the need is illusory, has to be necessarily looked into in the contextual background that the requirement of the premises for bonafide need, hardened into a necessity in the year 2008 when the sons of the respondent no.1 became major and indicated willingness to support the respondent no.1 in such business. Merely because the son of respondent no.1 namely Abhinav, is now employed at Bangalore, that would not negate the need as the other son Apruv has expressed his willingness to support the respondent no.1 in the business which is proposed to be commenced in the suit premises. Though the respondent no.1 resides at Tumsar, and the suit property is at Gondia, the distance is not such as cannot be travelled daily, apart from which, it is open for the respondent no.1 to shift his residence to Gondia, once the property gets vacated for preparing it for the business proposed and running it.

11. The need, therefore, in my considered opinion, has been rightly held by the Courts below as established.

12. Insofar as the plea of comparative hardship is concerned, it would be necessary to note that the petitioner is having residential property with open land of 800 sq.ft abutting it, as recorded by the trial Court in Sr. No.2, table-C in paragraph 15 of its judgment. The ownership of this premises is not disputed. The only contention is, that the premises is only for residential use, therefore, the Kirana Shop cannot be started therein. This plea is clearly not maintainable as the residential premises is equally capable of being used for running a Kirana Shop as the relevant Building Regulations in that regard do not prohibit so. That apart, the area of 800 sq.ft. which is an open land abutting to the residential property no. 2 in table-C, could also be converted into go-downs for the use of wholesale business of food-grains, which the petitioners, purport to do. Why this has not been done, there is no answer to this.

13. It has also not been shown, that the need pleaded by the respondent no.1 is one, which cannot be done without the assistance of either of the sons of respondent no.1. Rather the need pleaded could also be got implemented by appointment of a Manager or a suitable person to look after the day to day affairs under the supervision and guidance of respondent no.1.

14. That being the position, I do not see any reason to interfere in the well reasoned judgments of the Courts below. The petition is therefore without any merits and hence it is dismissed. No costs.

15. The learned Counsel for the petitioners, at this stage, seeks stay of the execution of the judgment and decree of the trial Court for a period of six weeks to enable the petitioners to approach the Hon'ble Apex Court. Though, the same is opposed by Mr. Purohit, learned Counsel for the respondents, considering that there was stay operating during the pendency of the appeal and the learned Counsel for the respondents had given an oral undertaking not to execute the decree during the pendency of the present petition, the execution of the judgment and decree of the trial Court is hereby stayed for a period of six weeks from today.

JUDGE