



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

WRIT PETITION (WP) NO.6872 OF 2022

- 1) Sheshrao s/o Laxman Talhar, (Since deceased)
through his legal heirs.
 1. Shrivkumar s/o Sheshrao Talhar, aged about
54 yrs, occu: Business,
 2. Pawankumar @ Satyajit s/o Sheshrao
Talhar, aged about 50 yrs, Occ. Business.
 3. Sau. Jaya w/o Vithalrao Bidwaik, aged
about 47 yrs, occu : Household.
 4. Sau Nilima w/o Sanjay Wathe, aged about
47 yrs, occu : HouseholdAll 1 to 4 Residents of plot No.212, Tiranja
Chowk, Nandanwan Nagpur.

.... Petitioner(s)

// VERSUS //

- 1) Subhash s/o Gulabrao Warhekar, aged
major occu: Business, Prop. Subhash
Photo studio, R/o Plot No.212, House
No.1287, Tiranga Chowk, Shivnagar,
Nagpur

... Respondent(s)

Ms Rashi Deshpande, Advocate for the Petitioner/s

Mr P.P. Kothari, Advocate a/b Ms Shwetal Kothari, Advocate for the
respondent-sole

**CORAM : ANIL S. KILOR, J.
DATED : 18.10.2023**

ORAL JUDGMENT :

1. Heard.
2. **Rule.** Rule made returnable forthwith. Heard finally by consent by the parties.
3. The petitioners are the landlords, who filed the suit for ejectment, possession and damages against the respondent on the ground of bonafide need.
4. The said suit came to be decreed vide judgment and decree dated 11.10.2018 passed by the Small Causes Court, Nagpur in Regular Civil Suit (RCS) No.100 of 2011.
5. The respondent feeling aggrieved by the same, filed RCA No.529 of 2019. The learned lower Appellate Court reversed the judgment and decree of the trial Court, vide judgment and decree dated 22.07.2019, the same is under challenge in this writ petition.

6. In the matter at hand, the suit was filed by the original owner Sheshrao Laxman Talhar and on his death the petitioners/legal heirs persuaded the suit.

7. As regards bonafide need, it is pleaded in the suit that the suit block is required for the need of the business of his children.

8. It is stated that the defendant is having an alternate accommodation in the same locality for doing his business and therefore, he is not in need of the suit premises.

9. The learned trial Court, while decreeing the suit, has observed that, during the course of crossexamination plaintiff has admitted that he has got two blocks vacated but the defendant has not brought anything on record to show that when these two blocks were vacated, whether it was vacated prior to institution of suit or after institution of suit.

10. It is further observed that, in the said two blocks plaintiff's daughterinlaw is running shop of beauty-products, therefore, there is no vacant blocks available with plaintiff.

11. The findings as regards hardship were recorded to the effect that the defendant is having alternative accommodation, therefore, he is not in need of suit property and hence, the defendant would not cause any type of hardship, if he has been asked to vacate suit property.

12. The learned trial Court has further noted the admission given by the defendant on the point of hardship that, he is residing at Shiv Nagar and he is having his own house having area of 1200 sq.ft. at a distance of 200 to 300 feet. from suit property. Moreover, the admission of defendant that his wife is having plot in the same area.

13. It is therefore, held that, the defendant would not cause any type of hardship as he can shift his business at his residence which is at a distance of 200 to 300 feet away from suit property or he can construct plot owned by his wife for his own business.

14. The learned lower Appellate Court, however, reversed the said findings on the point of bonafide need as well as on the point of hardship.

15. It is observed by the first Appellate Court that, in cross-examination the plaintiff has admitted that he got two blocks vacated and further admitted that his daughter in law runs a shop of beauty-products in those blocks.

16. It is further observed that, during crossexamination, the PW-1 stated that his son Shivkumar runs a Gym on the first floor and on the second floor his son Satyajeeet runs private tuition and computer classes and his both sons are doing their independent businesses. It is therefore, held that, the original plaintiff has got ample premises in his possession.

17. The learned first Appellate Court further recorded the findings that, if the sons of the plaintiff require the suit premises to run their Gym and private tuition and computer classes in that case, the area of the suit premises i.e. 140 square feet is not sufficient and it cannot be put in use. It is also held that, the original plaintiff has

not given the specific details about his requirement or requirement of his sons but simply pleaded that the suit shop block is required for bonafide purpose of the plaintiff i.e. for need of business of his children, as their inclination is more towards business and the locality in which the suit premises is situated in the growing locality and fit for business.

18. Similarly, as regards hardship, the learned lower Appellate Court has observed that, the original plaintiff has deposed in his crossexamination that he has not produced any documentary evidence to show that the defendant has alternate accommodation. It is held that, the plot owned by the wife of the defendant cannot be termed as alternate accommodation suitable for the defendant to run his business more specifically when the original plaintiff himself has admitted in his crossexamination that the defendant has the only business in the suit shop block.

19. In the above referred backdrop, I have heard the learned counsel for the respective parties.

20. The learned counsel for the petitioners submits that it is a settled law that, it is a prerogative of the landlord, if he requires the premises in question for his bonafide use, it is not the tenant who can dictate the terms to landlord and advise him what he should do; and what he should not. It is submitted that the learned lower Appellate Court has erroneously entered into the arena of suitability of suit shop and held that the suit shop is not suitable for the purpose for which the landlords have sought ejectment of the respondent. The learned counsel for the petitioners, in support of her submission, has placed reliance on the judgments of the Hon'ble Supreme Court of India in the cases of *Uday Shankar Upadhyay v. Naveen Maheshwari*¹, *Anil Bajaj & Anr. V. Vinod Ahuja*², *Prativa Devi (SMT) Vs. T.V. Krishnan*³ and *Bhupinder Singh Bawa V. Asha Devi*⁴.

21. It is further submitted that the burden to prove the hardship is on the tenant and once sufficient evidence has been brought on record by the plaintiff to point out that, there is alternate

1 (2010) 1 SCC 503

2 AIR 2014 SCC 2294

3 (1996) 5 SCC 353

4 (2016) 10 SCC 209

accommodation available with the respondent, and on failure of the respondent to counter the same by establishing the fact of hardship in his favour, the learned lower Appellate Court ought not to have held in favour of the respondent on the point of hardship.

22. On the other hand, the learned counsel for the respondent argues that the learned lower Appellate Court has rightly allowed the appeal preferred by the respondent by holding in favour of the respondent on both the points i.e. bonafide need as well as hardship.

23. It is submitted that the plaintiff has not disclosed the alternate accommodation available with him and thereby, they suppressed the fact. It is submitted that the learned lower Appellate Court has rightly allowed the appeal by reversing the judgment and decree passed by the trial Court.

24. The learned counsel for the respondent has placed reliance on the judgments of this Court in the cases of *Vasant Mahadeo Gujar Vs. Baitulla Ismail Shaikh & Anr.*⁵, *Tarachand Hassaram*

5 2016(4) ALL MR 174

*Shamdasani vs. Durgashankar G. Shroff & others*⁶, *Vijay Gangadhar Dande (Dead) and Ors. Vs. Dilip Gyanchand Khemani*⁷ and *Narendra Gulabrao Zade Vs. Shiocharan Ghashiram Gupta and anr.*⁸.

25. It is further submitted that unless there is a perversity and the findings are without evidence, this Court can not interfere with the judgment under Article 227 of the Constitution of India. He further submits that as there is no perversity committed by the learned lower Appellate Court, this Court may not interfere with the impugned judgment. Accordingly, he prays for dismissal of the present writ petition.

26. In light of the findings recorded by both the Courts below and rival submissions made by the parties, at this stage it is necessary to reiterate the law in respect of bonafide need.

27. The Hon'ble Supreme Court of India, in the case of *Prativa Devi (SMT) V. T.V. Krishnan*⁹, has observed that, the landlord is

6 2004(Supp.) Bom.C.R. 333

7 2015(5) ALL MR 559

8 2011 (1) ALL MR 889

9 (1996) 5 SCC 353

the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the Courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own. It is further held that, there is no law which deprives the landlord of the beneficial enjoyment of his property.

28. The Hon'ble Supreme Court of India, in the case of *Savitri Sahay V. Sachidanand Prasad*¹⁰, has observed that under normal circumstances if a landlord during the trial gets vacant possession of some other premises which are equally suitable and chooses to let them out on higher rent then it may be arguable that the need of the landlord, made out in the Eviction Petition, was not reasonable or in good faith. However, further it is held that, a landlord may have two or more premises which have been let out, it is for the landlord to choose which one would be preferable to him or her and the tenant could not question such preference.

10 AIR 2003 SC 156

29. The Co-ordinate Bench of this Court, in the case of *Balwant P. Doshi Vs. Shantaben Dhirajlal Shah*¹¹, has observed that it is well settled that the Courts cannot ordinarily doubt the bonafide need of the landlord nor the Courts can dictate to the landlord as to how the premises owned by him should be used. It is sufficient for the landlord to express his desire to occupy the premises which are 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.

30. The Hon'ble Supreme Court of India, in the case of *Sait Nagjee Purushotham & Co. Ltd. Vs. Vimalabai Prabhulal and Others*¹², has observed that, it is always the prerogative of the landlord that if he requires the premises in question for his bona fide use for expansion of business this is no ground to say that the landlords are already having their business at Chennai and Hyderabad therefore, it is not genuine need. It is further held that, it is not the tenant who can dictate the terms to the landlords and advise him what he should do and what he should not. It is always

11 2002 (4) Mh. L.J. 473

12 (2005) 8 SCC 252

the privilege of the landlord to choose the nature of the business and the place of business.

31. Similarly, the Hon'ble Supreme Court of India, in the case of *Ram Babu Aggarwal Vs. Jay Kishan Das*¹³, has observed thus:

“7. However, as regards the question of bonafide need, we find that the main ground for rejecting the landlord's petition for eviction was that in the petition the landlord had alleged that he required the premises for his son Giriraj who wanted to do footwear business in the premises in question. The High Court has held that since Giriraj has no experience in the footwear business and was only helping his father in the cloth business, hence there was no bonafide need. We are of the opinion that a person can start a new business even if he has no experience in the new business. That does not mean that his claim for starting the new business must be rejected on the ground that it is a false claim. Many people start new businesses even if they do not have experience in the new business, and sometimes they are successful in the new business also.”

32. The Hon'ble Supreme Court India, in the case of *Uday Shankar Upadhyay Vs. Naveen Maheshwari*¹⁴, has held that the Court cannot dictate to the landlord which floor he should use for his business i.e. for the landlord himself to decide.

33. The Hon'ble Supreme Court of India, in the case of *Anil Bajaj & Anr. V. Vinod Ahuja*¹⁵, has observed that, the fact that the

13 AIR 2010 SC 721

14 (2010) 1 SCC 503

15 AIR 2014 SC 2294

landlord is doing business from various other premises cannot foreclose his right to seek eviction from the tenanted premises so long as he intends to use the said tenanted premises for his own business.

34. *The Hon'ble Supreme Court of India, in the case of Bhupinder Singh Bawa Vs. Asha Devi¹⁶, has observed that, it is perfectly open to the landlord to choose a more suitable premises for carrying on the business by her son and that the landlord cannot be dictated by the tenant as to from which shop her son should start the business.*

35. Thus, it is evident from the above referred authorities that the landlord is the best judge of his residential requirement and he has a complete freedom in the matter. The learned Appellate Court despite the said well settled law, has held that bonafide need has not been proved by the landlord as he has not given the specific requirement as regards bonafide need. Furthermore, in absence of any evidence that on the date of filing of the suit or even during the pendency of the suit two shops got vacated by the landlord and it

16 (2016) 10 SCC 209

was available to the landlord for use, the learned lower appellate Court committed error in holding that since the plaintiff admitted that two shops were got vacated, the bonafide need was not proved. Whereas, even though if it is accepted that those shops were vacated during the pendency of the suit, still as held by the Hon'ble Supreme Court of India in the case of *Savitri Sahay* (supra) that it is for the landlord to chose which one would be preferable to him or her and the tenant could not question such preference, the above referred findings cannot be termed as just and proper.

36. Moreover, it is a settled law that Courts cannot ordinarily doubt the bonafide need of the landlord. In the circumstances, the findings recorded in negative on the point of bonafide need by the learned lower appellate Court, are perverse and without evidence hence, not sustainable in the eyes of law.

37. Though it has come on the record that there is alternate accommodation available to the defendant, having his own house admeasuring 1200 Sq.Ft. at a distance of 200 to 300 feet from the suit shop and also having a plot owned by his wife, the learned

lower appellate Court committed error in holding against the plaintiff on the point of hardship.

38. Thus, it is evident from the findings recorded by the learned lower Appellate Court on the point of bonafide need and hardship, it is contrary to the law discussed and reiterated by the Hon'ble Apex Court or this Court. In the circumstances, I pass the following order:

- (i) The writ petition is **allowed**.
- (ii) The judgment and order dated 22.07.2019 in Regular Civil Appeal No.529 of 2019 passed by the Special Judge, Special Court for Differently Abled Persons, Senior Citizens and Marginalized Section of Society, Nagpur, is hereby quashed and set aside and consequently, the judgment and decree dated 11.10.2018 passed in Regular Civil Suit No.100 of 2011 passed by the Small Causes Court, Nagpur, is upheld.

Rule accordingly. No costs.

[ANIL S. KILOR, J.]