

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

WRIT PETITION NO. 5139 OF 2017

Hemant Virendra Jain __ Vs. __ Late Rao Bahadur Devineni Laxman Swami Ashram

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S.V.Purohit, Advocate for petitioner
Mr. Masood Shareef, Advocate for respondent

CORAM : AVINASH G. GHAROTE, J.
DATE : 03/04/2023

1] Heard Mr. Purohit, learned counsel for the petitioner and Mr. Shareef, learned counsel for the respondent.

2] **Rule, Rule** made returnable forthwith. Heard finally with the consent of the learned counsel for the rival parties.

3] The petition challenges the judgment dated 12.02.2015 passed by the learned Additional Judge, Small Causes Court Nagpur and the judgment dated 17.07.2017 passed by the learned District Judge-13, Nagpur in appeal, which upholds the decree for eviction granted under Section 16 (1) (g) of the Maharashtra Rent Control Act, 1999 (hereinafter to be referred as "the M.R.C. Act") to the plaintiff/respondent.

4] Mr. S.V.Purohit, learned counsel for the petitioner submits that all the trustees of the respondent-trust were necessary to be impleaded as plaintiffs without which the suit was not maintainable. In so far as plea of bonafide need is concerned, he submits that the same is also absent.

5] Mr. Shareef, learned counsel for the respondent submits, that the relationship of landlord and tenant stands admitted between the parties and the learned Small Causes Court, Nagpur under the provisions of the M.R.C. Act read with Section 26 of the Provincial Small Cause Courts Act, 1887 could not go into the issue of title, and therefore, the contention raised in this regard was clearly erroneous. No other argument was advanced.

6] A perusal of para-8 (pg. 140) of the written statement of the tenant, as pointed out by Mr.Shareef, learned counsel for the respondent, clearly indicates the admission on part of the tenant regarding the relationship of the landlord and tenant between the parties hereto. It is categorically admitted by the tenant, that earlier in point of time, the forefathers of the defendant/tenant were regularly paying the rent, however in the interim, since there was no Board of Trustees till the order of

appointment by the Hon'ble Joint Charity Commissioner, Nagpur, it was not possible for the defendant/tenant to deposit the rent, and now he was ready to pay the rent. In view of these categorical admissions on the part of the defendant/tenant, it is no longer open to him to contend otherwise. It is therefore not open for the defendant/tenant to now raise a claim regarding the title of the Trust to the suit property on the basis of the Will for the first time in the Writ Petition, as the defendant/tenant is bound by the statement as made by him in para-8 of the written statement.

7] In so far as the ground regarding the suit being infirm on non-joinder of all the trustees is concerned, it is necessary to note that the suit is for enforcement of the civil rights of the plaintiff trust and therefore, there is no necessity to implead all the trustees as plaintiffs to the suit. The contention on that count is therefore rejected.

8] Insofar as, the *bonafide* need is concerned in para-11 of the plaint, it has been categorically stated that as per the aims and object of the plaintiff/Trust, it has to establish a Hostel for poor and deserving Hindu students, who are taking education at Nagpur in High School or University

level, and therefore, the need for purpose of construction of such a hostel, is pleaded which could not be so done unless the tenants vacated the same. The need to fulfill the aims and objects of the Trust cannot be said to be not a *bonafide* need. This need has been upheld by both the Courts below and nothing has been pointed out by the learned counsel for the petitioner to indicate a contrary position thereto.

9] A similar challenge raised by one of the tenants in C.R.A. No. 154/2017, has been rejected by this Court by an order dated 20.02.2018.

10] Considering the above position, I do not see any reason to interfere in the well reasoned judgments of the Courts below. The petition is devoid of any merits and is accordingly **dismissed** with no order as to costs.

11] The learned counsel for the petitioner considering the dismissal of the petition seeks 6 months time for vacating the premises. Mr. Shareef, learned counsel for the respondent is agreeable to the grant of the same time, as has been granted in C.R.A. No. 154/2017, considering which, the

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petitioner is granted six months time to vacate the premises.

12] Rule is discharged.

JUDGE

Rvjalit