

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

WRIT PETITION NO.7248 OF 2022

(BALWANT ANANTRAMJI KUHITE...VS.. SANJAY NILKANTHRAO GOTMARE)

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

Court's or Judge's orders

Ms Radha Mishra, Advocate for Petitioner.
Shri Y.B.Sharma, Advocate for Respondent.

CORAM : ANIL S. KILOR, J.
DATED : APRIL 06, 2023.

1. Heard.

2. In a suit for eviction filed by the landlord both the Courts held concurrently in favour of the landlord on the point of *bona fide* need.

3. The only ground on which the present petition came to be filed is that the landlord is having another premises in the same locality. However, the petitioner has not pointed out that the said premises was in possession of the respondent/ landlord on the date of filing of suit or at anytime during the pendency of the suit.

4. This Court, Principal Seat at Bombay, in the case of *Sara Rauf ..vs.. Durgashankar*, reported in **2007 (4) Mh.L.J. 129** has categorically held as under:

“9. Looking at the overall facts, it is not even the case of the petitioner-tenant, that

all four premises mentioned in the affidavit dated 30th November, 2002 were in fact capable of being utilised for the residential purpose when the suit was filed and until the first appeal was, finally decided. In fact, it is clear from the observations made by the courts below that these premises were not available for occupation and were involved in the litigation. It is true, that the duty of the court is to see whether, in the facts and circumstances of the case, landlord has obtained the decree by playing fraud on the court. Similarly, to see whether a litigant who comes to the court, must come with clean hands and if his case is based on falsehood, he has no right to seek any relief from the court or even to approach the court as observed by the Supreme Court in S.P.Chengalvaraya Naidu's case(supra). In the facts and circumstances of the case in hand, it cannot be said that the decree was obtained by fraud on the court.

10. For the purpose of determining whether the requirement of the landlord of the premises in question is reasonable and bonafide what is necessary to be considered is not whether the landlord has juridically in possession of other premises, but, whether they were available to him for occupation so that he cannot be said to be in need of the premises in question. Merely because the landlord is the owner of other premises in possession of other tenants and are not capable of being utilised for the requirement pressed into service such premises cannot be taken into account for negating the need of the landlord for the premises in question.”
(Emphasis supplied)

5. Thus, from the above referred observations, it is evident that merely because the landlord is owner of other premises in possession of other tenant which are not capable of being utilized for the requirement pressed into service, such premises cannot be taken into account for negating the need of the landlord for the premises in question. If the landlord is not in possession of the other premises though he may be the owner of several other premises, it cannot be said that other premises are capable of being utilized by the landlord for requirement pressed into service. Thus, the said ground does not survive in the present matter.

6. Now, at this stage, the learned counsel for the petitioner states that petitioner's son is pursuing his studies and therefore, some time will require to vacate the premises. On instructions, the learned counsel for the petitioner makes a statement that the petitioner would vacate the premises within six months from today.

7. However, considering the concurrent findings recorded by both the Courts below as regards *bona fide* requirement and the period since when the landlord is fighting for possession of the suit premises, I am of the opinion that four months would be the reasonable period, subject to filing of an undertaking in writing to that effect by 20/04/2023. Accordingly, I pass the following order:

- i) The Writ Petition is **dismissed**. No order as to costs.
- ii) The petitioner is permitted to vacate the suit premises within four months from today. It is made clear that, on any ground neither this period will be extended nor any application for extension will be entertained.
- iii) The above protection of four months is granted subject to filing of the Undertaking by the petitioner on or before 20/04/2023.

JUDGE

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