

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

WRIT PETITION NO.125/2023

Shri Manish S/o Anilkumar Pandit and another

...Versus...

Nagpur Gujrati Bramha Samaj Through its President, Shri Ashokkumar S/o
Vasantray Trivedi

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

Court's or Judge's orders

Shri N.D. Khamborkar, Advocate for petitioners

CORAM : AVINASH G. GHAROTE, J.

DATE : 17/03/2023

1. Heard Shri N.D. Khamborkar, learned counsel for the petitioners. The petition questions the judgment dated 02/11/2017 passed by the learned Small Causes Court granting a decree for eviction of the petitioners from the suit premises which is shop no.4, admeasuring 200 sq. ft. on the ground floor of the building known as 'Bramha Samaj Bhawan', Gandhibagh, Nagpur bearing Municipal House No.70, on the ground that the petitioner, was a sub-tenant and was inducted in the premises without the permission and consent of the respondent landlord, as the original tenant was one Baburao Sitaram Baijdewar and after his demise since his son was also no more and there were no other legal heirs of deceased Baburao, on account of which,

the occupation of the petitioner of the said premises was that of a sub-tenant.

2. On 09/01/2023 the following order was passed :-

“Heard Mr. Khamborkar, learned counsel for the petitioners.

*2] The contention raised is that the suit for eviction against a sub-tenant cannot lie before the Small Causes Court, based upon the judgment of the Apex Court in **Hiralal Vallabhram vs. Kastorbhai Lalbhai and other**, AIR 1967 SC 1853, is rejected on the ground that this is a suit under the Maharashtra Rent Control Act and Section 7(15) defining ‘tenant’ under clause (a) sub-clause (iii) includes a ‘sub-tenant’ in the definition of the ‘tenant’. Thus the position will be governed by the definition as contained in Section 7(15) of the Maharashtra Rent Control Act.*

3] The contention is clearly unmerited and therefore, is rejected.

4] The next contention is that the person who has stepped into witness-box on behalf of the trust viz. Chandrakant Vasantray Trivedi could not be said to be a person authorized by the trust to institute the proceedings against the petitioner.

5] In order to test this proposition, learned counsel to place on record the evidence of Chandrakant Trivedi as well as the documents exhibited in his evidence.

6] List the matter on 16.1.2023.”

3. Today, the learned counsel for the petitioners reiterates the contention that the person who had stepped into

the witness box on behalf of respondent/Trust i.e. Chandrakant Balashankar Trivedi could not be said to be a person duly authorized by the Trust to institute proceedings against the petitioners or to continue the same and lead evidence therein. In order to support this proposition, learned counsel for the petitioners invites my attention to the Resolution dated 15/03/2013 (Exh.45); a General Power of Attorney dated 31/01/2014 in favour of Chandrakant Balashankar Trivedi (Exh.47) and the Resolution of the Executive Committee of the respondent/Trust dated 15/01/2014 to contend, that the Power of Attorney Holder did not have any right to lead any evidence on behalf of the Trust and that he was not duly authorized and therefore, his evidence ought not to have accepted by the Courts below. He further submits that the suit has been improperly instituted as since the respondent was a Trust, all the trustees were necessary parties to the suit and therefore on this ground the suit was infirm. It is also contended that it has not been brought on record that Ashokbhai Vasantrao Trivedi, was indeed the president of the Trust. It is, therefore, submitted that the institution of suit itself was infirm on this count. Reliance is placed upon *Nagar Wahan Mandir, Pandharpur Vs. Akbaralli Abdulhusen and Sons and others 1994 Mh.L.J. 280*. No other plea is raised.

4. Insofar as the question of authority of Chandrakant Balashankar Trivedi is concerned, though the General Power of Attorney dated 31/01/2014 (Exh.47) does not indicate that

any power to tender evidence has been conferred upon the said person, however, it duly records that Chandrakant Balashankar Trivedi was Manager of the respondent/Trust. The Resolution dated 15/01/2014 (Exh.46) by which it was unanimously resolved that suit be instituted against the tenants, who have sub-let the shop blocks in the premises of the Trust and were defaulters, also recorded that Power of Attorney be given to Chandrakant Trivedi, who was the Manager of the Trust and who was well aware of the facts and was acquainted with the tenants and so also to lead evidence. It is therefore apparent that not only the Power of Attorney (Exh.47) recognizes the position of the PW-1 as the Manager of the Trust in which capacity he was entitled to tender evidence on behalf of the Trust but the Resolution dated 15/01/2014 (Exh.46) by the Executive Committee also specifically recognizes the position of PW-1 as the Manager of the Trust and also he is being aware of the facts of the matter, on account of which the Committee further authorized him to lead evidence on behalf of the respondent/Trust. The Resolutions themselves indicate that Shri Ashokkumar Trivedi was the President of the Trust who has also executed the Power of Attorney (Exh.47) in favour of PW-1, in pursuance to the Resolution dated 15/01/2014 (Exh.46). The evidence of PW-1 (Exh.23) further records that he was serving in the respondent/Trust as a Manager and had personal knowledge of the facts of the case and also knew the tenants/petitioners. That being the position, the tendering of

the evidence by PW-1 on behalf of the respondent/Trust cannot be faulted either on the ground of absence of authority or for that matter absence of knowledge regarding the affairs of the Trust.

5. Though it is also contended that the Resolutions at Exhs.45 and 46 were not placed in original before the Trial Court, a perusal thereof would indicate that originals of these documents Exh.46 and 47 were duly verified by the Registrar of the Small Causes Court by comparing them with the originals as there is an endorsement to this effect on both these documents, of the Registrar of the Small Causes Court. Though it is contended that the original proceeding-book has not been placed on record, in my considered opinion, mere absence thereof would not affect the legality or validity of Exhs.45 and 46.

6. Though reliance is placed upon ***Nagar Wachan Mandir, Pandharpur*** (supra), in my considered opinion, since the respondent/Trust has filed the suit for enforcement of its civil law rights for seeking a decree of eviction against the tenants, there is no necessity in law for all the trustees to join in the suit as plaintiffs, and the suit filed on behalf of the Trust by duly authorized person, would clearly be maintainable.

7. The further plea that the original tenant M.P. Transport which was a partnership firm has not been impleaded and therefore the suit ought to fail, in view of

Section 7 (15) of the Maharashtra Rent Control Act, which includes a sub-tenant in the word 'tenant' clearly does not have any merit. That apart, it would be material to note that the present petitioners, claim to be the sons of Anilkumar Pandit one of the partners of M.P. Transport Company a partnership firm and after the demise of Anilkumar Pandit claim to be the partners of M.P. Transport Company, who were the original defendant nos.2 and 3 in the suit and therefore the said firm, is clearly represented in the suit before the Trial Court. I therefore do not see any reason to interfere in the impugned judgment and decree passed by the Trial Court as confirmed by the Appellate Court, in view of the aforesaid proposition. The writ petition is, therefore, dismissed. No order as to costs.

8. At this juncture, Shri Khamborkar, learned counsel for petitioners claims protection from eviction for a period of four weeks as the execution proceeding, for the eviction, is pending.

9. Considering that the petitioners/sub-tenants are in possession of the premises, the effect and operation of this order shall stand stayed for a period of four weeks from today.

(AVINASH G. GHAROTE, J.)