

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.3835 OF 2024**

Ashwin Medical Foundation, a Public
Charitable Trust through its Trustees-

a) Dr. Girish Aphale and Ors.

....Petitioners

V/s.

Chinchwad Devasthan Trust, a Public
Religious Trust through its Trustees-

a) Mandar Jagannath Deo and Ors.

....Respondents

Mr. N.V. Vechalekar *for the Petitioners.*

Mr. Yuvraj Narvankar *i/b. Ms Neha Wadekar for the Respondents.*

CORAM : SANDEEP V. MARNE, J.

Dated : 3 July 2024.

P.C.

1) By this petition, Petitioner-Trust challenges the Judgment and Order dated 7 November 2023 passed by District Judge-20, Pune in Regular Civil Appeal No.323 of 2016, by which the Appeal filed by Petitioner-trust has been dismissed and the Decree of 2nd Additional Judge, Small Causes Court and Jt. Civil Judge Senior Division, Pune dated 15 October 2015 passed in Special Civil Suit No.130 of 2008 is confirmed.

2) The Trial Court, vide decreeing the Special Civil Suit No.130 of 2008 filed by Plaintiff/Respondent, has directed Petitioners/Defendants to

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handover vacant and peaceful possession of the suit premises to the Plaintiff-Trust.

3) I have heard Mr. Vechalekar, the learned counsel appearing for Petitioner-Trust. He would submit that the suit premises are needed by the Petitioner-Trust for the purpose of effective operation of the hospital in the adjoining building. That specific evidence is led that the suit premises are being used both for carrying out medical activities as well as for housing the emergency staff of Petitioner-Trust. That the Suit filed by Plaintiff was not maintainable on account of failure to secure permission of the Charity Commissioner under Section 50 of the Maharashtra Public Trust Act, 1950. He would submit that Plaintiff-Trust has failed to prove the hardship. That there is no evidence to indicate the number of students taking education in *Vedpathshala*. That what appears on record is merely word against word and therefore the Trial and the Appellate Court have erred in accepting the version of the Plaintiff in absence of any concrete evidence on record. He would also rely upon Government Resolution (**GR**) dated 22 January 1991, under which some land was directed to be handed over to Petitioner-Trust, which is not actually handed over. That a meeting has been conducted with the Trustees of the Respondents for the purpose of grant of possession of the land allotted by the Government by the said GR. That if that land is made available to Petitioner-Trust, it will be in a position to vacate the suit premises.

4) Mr. Narvankar, the learned counsel appearing for Respondent-Plaintiffs would oppose the petition and submit that interference by this

Court in writ jurisdiction in the concurrent finding of the Courts is not warranted. He would submit that the Plaintiff -Trust proved the *bonafide* need by leading evidence. That it has come out in the evidence that Defendant -Trust does not need the suit premises after shifting of its hospital activities in the adjoining building. That Plaintiff-Trust administers three *Ashtavinayak Devasthan*s and has its administrative office and *Vedpathshala* in '*Mangalmurti Wada*', in which suit premises are located. That suit premises are needed for *bonafide* need of Plaintiff-Trust for operating its administrative offices as well as for running of *Vedpathshala* wherein 20 students are not just taking education but also reside. He would submit that Defendant -Trust is no longer in need of suit premises and therefore the Trial and the Appellate Court have rightly decreed the Suit.

5) After having considered the submissions canvassed by the learned counsel appearing for parties, it must be observed at the very outset that concurrent findings on fact on *bonafide* need of the Plaintiff -Trust as well as cause of greater hardship to Plaintiff-Trust have been recorded by both the Courts below. A perusal of the findings recorded by both the Courts as well as evidence on record would indicate that the suit premises, comprising 20 rooms in *Mangalmurti Wada* owned by Plaintiff-Trust, were leased out from time to time to Defendant -Trust for operation of a hospital therein. It is undisputed position that Defendant-Trust has subsequently constructed a separate hospital in the year 2005 in the nearby land, which has been given by the Plaintiff-Trust to it on lease for a period of 99 years. Thus, the entire hospital activities are shifted from *Mangalmurti Wada* to the new hospital building. There is a specific admission to this effect by Defendant's witness

wherein he admits that '*it is true that after construction of building of Morya Hospital in S. No.826, work of hospital is not carried out in the suit premises*'. Thus the purpose for which the suit premises were let out to Defendant -Trust no longer exists as the hospital activities are already shifted in the hospital building of Defendant-Trust. Though a feeble defence is taken that the suit premises are used by the Defendant -Trust as residential quarter for staff necessary for emergency in the hospital, in my view that is not the purpose for which the premises were let out. Furthermore, this stand was not even taken by the Defendant -Trust in its written statement.

6) On the other hand, the evidence shows that Plaintiff-Trust runs management of three *Ashtavinayak Devasthan* and runs its administrative office from *Mangalmurti Wada*, in which suit premises are located. Additionally, *Vedpathshala* is run by Plaintiff's Trust in the very same building, in which 20 students not only taking education but are also residing therein. The need of Plaintiff in respect of tenanted premises is thus clearly made out in the evidence and on the other hand, lack of need of the tenanted premises by the Defendant-Trust is also borne out. Cause of greater hardship to Plaintiff-Trust in the event of denial of decree of eviction as compared to the one caused to the Defendant in the event of suit being decreed is thus proved.

7) I therefore, do not find any reason to interfere in the concurrent findings recorded by the Trial and the Appellate Court. The Writ Petition is devoid of merits and is accordingly **dismissed**.

8) After the order is pronounced, Mr. Vechalekar, would submit that Petitioner-Trust be granted time of three months to vacate the suit premises. The request is opposed by Mr. Narvankar. Mr. Vechalekar has shown willingness on the part of Petitioner-Trust to file an undertaking to vacate the suit premises within three months. Accordingly, the Petitioner-Trust is permitted to retain the possession of the suit premises till 2 October 2024 subject to the condition that the Petitioner-Trust files an undertaking within a period of two weeks from today in the registry of this Court to vacate the suit premises by 2 October 2024. Needless to observe that if such an undertaking is not filed, permission to retain the possession of the suit premises would automatically come to an end.

[SANDEEP V. MARNE, J.]