



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 5762 of 2023

g Men's Christian Association, Nagpur through its authorised Trustee, Niraj Singh S/o Khrist
Singh ..vs.. Shri Atul David]

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

Court's or Judge's orders

Mr. R. M. Sharma, Advocate for the petitioner
Mr. Ritesh Badhe, Advocate for the respondent

CORAM : ANIL L. PANSARE J.

DATED : 28-11-2024

On 19-11-2024, following order was passed.

“Heard Mr. R. M. Sharma, learned Counsel for the Petitioner and Mr. R. N. Badhe, learned Counsel for the Respondent.

2. *The Petitioner – Landlord is before the Court, aggrieved by the Judgment and decree dated 12/2/2021 passed by the learned Adhoc District Judge-4, Nagpur (hereinafter referred to as ‘the first appellate court’) in Regular Civil Appeal No. 77/2019. The first appellate court has dismissed the appeal and upheld the Judgment and decree dated 6/12/2018 passed by the learned Judge, Small Causes Court, Nagpur in Regular Civil Suit No. 570/2005.*

3. *Having heard both the sides at length and having gone through the material placed before me, the Petition could be disposed of on the basis of undisputed facts.*

4. *The Respondent - Tenant has, admittedly not paid nor tendered in the Court the rent, pending suit.*

5. *Sub-section (3) of Section 15 of the Maharashtra Rent Control Act, 1999 (for short, ‘the Act of 1999’) reads as under :*

“15. No ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard rent and permitted increases

(1) x x x x x x x

(2) x x x x x x x

(3) No decree for eviction shall be passed by the court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases if, within a period of ninety days from the date of service of the summons of the suit, the tenant pays or tenders in court the standard rent and permitted increases then due together with simple interest on the amount of arrears at fifteen percent per annum; and thereafter continues to pay or tenders in court regularly such standard rent and permitted increases till the suit is finally decided and also pays cost of the suit as directed by the court.

(4) x x x x x x x”

As could be seen, not only the tenant is required to pay or tender in court the standard rent and permitted increase then due together with the simple interest on the amount of arrears at fifteen percent per annum, but also to continue to pay or tender in court regularly such standard rent and permitted increase till the suit is finally decided and also to pay cost of the suit as directed by the court. The tenant herein has admittedly not paid or tendered in the court the rent regularly, and is thus, liable to be evicted from the premises.

6. The learned Counsel for Respondent contends that the Petition suffers from delay and laches. He submits that the Judgment and order impugned has been passed on 12/2/2021 and the Petition has been filed on or about 25/8/2023.

7. True it is that the Petitioner has approached this Court a little late, which, according to the Petitioner, is caused for various reasons enumerated in paragraph No.11 of the Petition. It appears that the employee, who was looking after the legal matters, left the job, and therefore, the job was assigned to another person. The learned Counsel for Petitioner submits that he required some time to understand the issues involved and to meet various Counsels engaged by the Trust. He submits that since both the courts below had concurrently dismissed the claim of Petitioner in the present matter, Petitioner required to consult engaged Counsels, who took sometime to go through the entire record and give their opinions, which further prolonged the matter till November-2022. He further submits that after due deliberation, the Petitioner – Trust gradually transferred the present matter to the present Advocate in July-2023. After going through the matter, necessary steps were taken and present Petition was prepared and filed. In the above process, delay was caused in filing the present Petition. He further submits that the Supreme Court in **Suo Motu Writ Petition © No. 3 of 2020** vide order dated 10/1/2022 has been pleased to exclude the period from 15/3/2020 till 28/2/2022 and additional 90 days were granted to file proceedings.

8. Thus, delay has been explained though not as expected, but then there is no absolute bar to entertain the belatedly filed Petitions under Articles 226/227 of the Constitution of India, particularly where both the courts below have committed apparent error of law. The objection is, accordingly, overruled.

9. The first appellate court has also failed to consider the effect of Section 16(1)(g) of the Maharashtra Rent Control Act, 1999 (for short, 'the Act of 1999'), which entitles the public charitable

trust to recover possession of the premises for occupation for the purpose of the Trust. On this point, learned Counsel for the Petitioner has placed reliance upon the Judgment of the Co-ordinate Bench of this Court in the case of **Bandu Ravji Nikam V/s Acharyaratna Deshbushan Shikshan Prasarak Mandal, Kolhapur, 2003(3) Mh.L.J. 472**. The Court considered the provisions under Section 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, which is *pari materia* Section 13(1)(g) of the Act of 1999. The Co-ordinate Bench held thus :

“4. Having considered the rival submissions, I shall first deal with the plea that there is no pleading whatsoever with regard to the purpose of requirement of the respondent trust in the plaint. As rightly contended by the respondent, since the respondent is a public charitable trust, the requirement of pleading as well as proof to establish the ground under section 13(1)(g) of the Act would be different than the one required by any other landlord which is not a public charitable trust. This can be spelt out from the plain language of section 13(1)(g) of the Act which read thus :

“13. When landlord may recover possession.
– (1) Notwithstanding anything contained in this Act, a landlord shall be entitled to recover possession of any premises if the Court is satisfied -

(g) that the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held or where the landlord is a trustee of public charitable trust that the premises are required for occupation for the purpose of the trust; or (emphasis supplied)

On plain language of this provision, when the landlord is a public charitable trust, what is required to be pleaded and proved so as to succeed on this ground is only that the premises are required or occupation for the purposes of the trust and nothing more.....”

As could be seen, where the landlord is public charitable trust, what is required to be pleaded and proved so as to succeed on the ground of bona fide need is only that the premises are required for occupation for the purposes of the trust and nothing more. Thus, the landlord – Trust was entitled to recover the possession in terms of Section 16(1)(g) of the Act of 1999.

10. The first appellate court, however, relied upon Section 16(1)(i) of the Act of 1999 to deny the relief, which is not applicable. Section 16(1)(i) reads thus :

“16. When landlord may recover possession

(1) Notwithstanding anything contained in this Act but subject to the provisions of section 25, a landlord shall be entitled to recover possession of any premises if the court is satisfied -

(a) x x x x x x x

(b) x x x x x x x

(c) x x x x x x x

(d) x x x x x x x

(e) x x x x x x x

(f) x x x x x x x

(g) x x x x x x x

(h) x x x x x x x

(i) that the premises are reasonably and bona fide required by the landlord for the immediate purpose of demolishing them and such demolition is to be made for the purpose of erecting new building on the premises sought to be demolished.”

11. *The Petitioner herein, who was the Plaintiff before the trial court has come up with a plea that the suit premises are required for carrying out the object and purposes of the trust, and in that sense, required premises for the Trust activities. In other words, the Petitioner states that it intends to demolish the building so as to construct the new building for self-occupation. With such pleadings, the Petitioner's case will not attract the provisions under section 16(1)(i), as held by the Co-ordinate Bench of this Court in Writ Petition No. 3292/2021 (Smt. Savita Udaybhan Chachada V/s Smt. Vijayabai Shyamrao Suple & Anr.). The first appellate court, however, failed to apply correct provisions of law.*

12. *The first appellate court, therefore, committed grave error of law. The Judgment and decree passed by the appellate court is, thus, unsustainable. The Petitioner has made out a case. Writ Petition is, accordingly, allowed. The Judgment and decree dated 12/2/2021 passed by the learned Adhoc District Judge-4, Nagpur in Regular Civil Appeal No. 77/2019 and the Judgment and decree dated 6/12/2018 passed by the learned Judge, Small Causes Court, Nagpur in Regular Civil Suit No. 570/2005 are hereby quashed and set aside.*

13. *At this stage, learned Counsel for Respondent seeks time to take instructions as regards time to vacate the suit premises. Time granted.*

14. *Stand over to 28th November, 2024 'First on Board'."*

2. As could be seen, learned counsel for the respondent sought time to take instructions for vacating the suit premises. Learned counsel submits that respondent intends to take a chance before the Hon'ble Supreme Court and accordingly made a request to stay the

effect and operation of the order for a period of four weeks.

3. Instead of granting stay, following order is passed.

ORDER

(i) The order dated 19-11-2024 shall take effect from 30-12-2024.

(ii) Writ petition is disposed of in above terms with no order as to costs.

(Anil L. Pansare, J.)