

(2004) 12 BOM CK 0008

In the Bombay High Court

Case No : Writ Petition No. 2836 of 1990

Murlimanohar Bhangde since deceased by his LRs. Smt.
Pushpa Bhangde and Others

APPELLANT

Vs

Prabha Bhattacharya (Dr.)

RESPONDENT

Date of Decision : 23-12-2004

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 17
Constitution of India, 1950 — Article 226, 227

Citation : (2005) 4 ALLMR 404 : (2005) 2 MhLj 853

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : M.G. Bhangde, for the Appellant; K.V. Sirpurkar, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Dharmadhikari, J.

By this petition, under Articles 226 and 227 of Constitution of India, original tenant challenges order dated 9-4-1990 passed by Appellate Authority (Additional District Magistrate, Nagpur) in exercise of appellate powers under Clause 21(2) of C.P. and Berar Rent Control Order, 1949 (hereinafter referred to as "Rent Control Order"). The proceedings were initiated by present respondent for grant of permission under Clause 13(3)(vi) and (vii) before the Rent Controller. The Rent Controller was pleased to dismiss the said application on 7-3-1989. The original tenant/petitioner has expired during pendency of the petition and his legal heirs have been brought on record. The provisions of Clause 13(3)(vi) are about bona fide need of the landlord while Sub-clause (vii) contemplates essential repairs or alterations which cannot be made without tenant vacating the house.

2. The respondent in November, 1986 moved Rent Controller, Nagpur and sought permission to terminate tenancy of the petitioner/tenant under Clause 13(3)(vi) and (vii) of Rent Control Order. She has stated in her application that she is

qualified Medical Practitioner and wants to start Nursing Home in the name and style of "Smt. Padmarani Ramkali Bhattacharya" and she is Managing Partner with others for starting the said Nursing Home. She has stated that there is no other accommodation available except the suit house for that purpose in Nagpur city. She has further stated that her sisters are also qualified Medical Practitioners and all of them are going to start Nursing Home jointly. She has stated that she has become partner and her contribution towards partnership is Block No. 1 in House No. 721 in which the petitioner is tenant. She has further stated that the premises need to be re-constructed to suit the requirement of hospital and it cannot be done unless and until the Non-applicants vacate the house. Thus, she sought permission under Clause 13(3)(vi) and (vii) of Rent Control Order. This application was opposed by petitioner/tenant who contended that the provisions of Rent Control Order are pro-landlord. He admitted that the respondent is qualified medical practitioner however, denied that there is any partnership or she wants to start any Nursing Home/Hospital. The petitioner/tenant also denied that there is no alternate accommodation except the suit house. He admitted that sisters of respondent are also qualified medical practitioners but denied that they want to start any Nursing Home jointly. It is stated that application is absolutely vague and does not give details about area required for starting the Nursing Home, as to the time when it was decided to start nursing home, names of other partners and details of partnership. He further stated that there are 7 residential blocks in two storeyed building and 4 blocks are on ground floor and while 3 blocks on first floor. He has stated that unless and until all blocks are vacated, reconstruction is not possible and hence, block on ground floor occupied by him cannot be required for so called nursing home. He contended that the proceedings are filed malafidely only to get the rent increased. He further stated that the respondent landlord owns a big palatial bungalow and that bungalow is sufficient to meet her needs.

3. The landlord respondent examined her in support of her case and she was cross-examined at length by the counsel for petitioner/tenant. She also examined one Architect in support of her case and he was also cross-examined by the Advocate for the petitioner/tenant. The petitioner/tenant examined himself thereafter learned Rent Controller passed order on 7th March, 1989. The learned Rent Controller has found that other sisters and their husbands are not examined, partnership deed is not registered. The Rent Controller further found that the case of respondent that husbands of her sisters serving at Bombay want to leave their jobs and shift at Nagpur is not substantiated, no definite plans for nursing home are ready and the evidence of Architect is devoid of any details. The learned Rent Controller, therefore, refused to grant permission to the respondent landlord.

4. Aggrieved by this the respondent landlord filed Revenue Appeal No. 189/A/71 (2)/89 before the Additional District Magistrate, Nagpur and it appears that the sisters of respondent landlord had filed similar proceedings against their respective tenants in the suit property and those proceedings were also

dismissed by the Rent Controller. Those sisters also filed similar appeals before the Additional District Magistrate. Total four appeals came to be filed before that authority and on 9-4-1990 Additional District Magistrate decided all those appeals together and allowed the same: This appellate order was challenged in the present writ petition by original tenant and this Court protected his possession on 16-11-1990 while issuing interim order. On 25-7-1991 the petition came to be admitted for final hearing and stay was continued. It appears that on 4th May, 2000 this writ petition and Writ Petition No. 2561 of 1990 were heard simultaneously and ultimately this Court passed interim order by which record and proceedings of both the petitions were directed to be sent back to Rent Controller/Appellate Authority and that authority was directed to re-hear both sides in the light of provisions contained in Clause 13(8) of Rent Control Order, 1949. This Court found that the provisions of Clause 13(8) require the authorities to find out whether need of landlord can be met by occupation of portion of the house or whether the entire house was required to meet that need. As there was no such scrutiny, the Appellate Authority was directed to conduct that scrutiny to remit its findings back to the High Court, The Engineering Drawing which was produced before this Court was also directed to be forwarded to that authority. The matter was accordingly sent back and the Appellate Authority after hearing both the sides forwarded its finding dated 17-12-2002 mentioning therein that the need of the landlord can be met and all tenants can also be accommodated. On 5-9-2003 the respondent landlord has filed her objection on these findings. She has stated that Maternity Home is required to be constructed with open space, parking space and as per sanctioned map entire area is required for construction of Maternity Home. She has further stated that the Appellate Authority has wrongly observed that the entire first Floor is required to be used for accommodation of the Doctors. She has stated that patients' bed rooms and other rooms of maternity home are also provided for on first floor. On 29-10-2004 the respondent landlord has filed additional affidavit mentioning therein that the late tenant was having alternate accommodation and in fact, the same is being used by his legal heirs. She pointed out that three other tenants who had filed similar petitions have withdrawn the same. She has further made grievance that the suit premises are deteriorating day by day and has produced on record photographs in support of that contention. This affidavit is opposed by legal heirs of the original tenant by filing their counter affidavit on 22-11-2004. They have stated that the son of late tenant is residing in suit premises and other sons by name Sahil is practicing Advocate has shifted to his residence to the other property purchased by the late tenant. It is further contended that legal heirs of late tenant acquired tenancy status after his death and they have not acquired any alternate accommodation after acquisition of tenancy rights. Thus, the petitioners have opposed the statements made by respondent landlord in her additional affidavit. The writ petition has been heard in this background.

5. I have heard Adv. Shri V.V. Bhangde for petitioners and Adv. Smt. K. V. Sirpurkar for respondent/ landlord.

6. Adv. Bhangde has stated that the Appellate Authority has found that four tenants can be accommodated in the suit property and the landlord can still run the Maternity Home/Hospital in it. He states that three other tenants who had filed petitions have already withdrawn their petitions. He further states that in so far as ground under Clause 13(3)(vii) is concerned, the petitioners have no objection to the respondent landlady making essential repairs or alterations and for that the petitioners are ready and willing to vacate the block in their occupation temporarily. He points out that under Clause 13(7) after repairs or alterations the respondent has to restore possession on some conditions as before to the tenant who vacated it and cannot let the same out to any other person or occupy it herself. He further states that insofar challenge to grant of permission under the said ground is concerned, he is not pressing the petition. Thus, he has restricted the challenge in the matter only to grant of permission under Clause 13(3)(vi).

7. Insofar as grant of permission under Clause 13(3)(vi) is concerned, he contends that bona fides of the need of landlord are required to be decided on settled norms. He contends that the respondent landlord has nowhere disclosed as to how and in what circumstances, decision to establish maternity home/hospital at suit site was first conceived. He further states that if all sisters had agreed for commencing such. Nursing Home, details of their need and terms and conditions of their agreement are also not pleaded. He states that the area required for nursing home, its size, facilities to be provided in it will have to be first worked out and if such decision is really taken, must have been worked out. He points out that there are no pleadings to show all these details and contends that absence of pleadings clearly show that there was no such agreement between the sisters and reason of nursing home is put forth only with a view to evict the tenants, he contends that financial aspects of the project are also not pleaded before the Rent Controller. He contends that mere ipse dixit of landlord in this respect cannot be accepted. He relies upon the judgment reported at 1975 Mh.LJ 290 and 1980 Mh.LJ. 347 in support of his contentions. He further argues that all these details are required to be pleaded and then proved. He contends that as there are no pleadings, the Appellate Authority ought not to have allowed the appeal and the appeal should be dismissed. He further points out that the Appellate authority has on 17-12-2002 given finding that the premises can be used by them for nursing home and all tenants can also be accommodated. He contends that there is no specific challenge by the landlord to these findings dated 17-12-2002 and hence, according to him, the order of Appellate authority needs to be modified in accordance with this findings. He contends that the respondent landlord should be permitted to construct nursing home/hospital on site with appropriate accommodation for petitioner/ tenant and should be directed to handover possession thereof back to the tenant after construction.

8. As against this. Adv. Mrs. Sirpurkar appearing for the petitioner/ landlord states that the Appellate Authority has correctly granted permission under Clause

13(3)(vi). She refers to the application filed by landlady before the Rent Controller and also to the evidence adduced by her and states that it has come on record that necessary findings and expertise is available with the landlady. She further contends that the landlady has been cross-examined at length by the petitioner/ tenant and her need has been established and as such the Appellate Authority was pleased to grant permission. She contends that after filing of rent control proceedings the period of about 20 years has expired and in the meanwhile sisters of respondent landlord have come back and have joined her. She contends that as the premises are to be used for construction of Nursing Home/Hospital, there is no question of keeping any tenant in the said Hospital/ Nursing Home. She contends that as per sanction plan which was sent to the Appellate Authority as per interim order of this Court dated 4th May, 2000, the entire structure of Nursing Home is required and there is no scope for retaining the petitioner/ tenant in it. She argues that the aspect of financial capacity of the landlady or her expertise to start nursing home are not relevant factors on which grant of permission by Rent Controller needs to be examined. She contends that she has proved her financial stability and it is admitted position that the respondent and her sisters are qualified medical practitioners. She further states that in any case when entire structure standing on the suit plot is being demolished and nursing home is being erected there, the Appellate Authority could not have concluded that the tenants can be accommodated at the same place. She contends that as the premises were being put to some other use (non-residential use) the Appellate Authority could not have held that the need of landlady can be met and satisfied and also tenants can be continued at the same time. She contends that the provisions of Clause 13(8) are attracted when the house property remains as it is and when its user is not being changed. She contends that, here the residential house property which is now dilapidated is being demolished and nursing home is being erected. Hence, there is no question of asking the landlady to provide for accommodation for tenants in such circumstances. She points out sanctioned plan which is scrutinised by the Additional District Magistrate while remitting findings on 17-12-2002 and states that the findings recorded by the said authority are perverse. She further argues that in any case in such circumstances, the tenant cannot be foisted upon the respondent landlord. In support of her proposition, she relies upon various judgments.

9. In *Prativa Devi Vs. T.V. Krishnan*, the Hon''ble Apex Court has held that there is no law which deprives landlord of beneficial enjoyment of his property and the landlord is best judge of his residential requirement. He has complete freedom in the matter-. By placing reliance on *Sarla Ahuja Vs. United India Insurance Company Limited*, . she contends that the landlord cannot be dictated by tenant as to how he should adjust himself and Rent Control Authorities also cannot examine bona fide need of landlord in such mode. By placing reliance upon *Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta*, she contends that landlord cannot be forced to accommodate himself in small area so as to accommodate a tenant. By

placing reliance upon : (2003)10SCC679 , E. M. Kuthurathullah v. R. Rajendran she contends that when landlord has already commenced her Dispensary elsewhere and wants to start nursing home in her own premises she cannot be stated to be not acting bona fide. She relies upon the judgment reported at Manohar Chowla Vs. Shair Ali, to contend that need of proving expertise or previous experience or complying other formalities is not relevant while deciding the question of bona fide need as involved in this case. She also relies upon the judgment reported at G.C. Kapoor Vs. Nand Kumar Bhasin and Others, . for the same purpose. She relies upon the judgment reported at Shankar Bhairoba Vadangekar, since deceased, by his Heirs and Legal Representatives Vs. Ganpati Appa Gatare, since deceased, by his Heirs and Legal Representatives, to contend that burden to show that her need is not bona fide is upon the tenant and when she has stated that she wants to start nursing home, she is entitled to grant of permission. She also relies to contend that when her sisters had already entered into partnership deed for starting nursing home, bona fide need cannot be doubted. She further contends that her sisters have now joined her at Nagpur are eager to start nursing home and this subsequent event can be taken note of by the Court and relief can be given. She relies upon judgment of this Court reported at M/s. Inland Carriers (Bombay) Transporters and another Vs. Smt. Jamilabegum and others, to contend that all the sisters are not required to enter the witness box to prove the need She relies upon the Judgment reported at Joginder Pal Vs. Naval Kishore Behal, to contend that provision for bona fide need must lean in favour of the landlady and the technical objections raised by the tenant in this respect should be overlooked.

10. Adv. V.V. Bhangde has tried to distinguish all these cases by pointing out to the facts involved therein. He contends that insofar as the present facts are concerned, the law as laid down by this Court in 1975 Mh.LJ. 290 and 1980 Mh.L.J. 347 covered the issue and the order of Appellate Authority granting permission to terminate tenancy is unsustainable. He further states that as six blocks are now already vacant, the finding in order of appellate Court dated 17-12-2002 under Clause 13(8) of Rent Control Order becomes more stringent and disentitles the landlady to grant permission.

11. Perusal of ruling reported at G.C. Kapoor Vs. Nand Kumar Bhasin and Others, reveals that in para 11 thereof the Hon"ble Apex Court has observed as under:

"Regarding financial capacity of the appellant the Courts below have held that the appellant did not have financial capacity. From records we find that appellant produced revenue records to show his ownership over agricultural land in addition to the suit premises and made a categorical statement that he would be able to raise funds from financial institutions. Both the Courts below with mathematical precision considered this aspect while coming to the fact that he does not have financial capacity. We are of the view that these are irrelevant considerations as the question of having necessary funds to start the business is not at all necessary in view of the law laid down by this Court in the above

decision, namely, Dattatraya Laxman Kamble. That apart as the appellant has got immovable property it would not be difficult for him to raise necessary funds and, therefore, we hold that the finding on this point of the Courts below is not sustainable."

Here in her cross-examination the landlady has stated about her bank balance and has further shown that she is in position to make necessary financial arrangements. But the above observations of the Hon"ble Apex Court clearly reveal that the said consideration is irrelevant insofar as grant of permission is concerned. All the sisters are qualified medical practitioners and the suit plot belongs to them and it would not be difficult for them to raise necessary funds for starting nursing home. The bona fides of the landlady cannot be disputed on this count. Perusal of the Judgment reported at Joginder Pal Vs. Naval Kishore Behal, reveal that the Hon"ble Apex Court has held in paragraph 9 as under :

"The rent control legislations are heavily loaded in favour of the tenants treating them as weaker sections of the society requiring legislative protection against exploitation and unscrupulous devices of greedy landlords. The legislative intent has to be respected by the Courts while interpreting the laws. But it is being uncharitable to legislatures if they are attributed with an intention that they lean only in favour of the tenants and while being fair to the tenants, go to the extent of being unfair to the landlords. The legislature is fair to the tenants and to the landlords - both. The Courts have to adopt a reasonable and balanced approach while interpreting rent control legislations starting with an assumption that an equal treatment has been meted out to both the sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as take care of the interest of the landlord the Court should not hesitate in leaning in favour of the landlords. Such provisions are engrafted in rent control legislations to take care of those situations where the landlords too are weak and feeble and feel humble. "

Thus, It is apparent that the said provision of bona fide need therefore, needs to be interpreted leniently in favour of the respondent/landlord. Perusal of ruling reported at Shankar Bhairoba Vadangekar, since deceased, by his Heirs and Legal Representatives Vs. Ganpati Appa Gatare, since deceased, by his Heirs and Legal Representatives, reveal that after appreciating various judgments about the test to be applied while judging the bona fide requirement of the landlord. Paragraphs 23 and 24 of this ruling read as under :

"23. Now, I shall proceed, to consider the issue of reasonable and bona fide requirement asserted by the landlord in respect of the suit premises. Both the Courts below, in my view, have applied wrong tests to non-suit the landlord. At the outset, I shall advert to the legal position with regard to this ground. The Apex Court in the latest decision in the case of Raghunath Panhale v. Chaganlal Sundarji (supra) has referred to catena of decisions with regard to the said issue in paragraphs 6 to 9 of the judgment and restated the legal position. It would be useful to refer to the decision in Dattatraya Laxman Kamble Vs. Abdul Rasul

Moulali Kotkunde and Another, . The trial Court has relied on the decision of this Court in Sukhadeo Krishnarao Gahatode v. Laxmibai Dattatraya Mohoril 1979 Mh.LJ. 545. On analysing the aforesaid decision, it is well settled that where the landlord seeks to evict a tenant on the ground of bona fide requirement he has to satisfy three tests (i) that he requires the suit premises reasonably and bona fide, (ii) that such requirement is for his own occupation and (iii) comparative hardship. It is well settled that the word "require" does not mean mere wish or fancy of the landlord. The landlord must show some need or necessity. However, it does not mean absolute need or absolute requirement, it is also well settled that the landlord is the best judge of his residential requirements, and he has complete freedom in that behalf. It is no concern of the Courts to dictate to the landlord as to how, in what manner, he should live or to prescribe for him a residential standard of their own. There is no law which deprives the Landlord of the beneficial enjoyment of his property, Ordinarily speaking, the landlord, if he says he wished to use premises of which he is the owner, he is entitled to do so. What the Rent Act endeavours to provide for, is the case of a landlord who evicts the existing tenants in order that he may let them to another tenant at a rent, or exact a higher rent from the tenant on a threat of eviction. The law as enunciated by the Apex Court (see Mrs. Rena Drego Vs. Lalchand Soni, Etc., is that:

"When the landlord says that he needs more accommodation for his family there is no scope for doubting the reasonableness of the requirement. Further, the circumstances would raise a presumption that the requirement is bona fide. It is for the tenant to show that the demand for eviction was made with any oblique motive and in the absence of any such evidence the presumption of bona fides stands unrebutted."

This principle has been reiterated by the Apex Court in the decision referred to above in the case of Raghunath Panhale v. Chaganlal Sundarji and Co. (supra). The Apex Court has reiterated the principle that the legislature employed two terms "reasonably" and "bona fide" together, the requirement must be real and genuine from any reasonable standard. All the same, the genuineness of the requirement is not to be on par with the dire need of a landlord because the latter's need is much greater. The Apex Court has further observed that there is no warrant for presuming that the landlord's need is not bona fide. The statute enjoins that the Court should be satisfied of the requirement of the landlord. So, the Court would look into the broad aspects and if the Court feels any doubt about the bona fides of the requirement of the landlord, it is for the landlord to clear such doubts. The Apex Court has observed that it is open to the Court to presume that the landlord's requirement is bona fide and put the contesting tenant to the burden to show how the requirement is not bona fide.

24. The principles deduced from the aforesaid decisions would clearly justify the requirement of placing onus on the tenant to establish that the requirement for the landlord is not bona fide, whereas the burden on the landlord in this behalf is

very light. This position is reinforced by the mandate of Section 17 of the Bombay Rent Act which provides that where a decree for eviction has been passed by the Court on the ground of reasonable and bona fide requirement and the premises are not occupied or the work of erection is not commenced within a period of one month from the date the landlord recovers possession or the premises are re-let within one year of the said date to any person other than the original tenant, the Court may, on the application of the ordinal tenant made within thirteen months of such date, order the landlord to place him in occupation of the premises, on the original terms and conditions, and on such order being made, the landlord and any person who may be in occupation of the premises shall give vacant possession to the original tenant."

Thus, this ruling clearly shows that the learned Rent Controller has not applied correct test while considering the need of respondent No. 1. The respondent landlady and her sisters are qualified medical practitioner and are competent to establish nursing home. There was nothing before the Rent Controller to doubt their bona fides and the petitioner/tenant has failed to establish that the said requirement of landlady is not bona fide. This aspect will be considered little latter while considering the order passed by the Appellate Authority. Clause 13(4) and (5) of Rent Control Order also permit re-entry of tenant in case landlord fails to occupy or use premises for the purpose for which permission is granted as laid down in Section 17 of Bombay Rent Act. The facts that petitioner and her sisters are qualified gynecologists with experience and suit property belongs to them and they have intention to start maternity home and hospital these are sufficient to grant permission considering the scheme as envisaged by Clause 13(3)(vi) and (4), (5) and (6) of Rent Control Order. The petitioner has not come up with defence that law does not permit such user of suit property. No provision in Rent Control Order clothes tenant with locus to contend that landlady can not start her hospital on suit property or that he should also be accommodated in structure of such hospital against wishes of landlady.

12. The learned Rent Controller has given reason that sisters of respondent landlady has not been produced in witness box he has disregarded the fact that they have entered into partnership deed and the said partnership deed is duly proved and exhibited before him. The Hon"ble Apex Court has considered the similar situation in its judgment reported at S.K. Kamdar and Another Vs. State of Maharashtra, . There landlord had sought the premises for his Doctor son to setup private clinic. The tenant contended that the said son was in Government service and he could not start private clinic and there was no bona fide need. The said contention was not accepted as the son has offered to resign through an affidavit filed by him and shown his intention to start private clinic. The Hon"ble Apex Court in such circumstances refused to interfere with the order of eviction. Here also main respondent landlady is herself qualified and competent to start nursing home and she has stated that she is managing partner and she also proved partnership deed on record. The doubt raised by Rent Controller is ill-founded and misconceived. The Rent Controller could not have declined

permission on that account.

13. The rulings of the Hon"ble Apex Court reported at *Prativa Devi Vs. T.V. Krishnan*, and 1999(6) SCC 224 show that the landlord is best judge insofar as his requirement is concerned and he is also entitled to beneficial enjoyment of his property. The tenant cannot dictate that the landlord must be accommodated in such a way that tenant can also continue in the premises. The Hon"ble Apex Court has said that the Authority adjudicating the fact is placed itself in the armchair of the landlord and decide question whether in the given facts substantiated by the landlord need to occupy the entire premises can be said to be natural, real, sincere and honest. It will thus be seen that in the facts of the present case there is nothing on record to show that the need of respondent of the entire premises is either mala fide or unreal.

14. If one goes through findings recorded by Additional Collector on 17-12-2002, the said Authority has found that total area proposed to be constructed on plot after demolition of present building is 277.24 sq.mtrs. It is recorded that area of Nursing Home is 123.82 sq. mtrs and the area of Doctors' residents is 153.42 sq.mt. The Appellate Authority has interpreted the word "permissible for 25%" as 25% of built-up area can be used for maternity home. This in reference is drawn by him after consulting Town Planning Authorities on telephone and he has held that as a total plot area is 519.788 sq. mtrs., 129.947 sq.mtrs. can be used for Nursing Home. Thereafter he has considered the arguments of the respondent/tenant that landlord have not disclosed exact area of their Nursing Home whether they want to have maternity home with 5 to 10 beds or 60 beds or 100 beds. He has then proceeded to consider the fact that one of the landlords viz., Ku. Namita Bhattacharya is mentally unfit and one of the two sisters viz.,

Mrs. Geeta and Mrs. Nandita, Mrs. Geeta resides in Mumbai. Then he refers to the fact that at one place the sisters say that they have entered into partnership agreement while he finds that one of the sisters cannot take mental disturbance and thereafter he has held that area shown for residential purpose i.e. 153.42 sq.mtrs. is sufficient for two sisters namely present respondent and Ku. Namita. Thereafter he has proceeded to consider first floor construction as proposed and has found that the said plan shows covered veranda, drawing hall, dining, kitchen, four bed rooms with attached toilets and separate dressing for three bed rooms and store. He has thereafter observed that on first floor no room or structure which is necessary or part of Nursing Home is proposed and has thereafter found that the total area available for residential purpose on ground floor and first floor is about 390.85 sq.mtrs. and it is more than sufficient per family which consists of two members only. It is in this background that observation has been made that the sisters can get nursing home of 123.82 sq.mtrs. and reasonable accommodation for family of two in the remaining part of construction and this can be done without disturbing the present respondent/tenants. However, what is to be noticed that the Appellate Authority has overlooked the fact that two sisters residing with their husbands at Mumbai are also

going to Nagpur with their husbands and these sisters are also qualified Gynecologist and will be running maternity home. This error has been committed by holding that residential need is only of family of two persons. Thus, the need of other two sisters and their family has not been looked into. Not only this in hospital and nursing home some doctors and nursing staff will also be required to be stationed and relatives of patients will also be staying all this requirement is not considered by the Appellate Authority. In their objection to this report, Doctor sisters have pointed out that requirement will be of Operation Theatre, Labor Room, indoor and outdoor patient checking room, separate rooms for doctors, arrangement for family members, pathology room, washing room, small kitchen, record room, room for sterilizing including latrine and bath room. It is further mentioned that requirement of resident doctors as shown, in sanctioned map is also not considered. It is stated that as per scheme there are 8 single bed rooms with attached toilets for indoor patients and there is one dormitory with four beds. It is further mentioned that separate portion will have to be kept open for parking. It is mentioned that rooms on first floor are also meant for patients, it is seen that Appellate Authority has overlooked the fact that new construction can come up only after demolition of existing structure and in such structure if it is maternity home and hospital, the landlord cannot be directed to accommodate tenants also. Presence of tenants may create problems in running of establishment and also landlady may find it a nuisance. When entire premises are being demolished and are being reconstructed for a particular purpose, propulsions of Clause 13(8) shall not have any application. The Appellate Authority cannot direct the landlady to adjust her nursing home/hospital in such a way so as to accommodate petitioner/tenant. The finding recorded on 17-12-2002 is therefore, unsustainable and cannot be used against the respondent landlady.

15. The petitioner has placed reliance upon judgment reported at 7975 Mh.L.J. 290 and 1980 Mh.L.J. 347. Both these rulings consider cases where landlords applied for permission only under Clause 13(3)(vii) i.e. essential repairs or alternations which can not be made without tenant vacating. In both these cases no permission on account of bona fide need was sought and hence ratio thereof cannot be read to interpret Clause 13(3)(vi) involved herein. Moreover, actually in view of obligation to re-induct tenant cast upon landlady by Clause 13(7) of Rent Control Order, this permission is not opposed by petitioner. Further the arguments for learned counsel for tenant that respondent landlady did not furnish necessary details and her pleadings are inadequate, cannot be considered at this stage as the respondent landlady has tendered her evidence and has been cross-examined at length, about her need, her expertise, about partnership deed and also about her financial position. The Appellate Authority who has granted permission to respondent landlady has considered these aspects in detail. The petitioner/ tenant has not pointed out any prejudice in the matter. As such the argument advanced by placing reliance upon these ruling is without any merit and stands rejected.

16. Perusal of the impugned order dated 9-4-1990 passed by Appellate Authority reveals that the Appellate Authority has considered evidence and arguments. It has found that the respondent landlady kept two blocks vacant without letting it out and it proved their bona fides in as much as it showed that the owners were not after getting more rent. The appellate. Authority has found that the respondent was Professor of Gynecology in Government Medical College, Nagpur, She took voluntary retirement in the year 1983 or thereabout. It found that the respondent manages entire property on behalf of sisters who are living elsewhere. It also found that one sister Ku. Namita Bhattacharya is mentally sick and respondent is her legally appointed custodian and guardian. It further found that respondent has started Consultancy Clinic in the block in other house just across the road where she lives along with sister Namita, It also found that the suit house having seven blocks belong to Late father of the respondent and after his death different portions of that house are given to these sisters. It has found that sister Smt. Geeta Chatter has executed power of attorney in favour of the respondent and in such circumstances, it was improper on the part of Rent Controller to hold against the respondent as the said sisters did not enter the witness box. The Appellate Authority has further found that tenant has not come up with the case that the sisters are not having cordial relations with each other. The Appellate Authority has also considered the contents of Ex.-1 i.e. partnership deed and has found that there is nothing on record to disbelieve it as one of the signatories (present respondent) has testified about its correctness and the same was exhibited thereafter. The learned Appellate Authority has observed that in its opinion the claim of the respondent could have been sustained even without this partnership deed. The learned Appellate Authority has thereafter considered the plea of mala fides raised by petitioner/tenant and has found that the respondent landlady honestly admitted that she had talked about increase in rent as reflected in draft agreement Ex.-1 and-2. But she had further stated that there was also talk about vacating the blocks. It is found that the agreements were periodic for 11 months and the landlady had sought only modest increase of rent. It has thereafter held that as two blocks which fell vacant in the mean while were not let out, this fact established bona fides of the respondent and their desire to proceed further with their project of establishing hospital and nursing home. The Appellate Authority has pointed out that the witness Smt. Piranha (respondent) has stated that the proposed project envisages conversion of all residential blocks into rooms for patients and connected purpose. The Appellate Authority has observed that she cannot be asked to start project only in two vacant blocks. It has further found that there is no defence taken that the respondent alone is not competent to execute the project. It has found that the respondent appears to be a moving spirit behind the project. The Appellate Authority has also considered the grounds given by the Rent Controller for disbelieving the respondent and thereafter has found as to how those grounds of disbelief are misconceived. The Appellate Authority has thereafter granted permission to the respondent. Thus, the order passed by the Appellate Authority does not show any jurisdictional error or any error requiring interference in

exercise of writ jurisdiction. The said order dated 9th April, 1990 is perfectly just and proper.

17. Adv. Mrs. Sirpurkar appearing for respondent landlady has tried to urge that this Court should also take notice of subsequent events namely that her sisters at Bombay have come back and joined her practice. She has further stated that the tax receipt in relation to alternate accommodation available to the petitioner/tenant is also placed on record and this Court should also take note thereof. She has further contended that the concept of maternity home and hospital has undergone vast change in last 20 years and the respondents need to change their plan for the same. Adv. V.V. Bhangde appearing for the petitioner has disputed this subsequent events. He contends that unless and until there are appropriate amendments in the pleadings and unless and until there is evidence on records, such subsequent events cannot be looked into. However, because of the view I have already taken above. I do not find it necessary to go into that controversy. The respondent landlady is free to revise the plan for maternity home and hospital in accordance with law and there is no provision in Rent Control Order which prohibits her from doing so.

18. Under these circumstances, I do not find anything wrong with the appellate order, I do not find any merit in the writ petition. The petition is accordingly dismissed with no order as to costs.