

NAGPUR HIGH COURT

V.M. Deshmukh

Vs

K.M. Kothari

Misc. Petn. No. 159 of 1950

(Mangalmurti and Mudholkar, JJ.)

28.02.1951

JUDGMENT

Mudholkar, JJ.

1. This is a petn. under Article 226, Const. Ind.
2. The Appellant claims to be the landlord of the house bearing Municipal No. 9/19, situate on Hanuman Road, Sitabuldi, Nagpur. The non-Appellant 1 is his tenant and resides on the ground floor of that house. The upper floor is in the occupation of the landlord.
3. The Appellant has shifted to Nagpur from Gwalior recently and wants to settle down at Nagpur, where his wife, who is a medical practitioner, wants to set up in medical practice. He, therefore, made an appln. to the Rent Controller for grant of permission to serve a notice on the non-appct 1 terminating his tenancy. In that appln., the Appellant stated that his wife wanted to start a Maternity Home on the ground floor after it was vacated by the non-Appellant 1.
4. The Rent Controller dismissed the appct's. petn. The appct, therefore, preferred an appeal before the Addl. Dy. Comr. Nagpur. The latter affd. the order of the Rent Controller on the following grounds: (a) That there was delay on the part of the Appellant to make an appln. to the Rent Controller for evicting non. Appellant 1. (b) That there was no evidence to show that the appct's. wife was carrying on medical practice at Nagpur, and (c) that it was not possible to believe the appct's. statement regarding the intention of his wife to start a Maternity Home unless it is substantiated by some evidence.
5. sub-Clause (vi), Clause 13, Rent Control Order, says that if a Ct. is satisfied that the landlord needs the house or a portion thereof for the purpose refd. to in that sub-clause, he must grant the necessary permission to the landlord to give notice to the tenant. The Addl. Dy. Comr. should,

therefore, have ascertained whether the landlord had satisfied any of the conditions in the sub-clause. Instead of addressing himself to the matter in this way, the learned Addl. Dy. Comr. concerned himself with matters which were not strictly relevant and disposed of the appeal in what appears to us to be an off-hand way.

6. We have no doubt that in this case the allegations made by the Appellant clearly make out that the house was intended for the purpose of starting a Maternity Home. Under sub-Clause (vi) (c) to clause 13, a landlord is entitled to eject a tenant if he wants to locate his business in a portion of his house which is in the occupation of the tenant. It is, however, argued that the Maternity Home was to be run not by the Appellant himself but by his Wife and that, therefore, the house could not be said to have been required for the purpose of the business of the Appellant himself. There is no doubt that the words used in sub-clause are "business of his own". The word 'his' occurs at several places in sub-Clause (vi) and it must be interpreted throughout the sub-clause in the same way. It is not disputed that the words "his residence" occurring in the sub-clause at two places include a residence of all the members of the landlord's family. We have no doubt that that would be appropriate way of interpreting the word 'his'. As observed in *Smith v. Penny*¹,

"The family is the unit of our civilization. To keep the family together is of high public importance."

This supports our view that the word 'his' must be interpreted so as to include the family and not in a narrow way. This word is used in the last part of that clause in conjunction with the word 'own'. The question is whether the word 'own' is used along with the word 'his' to show that the 'business' must be one which the landlord himself is carrying on. We do not think that that is the purpose of using the word 'own'. In our opinion, such an interpretation would be in conflict with the meaning accorded to the word 'his' in the clause. It would appear that what is meant by the word 'own' is something in which the landlord or his family have pecuniary interest. Looked at this way the business of running Maternity Home would clearly fall within sub-cl (vi) of clause 13.

7. It has been admitted before us on behalf of the non-Appellant 1, that the appct's. wife is in fact a medical practitioner. The appct avers that she intends to start a Maternity Home and that statement must be accepted as correct because no one would be in a better position to know of her intention than she or the Appellant himself. If the statement is not true and if the business is not started within 3 months, the tenant has the remedy of recovering possession of the premises which he is made to vacate. For these reasons, the learned Addl. Dy. Comr. was wrong in law in refusing to act on the statement of the Appellant The supposed delay in making the appln. and the view taken by the Rent Controller that the premises are unsuitable for the use for Maternity Home are not germane to the question at issue.

8. In the view we take, we set aside the order of the Addl. Dy. Comr. and direct the Rent

Controller to grant permission to the Appellant to serve a notice on the non-Appellant 1. Cost of the appln. will be borne by the non-Appellant 1. Counsel's fee Rs. 50/-.

Application allowed.

Cases Referred.

¹(1946) 2 All e. r. 672 at p. 673