

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5182/1996

1. Laxmibai w/o. Keshav Janardan Pendurkar
Since Deceased.
Her L.Rs. are the Petitioner Nos. 2 to 9.
2. Harishchandra Keshav Pendurkar,
Since deceased, deleted.
3. Ratnaprabha Sitaram Naik-Satam,
Since deceased through her legal heirs
- 3a. Sonia Sanjay Gawade,
- 3b. Pradeep Sitaram Naik Satam
- 3c. Manisha Sitaram Naik Satam,
All 3a to 3c R/o. Ramratna, Phatak Road,
Revtale, Malwan, Sindhudurg.
4. Shubhangi Shamsundar Chipkar,
Since deceased, deleted
5. Kum. Nalini Keshav Pendurkar @
Leena B. Satardekar,
Age 78 yrs.,
R/o. Malwan.
6. Hemlata Keshav Pendurkar,
Age 72 yrs., Occ. : Retired,
R/o. Rajapur, Dist. Ratnagiri.
7. Aruna Keshav Pendurkar,
Since Deceased, deleted.

8. Surekha Keshav Pendurkar,
Age 65 yrs., Occ. : Household,
R/o. Malwan.

.....PETITIONERS
(Orig. Tenants/Deft.
Nos. 1, 2 & 4 to 9)

VERSUS

1. Ushabai w/o. Vasant Ramchandra Kandalgaonkar,
Aged about 53 years, Occ. : Household,
R/o. Malwan-Medha, Tal. Malwan,
The legal heir to deceased Vasant Ramchandra
Kandalgaonkar.
Since deceased through her legal heirs.
1(a)(i) Manisha Mahesh Kandalgaonkar,
1(a)(ii) Deepika Mahesh Kandalgaonkar,
1(a)(iii) Vasant Mahesh Kandalgaonkar
2. Shubha Gangadhar Argekar,
Aged about 48 years, Occ. : Household,
R/o. Malwan.

.....RESPONDENTS

Mr. Datta H. Pawar and Ms Sakshi Jankar, Advocate for Petitioners.
Mr. K. K. Sasavade a/w. Mr. Rajwardhan K. Sasavade, Mr. Satyajit S. Patil,
Mr. Amol S. Thorat, Advocates for Respondents.

CORAM : MRS.VRUSHALI V. JOSHI, J.
JUDGMENT RESERVED ON : 26.03.2026
JUDGMENT PRONOUNCED ON : 05.05.2026

JUDGMENT :

1. Heard.
2. The petitioner Nos.2 to 8 herein are the legal heirs of petitioner No.1, who died during the pendency of this petition. The suit was filed by the petitioners bearing No.47/1983 before the Civil Judge, Senior Division, Malwan, for eviction and possession of the suit

premises, viz. Municipal House No.1683 with the land beneath and around, totally admeasuring 664 sq. ft.Yds. bearing Survey No.781-C. Judgment and decree in said Civil Suit is challenged in this Writ Petition.

3. This writ petition has a long and chequered history.

4. It is the case of the Plaintiff No.1/Respondent of the said suit that her husband, Vasant Ramchandra Kandalgaonkar (Deceased), was declared a refugee from Karachi and came to Malwan in search of a residential house. He purchased the suit premises from the custodian of Evacuee property in a public auction dated 05.05.1965 under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. The said auction sale was confirmed and was made absolute by issuing the certificate in favour of the said deceased Vasant on 30.06.1964. The father of the petitioners, Keshav Janardan Pendurkar, was a tenant of the said suit premises with the agreed rent of Rs. 33/- per month for the structure and the open surrounding area around it. Deceased Vasant needed the premises for his own occupation. He requested the tenant, Keshav Pendurkar, to vacate and hand over peaceful possession of the suit premises. Pendurkar did not comply with the request. Thereafter, Vasant filed a Civil Suit for recovery of possession. In the said proceeding, the Civil Court held that the suit

was not tenable and that it had no jurisdiction to entertain the suit for possession of rented premises within the Municipality of Malwan and accordingly, returned the plaint for presentation before the proper Court. The plaintiff thereafter issued notices dated 13.04.1983 and 22.04.1983 to the widow of the deceased Keshav and the mother of Petitioner Nos.2 to 8, calling upon them to quit and hand over possession of the suit premises under the provisions of the Bombay Rent Act. The said notices were replied to with untenable and filmsy reasons. Subsequently, the plaintiff filed a suit for eviction and possession, contending that Defendant Nos. 2 to 9 were not residing in the suit premises and had no need or justification to occupy the same, as they possessed ancestral house property in Village Pendur, Taluka Malwan. It was further contended that the plaintiff had no accommodation or residential house for her family within the limits of Malwan or elsewhere, and was therefore in dire need of residential accommodation for her family. Even her relatives had denied her temporary shelter.

5. The petitioners/defendants filed their common Written Statement at Exhibit-23, contending that the deceased Keshav Pendurkar was the tenant of the suit premises, and after his demise, Defendant Nos. 1 to 9 became tenants thereof. The defendants denied the contention that the plaintiff's husband was a refugee, stating that he

was a resident of Mumbai and, upon returning from Karachi, continued to reside there. It was further contended that the suit premises originally belonged to one Shaikh Gani Abdul, who, before leaving India, sold the same to one R. V. Mahajan. Said Mahajan inducted the deceased Keshav Pendurkar, husband of Defendant No. 1, as a tenant in the suit premises. Subsequently, the Government auctioned the said property, and in that auction, the plaintiff's husband purchased the same and became its owner.

6. The defendants further contended that the plaintiff did not need the suit premises, as her husband owned ancestral house property at Talashil, situated about 2 to 3 miles from Malwan. According to the defendants, the notices were issued, and the suit was filed only to harass them. It was also contended that the plaintiff is presently residing in the Medha area near the temple of Lord Shankar at Malwan, having purchased land and a house property in the name of her nephew.

7. It was further submitted that defendant No. 1 is residing in the suit premises along with her daughters, defendant Nos. 6 to 9. The other defendants, though residing at different places, occasionally visit the suit premises. They contended that the house at Talashil is not sufficient, is located about 15 miles away from Malwan, and lacks adequate medical and other essential facilities. It was also stated that

Defendant No. 8 is handicapped and is serving at Malwan. The defendants contended that they have no accommodation and that, if a decree is passed, they would suffer greater hardship. The plaintiff, on the other hand, contended that the suit premises is reasonable and a *bona fide* requirement for her own use and occupation. The Civil Judge, Malwan, was pleased to hold that greater hardship would be caused to the plaintiff if a decree for eviction is refused, and accordingly decreed the suit. Being aggrieved by the said judgment, the defendants preferred an appeal bearing No. 141 of 1985 before the District Judge, Ratnagiri. The appeal was partly allowed, and the Appellate Court granted 2/3rd portion of the built-up structure to the plaintiff. Being aggrieved by the said judgment and order, the petitioners have filed the present petition.

8. Heard the learned Counsel for both the respective parties.

9. Though the petitioner Nos.2 to 6 were served, they remained absent and suit proceeded ex-parte against them. They were not residing on given address. Petitioner Nos.7 and 8 were contesting petitioners. Petitioner No.7 also died during the pendency of this petition. Petitioner No.8 i.e. Surekha Keshav Pendurkar is the only person, who is staying at said address and is occupying the premises.

10. For the last 30 years, i.e., three decades, the respondent has been contesting the litigation. Although the plaintiff i.e. respondent had

purchased the suit property in an auction, she has been deprived of enjoying the same, as the defendants have continued in possession as tenants. The Trial Court has rightly appreciated the evidence on record and concluded that the plaintiff is in *bona fide* need of the suit premises. Despite the plaintiff having purchased the property, the defendants have been enjoying it as tenants, and their defence is that the plaintiff has purchased another house in the name of her nephew. However, apart from bare oral assertions, the defendants have not produced any documentary evidence to substantiate this contention. On the contrary, the evidence shows that the plaintiff was residing at the mercy of her brother. The finding of the Trial Court that greater hardship would be caused to the plaintiff/respondent if the eviction is refused is correct. The Appellate Court took into consideration the medical condition of Petitioner No. 7 (Defendant No. 8), who was handicapped and working at Malwan; however, she expired and the ground of *bona fide* need for her residence is not in existence. At present, the only defendant residing in the suit premises is Defendant No.9, who is married and employed. Defendant No. 9 has contended that, although they have a house at Pendur, it is inconvenient for them to commute, and on this basis, the Appellate Court considered hardship and granted 2/3rd portion of the built-up area to the petitioners.

However, such a division is not feasible, as the petitioners have purchased the entire property, and the Appellate Court has granted such relief without adequate consideration of the documentary and oral evidence, merely on the ground that Defendant No. 8 was handicapped. The learned counsel for the petitioners has also produced a rough sketch of the house property, which indicates that there is open space available in the said property. The entire property was purchased by the father of Defendant No. 2. Despite such purchase, the defendants have been deprived of enjoying the property due to the original plaintiff's/respondent's occupation. Considering the *bona fide* need of the parties and the hardship caused, it is a settled position of law that the landlord is the best judge of his or her own requirement, and neither the tenant nor the Court can dictate how and in what manner the landlord should utilise the property. Upon consideration of the pleadings, reasons, and evidence on record, I do not find any perversity or irregularity in the findings of the Trial Court with respect to *bona fide* need and comparative hardship. The findings are justified and are in favour of the landlord. As a result, the petition stands dismissed.

11. The impugned judgment and decree passed by the 2nd Additional District Judge, Sawantwadi, in Regular Civil Appeal

No.141/1985 is hereby quashed and set aside, confirming the judgment and decree of eviction passed by the Trial Court.

12. The petitioners to hand over the possession of the suit property within a period of eight weeks from the date of this order.

13. Rule accordingly.

(MRS. VRUSHALI V. JOSHI, JJ.)

At this stage, learned counsel for the petitioners requested that the operation of this order be stayed for a period of 6 weeks to enable them to approach the Hon'ble Supreme Court.

Petitioner No. 8 has been in possession and enjoyment of the property for more than 30 years. However, considering that a reasoned order has been passed, the request for stay is rejected.

(MRS. VRUSHALI V. JOSHI, JJ.)

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