



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 WRIT PETITION NO. 3853 OF 2019

Satish S/o. Tejmal Bora

... Petitioner
(Org. Appellant)

VERSUS

1. Maharashtra Industrial Development Corporation,
Through The Competent Authority and
Executive Engineer, Office of the Executive Engineer
MIDC Region, Latur.

2. The Regional Officer
Office of Regional Manager,
MIDC, Latur.

... Respondents
(Org. Respondents)

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Mr. Atul Karad h/f., Mr. Gaanesh Kedar, Advocate for the Petitioner.
Mr. S. S. Dande for Respondent Nos.1 and 2.

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CORAM : ROHIT W. JOSHI, J.
DATE : 04 SEPTEMBER 2026

PER COURT :

1. The present petition is filed in order to challenge the judgment and order dated 6/10/2018 passed by the learned District Judge-1, Latur, by which the learned Court has dismissed the appeal preferred by the present petitioner under Section 7 of the Maharashtra Government Premises Eviction Act, 1955.

2. The respondent – Corporation is constituted under the provisions of the Maharashtra Industrial Development Corporation Act, 1961. The

provisions of Bombay Government Premises Eviction Act are applicable to the land held by the respondent – MIDC, in view of Section 29 of the MIDC Act. The petitioner was allotted an industrial shed in MIDC area by respondent No.2 under the lease deed dated 28/1/1988 for a period of 15 years for the purpose of establishing a factory for the manufacture of plastic home appliance.

3. Perusal of the lease deed will demonstrate that the same was granted on a premium of Rs. 1,68,392/-. The initial lease period was for 15 years starting from 1/1/1988. Clause - 6 of the lease provides that, in case the lessee has duly paid the entire amount of premium as agreed and as has performed the terms and conditions on his part, he shall before a period of six months prior to the date of completion of period of 15 years, approach the respondent – MIDC for grant of new lease for a further period of 80 years without payment of any additional premium.

4. The tenure of initial period of 15 years of lease expired on 31/12/2003. It is not in dispute that the petitioner did not make any application requesting execution of fresh lease deed for a further period of 80 years, as contemplated under clause - 6 of the agreement. The first application for execution of a fresh lease deed for further period 80 years commencing from 1/1/2004 was made on 1/7/2010 (page 51 of the petition).

5. It appears that the request was thereafter repeatedly made by various communications. The respondent No.1 issued a communication dated 19/4/2011 rejecting the request for execution of fresh lease deed made out by the petitioner (page 52 of the petition). Having rejected the request for execution of a fresh lease deed, the respondent No.2 issued a letter dated 16/1/2011 calling upon the petitioner to vacate the suit shed and deliver possession thereof to respondent No.2.

6. This communication dated 16/11/2011 was challenged by the petitioner by filing a suit being Regular Civil Suit No.619 of 2011. The learned Civil Court passed an order dated 25/7/2014 holding that it did not have jurisdiction to entertain the suit in view of Section 8-A of the Maharashtra Government Premises Eviction Act, 1955, and returned the plaint to the plaintiff for presenting the same before competent forum under the said Act.

7. The Executive Engineer of respondent No.1 issued a communication dated 11/11/2014 to the petitioner calling upon him to furnish his explanation in view of the aforesaid order dated 25/7/2014 passed by the learned Civil Judge. The petitioner has furnished a reply to the said letter dated 28/11/2014, making a request to allow him to restart his business in the suit property. The said request made by the petitioner came to be rejected vide communication dated 14/2/2015.

Notice dated 29/5/2015 was issued to the petitioner to remain present to hand over possession of the suit property along with the related documents.

8. On 26/6/2015, the respondent No.2 had drawn panchanama of the Suit Property in the presence of petitioner. Actual possession of the Suit Property is taken by the respondent on 27/8/2015.

9. In this backdrop, the petitioner preferred the aforesaid appeal before the learned District Judge under Section 7 of the Maharashtra Government Premises Eviction Act. The learned District Judge, as stated above, has dismissed the appeal vide judgment and order dated 6/10/2018 which is subject matter of challenge in the present petition.

10. The petitioner had assailed the letter dated 14/2/2015 whereby the request for execution of a fresh lease deed was rejected and directions to hand over possession were issued. The learned District Judge has referred to the material on record to hold that the petitioner had failed to utilize the Suit property for the purpose for which it was let. It is held that the petitioner also did not approach the respondent for execution of fresh lease deed within a period stipulated under the lease deed. The learned District Judge found that the petitioner was in breach of the agreement and therefore was not entitled to occupy the Suit property. The learned District Judge has also held that the initial order dated

16/11/2011 was not challenged by the petitioner.

11. Mr. Atul Karad, learned counsel for the petitioner, vehemently argued that the possession of Suit property was taken from the petitioner without following the due process of law. The learned counsel contends that although there were some difficulties in making payment of the premium initially, it is not in dispute that payment of premium is in fact made in the year 1996. He further contends that the record will indicate that the manufacturing plant was in fact set up by the petitioner. The contention of the learned counsel is that the learned District Judge has erred in treating the communication dated 16/11/2011 to be an order of eviction and further in dismissing the appeal on the ground that the said communication dated 16/11/2011 was not challenged.

12. As regards, the electricity and water connection, the learned counsel argues that the petitioner had in fact obtained a water connection at the Suit property.

13. The learned advocate contends that it is a settled legal proposition that a person in settled legal possession of immovable property cannot be dispossessed without following due process of law, even if he is a trespasser. The contention of learned advocate is that the petitioner was lawfully inducted in the suit property as a lessee and that he was making an endeavor to get fresh lease deed executed for a further period of 80

years in exercise of his rights vested under the initial agreement. The learned advocate, therefore argues that if at all possession of the suit property was to be taken from the petitioner, it ought to have taken by following due process of law as contemplated under the Government Premises Eviction Act. It is contended that possession of the suit property was taken without issuing a notice under Section 4 and, as such, the order of eviction dated 14/2/2015 is wholly unsustainable. Reliance is placed on the judgments of the Supreme Court in the case of **State of Maharashtra Vs. Marwanjee F. Desai & Ors¹**. and **Dipak Babaria & Anr. Vs. State of Gujarat & Ors²**., for the purpose that every order passed by the Competent Authority under the Government Premises Act is appealable and therefore the learned District Judge ought not to have dismissed the appeal on the ground that the appeal was not maintainable.

14. *Per contra*, Mr. Dande, learned counsel for respondent, justifies the order. The learned advocate contends that an industrial shed was let to the petitioner for a specific purpose that industry would be set up resulting in industrial development of the area and creation of employment. The learned counsel contends that allotment of lands by MIDC is with a specific aim and object and unless the allottee satisfies/fulfills the purpose for which the plot is allotted, he has no right to remain in occupation of the property. The learned counsel contends

1 (2002) 2 SCC 318

2 (2014) 3 SCC 502

that notice as contemplated under Section 4 was in fact issued by the Executive Engineer on 11/11/2014 and that the petitioner had also filed his reply to the said notice on 28/11/2014. The learned counsel contends that an opportunity of hearing was granted to the petitioner and after hearing the petitioner on 9/12/2014, the order of Eviction dated 14/2/2015 is passed.

15. The undisputed facts of the case are that a property in MIDC area was allotted to the petitioner initially for a period of 15 years. Perusal of the offer of allotment indicates that the allotment was for a specific purpose of setting up the plant for manufacturing of plastic appliances. The initial lease deed provides that failure to install plant and machinery other equipment for stating manufacturing activity will confer right upon the respondent – lessor to resume possession of the property.

16. It will also be appropriate to refer circular dated 26/2/1985 issued by respondent No.1 – MIDC. It speaks about grant of extension in order to enable to the allottee to commence manufacturing activity. Perusal of the circular will demonstrate that in the event the allottee is unable to install the plant and machinery within the initial period of 12 months, initial extension of six months can be granted without recovery of additional premium. The circular further provides that a further extension of six months after initial period of 18 months can be granted subject to payment of 10% additional premium. It is further provided that

a further extension of six months may be granted after lapse of 24 months on forfeiture of additional premium of 10% paid while seeking extension after 18 months. The circular provides that further extension after 2½ years is permissible only if genuine difficulties beyond the control of the allottee are established, subject to payment of further premium of 10% of the land rate prevailing as on date of grant of extension. Clause - 6 provides for grant of further extension in a fit case case on condition of forfeiture of additional premium paid while seeking extension. The scheme appears to be to extend cooperation to the allottee/industrialist to enable him to set up the plant and machinery and not to terminate the agreement upon any failure to set up the plant and machinery within the originally stipulated period of 12 months.

17. In the present case, the initial period of 15 years expired on 31/12/2003. Perusal of record will indicate that first request letter for execution of a fresh lease deed was made in the year 2010, on 1/7/2010 to be precise. There is no material on record to indicate that the petitioner had approached the respondent with a request to execute fresh lease deed prior to 1/7/2010. Such is not even the pleadings. Clause -6 of the lease deed provides that in case the allottee/lessee desires to retain the property for a further period of 80 years, he should approach the lessor/respondent 6 months prior to the expiration of the initial term of 15 years with a request to execute fresh lease deed. However, in the

present case, the first attempt at securing fresh lease deed is after a period of 6½ years from the date on which the initial term of 15 years expired.

18. It is undisputed that the petitioner did not obtain Electricity connection for the suit property till date. Although the learned counsel for the petitioner states that water connection was obtained, perusal of record indicates that even a water connection was not obtained. The petitioner has contended that the plant was set up at the suit property and for same period the plant was also operated. However, except for a passing observation in the report there is no material on record in support of the said contention.

19. The learned District Judge has recorded categorical findings in paragraph No.16 of the order that the petitioner did not obtain any Electricity Connection or Water Connection and did not produce any documentary evidence on record to show that the factory was started as per the project report on the basis for which the suit plot was allotted to him. The petitioner has placed on record LIC receipt dated 1/3/1996 regarding payment of premium with respect to 20 employees in the name of M/s. Bora and Sons. The learned District Judge has rightly appreciated the said document and has observed that payment of a single premium for the year 1996 will not establish that the plant was being run

continuously from 1988-1989 till the year 2010. The receipt is also not in the name of “M/s. Sangeeta Plastics”, the proprietorship concern of the petitioner. The findings that the petitioner did not produce any evidence to establish that the suit property was utilized for operations of a workshop, as contended by the petitioner, is therefore justified.

20. On the contrary, the learned District Judge has referred to a letter dated 11/5/2001 wherein the petitioner admitted that the suit property was not being used for any purpose since the year 2001. Although the letter/order dated 16/11/2011 cannot be interpreted to be an order of Eviction, it is certainly an order/communication intimating refusal to execute fresh lease deed as requested by the petitioner. After culmination of initial period of 15 years, the petitioner will have right to occupy the suit property only if fresh lease deed were to be executed. Admittedly, such lease deed is not executed.

21. Civil Suit which was filed in order to assail the order/communication dated 16/11/2011 rejecting the request for execution of fresh lease deed was challenged in the Civil Suit. The Civil Suit was not entertained by holding that the Civil Court did not have the jurisdiction to decide the said Suit. Thereafter, further steps were not taken by the petitioner in order to assail the said order/communication refusing to execute fresh lease deed.

22. In the light of the reasons recorded above, in the considered opinion of this Court, the petitioner has failed to make out a right to seek execution of fresh lease deed. Breach of the terms and conditions of allotment of plot is apparent on the face of record and/or almost undisputed.

23. The right to occupy the suit plot was vested with the petitioner under the lease deed. The lease deed is only for a period of 15 years. The period of 15 years expired in the year 2003, to be precise, on 31/12/2003. From 1/1/2004 onwards there is no document in favour of the petitioner entitling him to occupy the suit property.

24. The lease for the subsequent period of 80 years, as would be apparent from a reading of Clause - 6 of the lease deed, was to be a fresh lease. A fresh lease is admittedly not executed in favour of the petitioner. The letter/order rejecting the request for execution of a fresh lease was rejected on 16/11/2011. This letter was unsuccessfully challenged in a Civil Suit. After the suit was dismissed as not maintainable, the said letter is not challenged at all.

25. The petitioner has thus lost right to hold possession of the suit property upon expiration of the initial period of lease. The petitioner has not taken effective steps for execution of a fresh lease deed. Thus, apart from failure to observe the most important condition of the lease, i.e., to

set up a plant and utilize the suit property for industrial purpose, the petitioner has also lost the right to be in possession of the suit property.

26. It will be appropriate to refer to the judgment of the Hon'ble Supreme Court in the case of **Board of Trustees of Port of Kandla v. Hargovind Jasraj and Anr³**., wherein the Hon'ble Supreme Court has held that when right to occupy the suit property is based on a lease deed and challenge to termination of lease, is barred by limitation, a suit for possession is not maintainable and further that the plaintiff must file a suit within a period of three years from the date of termination for the lease in order to challenge the cancellation of lease.

27. In the case at hand, since the tenure of the lease had already expired on 31/12/2003 and the request for execution of a fresh lease was rejected on 16/11/2011, which is not under challenge, in the considered opinion of this Court, the petitioner has no right to occupy the suit property. The relevant observations in paragraph Nos.27 and 31 are reproduced hereunder:

“27. The termination of the lease deed was by an order which the plaintiffs ought to get rid of by having the same set aside, or declared invalid for whatever reasons, it may be permissible to do so. No order bears a label of its being valid or invalid on its forehead. Anyone affected by any such order ought to seek redress against the same within the period permissible for doing so. We may in this regard refer to the following oft-quoted passage in *Smith v. East Elloe Rural District Council*. The following are the observations regarding the necessity of recourse to the Court for getting the invalidity of an order established:

... An order, even if not made in good faith, is still an act capable of legal consequences. *It bears no brand of invalidity on its forehead.*

3 (2013) 3 SCC 182

Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.'

(emphasis supplied)

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31. It is true that in some of the above cases, this Court was dealing with proceedings arising under Article 226 of the Constitution, exercise of powers whereunder is discretionary but then grant of declaratory relief under the Specific Relief Act is also discretionary in nature. A civil court can and may in appropriate cases refuse a declaratory decree for good and valid reasons which dissuade the court from exercising its discretionary jurisdiction. Merely because the suit is within time is no reason for the court to grant a declaration. Suffice it to say that filing of a suit for declaration was in the circumstances essential for the plaintiffs. That is precisely why the plaintiffs brought a suit no matter beyond the period of limitation prescribed for the purpose. Such a suit was neither unnecessary nor a futility for the plaintiff's right to remain in possession depended upon whether the lease was subsisting or stood terminated. It is not, therefore, possible to fall back upon the possessory rights claimed by the plaintiffs over the leased area to bring the suit within time especially when we have, while dealing with the question of possession, held that possession also was taken over pursuant to the order of termination of the lease in question."

28. In the absence of any legally enforceable right in favour of the petitioner, this Court is not inclined to exercise its extra ordinary writ jurisdiction under Article 226 or supervisory jurisdiction under Article 227 of the Constitution of India in favour of the petitioner.

29. With the reasons recorded above, this Court sees no reason to interfere with the impugned order Writ petition is therefore dismissed with no order as to costs.

30. At this stage, the learned counsel for the petitioner makes a request to extend the interim order dated 4/1/2019. It needs to be stated that possession of the suit property was taken from the petitioner in the year

2015 i.e. on 27/8/2015. The said fact is an admitted fact. By the said order, this Court has restrained the respondent – MIDC from making allotment of the said property in favour of any other person till final disposal of the petition. I am afraid, in view of the findings that the suit property was never utilized for the purpose for which it was allotted to the petitioner, coupled with the fact that for a period around 6½ years the petitioner did not even approach the respondent – MIDC for execution of a fresh lease deed and further that the letter of rejection for execution for fresh lease deed is not under challenge, the request for extension of interim order cannot be extended. The said request is therefore rejected.

[ROHIT W. JOSHI, J.]