

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5685 OF 2014

Prakash D. Sawant	..	Petitioner
vs.		
Y.T.A. Hussain & Ors.	..	Respondents

Mr. A. S. Khandeparkar i/b. Ms Shilpa A. Joshi for Petitioner.
Mr. Sachin Shetye for Respondent No. 1.
Mr. A. R. Metkari – AGP for Respondent Nos. 2 and 3.

CORAM : M. S. SONAK, J.

DATE : 30 JULY 2015

P.C. :-

1] This petition challenges orders dated 1 February 2012 and 5 May 2014 made by the trial and appeal Court rejecting the petitioner's application for interim relief.

2] The petitioner, a police officer with the respondent nos. 2 and 3, has since retired w.e.f. 31 August 2009. During the tenure of service, the petitioner had been allotted the suit premises. The petitioner has now instituted the suit seeking declaration that he is a tenant in respect of the suit premises and that interim orders be made restraining the respondents from evicting the petitioner, otherwise than in the due course of law.

3] Mr. Khandeparkar, the learned counsel for the petitioner has submitted that the petitioner is a government allottee within meaning assigned to this term under section 7(2)(b) of Maharashtra

Rent Control Act, 1999 ("Rent Act"). In terms of section 27(1)(b) of the Rent Act, the government allottee is entitled to protection of the Rent Act and cannot be evicted otherwise than upon the grounds set out under the Rent Act. In support of the crucial issue as to whether the suit premises had been requisitioned in favour of the petitioner, reliance is placed upon deed of assignment dated 29 July 1988 between Mr. Raymond Annunciation and the respondent no. 1, wherein there is reference to some of the premises being requisitioned by the Government of Maharashtra for the use by Bombay Police Force. Mr. Khandeparkar submitted that this reference is, *inter alia*, to the suit premises.

4] The two Courts, have squarely considered the aforesaid contention of the petitioner. In the first place, the deed of assignment dated 29 July 1988 is quite vague. Secondly, there is no material produced in support of the contention that these are requisitioned premises. Thirdly, it was important for the petitioner to produce material that the suit premises had been requisitioned for his purpose and it was not sufficient for the petitioner to merely rely upon some vague recital in the deed of assignment dated 29 July 1988, which at the highest states some requisition by the State of Maharashtra for the purposes of Bombay Police Force. The two Courts, upon considering all these aspects, have taken the view

that the petitioner would not be entitled to the benefit of section 27 of the Rent Act.

5] The appeal Court, has made reference to the decision of this Court in the case of *Prakash Babu Harmalkar vs. State of Maharashtra & Ors.*¹, wherein the Division Bench of this Court has held that where order of allotment made under the Bombay Land Requisition Act was in favour of the Commissioner of Police and his nominees, a serving police officer, post his retirement, cannot, on the basis of such requisition in favour of the Commissioner of Police, claim the benefits under the Rent Act. Therefore, even if some reliance is to be placed upon the deed of assignment dated 29 July 1988, the petitioner, on the basis of the same, cannot claim benefit of section 27 of the Rent Act.

6] Finally, Mr. Khandeparkar submitted that the ad interim reliefs have been in operation since the date of institution of the suit in the year 2010 and therefore, rather than expose the petitioner to vagaries action by the respondents, it would be appropriate if the interim protection is continued and the suit is expedited. In this regard, Mr. Khandeparkar made reference to the decision of this Court in the case of *Vallabh S. Keskar vs. The State of Maharashtra & Ors.*²

1 2006 (1) Mh. L. J. 728

2 Writ Petition No. 3128 of 2012 decided on 19.06.2013

7] It is not possible to accede to the request of Mr. Khandeparkar. The facts and circumstances in the case of *Vallabh Keskar* (supra) are not discernible from the order dated 19 June 2013. In any case, there is no principle as such is laid down in the order dated 19 June 2013.

8] In matters of interference against interim orders, the scope of interference is also extremely limited. There is neither any perversity nor any arbitrariness in the view concurrently taken by the two Courts for the purposes of denying interim relief to the petitioner.

9] Accordingly, no case is made out for interference with the impugned orders. This petition is dismissed. There shall be no order as to costs.

10] However, it is clarified that the observations in the impugned orders as also in the present order are only *prima facie* and therefore, the trial Court, need not be influenced by them at the stage of final disposal of the suit.

(M. S. SONAK, J.)