

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1648 OF 2013

Amar Suryakant Sakpal & Anr.	..	Petitioners
vs.		
The State of Maharashtra & Ors.	..	Respondents

Mr. Sujeet Kurup with Mr. Shivaji Yadav for Petitioners.
Ms. Aparna Vhatkar – AGP for Respondent No. 1.
Mrs. M. R. Bhoir i/b. U. H. Kedar for Respondent Nos. 2 and 3
-MCGM.
Mr. Nikhil Rajeshirke for Respondent No. 6.

CORAM : M. S. SONAK, J.
DATE : 11 FEBRUARY, 2015

P.C. :-

1] Rule, with the consent and at the request of the parties, Rule is made returnable forthwith.

2] This petition is directed against the order made by the Bombay City Civil Court (Appellate Authority) under Section 105F of the Mumbai Municipal Corporation Act, 1888 ("said Act") dismissing the appeal against order dated 21 July 2011 directing the eviction of the petitioners under Section 105B of the said Act.

3] Mr. Sujeet Kurup, the learned counsel for the petitioners submitted that the impugned orders are premised almost entirely

upon document dated 26 June 1986, of which the original was never produced in the course of evidence. Besides, the document in question had to be considered in juxtaposition to several other documents which indicate that the petitioners father had not been allotted the premises in question in his capacity as an employee of the Municipal Corporation, but as a tenant thereof. Further, the name of the petitioners father had been included in Annexure II to the Redevelopment Scheme and in pursuance thereof, the petitioners were even allotted permanent accommodation. From such accommodation, the respondents had no right or authority to order the petitioners eviction. For these reasons, Mr. Kurup submitted that the impugned orders are liable to be interfered with by this Court in the exercise of its extra ordinary jurisdiction under Articles 226 and 277 of the Constitution of India.

4] Mrs. Bhoir, the learned counsel for the respondent nos. 2 and 3 – MCGM (Corporation) submitted that there was overwhelming material on record, which would establish that the petitioners father was an employee of the Municipal Corporation and had been allotted room no. 15 on the ground floor of Sangappa Chawl, as a staff quarter. There is no material on record that the petitioners father was tenant of the Corporation. The document at Exhibit 'B', which is a leave and licence agreement dated 26 June 1986 was

produced in the course of evidence and ample opportunity was afforded to the petitioners with regard to the same. In the course of cross-examination, no serious dispute was raised with regard to the said document. Accordingly, the learned counsel submitted that there is no case made out to interfere with the impugned orders.

5] Mr. Rajeshirke, the learned counsel for the respondent no. 6 society submitted that the respondent no. 6 society was not even a party to the original or the appellate proceedings and therefore the learned counsel submitted that he has no submissions to make in this matter.

6] Having heard the learned counsel for the parties and perused the record, in my judgment, no case is made out to interfere with the impugned orders. The impugned orders basically record finding of fact to the effect that the petitioners father was an employee of the Corporation and had been allotted room no. 15 at Sangappa Chawl as and by way of a staff quarter. The material on record suggests that the document at Exhibit 'B' which is a declaration by the petitioners father that he occupies the said room no. 15 as a licensee during the tenure of his service, was produced in the course of enquiry under Section 105B of the said Act. In the cross-examination recorded on 13 July 2001, the petitioners have

admitted the photograph and signature on the document Exhibit 'B' as that of their father. The reverse of the said document also makes specific reference to the names of the petitioners, as being the family members of late Suryakant Babu Sakpal. Strict rules of Evidence Act cannot be made applicable to enquiry under Section 105B of the said Act. From the record, it appears that adequate opportunity was afforded to the petitioners in the matter of their defence.

7] The documents referred to by the learned counsel for the petitioners indeed make reference, in some cases, to the petitioners father being a tenant. However, the documents have to be construed in their proper context. There is no document which indicates that the petitioners father was tenant of the Corporation or for that the premises had been allotted to the petitioners father as a tenant and not as and by way of a staff quarter. Besides there are findings of fact that the petitioners father or the petitioners were never enrolled as members of the society or that they were allotted the premises in question by the society on the basis that they were tenants and not merely the children of the municipal employee who had been allotted the original premises as and by way of a staff quarter. The document at Exhibit 'B' dated 26 June 1986 makes it clear that the original premises had been allotted during the tenure

of service of the corporation and that if the licensee i.e. the petitioners father were to be terminated or were to leave or retire from municipal service, the licence was to terminate.

8] This Court, exercising powers of judicial review would be loathe to interfere with the concurrent findings of fact, unless perversity were to be established. In the present case, it cannot be said that the findings of fact as recorded suffer from any perversity. In the aforesaid circumstances, no case is made out to interfere with the impugned orders. The petition is dismissed. However, there shall be no order as to costs.

(M. S. SONAK, J.)

Chandka