

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3304 OF 2016

Agricultural Produce Market Committee,
 Newasa, District Ahmednagar.
 Through its Chairman
 Mr. Kadubai Baburao Kardile,
 Age: 67 years, Occup. Social work,
 R/o. Gidegaon, Tq. Newasa,
 Dist. Ahmednagar. ... Petitioner

Vs.

1. The State of Maharashtra,
 Through its Secretary
 Co-operation and Textile Department,
 Mantralaya, Mumbai - 32.
2. The Director of Marketing,
 Maharashtra State, Pune.
3. M/s. Subhash Prakash Co.
 Newasa Market Yard, Tq. Newasa,
 Dist. Ahmednagar through its proprietor
 Shri Devidas Sadashiv Salunke,
 Age: 57 years, Occ: Business,
 R/o. Newasa, Tq. Newasa,
 Dist. Ahmednagar. ... Respondents

Mr. V.D. Sapkal, Advocate for the petitioner.
 Mr. S.N. Kendre, AGP for the respondent-state.
 Mr. V.D. Hon, Senior Advocate i/b. Mr. S.P. Pawar, Advocate for
 respondent no.3.

CORAM : SUNIL P. DESHMUKH, J.
DATE : 12-07-2016.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally
 with consent of the parties.

2. The petitioner-original respondent in Revision Application No. 15 of 2015 purportedly aggrieved by order dated 10-03-2016 passed by respondent no.2 directing to restore the possession as had been subsisting prior to 29-02-2016 regarding plot no.2 by order on application for interim relief in the revisional proceedings initiated by present respondent no.3 against a notice dated 19-01-2016, directing respondent no.3 to vacate the concerned premises, is before this court.

3. Learned counsel Mr. Sapkal for petitioner submits, notice by Agricultural Produce Market Committee was issued on 19-01-2016 to respondent no.3 to hand over possession and since no action in furtherance of the notice had been taken by respondent no.3, it has sealed the premises under a panchnama dated 29-02-2016 taking over the possession.

4. He submits that it appears, around 25-02-2016 the revisional proceedings had been supposedly initiated by respondent no.3 and a notice of the same through e-mail had purportedly been sent to the petitioner, however, the same had not been accompanied either with the memorandum of revision application or, for that matter, any of the annexures thereto in the revisional proceedings.

5. Pursuant to notice, the petitioner had been before respondent no.2 and had requested for time to file its response to the revisional proceedings. However, respondent no.2 insisted upon for immediate filing of response to the revisional proceedings and accordingly the same came to be filed on 04-03-2016 and the impugned order has been passed on 10-03-2016, which has been challenged in this writ petition. It has been submitted that this court had directed the parties to maintain status quo which is continuing hitherto.

6. Learned counsel for the petitioner submits that as per the terms of the agreement, upon expiry of the period of lease, it was open for the petitioner to take back the possession which has accordingly been taken as per powers available to it. The exercise of power cannot be faulted with and more particularly for the reasons as have been referred to by the revisional authority.

7. Learned counsel Mr. Sapkal further vehemently submits that impugned order on interim application tantamounts to the decision of revision itself. Having regard to the factual situation obtaining on the date of the order impugned, he submits, revisional authority has exceeded its power in directing to maintain *status quo ante*. Respondent no.2- Director of Marketing, is not vested with such power under any law at least at the interim stage.

8. Countering aforesaid submissions, Shri Hon, learned senior advocate, appearing for respondent no.3, contends that the whole action against respondent no.3 is a result of malafides and calculated move under a stratagem. It is submitted that much before expiry of period of lease pursuant to the terms of the agreement a request had been made to Agricultural Produce Market Committee for extension of period of lease, however, the same had not been responded to, nor even the subsequent communications in respect of the same. It is submitted pursuant to the terms respondent no.3 had option and right to continue for a further period. An option which has been exercised by respondent no.3. He further contends that Agricultural Produce Market Committee has been digressing the attention of the authorities which would not be germane. Respondent no.3 is being malafide targeted. He submits that the purported sealing of the premises is a calculated move to hinder and obfuscate the revisional proceedings. Action of sealing and/or taking possession is highhanded and illegal action. Despite notice having been served on Agricultural Produce Market Committee, of the revisional proceedings issued, duly served and having been received by petitioner the hasty action is taken ill-intendedly and ill-motivatedly. The same is a very brazen action intended to undo the revisional proceedings.

9. No response has ever been given by Agricultural Produce Market Committee to the requests being made by respondent no.3 for renewal of lease, pursuant to the terms of agreement. The petitioner had all along been abiding by the terms of lease between the parties. There is no allegation in respect of the same. In case there is no violation of any terms of the lease the licensee will be entitled to have the lease renewed and it was incumbent to renew the lease upon exercise of option.

10. It is therefore being submitted that the observations as have occurred in the order impugned are impeccable and after taking the stock of the situation as is emerging from the facts as they are. It is being submitted that there is no substance in the contention of the other side that the impugned order tantamounts to decision in revisional proceeding itself. Learned counsel urges that no indulgence be given to the request on behalf of the petitioner that the revisional proceedings be directed to be disposed at an early date.

11. He submits, respondent no.3 is in possession of the concerned premises since 1980 continuously till the same have been purportedly sealed on 29-02-2016, which is forming principle source of income to respondent no.3 and family members of proprietor. The whole activity of respondent no.3 has come to a

grinding halt under the highhanded and vindictive action. Learned senior counsel submits that the circumstances indicate that the balance of convenience is in favour of respondent no.3, as well as it is respondent no.3 alone who would suffer a loss which is irreparable. He submits that the ingredients necessary for interim relief are overbearingly in favour of respondent no.3.

12. Learned Assistant Government Pleader supports the impugned order and submits that an equitable view has been taken by respondent no.2 and in the circumstances, writ petition is liable to be dismissed.

13. After hearing the learned counsel for the parties the position emerges that, admittedly, respondent no.3 was in possession of the concerned premises since 1980 continuously without interruption all through up to 29-02-2016 and it further appears that there had been some correspondence before the expiry of the period of lease for continuation / renewal of the lease as well as further communications thereafter in this respect. For a period of five years after expiry of period of lease, Agricultural Produce Market Committee did not take any action. However, as the time passed by, perhaps, it appears that intention of the Agricultural Produce Market Committee underwent change.

14. Thirty year initial lease period expired in 2009-2010, the notice purportedly had been issued only in January, 2016. Thereafter, also till the revisional proceedings had been initiated, no action with regard to taking back possession from respondent no.3 as contended to have been pursuant to the terms of agreement had ever been initiated. It was only after notice of revisional proceedings had been communicated to the petitioner, an action appears to have been taken.

15. It is very tenuous argument on behalf of the petitioner that the notice was not accompanied by the memorandum of revision and annexures thereto and it appears to be a runaway one. In such a case the situation could have been salvaged by waiting till 03-03-2016 when the petitioner was called upon to respond to the revisional proceedings.

16. The purported action of sealing the premises being taken pursuant to the notice dated 19-01-2016, in the circumstances, appears to be hasty, may be, with a view to pre-empt interim order and its consequences in revisional proceedings. Such a hasty action by an organisation like the petitioner which is expected act as model litigant, would be difficult to be approved of.

17. The petitioner is before this court seeking relief under its discretionary powers. Looking at the action which is taken against the respondent no.3, particularly in the situation wherein there does not to be appear such an express exigency for Agricultural Produce Market Committee to take an action while having the notice of the revisional proceedings, in the circumstances, though, it is being contended that revisional authority has no power to grant the relief as has been granted under the impugned order, it is difficult to exercise discretion in favour of the petitioner.

18. Having regard to the background as has been referred to above, writ petition is dismissed. Rule discharged.

19. At this stage, Mr. Sapkal, learned counsel for the petitioner seeks extension of interim relief for a period of five weeks which had been hitherto operating under the interim order of this court dated 22-03-2016. As such, interim relief to continue for a further period of five weeks.

(SUNIL P. DESHMUKH)
JUDGE

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