

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**908 SECOND APPEAL NO. 535 OF 2016
WITH
CA/10895/20156
IN
SA/535/2016**

VILAS INDRABHAN LAVANDE & ORS.

VERSUS

DHULE MUNICIPAL CORPORATION, DHULE.

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Mr. M.S.Kulkarni, Advocate for Appellants.

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CORAM : T.V.NALAWADE, J.

DATE : 2nd AUGUST, 2016

ORDER :-

. The Appeal is filed by the plaintiffs of R.C.S. No. 3/2015 which was pending in the Court of the Civil Judge [Sr.Division], Dhule. Present respondent had filed application under the provisions of Order VII Rule 11 of the Code of Civil Procedure and had prayed for rejection of plaint. Said application was allowed by the trial Court and the decision given by the trial court is confirmed by the first

appellate Court. Heard learned counsel for the appellants/original plaintiffs.

2. The Suit was filed by present appellants, in all 34 plaintiffs, in respect of the shops which are in their possession. It is their contention that on 10/05/1985, the Chief Officer of the then Municipal Council executed agreement of lease in respect of the respective shops belonging to the Municipal Council in favour of the plaintiffs and the plaintiffs had taken the possession of respective shops as lessee. It is contended that the lease was for the period of 30 years [from 14/12/1984 to 14/12/2014], but under clause 14 of the agreement, they had expressed that they wanted the extension of the lease period.

3. It is the case of the plaintiffs that on 12/12/2014, notice was given to the plaintiffs by the defendant and the plaintiffs were asked to hand over the possession of the respective shops as the period of lease was over and the Corporation had taken decision to pull down the present structures and make construction of bigger commercial complex. They contended in the plaint that they have the right under the agreement of lease to get the

extension of the lease period and they had made such request in the correspondence dated 01/12/2014. In the Suit, relief was claimed against the Corporation to prevent it from pulling down the construction of the shops and to prevent it from taking action as per the contents of the notice dated 12/12/2014. Relief of direction was claimed against the Corporation to extend the period of lease in favour of the plaintiffs.

4. In the application filed under the provisions of Order VII Rule 11 of the Code of Civil Procedure, the Corporation contended that the suit property belongs to the Corporation and it has the power to take possession of such property under the provisions of Section 81 (B) to 81 (F) of the Bombay Provincial Municipal Corporation Act, 1949 [for short, 'B.P.M.C. Act']. The Corporation contended that no Suit can be filed in respect of the action taken by the Corporation under these provisions and the Civil Court has no jurisdiction. It contended that under the provisions of Section 81 (G) and 81 (H), there is express bar to the jurisdiction of the Civil Court. It was also contended that no direction as prayed can be given against the Corporation and the Suit in the present form is not tenable. Thus, for want of

jurisdiction, prayer was made for rejection of the plaint.

5. After hearing both sides, trial Court allowed the application filed by the Corporation for rejection of plaint and the plaint came to be rejected. The first appellate Court has confirmed this finding.

6. Learned counsel for the appellants/plaintiffs argued mainly on the procedure which, according to the appellants, needs to be followed by the Corporation in such cases. He also argued on the basis of few clauses of lease agreement and submitted that there is right to the lessee to get the extension of the lease period and this aspect could have been considered by the Civil Court.

7. The Courts below referred the provisions of the B.P.M.C. Act, like Sections 81 (B), 81 (F) and 81 (H). One case of this Court reported as 1999 (1) Mh.L.J. - 741 [Ulhasnagar Municipal Corporation Vs. Ms. Gulshan Contractors/Enterprises] is referred by the trial Court to hold that the civil Court has no jurisdiction to entertain such dispute when notice is given.

8. Under the provision of Section 81 (B) of the B.P.M.C. Act, power is given to the Commissioner to evict the person from Corporation premises under the grounds mentioned in the Section and one of the grounds is unauthorized occupation of Corporation premises and acting in contravention of the terms express or implied under which the person is authorized to occupy the premises. The power is so wide that in public interest also the Corporation can evict such person. After giving such notice by the Commissioner, the person occupying the premises is bound to vacate the premises within one month from the date of the service of notice. The provision of Section 81 (B) provides that before making such order, liberty needs to be given to have their say. After receipt of such notice, the party can file say and make representation about its case. If after giving such hearing, order is made and is not complied with, even force can be used to take possession of the premises by the Commissioner. The provision of Section 81 (F) shows that Appeal lies from every order made by the Commissioner in respect of any corporation premises and the period given for filing Appeal before the District Judge is 30 days from the date of service of notice relating to the order made under the aforesaid provisions. The provision of Section 81 (H) shows

that subject to the provisions of the Chapter giving powers to the corporation, no civil Court has jurisdiction to entertain any Suit or proceeding in respect of eviction from any corporation premises for any of the grounds from Section 81 (B).

9. The aforesaid provision shows that against every order made by the Commissioner, Appeal lies to the District Judge. The District Judge in Appeal can consider every challenge against the order including the contention that necessary procedure was not followed. It can also consider the contention that such order could not have been made in view of the agreement, if any, between the parties. This Court has no hesitation to observe that the appellants/plaintiffs ought to have challenged the order mentioned in the notice dated 12/12/2014 given by the Commissioner of the Corporation in District Court. The nature of pleadings shows that the plaintiffs were aware that the lease was for fixed period. In the so called representation dated 01/12/2014, they had requested the Corporation to extend the period of lease. Thus, the dispute whether their possession subsequent to the period of 30 years of lease was unauthorized or not could have been considered

by the commissioner and then by the District Judge. If the Commissioner had not given them opportunity, they ought to have filed Appeal. They preferred to approach the Civil Court and it is clear that they wanted to protract the things. The nature of relief claimed shows that they wanted direction against the Corporation from the Civil Court by ignoring the order made by the Corporation. They also wanted to protect their possession. In view of the specific bar created as quoted above, the civil Court could not have entertained the dispute of the nature mentioned in the plaint. If the machinery provided for consideration of this dispute is not allowed to act, then those provisions will become useless and the parties will always prefer to come to the civil Court for protracting the things.

10. The Courts below have referred reported case of Ulhasnagar Municipal Corporation [supra] on this point. This Court has made it clear that self-contained remedy is created by the aforesaid provisions and the jurisdiction of civil Court to entertain the Suit in respect of eviction of any person is barred due to these provisions.

11. In view of the discussion above, this Court holds

that interference is not possible in the orders made by the Courts below and no substantial question of law as such is involved in the matter.

12. In the result, Second Appeal stands dismissed. In view of dismissal of Second Appeal, C.A. No. 10895 of 2016 stands disposed of.

13. At this stage, learned counsel for the appellants requested for giving some interim relief. Such relief is refused as the appellants are doing everything to protract the things.

[T.V.NALAWADE, J.]