

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4424 OF 2015

Smt. Sunanda Mahabal Pujari ..Petitioner
Versus
Smt. Sumati Manohar Naik
and another. ..Respondents

....
Mr. Pankaj D. Purway, Advocate for the Petitioner.
Mr. Sachin P. Shetye, Advocate for Respondent No.1.
Mr. S.D. Rayrikar, AGP, for Respondent No.2-State.

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CORAM : R. G. KETKAR, J.

DATE : 20th JANUARY, 2016

P.C.

1. Heard Mr. Purway, learned Counsel for the petitioner, Mr. Shetye, learned Counsel for respondent No.1 and Mr. Rayrikar, learned AGP for respondent No.2-State.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged (1) the judgment and order dated 30.10.2012 below application for leave to defend; (2) the judgment and order dated 30.10.2012 below application under Section 24 of the Maharashtra Rent Control Act, 1999 (for short, 'said Act') passed by the Competent Authority, Konkan Division,

Mumbai (for short, 'Competent Authority') in case No.20 of 2011; and (3) the judgment and order dated 21.2.2015 passed by the Additional Commissioner, Konkan Division in Revision Application No.627 of 2012 filed under Section 44 of the said Act.

3. By the first judgment and order dated 30.10.2012, the Competent Authority rejected the application made by the petitioner for leave to defend. By the second judgment and order dated 30.10.2012, the Competent Authority allowed the application made by respondent No.1 under Section 24 of the said Act and directed the petitioner herein to hand over vacant and peaceful possession of Room No.1 situate at Naik Major Chawl, House No.295, Sec-DIG Node, Thane Belapur Road, Navi Mumbai (for short, 'suit premises') to the first respondent. The petitioner was also directed to pay respondent No.1 a sum of Rs.1,000/- per month from August, 2010 till vacant possession of the suit premises is delivered to her. By the judgment and order dated 21.2.2015, learned Additional Commissioner rejected the revision application preferred by the petitioner and confirmed the order of the Competent Authority.

4. Mr. Purway contended that the petitioner is in possession of the suit premises for last more than 15 years as a tenant. He submitted that the petitioner is a South-Indian and does not understand Marathi. He submitted that respondent No.1 misrepresented the petitioner and obtained her signature on the purported leave and licence agreement dated 16.8.2009. In fact, the petitioner has lodged a complaint in that regard, as also has instituted a suit in the Court of Civil Judge, Junior Division, Vashi, as well as has filed a private criminal complaint against respondent No.1 and others. He submitted that as the petitioner is a tenant in the suit premises and the document obtained by respondent No.1 is a forged and fabricated document, the Competent Authority could not have directed the petitioner to hand over vacant and peaceful possession of the suit premises.

5. On the other hand, Mr. Shetye supported the impugned order. He submitted that the criminal complaint and the suit is instituted after the order passed by the Competent Authority. He further submitted that the leave and licence agreement was entered into on 16.8.2009 and the complaint is

lodged as late as on 7.10.2010 that is to say nearly after more than one year. He submitted that after considering the defence set out by the petitioner, the Competent Authority declined the leave to defend and allowed the application. The Additional Commissioner has confirmed that order. He, therefore, submitted that no case is made out for invoking the powers under Article 227 of the Constitution of India.

6. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. The defence set out by the petitioner is that she is a monthly contractual tenant. However in order to substantiate this plea, she did not produce the tenancy agreement. She also did not produce a single rent receipt. Reliance placed on the documents to contend that the petitioner is in possession for more than 15 years will not advance the case of the petitioner and substantiate her plea that she is a tenant. At the highest it will establish her residence in the suit premises and not the capacity in which she is occupying the suit premises. That apart, though the petitioner has alleged that the agreement for leave and licence is forged and fabricated

document, it was entered into on 16.8.2009, the complaint is lodged on 7.10.2010. The authorities below after appreciating the material on record have given concurrent finding that the petitioner is in possession of the suit premises on the basis of the care taker agreement dated 16.8.2009.

7. As far as the Suit instituted by the petitioner is concerned, the Suit was also dismissed on the ground of lack of jurisdiction. Mr. Purway submitted that the appeal preferred by the petitioner is pending in the District Court, Thane. The authorities below after considering the material on record held that the petitioner failed to prove her plea of tenancy. As against this, respondent No.1 has placed on record leave and licence agreement. Respondent No.1 has issued legal notice to the petitioner. Though she received that notice, she did not give reply to that notice. Explanation to Section 24 of the said Act lays down that an agreement of licence in writing is conclusive evidence of the fact stated therein. In the case of **Raj Prasanna Kondur v/s. Arif Taher Khan & others, 2005 (4) Bom.C.r. 383**, learned Single Judge of this Court considered Section 24 of the said Act and held that Section 24 does not require leave

and licence agreement to be registered.

8. In view thereof, I do not find that the authorities below committed any error in passing the impugned orders. Hence, the Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Deshmane (PS)