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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTER PATENT APPEAL NO.22 OF 2014 WITH
CIVIL APPLICATION NO.35 OF 2014

Gunvantiben wd/o Bhupatrai
Shah (Rupani) ...Appellant
vs.
Maharashtra Housing And
Area Development Authority & others ...Respondents

Mr.Makarand Kale i/b M/s.M.P.Vashi & Associates for
the Appellant
None for the respondents

CORAM : A.S.OKA, &
SMT.ANUJA PRABHUDESSAI, JJ.
DATE : DECEMBER 2, 2016

P.C.:

1 By this Letters Patent Appeal, the appellant has taken an exception to the Judgment dated 21st February 2012 passed by the learned Single Judge. An order of eviction was passed against the petitioner by the Competent Authority. An appeal was preferred by the appellant against the said order. The appeal was dismissed by the Appellate Authority. Being aggrieved by the order of eviction which was confirmed by the Appellate Authority, a writ petition was filed before the learned Single Judge by the Appellant which was rejected by a reasoned order.

2 The first submission of the learned counsel for the appellant is that the appellant could not give

reply to the show cause notice, and therefore, an order of remand be made. The second submission is that the occupants of various premises including the appellant have formed a co-operative housing society, and therefore, eviction proceedings are not competent. He submitted that the possession of the appellant ought to have been protected.

2 We have considered the submissions. It is not in dispute that a show cause notice of eviction was served to the appellant. In the order of the Competent Authority, it is recorded that on behalf of the appellant, an Advocate addressed a notice dated 9th March 2007 in which it was alleged that the appellant was a lawful tenant in respect of the tenement and he was regularly paying the rent to the concerned Authority of Bombay Housing and Area Development Board which is one of the regional boards constituted by the Maharashtra Housing And Area Development Authority under the provisions of the Maharashtra Housing And Area Development Act, 1976 (for short 'the said Act of 1976').

3 Perusal of the Judgment of the Appellate Authority shows that the said Board had allotted the tenement in dispute to one Shri C.R.Dhole who was the Rent Collector as a service quarter. Shri Dhole was dismissed from the employment with effect from 7th November 1974. The eviction proceedings were initiated to get the possession of the said tenement. It is recorded by both the Authorities that on 5th July 1978, eviction order was passed and

the possession of the said tenement was taken by the said Board on 9th September 1978. At the time of taking possession, one Mr.B.M.Shah and his family was found residing there. The case of the Authorities is that thereafter, the appellant broke open the lock and took possession.

4 A proposal for regularization of the possession of the appellant was considered. However, a Legal Advisor of the MHADA opined that the tenement cannot be regularized as the same was allotted as a service quarter. Thereafter, MHADA proceeded to initiate action against the appellant.

5 The Appellate Authority in the impugned order has noted that the case of the appellant was that she purchased the said tenement from Shri Dhole and therefore, she was a lawful occupant of the premises. As stated earlier, Shri Dhole had no right in respect of the said tenement as the same was allotted to him as a service quarter. An order of eviction has already been made against Shri Dhole. He had no authority to transfer the said tenement to the present appellant. Therefore, the Appellate Authority concluded that the appellant is an unlawful occupant. In fact, not a single document is produced by the appellant showing that the tenement was purchased by her from Shri Dhole.

6 We have perused the Judgment of the learned Single Judge. We find that the contention that a co-operative housing society has been formed by the

occupants was not at all raised before the learned Single Judge. The contention raised before the learned Single Judge is that the appellant has been acquitted in prosecution for criminal trespass. The second submission was that huge amount was paid by the appellant to the authorities.

7 The learned Single Judge has rightly concluded that merely because the appellant has paid compensation, it creates no right in her favour. The learned Single Judge also noted that the appellant did not dispute that a show cause notice issued by the Competent Authority was served upon her. The learned Single Judge also noted that the Competent Authority while passing order of eviction has taken into consideration the letter/notice dated 9th March 2007 issued by the Advocate for the appellant.

8 Therefore, there is a clear finding of fact recorded by the Competent Authority as well as the Appellate Authority that the appellant has no right, title or interest in respect of the tenement in her possession which was allotted to Shri Dhole as a service quarter. The learned Single Judge has confirmed the said finding. We find no error in the view taken by the learned Single Judge.

9 Even assuming that a housing society has been formed by the persons possessing various structures, that will not confer any right on the said society in respect of the tenement. There is no merit in the

Letters Patent Appeal and the same is dismissed.
Civil Application No.35 of 2014 does not survive and
the same is dismissed.

(ANUJA PRABHUDESSAI, J.)

(A.S.OKA, J.)