

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition (ST) NO. 11609 OF 2016

Shri. Nagappa Macha Mogvira ...Petitioner
Versus
Kalyan-dombivli Municipal Corporation ...Respondent

....
Mr. Sushant Chavan, Advocate for the Petitioner.
Mr. A.S. Rao, Advocate for the Respondent.
....

CORAM : R. G. KETKAR, J.

DATE : 3rd May, 2016

P.C.

1. Heard Mr.Sushant Chavan, learned Counsel for the petitioner and Mr.A.S. Rao, learned Counsel for the respondent, at length.

2. By these petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 7.4.2016 passed by learned District Judge-1, Kalyan in Regular Civil Appeal No.25/2016. By that order, learned District Judge dismissed the appeal preferred by the petitioner under Section 81-F of Maharashtra Municipal Corporation Act (for short, 'Act') challenging the eviction order dated 3.2.2016 passed by Municipal Commissioner of the respondent. The Municipal

Commissioner of the respondent issued notice dated 21.12.2015 under Section 81B[2] of the Act *inter alia* setting out therein that shop No.9 admeasuring 42.00 sq. ft. situate at Mahatma Gandhi road, Dombivali (W) (for short, 'suit premises') is required in the interest of public at large and to show cause as to why order under Section 81B(1) of the Act should not be passed. The petitioner gave reply on 28.12.2015. After hearing the petitioner, the Municipal Commissioner passed order on 3.2.2016 *inter alia* on the ground that thought the premises was let out to one Mr. Dattu N. Mhatre he had sub-let the suit premises to the petitioner. Writ Petition No.3369/2007 for regularization of all the premises was filed. In terms of minutes of the order, this Court disposed of the petition. The Corporation did not execute the lease agreement as the petitioner did not comply the order passed by this Court as also on the ground that the shop premises is affected in the road-widening and the same is required to be removed by evicting the persons in occupation. The Municipal Commissioner also came to the conclusion that condition No.12 of the lease agreement was violated as the petitioner was sub-let the suit premises by the original allottee without consent of the Corporation.

3. Aggrieved by this order, the petitioner preferred appeal, which was dismissed by learned District Judge. It is against this order, the petitioner has instituted the present petition.

4. In support of this petition, Mr. Chavan submitted that by demand notice dated 6.2.2015 the petitioner was called upon to deposit Rs.72,996/- towards the arrears of lease rent as on 31.3.2015. In pursuance thereof, the petitioner has deposited amount on 27.3.2015. In other words, the petitioner is not in arrears of the lease rent. He invited my attention to the order dated 5.2.2003 passed by this Court in Writ Petition No.361/1993. That petition was instituted by Kalyan Mahanagarpalika Galadharak Sanghatana and others against the respondent. The petitioner is one of the members of said Sanghatana. Clause 2(C) thereof provided that the members of the petitioner Sanghatana, who were not shown in the original list of allottees of the respondent No.1-Corporation shall pay a sum of Rs.3,00,000/- each towards premium or transfer charges. This order was in respect of the premises situate in Dombivali area. He also invited my attention to order dated 20.4.2009 passed by the Division Bench of this Court in Writ

Petition No.3369/2007 pertaining to the shop in Kalyan area. Mr.Chavan invited my attention to the correspondence made by the petitioner for obtaining information under Right to Information Act, 2005 and submitted that the petitioner though called the respondent to supply draft agreement the same was not provided. As the petitioner has paid the arrears, the impugned order deserves to be set aside.

5. On the other hand Mr.Rao supported the impugned order. He submitted that the petitioner did not pay Rs.3 Lacs towards the premium or transfer charges and thus he is in unauthorized occupation of the suit premises being in breach of condition No.12 of the agreement dated 14.8.1979. He further submitted that in the Development Plan of city of Dombivali sanctioned by the Government of Maharashtra, the width of Mahatma Gandhi road is shown 15 meters. Said road is required to be widened in the interest of public at large and, therefore, the shop premises are also required for public purposes.

6. I have considered rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. It is no doubt true that the petitioner has

paid Rs.77,757/- on 27.3.2015 in pursuance of the demand notice dated 6.2.2015. However said payment is towards rent from the year 1989. In other words, the petitioner did not pay the lease rent regularly. That apart, as per the order dated 5.2.2003 as the petitioner was not the original allottee and the suit premises was sub let to him, he was required to pay Rs.3 lacs towards the premium or transfer charges. Mr. Chavan fairly stated that the petitioner did not pay that amount. Thus the shop premises could not be regularized and consequently the agreement could not be entered into with the petitioner. The Municipal Commissioner has recorded a finding that the suit premises are required for public purposes of road widening of Mahatma Gandhi Road. Learned District Judge has considered this aspect while dismissing the appeal. In view thereof, I do not find that any case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed. The Corporation is permitted to withdraw the amount deposited, if any, by the petitioner in this Court unconditionally.

(R. G. KETKAR, J.)