

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 4625 OF 2016

Shri Shrichand B. Jaisinghani ...Petitioner

Versus

Kalyan-Dombivli Municipal Corporation ...Respondent

WITH

Writ Petition (ST) NO. 11613 OF 2016

Shri Jaisingrao Gopal Chavan ...Petitioner

Versus

Kalyan-Dombivli Municipal Corporation ...Respondent

....

Mr. Sushant D. Chavan, a/w. Mr. Anil Galgali, Advocate for the
Petitioners.

Mr. A.S. Rao, Advocate for the Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 3rd May, 2016

P.C.

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

2. By these petitions under Article 227 of the
Constitution of India, the petitioner in each petition has
challenged the judgment and order dated 31.3.2016 passed by
learned District Judge-1, Kalyan in Regular Civil Appeals
preferred by the petitioner under Section 81-F of the

Maharashtra Municipal Corporations Act (for short, 'Act'). By these orders, learned District Judge dismissed the appeals preferred by the petitioners.

3. Mr. Chavan states that the controversy raised in the petitions is identical. In view thereof, the facts from Writ Petition No.4625/2016 are taken into consideration. On 21.12.2015, the Municipal Commissioner of the respondent issued notice under Section 81B(2) of the Act to the petitioner *inter alia* setting out therein that the petitioner is in arrears of lease rent of Rs.83,057/- at the end of 31.3.2015 and as such has rendered himself as an unauthorized occupant of the municipal premises. Indian Railway administration has constructed the foot over bridge connecting Dombivali (East) and (West) for the convenience of the public at large. Said foot-over bridge is required to be connected with the escalated stair case. The Municipal Commissioner, therefore, invoked powers conferred on him and called upon the petitioner to show cause as to why order under Section 81B(1) of the Act should not be passed and he should not be evicted from the municipal premises on this ground.

4. The petitioner gave reply through Advocate on

28.12.2015 denying the grounds raised in the notice. By notice dated 8.1.2016, the hearing was fixed before the Municipal Commissioner. Ultimately after hearing the petitioner, on 3.2.2016, the Municipal Commissioner passed the order. The Municipal Commissioner held that the petitioner is in arrears of lease rent and has violated the terms of agreement and that the Municipal premises is required for public purpose. Aggrieved by that order, the petitioner preferred appeal under Section 81F of the Act. By the impugned order, learned District Judge dismissed the appeal. It is against this order, the petitioner in each petition has instituted the present petitions.

5. In support of this petition, Mr. Chavan strenuously contended that the petitioner is the original allottee. Initially the petitioner was carrying on business in gala near Dombivali (West) Railway Station. As that gala was affected by the road widening, he was given the present premises on lease basis. He submitted that the petitioner was all along ready and willing to pay the agreed rent. However, the officers did not accept the rent from 1979. He further submitted that in pursuance of the order passed by this Court on 18.4.2016, the petitioners have deposited the entire arrears of rent in this Court. He further

submitted that the petitioners are carrying on business on small scale. The petitioners are carrying on business of type-writing work, photo copying and newspaper vending. The only source of their livelihood is the income generated from these galas. As the petitioners have now paid the entire arrears of rent, they should not be evicted from the galas in their possession. That apart, even accepting for the time being that an element of public interest involved, the corporation should be directed to first provide for permanent alternate shop premises or at least temporary shop premises. He, therefore, submitted that appropriate direction may be issued to the Corporation for providing alternate premises.

6. On the other hand Mr.Rao supported the impugned order. He submitted that the petitioners were in arrears of rent from 1979 and did not pay the rent regularly thereby violating the terms and conditions of the agreements. It is only after the order dated 8.4.2016 of this Court, the petitioners have deposited the arrears of the rent. In other words, having regard to the default committed by the petitioners, it has to be held that the petitioner has committed breach of the conditions of the agreement. He further submitted that the premises are also

required in public interest. He relied upon Section 81B(1)(a)(i) and (c) of the Act and submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India.

7. I have considered rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. Perusal of notice dated 21.12.2015 issued by the Commissioner shows that the petitioner is in arrears of lease rent of Rs.83,057/-. The petitioner has not paid the lease rent from 1.1.1981 till 31.3.2013 amounting to Rs.68,216/-. To that effect notice was issued on 27.1.2014. In other words for more than 34 years, the petitioner was in arrears of the lease rent. Apart from that perusal of the notice also shows that the premises in possession of the petitioner are required for public purposes for connecting escalating staircase. Indian Railway Administration has constructed foot-over-bridge connecting Dombivali [East] and [West] for the convenience of the public at large. These facts are no more in dispute. Perusal of the impugned order shows that learned District Judge has held that the petitioner was in arrears of rent and that the premises in question are required for public purpose. After considering the

material on record, I do not find that learned District Judge has committed any error in passing the impugned order.

8. Mr.Chavan submits that the Corporation may be directed to accommodate the petitioners by offering permanent alternate shop premises or at least temporary alternate shop premises. He submitted that the respondent has formulated Basic Serviced for Urban Poor Scheme and the petitioners may be accommodated as per that Scheme.

9. In view thereof, reserving the liberty to the petitioners to make representation to the Corporation, these petitions fail and the same are dismissed. If such representations are made, the Corporation shall consider it sympathetically subject to petitioners complying the conditions. The Corporation is permitted to withdraw the amount deposited by the petitioners in this Court unconditionally. Order accordingly.

(R. G. KETKAR, J.)