

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9271 OF 2013

Ismail Abdul Gani ... Petitioner
Vs.
Azmatullah Baig Shifiullah Baig ... Respondent

Mr. Milan Desai i/b. Mr. T. R. Patel for Petitioner.
Mr. Sachin R. Pawar for Respondent.

CORAM : R. G. KETKAR, J.
DATE : JUNE 16, 2016

ORDER :

Heard Mr. Desai, learned Counsel for petitioner and Mr. Pawar, learned Counsel for respondent at length. Rule. Mr. Pawar waives service for respondent. In view of the order dated 13.11.2013 and at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 28.10.2010 passed by the Competent Authority, Konkan Division, Mumbai (for short 'Competent Authority') as also the judgment and order dated 03.05.2013 passed by the Additional Commissioner, Konkan Division, Mumbai (for short 'Commissioner'). By order dated 28.10.2010, the Competent Authority rejected the application made by the petitioner under Section 24 of the Maharashtra Rent Control Act, 1999 (for short 'Act'). The said proceedings was instituted by the petitioner for recovery of possession of flat No.106, Karishma Apartment, 'A' Wing, behind Dadi Colony and Sabnam Apartment, Mumbra - 400 612, District - Thane (for short 'suit premises') on the ground that respondent failed to vacate the same after expiry of licence period. Aggrieved by that

decision, petitioner instituted Revision Application under Section 44 of the Act. By order dated 03.05.2013, the Commissioner rejected the Revision Application. It is against these decisions, petitioner has instituted the present Petition under Article 227 of the Constitution of India.

3. In support of this Petition, Mr. Desai strenuously contended that the authorities below rejected the application only on the ground that the entire building constructed by the petitioner is without necessary sanction. Petitioner cannot be said to be the lawful owner of the entire building, which includes the suit premises. Mr. Desai submitted that the Commissioner also dismissed the Revision Application by merely observing that the 'Krishna Apartment' building including the suit premises is illegal construction. He submitted that the authorities below committed error apparent on the face of the record in rejecting the application on the ground that the building is unauthorized. The authorities below could not have gone into the issue of building being unauthorized or not. They exceeded the jurisdiction vested in them. He submitted that as per Section 24 of the Act, landlord is entitled to recover possession of the premises given by him on licence for residence on expiry of the period of licence. On the expiry of the period of licence and on failure of the licensee to so deliver the possession of the licensed premises, the landlord is entitled to recover possession of such premises by making an application to the Competent Authority. If the Competent Authority is satisfied that the period of licence has expired, it is under obligation to pass an order for eviction of a licensee. Explanation (b) lays down that the agreement of license in writing shall be the conclusive evidence of the fact stated therein.

4. Mr. Desai submitted that in fact the Competent Authority

recorded that the suit premises was given to the respondent vide leave and licence agreement dated 09.01.2008 for a period from 09.01.2008 to 08.12.2008. The agreed monthly compensation was Rs.1800/- per month and security deposit was Rs.45,000/-. The Competent Authority held that the petitioner proved that the respondent had executed the leave and licence agreement on 09.01.2008 and the period admittedly expired. Having held so, in terms of Section 24 of the Act, the Competent Authority had no option but to pass the order of eviction. Apart from that, the respondent has not paid agreed compensation from January, 2008 as also electricity charges @ Rs.400/- per month.

5. Mr. Pawar supported the impugned orders. He submitted that both the authorities have concurrently rejected the application, and therefore, no case is made out for invocation of powers under Article 227 of the Constitution of India.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the authorities below, and in particular, the Competent Authority has held that parties entered into leave and licence agreement on 09.01.2008. The licence period was from 09.01.2008 to 08.12.2008. While answering point No.1, the Competent Authority held that documents produced by the petitioner prove that on 09.01.2008, respondent executed leave and licence agreement. Once the Competent Authority held that the leave and licence agreement is executed by the respondent and that the period stipulated therein expired on 08.12.2008, in terms of Section 24, the Competent Authority ought to have passed order of eviction of a licensee. Section 24 reads thus,

“24. Landlord entitled to recover possession of premises given on license on expiry.

(1) Notwithstanding anything contained in this Act, a licensee in

possession or occupation of premises given to him on license for residence shall deliver possession of such premises to the landlord on expiry of the period of license; and on the failure of the licensee to so deliver the possession of the licensed premises, a landlord shall be entitled to recover possession of such premises from a licensee, on the expiry of the period of license, by making an application to the Competent Authority, and, the Competent Authority, on being satisfied that the period of license has expired, shall pass an order for eviction of a licensee.

(2) Any licensee who does not deliver possession of the premises to the landlord on expiry of the period of license and continues to be in possession of the licensed premises till he is dispossessed by the Competent Authority shall be liable to pay damages at double the rate of the license fee or charge of the premises fixed under the agreement of license.

(3) The Competent Authority shall not entertain any claim of whatever nature from any other person who is not a licensee according to the agreement of license.

Explanation- For the purposes of this section,-

(a) the expression "landlord" includes a successor-in-interest who becomes the landlord of the premises as a result of death of such landlord; but does not include a tenant or a sub-tenant who has given premises on license;

(b) an agreement of license in writing shall be conclusive evidence of the fact stated therein."

7. Perusal of the impugned orders shows that the authorities below held that as the entire building where the suit premises is situate is unauthorized, petitioner cannot be held as owner of such building. In my opinion, the authorities below committed error apparent on the face of the record. In fact, the authorities below could not have gone into the issue whether building is unauthorized or not. The authorities below clearly exceeded jurisdiction vested in them. During the course of hearing, I repeatedly called upon Mr. Pawar to satisfy as to whether the authorities below could have gone into the issue of building being constructed unauthorizedly or not. He was not in a position to support the said finding. Mr. Pawar was also not in a position to show that respondent paid licence fee @ Rs.1800/- and electricity charges @

Rs.400/- per month from 09.01.2008 till date. In view thereof, the impugned orders cannot be sustained and as such, are liable to be set aside. Hence, the following order:

- a. Impugned orders are set aside and the application under Section 24 stands allowed;
- b. Respondent is directed to pay the compensation @ Rs.1800/- per month plus agreed electrical charges @ Rs.400/- per month from 09.01.2008 till the date of handing over possession to the petitioner;
- c. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

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