

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7313 OF 2016

Ram Darshan Gupta through his son and C.A.
Siddharth Gupta ... Petitioner
Vs.
Vinay Ramniwas Agarwal and others ... Respondents

Mr. Sudalai Mani i/b. Mahesh Menon & Co. for Petitioner.
Mr. Vishal Kanade i/b. Mr. A. R. Shaikh for Respondent No.1.
Mr. A. R. Metkari, AGP for Respondent No.3-State.

CORAM : R. G. KETKAR, J.
DATE : JULY 15, 2016

P.C. :

Heard Mr. Mani, learned Counsel for the petitioner, Mr. Kanade, learned Counsel for respondent No.1 and Mr. Metkari, learned AGP for respondent No.3-State at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 15.06.2013 passed by the Competent Authority, Konkan Division, Mumbai (for short 'Competent Authority') in Case No.55 of 2010 as also the judgment and order dated 04.06.2016 passed by the Additional Commissioner, Konkan Division, Mumbai (for short 'Commissioner'). By these orders, the authorities below allowed the application filed by the respondent No.1 under Section 24 of the Maharashtra Rent Control Act, 1999 (for short 'Act') and directed the petitioner herein to handover the vacant and peaceful possession of flat No.D-602, 6th floor, Luv-Kush Apartment, Sindhi Society, Chembur, Mumbai 400 071 to the respondent No.1 with further direction to pay Rs.20,000/- per month to the respondent No.1 from 31.03.2010 till vacant possession of the suit premises is delivered to the respondent No.1.

3. In support of this Petition, Mr. Mani strenuously contended that by leave and licence agreement dated 01.04.2008 between respondent No.1 herein and M/s. Chandra Transport Private Limited (for short the 'said Company'), the suit premises was given to the said Company on leave and licence basis for residential purpose for a temporary period upto 31.03.2008. He submitted that respondent No.1 instituted proceedings under Section 24 of the Act for recovery of the suit premises by impleading only respondent No.2, the said Company. Though the petitioner is in possession of the suit premises, he was deliberately not impleaded in the said proceedings. Respondent No.1 initiated the proceedings under Section 24 of the Act in collusion with the respondent No.2 so as to evict the petitioner from the suit premises. He submitted that respondent No.1 is the uncle of the petitioner. Petitioner was working as a Manager with the respondent No.2. There was understanding between the petitioner and the respondent No.1 that in lieu of payment of gratuity amount to the petitioner, the suit premises will be transferred in the name of the petitioner. However, respondent No.1 did not execute any document and transferred the suit premises in favour of the petitioner. He submitted that the petitioner is in settled possession of the suit premises and that, even the original share certificate is in custody of the petitioner. He submitted that the authorities below however proceeded on the premise that the petitioner is a licensee and allowed the application under Section 24 of the Act. He submitted that the Petition requires consideration.

4. On the other hand, Mr. Kanade relied upon Section 24(3) of the Act to contend that the Competent Authority cannot entertain any claim of whatever nature from any other person who is not a licensee according to the agreement of licence.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. While allowing the application under Section 24, the Competent Authority has observed in paragraph 7 that petitioner is not a party to the leave and licence agreement. He is residing in the suit premises as a licensee as he is an employee of the respondent No.2 Company. Petitioner herein accepted that respondent No.1 as the owner of the suit premises in his leave to defend application. In paragraph 8, the Competent Authority held that the petitioner is in possession on the basis of the licence granted to him and as the period expired and petitioner has not vacated the suit premises, respondent No.1 is entitled to the relief sought.

6. Aggrieved by this decision, petitioner preferred revision application before the Commissioner. The Commissioner has considered the submissions advanced on behalf of the petitioner that the respondent No.1 offered to sell the suit flat after adjustment of his dues by way of gratuity. The Commissioner also considered the fact that the original share certificate is in the custody of the petitioner and other documents like ration card, gas connection, telephone bill and bank passbook. In paragraph 6, the Commissioner observed that petitioner did not place on record any document which establishes that he is occupying the suit premises as the owner.

7. In view thereof, I do not find that the authorities below committed any error in allowing the application filed by the respondent No.1 under Section 24 of the Act. As of date, the ownership stands in the name of the respondent No.1. Petitioner has not instituted any proceedings for specific performance of agreement / understanding between the parties. In view thereof, Petition fails and the same is dismissed. In the event of

the petitioner filing Suit for specific performance of agreement / understanding, the observations made in the impugned orders and in this order will not come in the way of the petitioner and the Court seized of that Suit will decide the Suit on the basis of the evidence on record and in accordance with law, uninfluenced by the observations made herein.

8. At this stage, Mr. Mani orally applies for stay of this order for a period of eight weeks from today. He states that the Constituted Attorney of the petitioner, Mr. Siddharth Gupta is present in person. Upon taking instructions from him, Mr. Mani states that the petitioner is in possession and nobody else is in possession and he has neither created third party interest nor parted with the possession. He will hereafter neither create third party interest nor part with the possession. Mr. Mani states that the petitioner will deposit the arrears of compensation within four weeks from today in this Court under intimation in writing to the respondents' Advocate.

9. Having regard to the fact that petitioner desires to challenge this order before the Apex Court, in my opinion, ends of justice would be served by staying operation of this order for a period of eight weeks from today subject to the petitioner and all adult members residing with him giving usual undertaking to this Court within two weeks from today incorporating therein:

(i) that they are in actual possession of the suit premises and nobody else is in possession;

(ii) that they have so far neither created third party interest nor parted with the possession of the suit premises;

(iii) that they will hereafter neither create third party interest nor part with the possession of the suit premises;

(iv) that they will deposit the arrears of compensation in this

Court, within four weeks from today; and

(v) that in case the petitioner is unable to obtain suitable orders within eight weeks from today from the higher Court, he will deliver vacant and peaceful possession of the suit premises to the respondent No.1.

10. In view thereof, notwithstanding dismissal of the Petition, this order shall remain stayed for a period of **8** weeks from today, subject to the petitioner and all adult members residing with him filing undertaking in the aforesaid terms within two weeks from today, with a copy in advance to the other side. In case the petitioner does not file undertaking in the above terms within two weeks and / or arrears of compensation are not deposited in this Court within four weeks from today, the interim order shall stand vacated without further reference to the Court. List the Petition for reporting compliance after three weeks. Order accordingly.

(R. G. KETKAR, J.)

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