

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 11024 OF 2016
WITH
WRIT PETITION NO. 11174 OF 2016**

Mr. Brijendra Tiwari

..Petitioner

Vs

Smt.Penumarti Lakshmi

.. Respondent

Mr.Sandeep S. jinsiwale, Advocate for Petitioner.

Mr.Uday Warunjikar, Advocate for Respondent.

**CORAM : R.G.KETKAR,J.
DATE : 03/10/2016**

PC:

1. Heard Mr. Sandeep Jinsiwale, learned counsel for the petitioner and Mr. Uday Warunjikar, learned counsel for the respondent at length.
2. By these Petitions under Article 227 of the Constitution of India, the petitioner in each of the Petitions has challenged the order dated 27.7.2016 passed by Competent Authority under the Maharashtra Rent Control Act, 1999 for Pune Region, Pune (for short, 'Competent Authority'). By that order, the Competent Authority rejected the applications made by the petitioner for examining witnesses, a list whereof was furnished before the Competent Authority.

3. In support of these Petitions, Mr. Jinsiwale submitted that the witnesses proposed to be examined by the petitioner are working with the petitioner in 'Fun-n-Fun Nursery School'. The petitioner desires to establish that they are running Nursery school in the premises in question. The petitioner has already filed affidavits in examination-in-chief of these witnesses. No prejudice will be caused to the respondent in case they are examined. The petitioner must get an opportunity to establish their case that they are running the nursery school in the suit premises. The respondent will get opportunity to cross examine the witnesses to be examined by the petitioner. He, therefore, submitted that the impugned order requires to be set aside.

4. On the other hand, Mr. Warunjikar supported the impugned order. He submitted that the leave and licence agreement is a registered instrument. It clearly shows that the premises in question are given on licence for residential purpose. In fact, the eviction proceedings are instituted because the petitioner is using the premises for the purpose other than for which it was given on leave and licence. He submitted that in view of explanation (b) to Section 24 of the Act, an agreement of licence in writing is a conclusive evidence of facts stated therein. He, therefore, submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India.

5. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. It is not in dispute that the leave and licence agreement is a registered instrument. Prima facie, perusal of leave and licence shows that the premises in question are given on licence for residential purpose. Explanation (b) of Section 24 reads thus:

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

(1) xx xx xx

(2) xx xx xx

(3) xx xx xx

Explanation- for the purposes of this section -

(a) xx xx xx

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

In view thereof, prima facie, it cannot be said that the premises are given on licence for the purpose other than the residential purpose.

6. It is also not in dispute that the witnesses proposed to be examined by the petitioner are not witnesses to leave and licence agreement. In view thereof, I do not find that the Competent Authority has committed any error in rejecting the applications. In my opinion, the entire attempt of the petitioner is to delay hearing of Section 24 proceedings. On this ground also, no case is made out for invocation of powers under section

227 of the Constitution of India. Petitions fail and the same are dismissed.

7. Mr. Warunjikar submits that the respondent has completed his argument and the next date before the Competent Authority is 6.10.2016. In view thereof, the Competent Authority is requested to decide the eviction proceedings as expeditiously as possible and, in any case, on or before 31.10.2016. Order accordingly.

(R.G.KETKAR, J.)