

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 13345 OF 2016

Mr. K. Satyanarayan	...Petitioner
<i>Versus</i>	
The Estate Officer	...Respondent

....
Mr. Pranil Sonawane, Advocate for the Petitioner.
....

CORAM : R. G. KETKAR, J.

DATE : 2nd DECEMBER, 2016

P.C.

1. Heard Mr. Pranil Sonawane, learned Counsel for the petitioner, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 3.2.2016 passed by the Estate Officer as also the judgment and order dated 30.11.2016 passed by the learned Principal Judge of the Bombay City Civil Court at Bombay in Misc. Appeal No.19 of 2016. By these orders, the petitioner and all persons who may be in occupation of the Service Quarter No.34/1254, Type-III, C.G.S. Colony, S.M. Plot, Mumbai – 400 037 (for short, 'suit premises') or any part thereof is ordered to

vacate within 15 days from the date of publication of the order.

3. In support of this Petition, Mr. Sonawane submitted that the petitioner did not sub-let the suit premises to Shri Sunil Kar. Because of his duties he was required to shift elsewhere and due to fear of theft, he permitted his friend's brother and his family to stay in the suit premises for one month. The petitioner was not charging any amount to Shri Sunil Kar. He further submitted that on 13.5.2014, inspection was allegedly carried out by Inspection Officers R. Appaswamy (U.D.C.) and Raj Kumar Kewat (M.T.S.).

4. Mr. Sonawane invited my attention to the office memorandum dated 8.1.2003, which mandates the inspection to be carried out by Estate Officer. He submitted that basically the inspection carried out by R. Appaswamy (U.D.C.) and Raj Kumar Kewat (M.T.S.) is contrary to the circular dated 8.1.2003. The circular also requires that during the course of inspection, the witnesses are required to be summoned and their signatures are required to be obtained on the inspection report. Even this requirement was not followed while carrying out the inspection. It is on the basis of this inspection report,

show cause notice was issued by the Assistant Estate Manager. He submitted that even the show cause notice was not issued by the authorized officer. Lastly, he submitted that the petitioner is due to retire on 31.1.2017 and therefore the impugned orders may not be executed till that date.

5. I have considered the submissions advanced by Mr.Sonawane. I have also perused the material on record. The Authorities below have considered the inspection report dated 13.5.2014. In particular in column No.14, the occupant Mr. Kar stated that he is staying in this quarter along with his family members for last seven months and that he is paying Rs.7,500/- per month to the petitioner. In column No.16, it is recorded that neither the petitioner nor any of his family members were staying in the suit premises.

6. In pursuance thereof, show cause notice was issued to the petitioner. The petitioner appeared for personal hearing before the Estate Officer. During the course of personal hearing, he admitted that he allowed his friend's brother and his family to stay in the suit premises for one month. He further admitted that Shri Kar was allowed to stay in the suit premises for one

month due to fear of theft. He however stated that he did not know his whereabouts before or after the period. He does not know the present address where Shri Kar has shifted.

7. The authorities below have considered the material on record. Perusal of the order passed by the learned Principal Judge and in particular paragraphs-8 and 10 shows that the learned Judge recorded a categorical finding that Shri Kar was neither a relative nor a close friend and only inference that can be drawn that the premises were let out to said person. In paragraph-9 it was further held that the petitioner was occupying the premises as a licensor and once the license is revoked, he has not right to continue in the premises.

8. Mr. Sonawane submitted that the inspection was carried out contrary to the office memorandum dated 8.1.2003. I do not find any merit in the submission of Mr.Sonawane as it was found that the petitioner and his family were not occupying the suit premises and was occupied by a stranger.

9. For the reasons recorded in paragraphs-8 to 10 of the order dated 30.11.2016, no case is made out for invocation of powers under Article 227 of the Constitution of India. The

authorities below have concurrently found that the petitioner has sub-let the suit premises to a stranger. Hence, the Petition fails and the same is dismissed.

10. At the request of Mr.Sonawane, eviction order shall not be executed till 8.12.2016 subject to the petitioner neither creating third party interest nor parting with the possession and his handing over possession on or before 9.12.2016. List the petition for reporting compliance on 13.12.2016, high on board.

(R. G. KETKAR, J.)

Deshmane (PS)