

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

**WRIT PETITION NO.12880 OF 2015
ALONG WITH
CIVIL APPLICATION STAMP NO.34961 OF 2015
ALONG WITH
CIVIL APPLICATION STAMP NO.34963 OF 2015**

**Ramesh Shriniwas Nikam : Petitioner.
Versus
Yogesh Sudhakar Kamlapurkar : Respondent.**

**Smt. Lata D Dhere for the Petitioner/Applicant
Mr. Vishal Kolekar for the Respondent.**

**CORAM : R. M. SAVANT, J.
DATE : 06th January 2016**

P.C.

1 The prayers in the above Petition are not happily worded, however, reading of the stay application being Civil Application Stamp No.34961 of 2015 indicates that the Petitioner is challenging the order passed by the Competent Authority dated 30/04/2011 passed under Section 24 of the Maharashtra Rent Control Act, 1999, and the order dated 22/06/2015 passed by the Revisional Authority i.e. the Additional Commissioner, Pune Division, Pune under Section 44 of the said Act. Whilst challenging the said orders, the Petitioner also seeks to challenge the order dated 15/09/2015 passed by the Civil Court in Special Civil Suit No.958 of 2009. It seems by the said order dated 15/09/2015 the application for injunction filed in the said suit came to be rejected. How the said challenges can be clubbed together therefore begs

an answer.

2 Since the Petitioner has advanced submissions as regards challenge to the orders passed by the Competent Authority as well as the Revisional Authority in Revision, this Court has proceeded to consider the above Petition in the context of the said challenge.

3 The Respondent herein, who is the Licensor, is the Applicant before the Competent Authority exercising powers under Section 24 of the Maharashtra Rent Control Act, 1999 (for brevity sake hereinafter referred to as “the Rent Act”). A Leave and License Agreement was entered into between the Petitioner and the Respondent on 08/11/2006 and was registered with the Sub-Registrar, Haveli, Dist. Pune at Sr.No.7816 of 2006. The license period was of 33 months commencing from 01/10/2006 and expiring on 30/06/2009. The Respondent filed the application in question being No.41 of 2007 for eviction of the Petitioner on the ground that through the license period has come to an end on 30/06/2009, the Respondent had continued to occupy the premises in spite of a notice to vacate having been addressed to him.

4 The Petitioner filed his reply to the said application being No.41 of 2007 and questioned the said application on multifarious grounds. The said

grounds were inter-alia to the effect that the application is not maintainable as the Respondent was not the landlord of the premises, that the application is hit by the principles of res-judicata, that the application is barred by limitation and that the status of the Defendant is that of a tenant/deemed purchaser after 30/06/2009 and that the Petitioner has filed a Civil Suit being Regular Civil Suit No.258 of 2009 subject matter of which suit is the flat in question.

5 In view of the said stand taken by the Defendant, the Competent Authority framed as many as 9 issues revolving around whether there was a relationship of licensor and licensee etc. The parties led evidence. The Leave and License Agreement which was a registered document was produced on behalf of the applicant and came to be marked as an exhibit. The Petitioner herein admitted the execution of the said Leave and License Agreement and also admitted to its contents. The Competent Authority in view of the law laid down by the Apex Court held that once the Leave and License Agreement is admitted, the contents thereof are also deemed to be admitted and no extraneous material can be considered so as to see the intention of the parties. The Competent Authority therefore recorded a finding that admittedly there was a Leave and License Agreement entered into between the parties which is a registered document and that the relationship of the parties was that of a licensor and licensee. The Competent Authority also negated the ground of res-judicata which was sought to be urged on behalf of the Petitioner on the

ground that the cause for filing the earlier application for eviction was a different cause of action than the cause of action for the instant application as the instant application was filed in April 2010 after the license period had come to an end on 30/06/2009. The Competent Authority also held that the Respondent herein is the landlord and that the Petitioner cannot call in question his title after enjoying the benefits of the agreement for the licensed period. The Competent Authority observed that it did not have jurisdiction to go into the issue of title. The Competent Authority also observed that since the Petitioner has continued to occupy the suit premises though the license period has come to an end on 30/06/2009, the Petitioner was liable to pay the amount for the said occupation which the Competent Authority has fixed by the impugned order. The Competent Authority accordingly by its order dated 30/04/2011 has allowed the said application being No.41 of 2007.

6 The Petitioner aggrieved by the said order dated 30/04/2011, challenged the same by way of a Revision under Section 44 of the Rent Act before the Additional Commissioner, Pune Division, Pune. The Additional Commissioner adverted to the fact that the Competent Authority has framed as many as 9 issues and has by taking into consideration the material on record answered the same against the Petitioner. The Additional Commissioner therefore held that the findings recorded by the Competent Authority were based on the material on record and therefore did not require any interference

in the revisionary jurisdiction. The Additional Commissioner accordingly dismissed the said revision by the impugned order dated 22/06/2015. As indicated above it is the said orders passed by the Competent Authority as well as the Additional Commissioner, which are sought to be taken exception to by way of the above Petition.

7 The learned counsel for the Petitioner Smt. Lata Dhere would contend that the application before the Competent Authority was not maintainable as there is an Agreement for Sale entered into between the parties in respect of the premises in question and therefore there is no more relationship of licensor and licensee. The learned counsel for the Petitioner seeks to draw this Court's attention to the said agreement which is dated 26/04/2007 and which has been executed by Barandur village, Taluka Bhadravati, Dist. Shimoga, Karnataka State. The said submission is the principal contention raised on behalf of the Petitioner to assail the orders passed by the Competent Authority as well as the Additional Commissioner.

8 Per contra, the learned counsel appearing for the Respondent Shri Kolekar would submit that the stand now sought to be taken by the Petitioner was not the stand taken before the authorities below and in fact no reference to the said agreement of the year 2007 was ever made before the authorities below.

9 Having heard the learned counsel for the parties, in my view, there is no merit in the above Petition. It is an undisputed fact that the tenure of the Leave and License Agreement has come to an end on 30/06/2009. On the refusal of the Petitioner to vacate the premises that the application came to be filed by the Respondent herein under Section 24 of the Rent Act. The Competent Authority has on the basis of the material on record held that there is a relationship of licensor and licensee and therefore on the efflux of the license period the licensee was required to vacate the premises and having not done so, the Petitioner is liable to be evicted from the premises and has accordingly allowed the application and directed the eviction of the licensee i.e. the Petitioner herein. The Additional Commissioner, Pune Division, Pune on consideration of the order passed by the Competent Authority did not deem it appropriate to interfere with the said order.

10 In the light of the orders passed by the authorities below, no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed. Since the challenge in the above Petition is restricted by this Court to the orders passed by the Competent Authority and the Additional Commissioner, Pune Division, Pune, it would be open for the Petitioner to challenge the order dated 15/09/2015 passed by the Civil Court in Special Civil Suit No.958 of 2009 by filing appropriate

proceedings. If any such challenge is raised needless to state that the same would be considered on its own merits and in accordance with law.

11 In view of the dismissal of the Petition, the above Civil Application Stamp No.34961 of 2015 as also the Civil Application Stamp No.34963 of 2015, which are not on board today, do not survive and the same to accordingly stand disposed of as such.

[R.M.SAVANT, J]