

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 630 OF 2016
(Rajesh Natthuji Rahate Vs. Rajesh Ramchandra Admane & others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R. S. Kalangiwale, Advocate for the petitioner.
Smt. Neeta Jog, Advocate for respondent No.1.
Smt. T. H. Udeshi, A.G.P. for respondent Nos. 3 & 4.

CORAM : S. B. SHUKRE, J.
DATED : 05 MAY, 2016

Heard.

Respondent No.1 has filed an affidavit-in-reply taking strong exception to the grant of ex-party interim stay to the order dated 10/3/2015 on the ground that the petition is not maintainable, the petitioner being stranger and the revision can also be filed. She further submits that the impugned order has been passed against respondent No.2 and any other occupants and since the petitioner was never party to the rent control case, the petitioner could not have sought for a blanket stay of this order.

According to the learned Counsel for the petitioner, under Section 44 of the Maharashtra Rent Control Act, there is a specific bar on filing of the appeal and, therefore, the petitioner has approached this Court

by filing this writ petition. He also submits that the petitioner's case is that he is in occupation of the premises in question on the basis of the claim that he is the owner thereof by virtue of sale deed executed in his favour by respondent No.2. Therefore, according to him, the objection taken by respondent No.2 is not tenable.

Considering the fact that the issue of ownership and lawful possession are involved in this case, and as informed by the learned Counsel for respondent No.1 as well as learned Counsel for the petitioner, are pending for adjudication in a suit filed by the petitioner as well as respondent No.2 Sanjay Rahate, it will have to be left to be decided appropriately by that Court.

Now, the question would be, whether possession of the petitioner, as claimed by him in this petition, can be protected or not by granting any interim stay or relief in the nature of status-quo? To my mind, for granting such a relief, this Court would have to consider whether the petitioner is really in possession of the premises in question.

On perusal of the documents placed on record, with the assistance of the learned Counsel for the petitioner as well as for respondent No.1, I could not find

any document supporting the contention that the petitioner is in possession of the premises in question. Learned Counsel for the petitioner submits that there is no dispute about the petitioner being in possession and that it has been admitted by respondent No.1. However, learned Counsel for the petitioner could not show any such admission in this case.

Unfortunately, in rent control case also, the non-applicant Sanjay Rahate, who is respondent No.2 in this case and who is brother of the petitioner and from whom the petitioner contends that he has purchased the premises in question, did not choose to file any written statement and that the order dated 10/3/2015 in the said case was passed in ex-parte manner. Therefore, so far as the aspect of possession of the petitioner is concerned, order dated 10/3/2015 also does not help. So, the question would arise as to on what basis the possession of the petitioner could be protected. I think, this question would have to be left to be decided by the learned Additional Commissioner before whom the revision is presently pending. Therefore, the order granting interim protection of possession is vacated and the petitioner is given liberty to appear before the Additional

Commissioner, Nagpur in the pending review petition for obtaining appropriate order in the matter. However, in the interest of justice, it is directed that no coercive steps shall be taken against the petitioner till 20/5/2016 in order to enable the petitioner to seek redressal of his grievances from that forum.

Respondent No.2 in this case has not been served so far. But, it appears to me that respondent No.2 is the brother of the petitioner and the manner in which respondent No.2 has conducted the rent control case filed against him, there is reason to believe that respondent No.2 has deliberately avoided to appear before this Court. In any case, no relief has been claimed against respondent No.2 and all these facts and circumstances would lead me to say that there is no need to issue any notice to respondent No.2 and if any notice has been issued to him, it stands recalled.

In view of the above, the writ petition would have to be disposed of and stands disposed of accordingly. No costs.

JUDGE