

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,**  
**BENCH AT AURANGABAD.**

**WRIT PETITION NO. 3073 OF 1994**

Chatarsingh Amiraksingh Makkad,  
aged 35 years occupation business  
R/o Main road, Shrirampur Dist. Ahmednagar.

**...PETITIONER**

**VERSUS**

- 1) Ramniranjan Girdharilal Karir (DIED)  
Through : Legal representatives:
- 1-A) Rajrani Ramniranjan Karir,  
aged major occupation household  
R/o Tilaknagar, Shrirampur Dist. Ahmednagar
- 1-B) Ajitkumar Ramniranjan Karir,  
aged major occup. business  
R/o State Bank road, Shrirampur
- 1-C) Kaushalkumar Ramniranjan Karir,  
aged major occup. business  
R/o Tilaknagar, Shrirampur Dist. Ahmednagar
- 1-D) Ajitkumar Ramniranjan Karir,  
aged major occup. business,  
Rahuri Factory, shopping Centre,  
Rahuri Dist. Ahmednagar
- 1-E) Mrs. Kishoridevi D. Sahani,  
aged major C/o Mr D.K. Sahani,  
III-B, 151, Hal Township, Ozar, District Nasik
- 1-F) Mrs. Kiran Grover  
C/o Jagjitsingh Grover,  
House No. 441, Anand road, Deolali Camp, Nasik

- 2) Tirathram Shankarsingh Panjabi,  
aged major occup. trader and agriculture  
R/o main road, Shrirampur Dist. Ahmednagar.

**... RESPONDENTS**

Mr Anil H. Kasliwal, Advocate for petitioner.  
Mr Harsh Bajaj, Advocate, holding for Mr A.S. Babaj,  
Advocate for respondents No. 1-C to 1-F.

**CORAM : NITIN W. SAMBRE, J.**

**DATE: 7<sup>th</sup> September 2017**

**ORAL ORDER:**

Petitioner, a tenant suffered order of dispossession of the suit plot in Regular Civil Suit No. 289 of 1984, based on the notice issued by respondent No.1/land owner, pursuant to the provisions of Section 106 of the Transfer of Property Act. Suit came to be decreed by the judgment and order dated March 27, 1987 passed by the Civil Judge (Junior Division), Shrirampur. What was let out to petitioner/tenant was an open plot, on which by carrying out construction, petitioner has started his business.

2. The Regular Civil Appeal being R.C.A. No. 246 of 1987 preferred by the present petitioner/tenant suffered a threat of dismissal, vide judgment and order dated July 11, 1994 passed by the 4<sup>th</sup> Additional District Judge, Ahmednagar. As such, this petition.

3. Heard Shri Kasliwal, learned Counsel for the petitioner/tenant and Shri Harsha Bajaj, learned Counsel, holding for Shri Anil Bajaj, learned Counsel for the respondents.

4. Shri Kasliwal, learned Counsel for the petitioner, would invite attention of this Court to the issues framed by the Trial Court at Exh. 24, particularly, issue No.1 and issue No.3. According to him, the issues, which could be framed adverse to the interest of the present petitioner/tenant, particularly, about willful default and any dues, which the petitioner is liable to pay to the respondent/landlord, are answered in favour of the petitioner. According to him, in such an eventuality, the judgment and decree passed by the learned Court below is not sustainable. In addition, he would urge that presuming that the construction was carried out, still same cannot be a ground for passing a decree of dispossession, unless it is noticed that the act of the present petitioner/tenant is contrary to the provisions of Section 105 & 106 of the Transfer of Property Act, wherein, the Court is required to frame appropriate issue and answer the same by recording finding to that effect.

5. Per contra, learned Counsel for the respondent/land owner, would urge that the suit in question was simplicitor for

possession, filed under the provisions of Section 106 of the Transfer of Property Act. In such an eventuality, mode of service of notice prescribed under section 105 and 106 of the T.P. Act is required to be appreciated. He would then urge that it is an admitted position on record that the petitioner/tenant has carried out construction without prior permission of the respondent/landlord. According to him, petition lacks merit and be dismissed.

6. Having considered the rival submissions, it is required to be noted that the suit in question is simplicitor for possession filed by the landlord under the provisions of the Transfer of Property Act. The landlord accordingly issued notice, which is at Exh. 29, and the issuance of notice seeking possession of the property and receipt of the same is not disputed by the petitioner/tenant.

7. Apart from above, there is sufficient material brought on record by the respondent/landlord, wherein it could be inferred that petitioner/tenant has carried out construction without permission of the landlord on the suit plot, which was given in possession of the petitioner/tenant,

8. Though the judgment of the learned Trial Court is not happily worded to the satisfaction of the parties, however, the

Appellate Court has re-appreciated entire gamut of the matter and has recorded finding against the petitioner/tenant. The lower Appellate Court has re-appreciated entire evidence and engrossed finding recorded by the Trial Court, directing present petitioner to deliver possession to the respondent/landlord.

9. The litigation further depicts pathetic condition of the landlord as original plaintiff is litigating for possession of his own property since 1984, who has expired way back and his legal representatives are pursuing the present matter. One of the legal representatives i.e. respondent No.1-B has expired long back and the petition has already stood dismissed against said co-owner i.e. legal representative of original landlord.

10. In addition to above observations, one more reason for dismissing present petition is that the orders of both the Courts have attained finality against respondent No.1 and the petitioner has not taken any step for restoring the petition against said respondent/landlord.

11. In the wake of above, in my opinion, no illegality could be noticed in the impugned judgment and decree passed by both the

Courts below, apart from the fact that the petition is already dismissed in 2003 against respondent No.1-B/co-owner of the suit property.

12. As such, petition fails and stands dismissed.

**( NITIN W. SAMBRE, J.)**

pjm