

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9960 OF 2017

OMPRAKASH RAJRARAM BASAIYE AND OTHERS
VERSUS
PADMAKAR BABURAO SURALE AND OTHERS

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Advocate for Petitioners : Shri Natu Sharad V.
Advocate for Respondents 1 to 5 : Shri Thole V. I.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 31, 2017

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PER COURT :-

1. The petitioners are aggrieved by the judgment of the appellate Court dated 25.7.2017, by which, Misc. Civil Appeal No.103 of 2017 has been allowed and the impugned injunctory order dated 5.5.2017 under Order XXXIX Rules 1 and 2 of the CPC, passed in RCS No.82 of 2017, has been set aside.

2. Prima facie, it appears that prior to the suit shop / premises being demolished by the Municipal Corporation in a road widening plan, the petitioners were tenants occupying about 200 sq. ft. of the premises on the ground floor. The landlord was occupying the first floor.

3. Contention of the landlord is that had the landlord desired

to demolish the property and erect a new structure, he would have been under an obligation to enter into an agreement / contract with the tenant as provided under the Maharashtra Rent Control Act, 1999. This contract would have been required to be signed only if the landlord either wanted to evict the tenant or to continue him after the new structure is erected. As the suit property is demolished by the Corporation, it is under fortuitous circumstances that the landlord is now erecting a new structure as the entire plot is vacant and the landlord desires to have a new building on the said plot.

4. It is thus obvious at a prima facie stage that the tenant's rights of continuing as a tenant on the ground floor would not be extinguished only because the building has been demolished in a road widening project of the Corporation. In the event the building is permitted to be erected, the right of the tenant to occupy the same area of the property will have to be adjudicated upon.

5. Learned counsel for respondents 1 to 4 / landlords submits that it will have to be first seen and adjudicated upon as to whether the right of the tenant would still exist when the landlord has not demolished the building so as to erect a new

structure in place of the dilapidated structure.

6. Both the learned Advocates now submits on instructions that the above said issue be kept open for the trial Court to decide.

7. Considering the same and in order to balance the equities, I am passing the following order by disposing of this petition:-

(A) The defendants 1 to 4 / landlords will proceed with the construction that is proposed to be erected on the suit premises.

(B) The trial Court shall consider all the contentions of the tenant and his right to occupy the same portion of land / shop, which he was earlier occupying as a tenant.

(C) In the event RCS No.82 of 2017 is not adjudicated upon till the completion of the construction, area admeasuring 200 sq. ft. on the ground floor shall be reserved and shall not be parted with by the landlord until the suit is decided and the claim of the tenant is adjudicated upon. In short, the said portion shall not be sold by the landlords or occupied by anybody and no third party rights shall be created by the landlords till the decision in the suit.

(D) Needless to state, by reserving their rights, the landlord may let out the said area of 200 sq. ft. on the ground floor to the petitioners / tenants in order to avoid loss of earnings by taking into account the prevailing rates of rent / standard rent, during the pendency of the suit.

(RAVINDRA V. GHUGE, J.)

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