

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 119 OF 2017

Rahim Jiwan Maredia	...Petitioner
<i>Versus</i>	
State Of Maharashtra And Anr.	...Respondents

WITH
Writ Petition NO. 120 OF 2017

Mohammed Khalid Laeeque Qureshi	...Petitioner
<i>Versus</i>	
State Of Maharashtra And Anr.	...Respondents

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Mr.Surel S. Shah, Advocate for the Petitioners.
Mr.Sachin Kankal, AGP, for the Respondent-State.
Mr.Girish P. Sonone, Asstt. Ex.Officer is present in Court.

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CORAM : R. G. KETKAR, J.

DATE : 08th MARCH, 2017

P.C.

1. Heard Mr.Surel Shah, learned Counsel for the petitioners and Mr.Sachin Kankal, learned AGP for the respondent-State, at length.

2. Writ Petition No.119/2017 challenges the order dated 13.8.2015 passed by the Competent Authority, Greater Mumbai in Eviction Case No.25018 as also the judgment and order dated 8.12.2016 passed by the learned Principal Judge, City Civil

Court, Greater Bombay (for short, “Appellate Authority”) in Misc. Appeal No.59/2015. By these orders, the authorities below passed eviction order against the petitioner in respect of residential premises bearing FQ-6, Gat No.11, Aarey Milk Colony, Goregaon (E), Mumbai – 400 065 (for short, 'suit premises').

3. Writ Petition No.120/2017 takes exception to the order dated 13.8.2015 passed by the Competent Authority, Greater Mumbai in Eviction Case No.25021 as also the judgment and order dated 8.12.2016 passed by the Appellate Authority in Misc. Appeal No.57/2015. By these orders, the authorities below passed eviction order against the petitioner in respect of residential premises bearing MQ-8, Gat No.2, Aarey Milk Colony, Goregaon (E), Mumbai – 400 065 (for short, 'suit premises'). As common questions of law and facts arise in these petitions, the same can conveniently be disposed of by this common order. In order to appreciate the controversy between the parties, facts from W.P. No.119/2017 are considered.

4. In support of W.P. No.119/2017, Mr. Shah submitted that by order dated 3.4.2010 the petitioner was allotted residential premises bearing FQ No.12 as the petitioner

maintaining 25 animals. On 12.4.2010, fresh allotment was made in favour of the petitioner and residential premises bearing No.FQ-11 and FQ-12 were allotted. On 7.5.2013, show cause notice was issued by the Competent Authority *inter alia* on the ground that (1) the petitioner was allotted residential premises in excess of his entitlement, (2) the premises described in the schedule are in unauthorized occupation of the petitioner, and (3) the petitioner has committed breach of the terms and conditions on which he was permitted to occupy the premises. On 19.6.2013, the petitioner gave reply. In particular in reply the petitioner contended that he was allotted FQ-11 and 12 in Gat No.11. He is not allotted residential premises FQ-6.

5. On 22.11.2013, Chief Executive Officer, Aarey Milk Colony addressed a letter to the petitioner informing him that the petitioner is in arrears of electricity bills in respect of FQ-6 in Gat No.11. He was called upon to hand over possession of FQ-6. On 4.2.2015, the petitioner filed application before the Competent Authority requesting the authority to produce the Government Resolution for allotment of rooms in Aarey milk colony and also for supplying copy to the petitioner. He invited my attention to order dated 31.1.1953 issued by the Milk Commissioner of

Bombay which was signed on 14.2.1953. He submitted that despite application, they did not supply the policy decision of the Government but produced it for the first time before the Competent Authority. He invited my attention to the office order dated 3.4.2010 issued by the Chief Executive Officer, Arey Milk Colony wherein reference is made to the Government Resolution dated 19.8.2004 and letters dated 7.5.2009 of State Government and 19.5.2009 of Deputy Commissioner (Dairies). However, the resolution as also letters were not produced before the authorities below. He submitted that the case made out by the petitioner that he was never allotted FQ-6 was not considered by the authorities below. If FQ-6 is excluded from the consideration then it cannot be said that having regard to the animals in the custody of the petitioner he is allotted excess premises than his entitlement. He, therefore, submitted that the impugned orders deserve to be set aside.

6. On the other hand Mr. Kankal supported the impugned orders. He invited my attention to reply dated 28.12.2012 addressed by the petitioner to the Chief Executive Officer, wherein the petitioner accepted that the residential premises bearing No.FQ-5 and FQ-6 were legally transferred in his name.

Even in reply dated 20.1.2013, the petitioner stated that having regard to the strength of animals, namely, 25, he was allotted FQ-5 and 6. He, therefore, submitted that having regard to the strength of animals, the petitioner was entitled to only one residential premises. However, he was allotted in excess residential premises and, therefore, the authorities below were justified in passing the impugned orders.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Perusal of order dated 14.2.1953 passed by the Milk Commissioner shows that the licensees are entitled to one room for every 20 animals. Between 21-30 animals there would be no extra room in all will be allotted. Clause 3 of that order reads thus :

“3) For every 20 animals the licensees will be entitled to one room. Between 21 and 30 animals there would be no extra room in all will be allotted.”

8. It is not in dispute that the petitioner is a licensee in the premises of the respondent. In view of clause 3 of the order dated 14.2.1953 as also having regard to the strength of animals maintained by the petitioner, namely, 25, he was entitled to

allotment of one residential premises. The Authorities below have concurrently found that the petitioner was allotted residential premises in excess of his entitlement and accordingly passed the impugned orders. In particular the Appellate Authority has considered this aspect in paragraph-6 of the impugned order. Mr.Shah relied upon Section 4 of the Bombay Government Premises (Eviction) Act, 1955 to contend that the petitioner's case does not fall in any of clauses of Section 4. It is not possible to accept this submission. Section 4(1)(a)(iii) and 4(1)(b) read thus :

“4. Power to evict

(1) If the competent authority is satisfied-

(a) that the person authorised to occupy any Government premises, has whether before or after the commencement of this Act-

(i) XXXXXX

(ii) XXXXXX

(iii) otherwise acted in contravention of any of the terms, express or implied, under which he is authorised to occupy such premises, or

(b) that any person is in unauthorised occupation of any Government premises,”

9. Perusal of the extracted portions shows that the eviction order can be ordered by the Competent Authority if it is satisfied that any person is in unauthorized occupation of any Government premises and that he has acted in contravention of

any of the terms, express or implied, under which he is authorized to occupy such premises. In my opinion, as the petitioner was allotted residential premises in excess of his entitlement, his case is squarely covered by Section 4(1)(a)(iii) and 4(1)(b) of the Act. Hence no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence the petitions fail and the same are dismissed.

10. At this stage, Mr. Shah orally applies for stay of this order for a period of eight weeks from today. He states that the petitioners are in possession of their respective premises. They have neither created third party interest nor parted with the possession. They will hereafter neither create third party interest nor part with the possession and will clear the arrears of license fees, if any, and will go on paying license fee hereafter. The petitioners and all adult family members residing in the suit premises will file undertakings to the above effect and also to the effect that in case they are unable to obtain suitable orders from the higher Court within eight weeks, they will hand over vacant and peaceful possession of the premises ordered by the impugned orders. Hence, notwithstanding dismissal of the Petitions, interim protection granted by the authorities below on

11.9.2015 shall remain in force for a period of eight weeks from today subject to the petitioners and all adult family members residing with them filing undertakings within two weeks from today incorporating therein :

- i. That they in possession of their respective premises and nobody else is in possession.
- ii. They have neither created third party interest nor parted with the possession.
- iii. They will hereafter neither create third party interest nor part with the possession and will clear the arrears of license fees, if any, and will go on paying license fee hereafter.
- iv. If they are unable to obtain suitable orders from the higher Court within eight weeks from today, they will hand over vacant and peaceful possession of the respective premises to the respondents.

11. List the petitions for compliance after three weeks.

(R. G. KETKAR, J.)