

Writ Petition NO. 192 OF 2017

Noble Co-operative Diary Society ...Petitioner
Versus
 State Of Maharashtra And Anr. ...Respondents

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

CORAM : R. G. KETKAR, J.

DATE : 08th MARCH, 2017

P.C.

1. Heard Mr.Surel Shah, learned Counsel for the petitioner and Mr.Sachin Kankal, learned A.G.P. for the respondent-State, at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 13.8.2015 passed by the Competent Authority, Greater Mumbai in Eviction Application No.25015 as also judgment and order dated 8.12.2016 passed by the learned Principal Judge, Bombay City Civil Court, Greater Bombay (for short, “Appellate Authority”) in Misc. Appeal No.58/2015. By these orders, the

Authorities below directed the petitioner to vacate the residential premises bearing No.FQ-12, Gat No.12, Aarey Milk Colony, Goregaon (E), Mumbai – 400 065 (for short, 'suit premises').

3. In support of this Petition, Mr. Shah invited my attention to show cause notice dated 1.2.2013 issued by the Chief Executive Officer, Aarey Milk Colony. In this notice, it was stated that the petitioner was allotted residential premises bearing Nos.SQ-2, 3, FQ-3, 4, 5, 6, 7, 12 and carving line No.1 and Administrative block No.1, in all 12 residential premises. By that notice, the petitioner was called upon to surrender the premises bearing FQ-7 and 12. The petitioner replied that notice on 14.2.2013 and pointed out that residential premise bearing number FQ-5 was not allotted to it.

4. Mr. Shah also invited my attention to communication dated 7.1.2015 addressed by Chief Executive Officer, Aarey Milk Colony to the Competent Authority setting out therein that as the petitioner has strength of 140 animals only seven residential premises were to be allotted in accordance with the provisions. However, in fact the petitioner was allotted the premises bearing No.SQ-2 and 3, FQ-3, 4, 6, 7, 12 and MQ-2 i.e. in all eight

residential premises and carving line No.1 and administrative blocks No.1 and 3 (administrative office) and in all three facilities. The administrative blocks fall in the category of facilities and, therefore, they are to be excluded. In view thereof, the request was made to expedite the eviction proceedings for eviction of residential premises FQ-12. He submitted that MQ-2 was not mentioned in the show cause notice issued on 1.2.2013. If MQ-2 is also excluded from the consideration, then the petitioner is in possession of only seven premises which is in conformity with the policy of the respondent and, therefore, the eviction proceedings should not have been initiated against the petitioner. He submitted that as this point was not raised before the authorities below, he will withdraw this Petition and file review petition before the Appellate Authority. He assures that within two weeks from today the petitioner will file review petition before the Appellate Authority. Upon taking instructions, he further states that the petitioner is in possession and he has neither created third party interest nor parted with the possession. The petitioner will hereafter neither create third party interest nor part with the possession and will pay the licence fees as also clear the arrears of licence fees, if

any.

5. In view thereof, petition is disposed of as withdrawn in the following terms:

- i. The petitioner is permitted to file review petition before the Appellate Authority. If such review petition is filed within two weeks from today, it shall not be dismissed on the ground of limitation.
- ii. The petitioner shall neither create third party interest nor part with the possession and will clear the arrears of licence fees, if any and go on regularly paying the licence fee pending the review petition.
- iii. During pendency of the review petition, no precipitative steps shall be taken against the petitioner.
- iv. Appellate Authority is requested to dispose of the review petition as expeditiously as possible and preferably within four weeks from filing of the review petition.
- v. All contentions of the parties on merits are expressly kept open.

(R. G. KETKAR, J.)