

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1689 OF 2016

Shiva Velaydam .Petitioner

Vs.

Mumbai Agricultural Produce Market Committee .Respondents
& anr.

Mr.P.J.Thorat, Advocate, for the Petitioner
Mr.Bagla, Advocate, for the Respondents No.1 & 2

CORAM : R.G.KETKAR, J.

DATE : 16.03.2017

P.C.

. Heard Mr. Thorat, learned counsel for the Petitioner and
Mr. Bagla, learned counsel for the Respondents at length.

2. By this Petition under Article 227 of the constitution of India, the Petitioner, hereinafter referred to as 'Plaintiff' has challenged the Judgment and Order dated 21.09.2015 passed by the learned Jt.C.J.J.D., Vashi, Navi Mumbai below Exh.5 in R.C.S. No.240 of 2015 as also the Judgment and Order dated 28.10.2015 passed by the learned District Judge-8, Thane in M.C.A.No.190 of 2015. By these Orders, the Courts below rejected the Application filed by the Plaintiff for

temporary injunction restraining the Respondents from dispossessing the Plaintiff forcibly or re-entering upon the suit premises i. e. Toilet No.6, Fruit Market, A.P.M.C., Sector-19, Turbhe, Navi Mumbai – 400 703 (For short “suit premises”) in pursuance of public notice, tender notice and threats given on 31.08.2015 at 4.00 p.m., without following due process of law.

3. In support of this Petition, Mr. Thorat submitted that the Plaintiff has instituted suit inter alia for a declaration that public notice dated 26.08.2015 published in daily news paper “Pudhari” and tender notice dated 03.09.2015 published in respect of suit premises is null and void against Plaintiff and for perpetual injunction restraining the Defendants from dispossessing the Plaintiff and/or interfering upon the suit premises. He submitted that right from 1994-95, license was executed in favour of the Plaintiff by the Defendants. He submitted that there are in all 17 toilets in the premises of APMC. The Plaintiff was given suit premises on Leave and License basis right from 1994-95. He submitted that for a period of one and half years from passing the impugned Orders, it was delivered to the Defendants for carrying out renovation work. He submitted that the Plaintiff is in settled possession of the suit premises. Pending the suit, Plaintiff took out the Application

for temporary injunction restraining the Defendants from dispossessing the Plaintiff from the suit premises without following due process of law. By the impugned Orders, the Courts below have rejected the Application made by the Plaintiff. He relied upon the decision of the Apex Court in the case of ***KRISHNA RAM MAHALE (DEAD), BY HIS LRS. Vs. MRS. SHOBHA VENKAT RAO, (1989) 4 SCC 131*** and in particular, paragraph 8 thereof to contend that it is well settled law that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law. He submitted that as the Plaintiff is in settled possession of the property, the Court below ought to have allowed the Application.

4. On the other hand, Mr. Bagla supported the impugned Orders. He submitted that the suit premises was given to the Plaintiff on the basis of Pay and Use. The license period came to an end on 09.09.2015. The Plaintiff requested for extension of period for further period of five years which was not acceded to by the Defendants. He submitted that the Plaintiff is not in a settled possession of the suit premises. The decision in the case of ***KRISHNA (Supra)*** will, therefore, not apply to the present case. He also relied upon the decision

of the Apex Court in the case of *Maria Margarida Sequeria Fernandes and Ors. Vs. Erasmo Jack de Sequeria (Dead) through L.Rs.*, AIR 2012 SC 1727 and in particular, paragraph 101 thereof.

5. I have considered rival submissions advanced by the learned counsel for the parties. I have also perused the material on record. It is not in dispute that the Plaintiff was given suit premises on the basis of Pay and Use. The last license given in favour of the Plaintiff expired on 09.09.2015. In other words, license given to the Plaintiff came to an end on 09.09.2015. Section 52 of the Indian Easement Act, 1882 defines “license” which reads thus :-

“52. **”License”** defined.-Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful and such right does not amount to an easement or an interest in the property, the right is called a license.”

While rejecting the Application, the learned District Judge observed in paragraph 22 that the Plaintiff is not in settled possession of the suit premises. In view thereof, the decision in *KRISHNA (Supra)* will not apply to the facts of the present case. In paragraph 101 of

Maria Margarida (Supra), the Apex Court summarized principles of law regulating grant of injunction. Paragraph 101 reads thus :-

“**101.** Principles of law which emerge in this case are crystallized as under :-

1. No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property.

2. Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.

3. The Courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.

4. The protection of the Court can only be granted or extended to the person who has valid subsisting rent agreement, lease agreement or license agreement in his favour.

5. The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession.”

6. A perusal of Clause 4 extracted hereinabove shows that the Apex Court held that protection of the Court can only be granted or

extended to the person who has valid subsisting rent agreement, lease agreement or **license agreement in his favour**. In the present case, his license has expired on 09.09.2015.

(emphasis supplied)

7. In view thereof, I do not find that the Courts below committed any error while rejecting the Application filed by the Plaintiff for temporary injunction. Hence, Petition fails and same is dismissed. Liberty is granted to the parties to apply for disposal of the suit in a time bound manner. If such Application is made, the learned trial Judge will pass appropriate Orders. Mr. Thorat orally submitted for continuation of interim order for a period of eight weeks from today. Having regard to the fact that the Courts below have rejected the Application for injunction and that the Defendants intend to invite tenders, I do not find request made by Mr. Thorat is reasonable. Hence, oral application is rejected.

(R.G.KETKAR, J.)