IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2443 OF 1994

Mrs. Rani Sevakram, since deceased, Petitioner
by heirs and legal representatives:

1.Mrs. Purna alias Urvashi Suresh Jahangiani ;
2.Ms. Jyotika Suresh Jahangiani;
3.Ms.Ruchika Suresh Jahangiani .. . .

V/S

1. The Oriental Insurance Co. Ltd.
2. U.P.State Handlooms Corporation;
3. S.C.Shah, Estate Officer .. .. Respondents

Mr. E.A.Sasi, Advocate for petitioner.
Mr. V.Y.Sangalikar, Advocate for Respondent No. 1.
Mr. A.R. Pandey, Advocate for Respondent no.2

CORAM : R.G.KETKAR,J.
RESERVED ON: 24/01/2017
DATE : 28th February, 2017.

ORA JUDGMENT:

1. Heard Mr.E.A.Sasi, learned counsel for the petitioner, Mr.V.Y.Sanglikar, learned counsel for respondent no.1 and Mr.A.R.Pandey, learned counsel for respondent no.2 at length.

2. By this petition under Article 227 of the Constitution of India, petitioner-Ms Rani Sevakram,(for short, 'Sevakram',) since deceased through her legal representatives, had challenged the Judgment and order dated 27.10.1993 passed by Estate Officer in Case No. 8A of 1992 as also the Judgment and order dated 29.4.1994 passed by the learned Principal Judge, Bombay City

Civil Court at Bombay (for short, 'Appellate Authority') in Misc. Appeal No. 154 of 1993. By order dated 27.10.1993 respondent no.3 directed Sevakram and respondent no.2, hereinafter referred to as 'Corporation' to pay damages at the rate of Rs. 22,000/- per month with effect from 1.9.1983. Aggrieved by that decision, Sevakram preferred Misc. Appeal No. 154 of 1993. By order dated 29.4.1994, the Appellate Authority dismissed the Appeal and modified the order of the Estate Officer by directing Sevakram to pay a sum of Rs.15000/- per month from 1.9.1983.

3. In support of this petition, Mr.Sasi reiterated the submissions that were advanced in support of Writ Petition No.2442 of 1994. In substance, Mr.Sasi submitted that the Authorities below committed error in holding that Sevakram is an unauthorised occupant. He further submitted that respondent no.1, hereinafter referred to as 'Insurer', has instituted suit against Sevakram under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1949, on the ground of default, namely, R.A.E.Suit no. 1308/3955 of 1985 and the suit is dismissed as withdrawn. He submitted that Insurer has waived notice of termination. In any case, notice of termination dated 19.7.1983 was not served on Sevakram. He further submitted that in the case of Suhas Pophale Vs. Oriental Insurance Company Ltd, (2014) 4 SCC 657, the Apex Court has considered the Guidelines in detail and held that even if the Guidelines are of

advisory nature, Insurer is bound by those Guidelines. He submitted that the impugned orders, therefore, deserve to be set aside.

4. Mr.Sasi further submitted that Writ Petition No.2442 of 1994 instituted by Sevakaram was admitted by this Court on 18.8.1994 by issuing Rule. The operation of the impugned orders was suspended subject to condition of Sevakram paying or depositing a sum of Rs. 15,000/- per month to Insurer. It was made clear that in case there is any default in payment of the amount, stay is deemed to have been vacated without further reference to the Court. Insurer was permitted to withdraw the amounts deposited or to be deposited by Sevakram.

5. Present Writ Petition, i.e. Writ Petition No.2443 of 1994 preferred by Sevakram was admitted by issuing Rule on the same day, i.e. 18.8.1994. As Sevakram was already directed to either pay or deposit Rs. 15,000/- per month to the Insurer, this Court did not issue any direction for payment of rent/mesne profits in this petition.

6. Corporation instituted Writ Petition No.1422 of 1996 challenging the impugned orders. By order dated 6.3.1996, Division Bench of this Court admitted petition by issuing Rule and interim relief in terms of prayer clause (b) was granted on the condition of Corporation depositing in this Court a sum of Rs. 25,000/- per month instead of depositing amount in the court of

Small Causes. Sevakram was permitted to withdraw the amount to be deposited by Corporation.

7. Insurer, thereafter, took out Civil Application No.2388 of 1996 for modification of order dated 6.3.1996 passed in Writ Petition No.1422 of 1996. Legal Representatives of Sevakram took out Civil Application No.3419 of 1997 for modification of order dated 6.3.1996 with a prayer that they may be permitted to withdraw the amount in the place of Sevakram, since deceased. After hearing both sides, by order dated 23.4.1998, this Court modified order dated 6.3.1996. Out of amount of Rs.25000/- deposited in this Court by Corporation, legal Representatives of Sevakram were permitted to withdraw sum of Rs. 15000/- so as enable them to deposit the same in the City Civil Court. The balance amount of Rs. 10,000/- per month was ordered to be invested in a nationalised Bank in fixed deposit for a period of one year and the same shall be renewed for one year each time till disposal of the petition. Civil Applications were accordingly disposed of.

8. Mr. Sanglikar submitted that Writ Petition No.1422 of 1996 was dismissed for non-prosecution on 19.11.2015. The Corporation, therefore, filed Civil Application No.111 of 2016 for restoration by recalling that order. While allowing that application, this Court directed the Corporation to deposit Rs. One lakh in this Court with effect from 1.12.2015. The

Corporation was also directed to clear the arrears within a period of four weeks from the date of the order. The compensation amount was ordered to be deposited each month on or before 10th day of each succeeding month. Mr. Sanglikar submitted that in paragraph 6 of that order, this Court referred to the decisions in (i) Atmaram Properties (P) Ltd Vs. Federal Motors (P) Ltd, (2005) 1 SCC 705 and (ii) State of Maharashtra Vs. Super Max International Private Ltd, (2009) 9 SCC 772. It was also made clear that this determination was not final and both parties were granted opportunity to place adequate material on record which will assist this Court in determining reasonable compensation. Accordingly, time was also granted to the parties to place material on record.

9. Mr.Sanglikar submitted that legal representatives of Sevakram have filed Civil Application No.1109 of 2016 in Writ Petition No.1422 of 1996 seeking permission to withdraw the amount deposited, i.e. one lakh per month, and deposit the amount at the rate of Rs.60,000/- per month in the City Civil Court by retaining Rs.40,000/- per month with effect form 1.12.2015. Civil Application No. 884 of 2016 is preferred by Insurer, inter-alia, praying for directing Corporation to deposit compensation at the rate of Rs. 2,95,230/- or such other sum as this Court deems fit and proper from 1.12.2015.

10. Civil Application No.1109 of 2016 is opposed by Insurer by

filing affidavit of Vivek Shukla, Regional Manager. It is contended that the entire suit premises on the ground floor and mezzanine floor admeasures 1968.2 sq.ft. It has been in exclusive use and occupation of the Corporation. It is also contended that Civil Application is filed by one Gulab Hussain Talukdar, purporting to be Constituted Attorney of legal representatives of Sevakram. Mr. Gulab Talukdar is not related to legal representatives of Sevakram. Perusal of Irrevocable Power of Attorney executed in his favour shows that legal representatives of Sevakram have transferred their rights to Talukdar. Special powers are conferred on him who is allegedly Power of Attorney of legal representatives of Sevakram. Legal representatives of Sevakram are not interested in prosecuting this proceeding. In any case, power of attorney is sham and bogus and, in fact, they have transferred their rights in favour of said Talukdar. Mr.Sanglikar submitted that Sevakram and Corporation are in unauthorized use and occupation of the suit premises and consequently legal representatives cannot be permitted to withdraw Rs.60,000/- for depositing in the City Civil Court, thereby, retaining Rs. 40,000/- every month.

11. Civil Application No.884 of 2016 is opposed by legal representatives of Sevakram by filing affidavit of Gulab H. Talukdar. It is contended that their predecessor-in-interest was in use, occupation and possession of the suit premises much prior

to 1950 onwards as tenant of Insurer and as such they are entitled to have tenancy right transferred in their favour and/or otherwise seek declaration from the Small Causes Court. They are contemplating appropriate proceedings to be initiated in the Small Causes Court. They have also decided to initiate appropriate proceedings before Small Causes Court for fixing standard rent payable by them to Insurer. Prayer is, therefore, made to reject the application and also permitting them to withdraw Rs. One lakh every month and to deposit Rs. 60,000/- per month in the City Civil Court and retaining Rs. 40,000/- per month with effect from 1.12.2015.

12. Mr. Sanglikar also relied upon Rule 8 of the Public Premises (Eviction of Unauthorized Occupation) Rules, 1971 which deals with assessment of damages for unauthorized use and occupation of any public premises.

13. In so far as the contention advanced by Mr.Sanglikar referred herein above is concerned, I have already dealt with these submissions while disposing of Writ Petition No. 2442 of 1994. For the reasons recorded in that order, I do not find any merit in the submission of Mr. Sasi.

14. In so far as the fixation of damages is concerned, as noted earlier, this Court had passed order on 19.1.2016 in Civil Application No.111 of 2016 after hearing all concerned parties. That Civil Application was taken out for recalling order dated

19.11.2015 by which Writ Petition No.1422 of 1996 preferred by Corporation was dismissed for non-prosecution. After referring to the earlier orders, this Court observed that interim order restraining the Insurer from executing the eviction decree can also be restored. However, this will have to be subject to further condition, as Sevakram cannot insist upon continuing in occupation of the suit premises, on the basis of deposit of the compensation at the rate of Rs.25000/- per month only. It was also noted that earlier compensation was determined in the year 1996. Suit premises admeasures about 1700 sq.ft and are used for commercial purposes. They are located opposite to Regal Cinema, Colaba which is a prime commercial area. This Court recorded submissions advanced on behalf of the Insurer that as per ready reckoner, reasonable compensation would be Rs. 5 lakhs per month. This Court directed Corporation to deposit Rs one lakh per month with effect from 1.12.2015 as upto November, 2015 Corporation had deposited compensation at the rate of Rs.25000/- per month. This Court also clarified that said determination is not final and both parties were granted opportunity to produce sufficient material on record which will assist the Court in determining reasonable compensation.

15. In this regard, it is necessary to refer to Rule 8 of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 (for short, 'Rules') which reads thus:

> **8. Assessment of damages.-**In assessing damages of unauthorised use and occupation of any public premises the estate officer shall take into consideration the following matters, namely :-
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> (a) the purpose and the period for which the public premises were in unauthorised occupation;
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> (b) the nature, size and standard of the accommodation available in such premises;
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> (c) the rent that would have been realised if the premises had been let on rent for the period of unauthorised occupation to a private person;
>
> (d) Any damage done to the premises during the period of unauthorised occupation;
>
> (e) Any other matter relevant for the purpose of assessing the damages."

16. Perusal of this Clause shows that while assessing damages, Estate Officer has to take into consideration various factors, such as, purpose and period for which public premises were in unauthrosied use and occupation; the nature, size and standard of accommodation available to the suit premises; rent which would have been realised if the premises were let out on rent for the period of unauthorized occupation to a private person and other relevant matters for the purpose of assessing the damages. It is not in dispute that the authorities below have concurrently found that Sevakram and Corporation are in unauthorised use

and occupation of the suit premises from 1.9.1983. The said building is situate at junction of Wodehouse and Madam Cama Road, opposite Regal Cinema, Mumbai-400005. The suit premises admeasures 1700 sq.ft. Though liberty was granted by this Court to the parties to produce sufficient material for determining reasonable compensation, no material is produced by Sevakram and Corporation. Applying the principles laid down in Atmaram Properties (P) Ltd (supra) and Super Max International Private Ltd, (supra) as also having regard to the nature, size and standard of accommodation, location and use for commercial purposes and fair market rent which Insurer would have realized if the said premises were let out to a private person, in my opinion, damages assessed at Rs.One Lakh per month will be reasonable. This Court has already directed Corporation to deposit Rs. One Lakh per month after taking into consideration various factors In view thereof, I do not find any ground is made out for invocation of powers under Article 227 of the Constitution of India, more so when the authorities below have concurrently recorded a finding that Sevakram is in unauthorized use and. occupation of the suit premises from 1.9.1983. Accordingly, damages are quantified at the rate of Rs. One Lakh per month from 1.12.2015 onwards. As far as Rs. 10,000/- per month deposited in nationalized Bank as per order dated 23.4.1998 is concerned, Insurer is permitted to withdraw that amount together with accrued interest.

17. In the light of this discussion, Petition fails and the same is dismissed. Rule is discharged.

18. Parties including Office to act on the authenticated copy of this order.

(R.G.KETKAR, J.)