

Sequeira

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

WRIT PETITION NO. 5719 OF 1997

Balibai Eknath Koli,
Adult, Occ : Business,
Residing at Koliwada, Uran,
Tal.Uran, Raigad.

.. Petitioner

Vs

1. Anubai Namya Koli,
Adult, Occ. Household.
2. Juran Namya Koli,
since deceased -
 - 2(a) Smt.Marry Zuran Koli,
Age – 65 years,
 - 2(b) Rajesh Zuran Koli,
Age – 40 years,
 - 2(c) Roni Zuran Koli,
Age – 38 years,
 - 2(d) Styone Zuran Koli,
Age – 32 years,
 - 2(e) Rocky Zuran Koli,
Age – 32 years,
 All residing at Koliwada, Uran
Taluka : Uran, Dist : Raigad.
3. Simor Namya Koli -
*W.P stands abated as against
Respondent No.3 as per order
dated 27/4/11.*
4. Haribhau Narayan Gharat,
Residing at Uran, Taluka -
Uran, District Raigad.

.. Respondents

Mr.G.H.Keluskar, for the Petitioner.

Mr.Rohit Joshi a/w Ms.Gauri Godse, for Respondent Nos.2(a) to 2(e).

Coram : N.M.Jamdar, J.
Date : 4 July 2017.

Oral Judgment :

By this petition, the Petitioner has challenged the concurrent judgments and orders passed by the Civil Judge Junior Division, Uran and District Judge, Raigad, Alibag decreeing the suit filed by the Respondent-landlord and dismissing the Appeal filed by the Petitioner.

2. The suit premises is a house consisting of one room bearing house no.470 situated at Uran, District Thane. The Respondent -landlord filed a Regular Civil Suit No.128 of 1989 against the Petitioner and the Respondent No.4, on the ground that Respondent No.4 had illegally sub-let the suit premises to the Petitioner and that Respondent No.4 was a defaulter in payment of rent. Accordingly, the Respondent Nos.1 to 3 landlord sought recovery of possession of the suit premises. The learned Civil Judge held that Respondent No.4 was the tenant of the suit premises and had unlawfully sublet the suit premises to the Petitioner and so also the Respondent No.4 had

committed default in payment of rent. The learned Civil Judge by judgment and decree dated 19 January 1990 decreed the Suit. Appeal No.33 of 1990 filed by the Petitioner in the District Court, Alibag was dismissed on 28 July 1997. Thereafter the present Writ petition is filed.

3. On 3 July 2017, the following order was passed in this petition and the petition is placed on board for hearing today under the caption 'dismissal / disposal' -

'1 The office noting indicates that Respondent no.1 is dead. By the order dated 27th April, 2017, this Court had already observed that the writ petition stands abated as against Respondent no.3. Ms. Godse appears for Respondent nos. 2A to 2E, who are the legal heirs of original Respondent no.2.

2 None appears for the Petitioner, when the petition is called out for final hearing. It appears that the petitioners are not interested to prosecute this petition. However, as a last chance, let the petition be listed under the caption for "disposal"/"dismissal" on 4th July, 2017.'

4. Heard learned counsel for the parties.

5. The Petitioner has challenged the findings of both the Courts that the Petitioner is a sub-tenant and is not entitled to the protection of section 15A of the Bombay Rent Act, 1947. The

learned counsel for the Petitioner reiterated the contention advanced in the courts below and submitted that the Petitioner was a protected tenant and could not have been directed to be evicted.

6. It is a case of the Respondent-landlord that the suit premises was given on rent to Respondent No.4. It is a case of the Petitioner that the Petitioner was a licensee since the year 1968. The Petitioner, in order to succeed, had to demonstrate that he was in possession and was a licensee prior to 1973, which is the relevant year. The burden of proof of this factual aspect was on the Petitioner. The evidence that was produced on record was voters list which indicated the name of the Respondent No.4 in the year 1977. The rent receipts were on record which showed that they were issued to Respondent No.4 till the year 1981. Both the learned Courts therefore, found corroboration in the version of the Respondent-landlord that the control of the premises were handed over to Petitioner in the year 1981. The Petitioner failed to demonstrate by any cogent evidence that he was entitled to protection of section 15A of the Act. Nothing is shown as to how there is any perversity in the reasoning of both the Courts on this aspect.

7. Since the Petitioner, who was not the tenant but was unlawful sub-tenant, the decree was rightly granted. There is no perversity in the finding. No other contention was advanced. It is not necessary to interfere with the concurrent findings of both the

Courts. Consequently the Petition fails and is dismissed. Rule is discharged. No costs.

(N.M.Jamdar, J.)