

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 706 OF 2016

The State of Maharashtra ...Petitioner
Versus
Sharad Suryanakt Kamathe (deceased) through ...Respondents
LRs

Mr YY Dabke, AGP, for the Petitioner-State.
Mr Bhavesh V Magam, for the Respondents.

CORAM: G.S. PATEL, J
DATED: 13th November 2017

PC:-

1. The Application is by the State of Maharashtra through its Deputy Controller of Rationing, Thane. It is directed against an Appellate order dated 25th July 2012 of the Ad-hoc District Judge-2, Thane, allowing an appeal filed by the present Respondents. That appeal was against a judgment and decree of the Joint Civil Judge Senior Division passed on 23rd July 2008 by which the trial Court dismissed the Respondents' suit. The Respondents were the Plaintiffs and the Applicant was the Defendant.

2. The Plaintiffs brought suit for a declaration that the Defendant was a licensee of premises situated at Kamthe house, Maharshi Karve Road, opposite New English School, Naupada, Thane. On this plot,

there exists a building known as Kamthe Flats on ground and two floors. The 1st Plaintiff's husband Suryakant owned the property. He died on 18th January 1989. The State Government's Rationing office was in need of office premises and in 1971 requested Suryakant to give it the ground and first floor including the verandah and gallery on a temporary basis on leave and licence for 33 months. A draft agreement was drawn up and was sent to the Law and Judiciary Department for finalization. The Defendant was put in possession. The agreement never came to the execution and till date there is no such agreement. This went on for some years and in April 1975 the State Government asked for an additional accommodation. Suryakant then gave the Petitioner/Defendant the second floor excluding the terrace. The State Government did not vacate the second floor and the Plaintiff filed Suit No.342 of 1993 which came to be decreed. The State Government appealed but gave an undertaking to vacate the second floor within two years. It did so on 29th April 1999.

3. The present suit was filed in respect of the ground and the first floor saying that the State Government was not paying permitted increases, tax and cess, maintenance or carrying out essential tenantable repairs. Before the Trial Court there was a structural report. The Plaintiff asked the State Government and its rationing office to remove itself. There was also evidence of a municipal notice saying that the building was in dilapidated condition. There is evidence that rent was paid for the ground and first floor till August 2003 but not thereafter. The State Government urged that it was the landlord's obligation to carry out repairs. It also said that it was agreeable to redevelopment provided it got accommodation in the redeveloped building.

4. The Trial Court having dismissed the suit, the Plaintiffs appealed. They were the heirs of the original landlord Suryakant. The Appellate Court framed several points for determination. It held that the Defendant was a tenant, not a licensee, but that the Plaintiffs had shown that they required premises for demolition as ordered by the Thane Municipal Corporation and were therefore entitled to possession.

5. The Appellate Court correctly found that the property is not a government property and the provisions of the Maharashtra Rent Control Act applied. It also correctly held that the Court had the necessary jurisdiction to entertain and try the suit. The principal argument before the Appellate Court was on the question of jurisdiction and I can find no fault with the reasoning of the Appellate Court. This is after all a Civil Revision Application under Section 115 of the Code of Civil Procedure 1908. The Applicant invoking that section must demonstrate either a patent jurisdictional error, material irregularity or perversity. What is urged instead is that the State Government is a “protected” tenant, though it is unclear what it is protected against, or from whom it deserves protection. The State Government urges that it is entitled to alternative premises in accordance with law. This is hardly an argument that can be countenanced from a litigant such as a State Government.

6. There is no merit in the Civil Revision Application. It is dismissed. No order as to costs.

(G. S. PATEL, J.)