

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 7425 OF 2013

Ashok Bhalendra Dadge

...Petitioner

Versus

Sangli Miraj and Kupwad City Municipal
Corporation, Sangli

...Respondent

WITH

Writ Petition NO. 7811 OF 2013

WITH

Writ Petition NO. 7813 OF 2013

....

Mr.Vijay Killedar, Advocate for the Petitioners in all petitions.
Mr. N.V. Walawalkar, Senior Advocate a/w. Piyush Toshnival i/b.
Mr. Aniket U. Nikam, Advocate for the respondent in all petitions.

....

CORAM : R. G. KETKAR, J.

DATE : 08th DECEMBER, 2017

P.C.

1. Heard Mr.Vijay Killedar, learned counsel for the petitioners and Mr.N.V. Walawalkar, learned senior counsel for the respondent, in all the petitions, at length.

2. By these Petitions under Article 227 of the Constitution of India the petitioner in each Petition has

challenged the judgment and order dated 17.7.2013 passed by the learned Ad-hoc District Judge-I, Sangli in Regular Civil Appeals filed by the petitioners challenging the orders (1) dated 10.12.2002 and (2) 27/29.1.2003. By the impugned orders, the learned District Judge has dismissed the appeals.

3. Rule. Mr. Nikam waives service. Having regard to the narrow controversy raised in these petitions as also at the request and by consent of parties, Rule is made returnable forthwith and the Petitions are taken up for final hearing. As the controversy raised in these Petitions is identical, same can conveniently be disposed of by this common order.

4. For appreciating the controversy raised in these Petitions, the facts from W.P. No.7425/2013 are taken into consideration. The petitioner claims that he is a tenant and is in possession of shop No.4 situate in City Survey No.984, Bal Kridodyan Shop, Peth Bhag situate in Sangli (for short, 'suit premises'). The rent that was agreed between the parties was Rs.3,630/- per annum. Demand notice was issued on 31.10.2000 (Exhibit-24) calling upon the petitioner to pay the annual rent for the year 2000-01 of Rs.3630/-. The petitioner

had paid rent upto 31.3.2004 and even thereafter till date.

5. On 1.6.2002, the General Body of the respondent Corporation passed resolution enhancing the rent. Respondent issued demand notice dated 6.7.2002 (Exhibit-25) calling upon the petitioner to pay arrears of Rs.77,778/- upto 31.3.2002 and Rs.29,556/- being the annual rent for the year 2002-03. The petitioner was also informed that if the amount is not paid within 15 days, action under Section 81-B(1) of the Bombay Provincial Municipal Corporations Act, 1949 (for short, 'Act') will be initiated for taking possession.

6. The petitioner gave reply on 8.8.2002 disputing the enhancement of the rent as also expressed willingness to pay annual rent of Rs.3630/-. As the petitioner did not pay the enhanced rent, the Estate Manager of the respondent issued notice on 19.9.2002 (Exhibit 26) calling upon him to make payment of Rs.1,07,334/- within 15 days which included arrears of Rs.77,778/- as on March, 2002 and Rs.29,556/- being annual rent for 2002-03. This was followed by notice dated 30.10.2002 (Exhibit 27) under Sections 81-B and 81-C of the Act. The petitioner was informed that the explanation given by

him on 8.8.2002 was not found satisfactory. He was called upon to attend the hearing before the Deputy Municipal Commissioner on 2.11.2002 at 11:30 a.m. It was made clear that in case the petitioner remains absent, exparte order will be passed.

7. Mr. Killedar submitted that though hearing was fixed on 2.11.2002, no hearing took place on that date. On 14.11.2002 (Exhibit 28), the Estate Manager issued notice under Sections 81-B and 81-C calling upon the petitioner to attend the hearing at 4:30 p.m. on 18.11.2002 before the Deputy Municipal Commissioner. Mr. Killedar submitted that no hearing took place on 18.11.2002. Ultimately notice dated 4.12.2002 (Exhibit 29) was issued under Sections 81-B and 81-C calling upon the petitioner to attend the hearing at 5:00 p.m. on 10.12.2002 before the Deputy Municipal Commissioner. This was followed by notice dated 27/29.1.2003 (Exhibit-30). In the notice it was recited that explanation given by the petitioner was not found satisfactory. Even during the course of hearing, no satisfactory explanation was given. The petitioner was called upon to pay the rent within 30 days as also hand over possession failing which action under Section 81-C will be

taken.

8. Mr. Killedar submitted that on 7.2.2003 the petitioner gave explanation to the Municipal Commissioner *inter alia* setting out therein that the hearing before the Deputy Municipal Commissioner was a mere farce. The petitioner was not given opportunity to file written statement as also documents. The rent demanded from the petitioner was also exorbitant.

9. Mr. Killedar heavily relied upon the provisions contained in Chapter VIII-A. Said chapter is entitled "Power to evict persons from corporation premises." He submitted that Section 81-A(a) defines the expression "Commissioner" for the purpose of Chapter VIII-A which includes Transport Manager of the Transport Undertaking, in the event of any Corporation having established or acquired, or establishing or acquiring, a Transport Undertaking. He submitted that Section 81-B empowers eviction of persons from Corporation premises by the Commissioner. In particular, he relied upon sub-section (2) thereof which requires the Commissioner to follow the procedure of issuing notice calling upon all the concerned persons to show cause why an order of eviction should not be made. The notice

has to specify (a) the grounds on which the order of eviction was proposed and (b) require all persons concerned, that is to say, all persons who are or may be in occupation of or claim interest in, the Corporation premises, to show cause against the proposed order, on or before such date as is specified in the notice. It further provides as under :

“If such person makes an application to the Commissioner for the extension of the period specified in the notice, the Commissioner may grant the same on such terms as to payment and recovery of the amount claimed in the notice, as he deems fit.

Any written statement put in by any person and documents produced, in pursuance of the notice, shall be filed with the record of the case, and such person shall be entitled to appear before the Commissioner by advocate, attorney or other legal practitioner.

The notice to be served under this sub-section shall be served in the manner provided for the service of a notice under sub-section (1); and thereupon, the notice shall be deemed to have been duly given to all persons concerned.”

10. Mr. Killedar submitted that in the present case an opportunity for filing written statement as also documents in support of the petitioner's case during the hearing was not given. In fact the Deputy Municipal Commissioner during the course of hearing on 10.12.2002 had driven away the petitioner.

Hearing was merely a farce and in fact no hearing took place on 10.12.2002.

11. Mr. Killedar further submitted that in any case the hearing has to be conducted by the Municipal Commissioner and such power cannot be delegated to Deputy Municipal Commissioner. In other words, the hearing conducted by Deputy Municipal Commissioner was without any authority of law and is a nullity.

12. Aggrieved by the order dated 10.12.2002 as also notice dated 27/29.1.2003, the petitioner preferred appeal on 1.3.2004 specifically challenging this order and the notice. He invited my attention to the impugned order and submitted that in paragraph-9, the learned District Judge made observations which were really uncalled for. In paragraph-11 the learned District Judge noted that there is finding of the Civil Court that the appellants did not challenge the order dated 10.12.2002. He submitted that said finding is contrary to record as in appeal filed under Section 81-F the petitioner has challenged the order dated 10.12.2002. In fact even point No.1 requires the petitioner to prove that the order dated 10.12.2002 and notice dated

27/29.1.2003 are illegal and liable to be set aside or not. He, therefore, submitted that the impugned order deserves to be set aside.

13. On the other hand, Mr. Walawalkar supported the impugned order. He submitted that the lease of the petitioner expired as far back as on 31.12.1994. The General Body passed a resolution on 1.6.2002 proposing the enhanced annual rent. He submitted that the Corporation has not enhanced the rent in respect of the existing leases. It is only after expiry of the lease period, the Corporation has proposed to enhance the rent. In any case, this cannot be subject matter of proceedings under Section 81-F of the Act. He submitted that hearing took place on 10.12.2002 when the petitioner was present. Contentions raised in the explanation dated 7.2.2003 are an afterthought. He further relied upon the resolution No.140 dated 27.11.1998 passed by the Standing Committee as also the order dated 1.12.1998 passed by the Commissioner of the respondent Corporation delegating the powers under Section 81-B to the Deputy Municipal Commissioner under Section 69 of the Act. In other words he submitted that the Deputy Municipal Commissioner was authorized to conduct the proceedings under

Section 81-B. He, therefore, submitted that no case is made out for interfering with the impugned order.

14. Mr. Walawalkar submitted that the petitioners have not paid the arrears of the enhanced rent. He submitted that if the Court is inclined to remand the matter to the District Court, the petitioners may be directed to clear the arrears of rent which is enhanced. He submitted that if the petitioners commit three defaults, it may be made clear that the respondent will be at liberty to execute the eviction orders. Upon taking telephonic instructions, Mr. Killedar states that the petitioners will clear all the arrears of enhanced rent by paying the same directly to the respondent in ten equal monthly installments commencing from January, 2018.

15. I have considered the rival submissions advanced by the learned Counsel for the parties. I have also perused the material on record. As noted earlier, the Corporation had enhanced the rent in respect of the shop premises. On 6.7.2002, notice was issued to the petitioner calling upon him to make payment of Rs.1,07,334/- within 15 days failing which action under Section 81-B for taking possession will be taken. It is not

in dispute that the petitioner gave reply on 8.8.2002. This was followed by notice dated 19.9.2002 once again calling upon the petitioner to pay Rs.1,07,334/-. As the petitioner did not make payment, the respondent issued notice dated 30.10.2002 calling upon the petitioner to pay Rs.1,07,334/- and at the same time informed him that the extension given by him was not found satisfactory. The petitioner was called upon to attend hearing at 11:30 a.m. on 2.11.2002 before the Deputy Municipal Commissioner. It is not in dispute that no hearing took place on 2.11.2002 as also on 18.11.2002. Thereafter notice was issued on 4.12.2002 calling upon the petitioner to attend hearing at 5:00 p.m. on 10.12.2002 before the Deputy Municipal Commissioner. A perusal of the notice dated 27/29.1.2003 shows that the Deputy Municipal Commissioner recorded that the explanation given by the petitioner to the notice as also explanation given by him during the course of hearing was found to be not satisfactory and the petitioner was called upon to pay arrears of rent within 30 days as also hand over possession.

16. As noted earlier, a perusal of the prayer in the appeal preferred by the petitioner shows that the petitioner has

challenged the order dated 10.12.2002 as also the notice dated 27/29.1.2003 by filing appeal.

17. After perusing the impugned order and more particularly paragraphs-9 and 11, I find that the learned District Judge did not address the real controversy raised between the parties. The moot question before the learned District Judge was whether the order dated 10.12.2002 and the notice dated 27/29.1.2003 are vitiated or not. In paragraph-9, the learned District Judge made general observations. In paragraph-11, the learned District Judge observed that the Civil Court has recorded a finding that the petitioner did not challenge the order dated 10.12.2002. In my opinion, the impugned order is wholly unsustainable. The learned District Judge failed to appreciate that the petitioner has challenged the order dated 10.12.2002 and said order could be challenged only in an appeal under Section 81-F of the Act.

18. The impugned orders are, therefore, set aside and the appeals are restored to the file of learned District Judge for deciding it afresh. All contentions of the parties on merits are expressly kept open. The petitioners shall clear all the arrears of

enhanced rent by paying same directly to the respondent in ten equal monthly installments commencing from January, 2018. If the petitioners commit three defaults, the respondent will be at liberty to execute the eviction order. Since the appeals are of the year 2007, the learned District Judge is requested to decide the appeals within one year from production of the authenticated copy of this order. Rule is made absolute in aforesaid terms with no order as to costs. Petitions are disposed of. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)