

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 1127 OF 2013
WITH
CIVIL APPLICATION NO. 1489 OF 2015

Municipal Corporation for Greater
Mumbai .. Appellants
vs.
MPH Naka Octroi Agents Association .. Respondents

Mr. J. Reis, Senior Advocate a/w. Ms Madhuri M. More for the
Appellants-BMC.

CORAM : M. S. SONAK, J.
DATE : 12 JANUARY 2017.

P.C. :-

1] By order dated 11 October 2013, it was made clear that this appeal will be disposed of finally, at the stage of admission.

2] Mr. Reis, learned senior advocate alongwith Ms M.M. More, learned counsel appear for the appellants. None for the respondents though served.

3] The challenge in this appeal is to the order dated 23 July 2013, by which, learned City Civil Judge, Mumbai (Trial Court) has restrained the appellants from executing its notice dated 27 June 2013 issued under section 105B of the Mumbai Municipal Corporation Act, 1888 (MMC Act).

4] Mr. Reis, learned senior advocate submits that the respondent, which is an Association of Naka Octroi Agents were merely permitted to set up and use about 45 cabins at the Octroi Naka in

their capacity as Naka Octroi Collection Agents. Mr. Reis submits that the letter of allotment dated 29 April 1998 is very clear that the administrative control over such cabins shall always remain with the appellants Corporation and the Association will not establish any legal claim whatsoever to the structures, which are in the form of cabins basically to facilitate the collection of Naka Octroi. The letter of allotment, in terms, states that the status of the Association will be that of “caretaker” and nothing further. Mr. Reis relies upon the decision of the Hon’ble Supreme Court *Maria Margarida Sequeira Fernandes and ors. vs. Erasmo Jack De Sequeira (dead) through Lrs. - (2012) 5 SCC 370* to submit that a caretaker holds the property only for and on behalf of the principal and therefore, such a caretaker, cannot claim any independent possession as of right. He points out that the earlier suit instituted by the Association was decreed only to the extent that the action if any, was directed to be taken by following the due process of law. On this occasion, the Municipal Corporation of Greater Mumbai (MCGM) has adopted due process of law and therefore, there was no case made out for grant of any interim protection. Mr. Reis, without prejudice, submits that no conditions have been imposed upon the respondents in the matter of payment for the use of cabins and as a result, the Association and its members continue to make use of the cabins without effecting any payments. Mr. Reis submits that this is also another reason which warrants interference with the impugned order.

4] As noted earlier, the respondent though served, is not represented by any one. The record indicates that the advocate has

filed appearance on behalf of the respondent. However, such advocate is not present today, when the matter is taken up for final disposal. The matter has been on the cause list for some time now. Accordingly, it is not possible to adjourn the matter any further.

5] The suit premises in this case are some 45 cabins, which, the respondent Association was permitted to put up in order to facilitate the Naka Agents Collecting Octroi. The letter of allotment dated 29 April 1998 states that the cabins shall be clearly temporary structures having dimensions of 5' x 7' each as per the plan approved by the Municipal Architect. Certain terms and conditions have been set out in the letter of allotment. It is clarified that the strip of land will be allotted to the Association purely on temporary basis, upon which they can put up cabins. The allotment contemplates payment of reasonable occupancy charges to the Corporation every month as determined by W.O. (Estate). The MCGM has to exercise administrative control over an individual office or agents. The letter of allotment, in terms, set out that the Association will act as caretaker and will enter into agreement with the MCGM. There is a condition that the Association will not establish any legal claim whatsoever to the structures which can be demolished by the MCGM as and when required. Further the Association is not even claim any compensation in such an eventuality.

6] Although, the occupancy charges have not been specified, there is material on record in the form of letter dated 15 April 2013 addressed by the respondents Association to the MCGM indicating

that the Association has paid a sum of Rs.72,63,250/- from 10 January 2002 till 13 March 2013.

7] In the plaint, there is reference to certain demands made by the MCGM towards the occupancy charges. In paragraph 10, there is reference to demand dated 6 August 2001 in respect of outstanding amount of RS.50,89,560/- The plaint also states that such demand is excessive and without prejudice, the plaintiffs have deposited a sum of Rs.25 lakhs or thereabouts there is also reference to deposit of further sum of Rs.20 lakhs.

8] Be that as it may, it is quite clear that from the the date of impugned order, i.e., 23 July 2013, the respondent Association has not paid any amounts towards occupancy charges to the appellants MCGM. Such amount, according to learned counsel for MCGM, as of 31 March 2017 would come to Rs.54,26,763/-. This is on the basis that the monthly compensation is Rs.46,178/-

9] From the letter of allotment, at least *prima facie*, it does appear that the status of the Association is that of a caretaker in respect of the cabins. In any case, the Association is an Association of Agents appointed by the MCGM to collect Octori. In lieu of such privilege, the agents not only earn commission but further were provided this facility to setting up cabins, wherefrom they were permitted to undertake certain activities, which could supplement their income. There is, at least, *prima facie* no material on record, which would elevate the status of such agents to either tenants or occupants having some right to retain their occupation.

10] In *Maria Margarida Sequeira Fernandes (supra)*, the Hon'ble Supreme Court has emphasised upon the duty to set out with clarity the nature of the legal right claimed in the pleadings. At paragraph 97, the Hon'ble Supreme Court has laid down principles of law when the relief is claimed on basis of title or possession. Therein, it is clarified that the 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. Further, 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. The protection of the court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or licence agreement in his favour. 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.

11] The impugned order has not adverted to aforesaid principles. The impugned order has basically considered the aspect of user from the year 1998 and further circumstance that hardly 24 hours notice was served upon the respondents to hand over the vacant possession of the cabins. Be that as it may, even if some protection was required to be granted to the respondent and its members, such protection could not have been unconditional. On basis of such protection the respondent or their members cannot be permitted to occupy the cabins in question without effecting any payments to the MCGM. Although, the impugned order is vulnerable, taking into

consideration the circumstance that the interim order has been in operation since July 2013 and the members of the respondent Association have been in occupation since the year 1998 or thereabouts, at this stage, it will not be appropriate to directly vacate the interim reliefs and thereby, render the respondent's suit virtually infructuous. However, the respondents are liable to be put to the terms in case, they wish to continue with their occupation of the cabins in question during pendency of the suit. Further, this is the fit case where the suit itself deserves to be disposed of as expeditiously as possible and in any case on or before 31 December 2017.

12] This appeal is accordingly, disposed of with the following order:

(a) The impugned order is modified. The interim relief granted by the impugned order shall be subject to the respondent Association paying to the Corporation an amount of Rs.54,26,763/- towards arrears/occupation charges up to 31 March 2017. Such amount to be deposited on or before 31 March 2017 with the MCGM;

(b) In addition to the aforesaid, the respondents Association to pay the MCGM an amount of Rs.46,178/- per month on or before 5th day of each month to the MCGM toward occupation of the cabins in question. The first such payment to be made on or before 5 April 2017;

c) In case of any breach in complying with the condition of payment as aforesaid, the protection granted by the impugned order shall stand vacated. The MCGM, in such a situation, shall be entitled to proceed with the execution of the notice, which is impugned in the suit;

d] The respondent Association and all persons claiming through or under the Association are also restrained from parting with possession of the cabins in question or attempting to create any rights or third party rights therein;

e] The Trial Court is directed to dispose of the suit as expeditiously as possible and in any case on or before 31 December 2017;

f] All contentions of all parties are kept open for determination by the Trial Court on merits;

g] The MCGM to intimate the respondent Association of the making of this order within a period of 15 days from today. Further, the authenticated copy of this order is directed to be furnished to the respondent Association by the MCGM. A copy of the same is also to be filed before the learned Trial Court taking up the suit.

h] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)