

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

WRIT PETITION NO.11292 OF 2017

Smt.Shubhangi Bejamin Prabhune

..Petitioner

V/s.

Additional Commissioner Kokan

Division at Mumbai & Ors.

..Respondents

Ms.Snehal R. Modi for the Petitioner.

Mr.S.D. Rayrikar, AGP for Respondent No.1-State.

Mr.Amrut Joshi a/w Mr.Nikhil Mishra for Respondent Nos.2 to 6.

CORAM : M. S. SONAK, J.

DATE : 09th OCTOBER 2017

P.C.

1. Not on board. Upon production, taken on board.
2. Heard learned counsel for the parties. Mr.Joshi undertakes to file Vakaltnama on behalf of respondent Nos.2 to 6 within a period of one week from today. He states that he has authority to appear on behalf of respondent Nos.2 to 6 and the some of the respondents are present in the Court.
3. The challenge in this petition is to the orders dated 05th

January 2010 and 03rd August 2017 made by the Competent Authority and the Appellate Authority respectively ordering the eviction of the petitioner from the suit premises in exercise of powers conferred upon them by Section 24 of the Maharashtra Rent Control Act, 1999.

4. Ms.Modi, the learned counsel for the petitioner submits that in this case, the so called leave and license agreement bears signature of a person who was admittedly not a trustee of the respondent trust. Further, in this case all the trustees i.e. total 9 in number were never parties to this proceeding, since, proceedings were initiated and prosecuted by only 6 out of the 9 trustees. She points out that there is no proper resolution authorizing the trustees. Even the so called leave and license agreement was not properly stamped and the respondent's husband was forced to sign leave and license agreement. Ms.Modi points out that the petitioner's case that her husband and after the husband she was a tenant of the suit property has not been considered, Ms.Modi points out that R.A.D. Suit No.201 of 2011 seeking declaration as to tenancy is already instituted by petitioner and same is pending. For all these reasons, she submits that the impugned orders which suffer from jurisdictional errors may be set aside.

5. Mr.Amrut Joshi, the learned counsel for the respondent points out that all the technical objections raised by the petitioner have been duly considered and answered by the two Courts. He points out that jurisdiction of the Competent Authority under Section 24 is quite limited. He points out that the petitioner's husband, an employee, was given the suit premises as service quarter. The petitioner's husband retired from employment in the year 1999 and the petitioner, without any authority of law has retained the suit premises for all these years. He points out there is absolutely no jurisdictional error in the impugned orders, and therefore, this Court may not interfere with the impugned orders in the exercise of jurisdiction of under Article 227 of the constitution of India.

6. Having heard the learned counsel for the parties and perused the material on record, there is no case made out to interfere with the impugned orders. As urged by Mr.Joshi the objection now raised, which are, in any case, hyper technical in nature, have been duly considered by the two Courts. There is no jurisdictional error in the impugned orders so as to warrant interference under Article 227 of the Constitution of India.

7. In this case, the record, indicates that the petitioner's husband Benjamin Prabhune was allotted the suit premises as services quarter, while he was in service. He retired on 30.04.1999. Thereafter, in 2004 leave and license agreement was entered into between the parties. The petitioner, has not disputed a signature on the agreement though, contention is that such signatures were obtained on blank papers and by practicing fraud. Taking into consideration the parameters of the jurisdiction under Section 24 of the Maharashtra Rent Control Act, 1999, it cannot be said that there is any jurisdictional error on the part of the authorities or that the authorities have acted perversely or unreasonable in the matter. The objection raised by the petitioner, really, do not go to the root of the matter or relate to the substance of the matter. In such circumstances, it is not possible to interfere with the impugned order under Article 227 of the Constitution of India.

8. The learned counsel for the respondents however conceded that the findings of the impugned orders need not come in the way of deciding the petitioner's R.A.D. Suit No.201 of 2011 which are substantive proceedings. Accordingly, it is clarified that nothing in the impugned orders or for that matter none of the observations in the present order as well need come in the way of

the petitioner in RED Suit No.201 of 2011. The said suit is decided on its own merits and in accordance with law. However, merely because the suit is pending, there is no reason to interfere with the impugned orders. If the petitioner, succeeds in this suit, it is always open to the petitioner to apply for appropriate reliefs including restitution.

9. This petition is accordingly dismissed. There shall be no order as to costs.

10. At this stage, the learned counsel for the petitioner, points out that the grand daughter of the petitioner is studying and will have to answer examination some time in March-April 2018. On this basis, she submits that the petitioner may be given time period upto 31st May 2018 to vacating the suit premises. She submits that the petitioner will file usual undertaking in this Court within a period of four weeks from today and further, continue to pay compensation at the rate of Rs.3,000/- per month. She states that on or before 31st May 2018, the petitioner, will positively hand over the vacant and peaceful possession of the suit premises to the respondent.

11. After some initial reluctance, Mr.Amrut Joshi, the learned counsel for the respondent Nos.2 to 6, on the basis of the instructions from some of the respondents, who are present in the Court, agrees that time upto 31st May 2018 may be granted, subject to aforesaid conditions.

12. Accordingly, although, the present petition is dismissed, the respondent-decree holder shall not execute the eviction decree until 31st May 2018 subject to the following :-

(a) The petitioners and their family members filing the usual undertaking in this Court within a period of four weeks from today, after furnish of copy of the same to the advocate for respondent Nos.2 to 6;

(b) If no such undertaking is filed within a period of four weeks from today, the respondent Nos.2 to 6 shall be at liberty to execute the eviction decrees upon expiry of period of four weeks from today;

(c) The petitioner shall continue to pay compensation at the rate of Rs.3,000/- per month until 31.05.2018.

13. The petition is disposed of in the aforesaid terms.

(M. S. SONAK, J.)