

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Civil Application NO. 1687 OF 2010**IN****Writ Petition NO. 1748 OF 1992**

Shri.Kohiyar T. Satarawala, since deceased through his
heirs & L.Rs. 1)Shiraz Kohiyar Satarawala & Ors.

...Applicants

*Versus**(Orig. Respondents)*

Shri.Khurshed Nadirshah Satarawala since deceased
by his residuary Legatee Mrs.Bapsy N.Lawyer (since
deceased) M/s.Jwel Buildcon Pvt.Ltd. & Ors.

...Respondents

Ms.S.M.Dandekar, for the Applicants.

*Mrs.Neha Bhide with Mr.Yogesh Pendse and Ms.Shilpa Madki, for the
Respondents*

Mr.P.K.Satpalkar i/b. Mulla & Mulla & CB&C, for Respondent nos.3 to 6.

CORAM : G.S. KULKARNI, J.**DATED : 14th JULY, 2017**

P.C. :

1. This civil application has been filed by the applicants (defendants)/original respondents to the petition. The prayer in the civil application is that the applicant be permitted to place on record certain additional documents which are annexed as 'Exhibit I' to 'Exhibit VIII' to this civil application, to be considered in the adjudication of the above writ petition so as to permit the applicants to rely on these documents as

additional evidence. These documents interalia are the property card of the suit premises, a copy of the lease deed, deed of assignment cum conveyance deed dated 26 March 2002 between Mrs.Bapsy Naval Lawyer (the executor of the last will of original petitioner/respondent no.1 herein) and Jewel Buildcon Pvt. Ltd. (the present petitioners) and the order passed by this Court in Criminal Writ Petition No.2496 of 2006 filed by the applicant no.1 herein.

2. In support of the civil application, the principal contention of the applicants is that Mrs.Bapsy N.Lawyer (successor in interest of the original plaintiff) who entered into an agreement/conveyance with the present petitioner M/s.Jewel Buildcon Pvt. Ltd. did not possess any legal right to convey the interest of the original plaintiff-Khurshed Nadirshah Satarawala. This for the reason that the land in question on which the suit property is situated belonged to the State Government and the lease which was granted by the State Government in favour of Khurshed Nadirshah Satarawala (original plaintiff), had expired as far as back in the year 1972. The contention is that in this regard the applicants have taken recourse to proceedings even before the criminal court, as also before the revenue authorities asserting that Mrs.Bapsy N. Lawyer could not have legally entered into a deed of assignment/conveyance with the present

petitioner-M/s.Jwel Buildcon Pvt. Ltd. Thus, according to the applicants, the documents which highlight this position is the additional evidence, necessary for adjudication of the petition. It is submitted that the respondent on this count is entitled to non-suit the petitioners in the present proceedings.

3. Mrs.Bhide,learned Counsel for respondent no.1 in the application (the original petitioner) has opposed this application. Mrs.Bhide relies on the reply affidavit filed on behalf of respondent no.1 in opposing the civil application. The first objection of Mrs.Bhide is in regard to the delay of about eight years in the applicants filing this application. She submits that the issues which are raised in the application are completely irrelevant to the issues with which the present writ petition concerns, the scope of which is limited in regard to the adjudication on the legality of the orders which are passed by the Civil Court and the appellate court, on the proceedings initiated by respondent no.1 seeking eviction of the applicants on the ground of arrears of rent, a cause purely arising under the provisions of the Bombay Rent Act,1947. Mrs.Bhide submits that the present application is nothing but an attempt of the applicant to deviate from the main proceedings. Mrs.Bhide would contend that the submission of the applicants also cannot be accepted

inasmuch as the dispute in the present proceedings pertains to the 'structure' which was let out to the applicant by Shri.Khurshed Nadirshah Satarawala (plaintiff) and not the land as no material has been pointed out before the Courts below on such issue. It is submitted that if the contention of the applicant is accepted then it is nothing short of calling upon the Court to record a finding of fact when the court is exercising jurisdiction under Article 227 of the Constitution which is wholly impermissible. She would therefore submit that the application deserves to be dismissed.

4. Having considered the rival submissions, I am of the clear opinion that that the prayer as made in the application, in the facts of the case, cannot be accepted. Mrs.Bhide, learned Counsel for respondent no.1 would be right in her contention that the documents as sought to be placed on record by the applicant are completely non-germane to the adjudication of the dispute in the present proceedings, and thus cannot be considered by this Court. By these documents the applicants want to raise an issue that the government lease in favour of the original plaintiff had expired in the year 1972 and thus the plaintiff had ceased to have any rights to institute the proceedings. Such a plea in any case was not raised before the courts below apart from the fact that it is not relevant for

adjudication of this petition which concerns the structure (suit premises) which was also the applicants case. In any event as pointed out by Ms.Dandekar, learned counsel for the applicant the issue of lease of the land by the Government is subject matter of diverse proceedings adopted at the hands of the applicant.

5. Apart from what is held above, the court in the present proceedings also cannot record a finding of fact on any of these documents as the proceedings are surely not the original proceedings. The scope of adjudication in this petition is only to consider the legality of the decisions of the courts below which arise from the eviction suit filed by the plaintiff's -respondent no.1 herein.

6. In the circumstances, the application is devoid of any merit and is required to be rejected. It is accordingly rejected. No costs.

(G.S.KULKARNI, J.)