

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.2863 OF 2016
IN
WRIT PETITION NO.2375 OF 2000

Sujit Himat Mutha

... Applicant

In the matter between

Magazine Bungalow Bhadekaru Malki

Sahakari Graha Nirman Sanstha Maryadit and another ... Petitioners

Vs.

The Collector, Satara and others

... Respondents

Mr. V. P. Sawant i/b. Mr. Dhananjay Rananaware for Applicant.

Ms Varsha Palav for Opponents No.1 and 2 (original petitioners in Writ Petition No.2375 of 2000).

Ms Vaishali Nimbalkar, AGP for Respondents No.1 to 4 in W.P.No.2375 of 2000.

CORAM : R. G. KETKAR, J.

DATE : APRIL 13, 2017

P.C. :

Heard Mr. Sawant, learned Counsel for the applicant, Ms Palav, learned Counsel for opponents No.1 and 2 (original petitioners in Writ Petition No.2375 of 2000) and Ms Nimbalkar, learned AGP for respondents No.1 to 4-State in Petition No.2375 of 2000 at length.

2. This application is filed by respondent No.5(b) in Writ Petition No.2375 of 2000 seeking permission of this Court to execute the leave and licence agreement with the HDFC Bank Limited, Satara Branch in respect of area admeasuring approximately 2200 sq.ft. on the ground floor and approximately 1300 sq.ft. on the first floor of the building constructed on plots No.37, 38, 39, 40, 41 in C.T.S. No.495, Sadar Bazar, Satara respectively. Parties shall hereinafter be referred to as per their status in the Petition.

3. In support of this application, Mr Sawant submitted that the grandfather of respondent No.5(b) had purchased C.T.S.No.495 in all admeasuring 6 Acres 36 Gunthas in public auction conducted in the year 1934. Out of 6 Acres 36 Gunthas, land admeasuring 4 Acres 26 Gunthas is agricultural land and land 1 Acre 28 Gunthas is non-agricultural land. He submitted that petitioners are located in 1 Acre 28 Gunthas, which is a non-agricultural land. He has tendered photocopy of the map, which is taken on record and marked 'X' for identification. He submitted that 4 Acres, 26 Gunthas agricultural land is shown in blue colour and 1 Acre 28 Gunthas non-agricultural land is shown in amber colour whether the petitioners are located. He submitted that area admeasuring 17,800 sq.ft. is shown in yellow colour. He has invited my attention to order dated 02.09.2016 passed by this Court (Coram: K. K. Tated, J.) in Civil Application No.190 of 2016, and in particular paragraphs 3 and 4(a) to 4(c). He submitted that the Court has accepted the undertaking dated 02.09.2016 given by respondent No.5(b). In particular, in paragraph 4 of the undertaking, respondent No.5(b) undertook that he will not sell or dispose of the property and will execute only necessary agreements and deeds with banks as necessary with a further undertaking that loan, mortgage, etc. with bank will solely be his responsibility and any outgoings to the bank in that regard will be his sole responsibility. Respondent No.5(b) further undertook that if the final judgment and order in Writ Petition No.2375 of 2000 goes against him, the loan raised will be repaid by him independently within a period of six months thereafter. He submits that presently respondent No.5(b) will execute leave and licence agreement in favour of HDFC Bank, Satara for a period of 5 years and appropriate order may be passed that the leave and licence agreement shall be subject to the outcome of the Petition.

4. Ms Palav submitted that basically the land bearing C.T.S. No.495 is given subject to imposing condition of impartability . In other words, respondent No.5(b) cannot part with possession of the suit property without obtaining necessary permission in accordance with law. She submitted that if the Court is inclined to permit respondent No.5(b) to execute the leave and licence, it may be expressly made clear that it would be subject to the further orders that may be passed in the main Petition.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. By this application, respondent No.5(b) has prayed for permission to execute leave and licence agreement with HDFC Bank Limited, Satara Branch in terms of prayer clause (b). The expression “license” is defined under Section 52 of the Indian Easements Act, 1882 and the same reads thus,

“52. **License.**- Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful and such right does not amount to an easement or an interest in the property, the right is called a license.”

6. A perusal of the above definition clearly shows that the licensee does not get any interest in the property. In view thereof, by executing leave and licence agreement, licensee cannot claim that it has got right, title and interest in the premises so demised. In view thereof, Civil Application is allowed in terms of prayer clause (b) subject to condition that licensee shall abide by the final outcome of the Petition and will not claim equity in that regard. Civil Application is disposed of accordingly.

(R. G. KETKAR, J.)