

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.14057 OF 2016

Dr. Ramesh Ramchandra Rane ... Petitioner
Vs.
The Municipal Commissioner, M.C.G.M. and others ... Respondents

Mr. S. G. Deshmukh i/b. Mr. Rajesh P. Dumbre for Petitioner.
Ms Oorja Dhond for Respondents - BMC.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 31, 2017

P.C. :

Heard Mr. Deshmukh, learned Counsel for petitioner and
Ms Dhond, learned Counsel for respondents at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 17.10.2016 passed by the learned Principal Judge, Greater Bombay in Miscellaneous Appeal No.29 of 2016 as also order dated 12.01.2016 passed by the inquiry officer of the respondents Municipal Corporation. By these orders, petitioner is directed to vacate room No.306, 'B' Wing, Royal Garden, Love Grove Pumping Station, Opp. Poonam Chamber, Dr. Annie Besant Road, Worli, Mumbai 400 018 (for short 'suit premises').

3. In support of this Petition, Mr. Deshmukh submitted that by order dated 29.09.2005, petitioner was compulsorily retired after attaining the age of 55 years with effect from 01.01.2006. He had challenged that order by instituting Writ Petition No.165 of 2009 and the same is pending. During the pendency of that Petition, Corporation issued notice calling upon the petitioner to vacate the suit premises. He

instituted Writ Petition No.607 of 2014 challenging that notice. Petitioner withdrew that Petition with liberty to challenge order passed by the inquiry officer in proceedings under Section 105-F of the Mumbai Municipal Corporation Act, 1888. By the impugned order, the learned Principal Judge has dismissed the appeal.

2. Mr. Deshmukh invited my attention to the order dated 06.06.2000 passed by this Court in Writ Petition (L) No.1122 of 2000 as also the information received under the Right to Information Act, 2005, and in particular names of employees of Corporation, who are accommodated after their retirement. Mr. Deshmukh submitted that several employees, though have retired, have been accommodated by the Corporation. He submitted that the petitioner has challenged the order of compulsory retirement, and therefore, his accommodation should be protected. As the Petition (L) No.1122 of 2000 is pending and in view of the order dated 06.06.2000 passed in that Petition, respondents should be directed to induct the petitioner in the suit premises. Even if he ultimately succeeds in his challenge to the order compulsorily retiring him, he will not get back the suit premises.

3. On the other hand, Ms Dhond supported the impugned order. She invited my attention to paragraph 9 of the impugned order wherein the learned trial Judge has considered clause 6 of the leave and licence agreement dated 14.08.2000.

4. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, by order dated 29.09.2005, petitioner was compulsorily retired after attaining the age of 55 years with effect from 01.01.2006. He has instituted Writ Petition No.165 of 2009. It is not in

dispute that no interim orders are passed in that Petition and the same is pending. Corporation thereafter issued notice of eviction to the petitioner, which was challenged by him by filing Writ Petition No.607 of 2014. That Petition was allowed to be withdrawn with liberty to challenge the order of the inquiry officer. In paragraph 9 of the impugned order, the learned Principal Judge has referred to leave and licence agreement dated 14.08.2000 whereunder the suit premises was allotted to the petitioner. Clause 6 reads thus,

“The license shall terminate on my leaving or retiring from Municipal service or on my being discharged or dismissed from Municipal Service.”

5. In view of this clause, I do not find that the authorities below committed any error in passing order of eviction against the petitioner. Though Mr. Deshmukh relied upon the instances wherein employees who have retired are accommodated by the respondents, he was not in a position to show any person who was also compulsorily retired like the petitioner. In any case, in the order dated 20.12.2016, statement made on behalf of the petitioner that possession was already taken on 15.12.2016 was recorded. For all these reasons, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed. Needless to observe that in case petitioner succeeds in his challenge to the order of compulsory retirement, he will be entitled to all the benefits flowing therefrom.

(R. G. KETKAR, J.)