

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

RA/227/2017 IN WP/7730/2015 WITH
REVIEW APPLICATION (CIVIL) NO. 225 OF 2017
IN WP/7730/2015 WITH RA/226/2017 IN
WP/7730/2015 WITH CA/13926/2017 IN RA/227/2017
WITH CA/13927/2017 IN RA/227/2017 WITH
CA/13928/2017 IN RA/227/2017 WITH CA/13929/2017
IN RA/225/2017 WITH CA/13930/2017 IN
RA/225/2017 WITH CA/13931/2017 IN RA/225/2017
WITH CA/13932/2017 IN RA/226/2017 WITH
CA/13933/2017 IN RA/226/2017 WITH CA/13934/2017
IN RA/226/2017

**VIJAYKUMAR RAMNATH SOMANI AND OTHERS
VERSUS
SUNIL SUPADU MAHAJAN AND OTHERS**

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Mr. R.F.Totala, Advocate for Applicants in all applications.

Mr. K.N.Lokhande, AGP for Respondents-State

Mr. D.B.Shinde h/f Mr. M.S.Deshmukh, Advocate in R.A.No.227 of 2017

Mr. P.R.Patil, Advocate for Municipal Corporation / Respondent No.5, in R.A.No.227 of 2017

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**CORAM : S.V.GANGAPURWALA, J.
MANGESH S. PATIL, J.**

DATED : 9th February, 2018.

PER COURT :-

. The review applicants seek review of the order dated 14.07.2017 passed by this Court in Writ Petition No.7730 of 2015 with connected Public Interest Litigations and Writ Petition No.11652 of 2015.

2. The Writ Petition No.7730 of 2015 was filed by the Deputy Mayor of Jalgaon Municipal Corporation assailing the order passed by the Respondent No.1 (Minister of State for Urban Development) dated 23.07.2015.

3. This Court, under the Judgment under Review, gave following directions.

“(A) The State Government should take a decision on the pending proposals / proceedings as expeditiously as possible and within two months from the date of receipt of copy of this order.

(B) We clarify that the decision has to be taken in accordance with the observations and conclusions in this order.

(C) The Municipal Corporation is free to execute and enforce any subsisting final order of eviction and is also free to initiate further proceedings under

Chapter VII-A of the Maharashtra Municipal Corporations Act, 1949 and which it should initiate within a period of two months from the date of receipt copy of this order.

(D) We clarify that the merits of individual cases and shop keepers to whom notices are served or may have to be heard before final orders are passed, are not touched and remained unaffected by our order. The Writ Petitions and the PILs are disposed of.

(E) In Writ Petition No.11623/2015 no separate orders are needed for the petitioner therein has adopted the stand of the PIL petitioner.

(F) Writ Petition No.7730/2015 stands disposed of by the above order.

(G) In view of the disposal of PILs and Writ Petitions, all Civil Applications are disposed of.”

4. The Review Applicants were not parties before this Court in Writ Petitions and PIL's. This review applicants are in occupation of the shops in the market under agreement.

5. Mr. Totala, the learned advocate for the applicants submits that the applicants are the tenants of the Municipal Corporation, Jalgaon. Under the order under review, this Court has termed all these occupants as

licensees. The applicants are tenants for a period of 20 years and the period of lease was to be extended every three years at the option of the lessee. According to the learned advocate, the Judgment of this Court dated 14.07.2017 proceeded on wrong premise that all these occupants of the shops are licensees and upon the culmination of the period, their occupation is unauthorized. The agreement with the Municipal Corporation were not brought before this Court. These Review Applicants are tenants their rights are protected. The learned advocate further submits that the review applicants are aggrieved as this Court directed the State Government to take decision on the pending proposals / proceedings, considering the observations made in the said order. The observations are against the rights of the applicants and without considering the case of the applicants. This Court, in para 24 of the Judgment, observed that these occupants do not have any independent right, title and interest in the premises and are carrying all the activities under licence from the Municipal Corporation. The learned advocate

emphasizes that these applicants are the tenants and this aspect is required to be considered. The learned advocate further submits that this Court, in earlier Writ Petition bearing Writ Petition No.2131 of 2014, under the Judgment and Order dated 04.08.2016, had directed the State Government to take decision upon the pending proposals / resolutions. The State Government has not taken any decision upon the said proposals / resolutions. In view of that the order under review could not have been passed by this Court. The learned advocate submits that these shops have been given to the applicants on lease by erstwhile Municipal Council. In view of that reliance on Section 79 of the said Act also would not inure to benefit of the Municipal Corporation. The learned advocate submits that the stand taken by the Municipal Corporation is contrary to the stand they had taken in the proceedings under Section 81 of the Maharashtra Provincial Municipal Corporation Act (for short 'said Act') before the District Court. In the proceedings before the District Court, the Municipal Corporation categorically agreed that these

occupants of the shops are the lessee and they do not have any intention of evicting them. Contrary stand is taken by the Municipal Corporation in the present proceedings. This aspect has also not been considered by the Court while passing the Judgment under Review. The learned Advocate also refers to the resolution bearing No.1231 dated 05.01.2012 to submit that the Corporation had resolved to give these shops on rent after accepting the premium. The learned advocate submits that only because some of the parties had approached the Apex Court against the Judgment under review and the Apex Court had not entertained the SLP, same would not be sufficient to non-suit the present applicants. The applicants have made out a case for review. The order under review is required to be recalled and the applicants are required to be added as parties in the Writ Petition. The applicants are required to be given an opportunity to put forth their case in the Writ Petition and the PIL. He further submits that the pendency of any Writ Petition would not have an impediment for the parties to assail the order of the

learned Single Judge confirming the order of dismissal of appeal filed by the applicants against the order of the eviction.

6. Mr. Patil, the learned advocate for the Municipal Corporation submits that the validity of this Judgment under Review was also subject matter before the Apex Court in SLP Diary No.26560 of 2017. The SLP was dismissed by the Apex Court under order dated 04.12.2017. The learned advocate submits that, the corporation has taken action under Section 81-B of the said Act against all these review applicants. The order of eviction has been passed against these applicants. One hundred and twenty six persons had assailed that order. The appeals were dismissed. Against that order, eighty six persons had filed Writ Petitions before this Court. The Writ Petitions are dismissed. Now the applicants cannot contend otherwise.

7. We have considered the submissions canvassed by the learned advocate for the respective parties. It is a matter of record that these review applicants were not

parties in the Writ Petitions and the PIL.

8. This Court, while disposing of the Writ Petitions and the PIL, had given directions to the State Government to take decision and granted liberty to the Municipal Corporation to execute and enforce any subsisting final order of eviction.

9. Clause-D of para 42 of the order under review further clarifies that the merits of individual cases and shop keepers to whom notices are served or may have to be heard before final orders are passed are not touched and remained unaffected by the order.

10. Majority of the review applicants have suffered the order of eviction and their appeals filed before the District Judge are dismissed. Even in case of majority of the applicants, their Writ Petitions challenging the order of the District Court, are rejected thereby upholding order of the eviction against them. Judicial orders are passed of eviction against these review applicants holding that their occupation is

unauthorized.

11. Much emphasis is laid by the learned advocate for the review applicants that they are the lessee and not the licensees as is observed by this Court in the Judgment under Review.

12. The agreement in question has been scrutinized by the District Court in the appeals filed against the order of eviction, thereafter by the learned Single Judge while dismissing the Writ petitions filed by the occupants challenging the Judgment of the District Court. The learned Single Judge has also dismissed the Writ Petitions. The agreement in question is an agreement of privilege of occupation of a space in Bhikamchandji Jain Municipal Market.

13. The similarly situated persons had approached the Apex Court against the Judgment under Review bearing Special Leave Petition Civil Diary No.26560 of 2017. The Apex Court, in its order, dismissing the SLP has observed as under :

“After hearing learned counsel for the parties, we

find that the High Court has considered the matter thoroughly in all its length and, thereafter, given the directions in paragraph 42 of the impugned judgment which fully take care of the interest of all the parties.

It may also be mentioned that the present special leave petitions are on behalf of the petitioners who are not even parties to the said litigation.

We therefore, are not inclined to interfere with these directions. The special leave petitions are dismissed.”

14. The validity of the order under review was also subject matter of consideration before the Apex Court in a Special Leave Petition filed by the persons similarly situated as the present review applicants. The SLP is dismissed.

15. Considering the aforesaid conspectus in its entirety we do not find any error apparent on the face of the record in the order under review.

16. In the light of the above, the review applications along with Civil Applications for delay are dismissed. No costs.

17. In view of disposal of review applications, civil applications for stay also stand disposed of.

(MANGESH S. PATIL, J.)

(S.V.GANGAPURWALA, J.)

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