

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11226 OF 2018

1. Premchand s/o Phoolchand Jangde,
Age-60 years, Occu-Business,
2. Purushottamchand s/o Phoolchand Jangde,
Age-52 years, Occu-Business,

Both R/o Near Paniwes,
In front of Heerakhan Jeening,
Jalna, Tq. and Dist. Jalna.

-- PETITIONERS

VERSUS

1. Maharashtra State Road Transport
Corporation,
Head Office, Mumbai,
Through its
Divisional Controller,
State Road Transport Corporation,
S.T.Stand, Jalna,
2. Nandrani Nathulal Barethiya,
Age-50 years, Occu-Housewife,
R/o Gawlipura, Akot,
Tq.Akot, Dist.Akola,
3. Prabha Lakhanlal Aher (Jafrabadi),
Age-48 years, Occu-Housewife,
R/o Gokulnand building,
In front of Sakal Press,
Budhwar Peth, Pune
4. Pushpa Rajesh Gurukhude,
Age-45 years, Occu-Housewife,
R/o Saraswati Colony,
Tukaram Chowk, Akola,
Tq. and Dist. Akola

--RESPONDENTS

Mr.V.D.Salunke, Advocate for the petitioners.
Mr.R.R.Mantri h/f Mr.D.S.Bagul, Advocate for the respondents.

(CORAM : Ravindra V.Ghuge, J.)
RESERVED ON : 22 /10/2018
PRONOUNCED ON : 21/11/2018

JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioners are aggrieved by the order dated 03/04/2018 passed by the resident Deputy Collector, Jalna and the order below Exh.5 dated 15/09/2018 in Rent Appeal No.1/2018 passed by the Appellate Court, Jalna, by which interim relief has been refused. As such, these petitioners are to be evicted from the canteen premises of the Maharashtra State Road Transport Corporation at the Jalna Bus Stand.

3. The petitioners are the sons of the deceased Phoolchand Jangde who entered into a lease agreement with the MSRTC, Jalna for running a canteen in a refreshment room allotted to him in 1976. Rent of Rs.4,000/- per month as license fees was being paid by the deceased by virtue of the license dated 14/04/1976. It is contended by the petitioners that prior to 1976, the deceased was running a small canteen at the Jalna

Bus Stand from 1967. By a renewal of the leave and license agreement dated 22/12/1977, the license fee was reduced to Rs.2,000/- p.m. as there was a poor response to the canteen.

4. On 16/12/1978, the MSRTC moved the resident Deputy Collector / Rent Authority at Aurangabad under Section 4 of the Bombay Government Premises Eviction Act, 1955 (In short, Act of 1955) against the deceased licensee. The grounds for eviction were arrears in payment of license fees and other irregular payments. The notice of termination dated 17/07/1977 was served upon him, before approaching the competent authority. Once again a notice dated 23/09/1978 was served on him calling upon him to vacate the premises on or before 01/10/1978. An application for recovery of amounts was also moved. The licensee has received the notice from the Competent Authority, Jalna in the 1978 case u/s 4.

5. The licensee opposed the said application. In the meanwhile, Jalna Taluka was declared as a district in 1981 and the case was transferred. The Deputy Collector of Jalna then delivered an order on 31/01/1990 and remanded the matter for re-verification to the MSRTC as regards the outstanding electricity and water supply bills.

6. The MSRTC preferred a Rent Appeal No.14/1994 and another Appeal No.2/1995. Both the appeals were allowed by judgment dated 31/12/1997 and the order dated 30/03/1994 passed by the Deputy Collector was set aside.

7. In 2015, the licensee Phoolchand expired. His LR's were brought on record. As the matter was remitted back, these petitioners contested the proceedings and by the order dated 03/04/2018, the Competent Authority directed recovery of Rs.96,31,228/- from these petitioners, besides directing them to vacate the premises. These petitioners therefore preferred the Rent Appeal No.1/2018 and by a detailed interlocutory order impugned in this petition, the application for stay / status-quo was rejected on 15/09/2018.

8. The basic contention of the petitioners is two fold. Firstly, that no notice for eviction was given under Rule 4(2) of the Bombay Premises Eviction Rules (In short, the Rules). Secondly, that until the appeal is decided, no loss would be caused to the MSRTC if the status-quo is continued.

9. The learned Advocate for the MSRTC has primarily

averred that the petitioners are guilty of suppression of material facts and misrepresentation. A notice was specifically issued by the resident Deputy Collector on 29/10/2016 under Rule 4(2). Even on 16/12/1978, a notice for termination of the lease agreement and the eviction of the licensee was issued. These documents are not placed before this Court by the petitioner as the petitioner does not intend to bring this to the notice of this Court. One notice was also issued by the resident Deputy Collector, Jalna which was received by petitioner No.1 Premchand on 13/07/1999 clearly indicating that such a notice was issued. It is, therefore, contended that these petitioners have intentionally suppressed the documents from this Court so as to take up the ground that a notice under Rule 4 was not issued.

10. It is further submitted that a modern bus stand equipped with all amenities is being constructed by the MSRTC at Jalna. The project is expeditiously undertaken. Due to the obstruction created by these petitioners, a public project is getting obstructed. In any case, the petitioners have to be evicted from the said premises and as such, no loss or harm or hardships are likely to be caused to these petitioners. Per contra, an irreparable loss and manifest inconvenience would

be caused to the MSRTC if a public project is stalled and obstruction is created as the cost of the project would escalate due to passage of time.

11. It is then submitted that these petitioners are unauthorized squatters on the premises. They have no lease agreement with the MSRTC. They cannot claim to inherit a lease agreement which was earlier entered into by the deceased father and hence, their eviction is not only legal, but is necessary as such squatters are stalling a public project.

12. The petitioners have relied upon the following judgments :-

1. *Nandini J.Shah and others Vs. Life Insurance Corporation of India and others [2008(4) Mh.L.J.106]*
2. *Merwanjee F. Desai Vs. State of Maharashtra [AIR (BOM) 1988 0 271.*
3. *Vishnupant alias Dhondopant s/o Wamanrao Jamkar Vs. Mahadev Santuka and others [2005(4) Mh.L.J.278].*

13. The MSRTC had placed reliance upon the order of the learned Division Bench of this Court in PIL No.2/2011.

14. Having considered the submissions of the learned

Advocates and the judgments cited, I have perused the original record and proceedings and the documents pertaining to the project of erecting a modern S.T.Bus Stand at Jalna.

15. Rule 4(1) upto Rule 4(3) which are relevant to this case, read as under :-

“4. (1) If the competent authority is satisfied -

(a) that the person authorised to occupy any Government premises, has whether before or after the commencement of this Act, -

(i) not paid rent lawfully due from him in respect of such premises for a period of more than two months, or

(b)

(c) that any Government premises named are required for any other Government purposes

*the competent authority may, *****
by notice served (i) by post, or (ii) by affixing a copy of it on the outer door or some other conspicuous part of such premises, or (iii) in such other manner as may be prescribed, order that person as well as any other person who may be in occupation of the whole or any part of the premises, shall vacate them within one month of the date of the service of the notice.*

(2) Before an order under sub-section (1) is made against any person the competent authority shall issue in the manner hereinafter provided a notice in writing calling

upon all persons concerned to show cause when an order of eviction should not be made.

explanation type

The notice shall --

(a) specify the ground on which the order of eviction is proposed to be made ; and

(b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the Government premises, to show cause, if any, against the proposed order, on or before such date as is specified in the notice.

If such person makes an application to the competent authority for extension of the period specified in the notice, the competent authority may grant the same on such terms as to payment and recovery of the amount claimed in the notice, as deems fit.

Any written statement put in by any person and documents produced in pursuance of the notice shall be filed with the record of the case and such person shall be entitled to appear before the officer proceeding in this connection by advocate, attorney or pleader.

The notice to be served under this sub-section shall be served by having it affixed on the outer door or on some conspicuous part of the premises, and in such manner as may be prescribed; and thereupon the notice shall be deemed to have been duly given to all persons concerned.]

(3) If any person refuses or fails to comply with an order made under sub-section (1), the competent authority

may evict that person from, and take possession of, the premises and may for that purpose use such force as may be necessary.”

16. I find from the record that the competent authority had issued a notice under Rule 4(2) dated 29/10/2016. Even in 1978, such a notice was issued. The petitioners do not deny about having received the said notice. The fact, however, remains that these petitioners have not placed the said notices on record and as such, it appears that they did not intend to bring the said notices before this Court. The main thrust of the petitioners' case that no notice was served upon them, stands negated, besides the fact that they are guilty of suppression of material information and would be covered by the judgment of the Hon'ble Apex Court in the matter of Bhaskar Laxman Jadhav and others Vs. Karamveer Kakasaheb Wagh Education Society and others [AIR 2013 SC 523].

17. The record also reveals that these petitioners are in arrears of payment of rent, in as much as, certain charges to be paid for consumption of electricity and water supply. The competent authority has considered all these aspects and has arrived at a conclusion that these petitioners are in arrears.

18. When called upon to state as to whether the petitioners are willing to deposit 50% of the said amount before the Appellate Court as a condition for granting protection, the learned Advocate for the petitioners was instructed to state that he would not deposit even 50% of the said amount.

19. The Hon'ble Apex Court in the matter of Mahadeo Savlaram Shelke and others Vs. Pune Municipal Corporation [(1995) 3 SCC 33], has concluded that an injunction should not be granted against a public project if such an injunction is likely to cause a serious obstacle and would stall such a project. Considering this aspect of the matter, I do not find that the Appellate Court has committed any error in declining to grant injunction in favour of these petitioners.

20. It also cannot be ignored that these petitioners have no lease agreement with the MSRTC. They cannot claim to inherit such a lease agreement. The licensee has passed away and there has been no renewal of the license with these LR's. When the project of constructing a modern bus stand is underway and is a necessity for the people from that region, an injunction of such nature cannot be granted to such petitioners.

21. In WP No.13777/2017 Ganeshlal Nandkishor Dipwal (died) through LR's and others Vs. Divisional Controller, MSRTC, Jalna, this court has passed an order dated 02/08/2018 by which a party occupying the parking place was evicted as it had become a stumbling block in the same project of erection of the modern bus stand at Jalna. Similarly, the learned Division Bench, by its order dated 29/08/2011, in a public interest litigation, had passed orders to pave the way for erecting the said bus stand at Jalna.

22. One more facet of this case, cannot be ignored. The Food Licensing and Registration Authority, which had issued the license to prepare and sell food items in the canteen to the deceased licensee and to petitioner No.1, has subsequently cancelled the said license and presently these petitioners do not have such a license. In fact, a statement was made by the petitioners before this Court that they have a license. Learned Advocate for the MSRTC submits that this is one more attempt by these petitioners to mislead this Court.

23. Considering all the above factors, I find that these petitioners do not deserve injunctory relief and the Appellate

Court has rightly refused the injunction. I do not find that the impugned order of the Appellate court, refusing injunction, could be termed as being perverse or erroneous.

24. This petition, being devoid of merit, is therefore dismissed. Rule is discharged.

25. The record and proceedings produced by the learned Advocate for the MSRTC is returned to him forthwith.

(Ravindra V.Ghuge, J.)