

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

WRIT PETITION (STAMP) NO. 40693 OF 2017

Abdul Hamid Abdul Rahim

Petitioner.

Versus

The Chief Officer, Municipal Council,
Kallamb, District Osmanabad.

Respondent.

WITH

WRIT PETITION (STAMP) NO. 40694 OF 2017

Dhananjay Bhimrao Aadmuthe

Petitioner.

Versus

The Chief Officer, Municipal Council,
Kallamb, District Osmanabad.

Respondent.

WITH

WRIT PETITION (STAMP) NO. 40696 OF 2017

Lalasaheb Vyankatrao Jadhav

Petitioner.

Versus

The Chief Officer, Municipal Council,
Kallamb, District Osmanabad.

Respondent.

WITH

WRIT PETITION (STAMP) NO. 40697 OF 2017

Yunus Osman Momin

Petitioner.

Versus

The Chief Officer, Municipal Council,
Kallamb, District Osmanabad.

Respondent.

WITH

WRIT PETITION (STAMP) NO. 40698 OF 2017

Mirza Babar Sattar Beg

Petitioner.

Versus

The Chief Officer, Municipal Council,
Kallamb, District Osmanabad.

Respondent.

WITH

WRIT PETITION (STAMP) NO. 40699 OF 2017

Laxman Bhagwan Kawade

Petitioner.

Versus

The Chief Officer, Municipal Council,
Kallamb, District Osmanabad.

Respondent.

Mr. Vijay R. Autade, Advocate for the petitioners.

Mr. P.S. Patil, Advocate for the respondent.

CORAM : **A.M. DHAVALA, J.**
(Vacation Court)

Dated : 02-01-2018.

PER COURT :-

1. All these petitions involve common question of law and facts and argued commonly by learned Advocate Mr. Vijay Autade for the petitioners.

2. All the Writ Petitioners were granted lease of certain plots for business by Municipal Council, Kallamb, District Osmanabad. In Writ Petition (Stamp) No. 49698/2017 petitioner Mirza Babar Sattar Baig was granted lease 25 years back, while in Writ Petition (Stamp) No.49697/2017 the petitioner Yunus Osman Momin was granted lease 20 years back and to others' leases were granted in 2002.

3. It is submitted that these lease were granted after obtaining resolution as contemplated under Section 92 (2) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. Admittedly, such lease agreement can be granted only for a period of three years and thereafter those can be renewed upto maximum period of nine years. Any other transfer of immovable property is to be effected by the Council with the sanction of the State Government as per Section 92 (1) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. Admittedly, 9 years lease period is over in all cases. Since the Municipal Council threatened to vacate the premises of the petitioners, they filed suits in the Court of Civil Judge, Junior

Division, Kallamb and sought temporary injunction vide Exh-5. The Municipal Council opposed the applications contending that the plaintiffs have no right to continue in the premises. It is also claimed that they have made encroachment over and above the premises leased to them. As the lease period is over, they do not have any right. The learned Civil Judge, Junior Division Mr. Munde relied on the judgment in the case of **Municipal Council Vs Kundanlal Mohanlal Jaiswal and others, 2007 (3) Mh.L.J. 155** and held that the plaintiffs' rights for retaining possession are over and they were not entitled for injunction and rejected the applications in cases of petitioners from Writ Petition (Stamp) Nos. 40697/2017, 40698/2017 and 40693/2017, while learned Civil Judge, Junior Division Mr. S.S. Ubale rejected the applications of the petitioners from Writ Petition (Stamp) Nos. 40694/2017, 40696/2017 and 40699/2017. He relied on number of rulings including judgment in the case of **Maria Margarida Sequeria Fernandes Vs. Erasmo Jack de Sequeria, AIR 2012 SC 1727**. These orders were challenged before the District Judge by way of Miscellaneous Civil Appeals and the orders were confirmed.

4. After hearing the learned Advocate, I find that the petitioners' civil right under the agreement came to an end in all the matters. Subsequent issuance of rent receipts and allowing to continue in the premises will not create any civil right. The learned trial Judge and First Appellate Judge have rightly relied on the ratio in **Kundanlal's** (supra) case and **Maria's** (supra) case that in absence of any civil right, the plaintiffs were not entitled for any relief of temporary injunction. I find no legal point involved as to entertain the Writ Petitions in the light of concurrent findings of the trial Courts.

5. The learned Advocate argued for equitable relief on the ground that the petitioners are in possession of the premises since several years and that is the only source of income for them. However, in absence of civil right, no such relief can be granted.

6. In view of the above facts, the Writ Petitions are dismissed and rule is discharged.

7. However, if the petitioners within 3 days file an undertaking to remove their structures from the sites within one month and deposit Rs. 50,000/- each for compliance of the

undertaking, the Municipal Council shall not take coercive action for a period of one month. In such case, if the structures are not removed within one month, the amount deposited shall be liable to be forfeited to the Municipal Council and if the structures are removed within the stipulated period, the amount shall be refunded by Municipal Council to the petitioners subject to recovery of arrears of lease, if any.

8. Parties to act on the authenticated copy of this order.
9. Copy to be authenticated by Registrar (Judicial).

(A.M. DHAVALÉ, J.)

vsm/