

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.261 OF 2014

Baban Nathu Naik & Ors. ... Applicants

Vs.

Sampatraj @ Champalal Shah & Anr. ... Respondents

Mr.S.S. Patwardhan for the Applicants

Mr.R.S. Khadapkar for Respondent No.2

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JUNE 25, 2018**

P.C. :

1. In this Civil Revision Application, the order dated 17.12.2013 passed by the learned Civil Judge, Senior Division, Pune below exhibit 70 in Regular Civil Suit No.649 of 2004, is challenged. As per the case of the plaintiffs, respondent Nos.2 to 5, who are the lessees of the land of which the present applicants are the owners. Respondent No.1 who is the original plaintiff, claims his leasehold rights through the lease deed dated 16.9.1963. Respondent No.1 has filed suit against the Municipal Corporation i.e., the present Respondent No.2 and other defendants i.e., the present applicants. In the plaint, the following reliefs are sought:

“(a) it be declared that the suit property described in para (1) above in possession of the Plaintiff is having the leasehold rights in favour of the Plaintiff in pursuance of the duly registered lease-deed dated 16-9-1963 by the late Nathuram Tanaji Naik and Laxman Tanaji Naik in favour of the Plaintiff and that the defendants are not entitled to have any transaction or any concern with the said property during the subsistence (*sic*) of the said lease-deed for 61 years from 16-9-1963 and that the Defendant No.1 is not entitled to cause any trespass (*sic*) on the said property or any dispossession of the Plaintiff ignoring and negating the leasehold rights of the Plaintiff;”

(b) the defendants be restrained from causing any encroachment on the suit property and any interference with the peaceful possession and enjoyment of the suit property and holding the leasehold interest therein by the Plaintiff under the lease-deed dated 16-9-1963 and manipulating any record contrary to the interest of the Plaintiff;

(c) ...”

2. The present applicants i.e., defendant Nos.2 to 5, preferred application under Order 7 Rule 11(d) of the Civil Procedure Code challenging the jurisdiction of the civil Court mainly on the ground that there is a bar u/s 149 of the Maharashtra Regional Town Planning Act because the said land is acquired by the Land Acquisition Officer and award was passed on 9.3.2004.

3. The learned Judge of the trial Court has turned down the objection of the respondents/defendants and held that the civil

Court is having jurisdiction to try and decide the said suit. Hence, this petition.

4. Mr.Patwardhan, the learned Counsel appearing for the applicants, submits that the applicants have challenged the impugned order on two counts. Firstly, that the land is acquired by the Land Acquisition Officer, so, no challenge can be given to that award. The relief No.(b) in the plaint is against the municipal Corporation which is the acquiring body. He submits that no such relief can be granted once the land is acquired. The second challenge is on the ground of section 33 of the Maharashtra Rent Control Act under which the jurisdiction of the civil Court is barred and the suit of such nature ought to have been filed before the Small Causes Court. He points out that the plaintiff has sought the declaration in respect of leasehold right, which is to be asked before the Small Causes Court. The Suit is filed at Pune where the Provincial Small Causes Court Act, 1887 is applicable.

5. The learned Counsel for the respondents i.e., respondent No.1 – the original plaintiff, while defending the order of the trial Court has submitted that the trial Court has rightly held that it has jurisdiction and that it can try and decide the application under

Order 7 Rule 11(d). The defence taken by the defendants cannot be considered by the trial Court. He has submitted that the arguments advanced by the learned Counsel for the petitioners is nothing but the defence and if the pleadings are taken into account, the suit is maintainable before the civil Court and cannot be rejected. He has further submitted that the respondent/plaintiff is not asking for any relief of deciding the relationship between the landlord and the tenant as rightly held by the trial Court in its order but only seeks a declaration of the subsistence of leasehold agreement dated 16.9.1963. He has further submitted that in the application, at exhibit 17, the applicants did not raise any ground giving the challenge u/s 33 of the Maharashtra Rent Control Act. The sole challenge given was only under section 149 of the MRTP Act.

6. The learned Counsel has submitted that the learned trial Judge had no opportunity to consider section 33 of the Maharashtra Rent Control Act and therefore, the second challenge cannot be considered by this Court at this stage.

7. In reply, Mr.Patwardhan, relied on relevant portion of para 9 of the said order wherein the learned Judge has held that the

plaintiff has not challenged any right under the relationship of landlord and tenant. The learned Counsel submits that thus, though the point of bar of jurisdiction of section 33 of the Maharashtra Rent Control Act was not raised in the application, it was orally argued and therefore, the learned Judge has touched the said point.

8. Heard. Perused the impugned order; plaint and considered the pleadings. It is a settled position of law that while considering the application under Order 7 Rule 11 of the Civil Procedure Code, the Court has to take into account the pleadings of the plaintiff and 'no defence' can be considered at that stage. The challenge given in the present case is not on facts but is on the basis of legal bar under two statutes. Admittedly, nothing is said in writing in exhibit 17 in respect of bar u/s 33 of the Maharashtra Rent Control Act but the only challenge is u/s 149 of the MRTP Act. The submission of Mr.Patwardhan that the learned Judge has considered the issue of bar u/s 33 of the Maharashtra Rent Control Act, is not correct as there is no proper discussion by the trial Judge to safely arrive at the conclusion that the said point was raised before the Court. The trial Judge has made a passing reference of the relief.

9. Be that as it may, the issue of legal bar under the statute can be raised and be considered at any stage before the Court. The land was acquired under the Land Acquisition Act; award was passed on 9.3.2004 and this fact is not challenged. Immediately after 1½ month, the suit was filed before the Civil Judge, Junior Division, Pune. The reliefs prayed and the pleadings made by the plaintiff in the plaint are in fact touching the issue of award and though it is differently worded, it is to be necessarily said that the plaintiff is trying to make out the case and seeks reliefs which are barred u/s 149 of the MRTP Act. Once the award is passed, the officers of the acquiring body are bound to enter upon the land or they may take necessary steps which are required in the process of acquisition. No such blanket relief can be granted against the acquiring body as prayed in prayer (b) of the plaint. So, the challenge given u/s 149 of the MRTP Act is valid and thus, if at all the plaintiff has some case and wants some right in the acquisition proceedings, civil Court is not a proper forum and so the civil Court has no jurisdiction and cannot entertain and try the said suit.

10. As per the submission of the learned Counsel for Respondent No.1, the plaintiff seeks simpliciter declaration of

subsistence of leasehold agreement. Such a declaration of subsistence of leasehold agreement cannot be given by a civil Court because this pertains to the declaration of rights between lessee and lessor or a landlord and tenant. The plaintiff ought to have filed a suit before the Small Causes Court, Pune and not before the civil Court, even simpliciter. Such declaration cannot be given unless the transfer of the property under the Transfer of Property Act and the status of the parties is considered. Such relief can be considered only by the Small Causes Court. Further, if the plaintiff wants to seek such relief in respect of lease deed or leasehold rights, then, he may file appropriate proceedings before the Small Causes Court.

11. Hence, the order passed by the learned Judge dated 17.12.2013 by the learned Civil Judge, Senior Division, Pune is hereby set aside. The application is allowed in terms of prayer clauses (b) and (c).

(MRIDULA BHATKAR, J.)