

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 3412 OF 2018

Bhagyashri Bhimrao Badade
And Ors.

...Petitioners

Versus

Ravindra Rajaram Wagh
And Ors.

...Respondents

....
Mr. Kuldeep U. Nikam, Advocate for the Petitioners.

....

CORAM : R. G. KETKAR, J.

DATE : 22nd MARCH, 2018

PC.

1. Heard Mr. Kuldeep Nikam, learned counsel for the petitioners, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the judgment and order dated 25.10.2016 passed by the Competent Authority (Rent Control Act), Pune Division, Pune (for short, 'Competent Authority') in Case No.22/2010 as also the judgment and order dated 9.10.2017 passed by the Additional Commissioner, Pune Division, Pune (for short, 'Commissioner') in Revision Application No.39/2017. By these orders, the Courts below allowed the application made by the first respondent under Section 24 of the Maharashtra Rent Control Act, 1999 (for short, 'Act') and directed the petitioners herein to hand over vacant and

peaceful possession of two rooms on the first floor approximately admeasuring 200 sq. ft., six rooms on the second floor approximately admeasuring 800 sq. ft., two rooms on the third floor approximately admeasuring 200 sq. ft., in all ten rooms, situate in C.T.S. No.1220, Sadashiv Peth, Pune – 411 030 (for short, 'suit premises') within 30 days. As respondent No.1 did not claim any license fee, the Authorities below declined to pass order in that regard.

3. In support of this Petition, Mr. Nikam submitted that the petitioners were inducted in the suit premises in the year 1999. Said leave and licence agreement was executed on 24.3.2013 between respondent No.1 and Bhimrao Vishnuji Badade, since deceased through the Power of Attorney Shri Vijay Laxman Walzade. The said agreement was registered on 5.4.2003. The petitioners do not accept the fact that the leave and licence agreement was executed between the parties. He submitted that respondent No.1 instituted proceedings before the Competent Authority on 24.6.2010. In other words, respondent No.1 belatedly filed the proceedings before the Competent Authority.

4. Mr. Nikam submitted that after service of summons of the proceedings, petitioner No.3 filed affidavit on 20.7.2010 for grant of leave to defend. The Competent Authority passed order on 6.8.2012, which is to the following effect :

“Allowed leave to contest the matter as alleged in main application (Exh.1).

Sd/-
6.8.2012.”

5. Mr. Nikam relied upon Section 43(4)(c) of the Act to contend that once the Competent Authority had granted leave to contest the application, it has to hold enquiry and follow the practice and procedure of the Court of Small Causes Court including the recording of evidence. In the present case, after granting leave to defend, no opportunity was given to the petitioners to lead evidence.

6. Mr. Nikam has taken me through the order passed by the Competent Authority and in particular paragraphs-13 and 14. He submitted that as the petitioners were not given opportunity to lead evidence. On this short count alone the Petition requires consideration.

7. I have considered the submissions advanced by Mr. Nikam. I have also perused the material on record. It is no doubt true that the petitioners are disputing execution of the registered leave and licence agreement dated 24.3.2003. The petitioners contend that in fact respondent No.1 has inducted them as a tenant. The question is whether the said contention is available to the petitioners. Explanation (b) to Section 24 and section 55 read thus :

“24. Landlord entitled to recover possession of premises given on licence on expiry.---

- (1) xxxx
- (2) xxxx
- (3) xxxx

Explanation.--For the purposes of this section, –

- (a) xxxx
- (b) an agreement of licence in writing shall be conclusive evidence of the fact stated therein.”

“55. Tenancy agreement to be compulsorily registered.--

- (1) Notwithstanding anything contained in this Act or any other law for the time being in force, any agreement for leave and licence or letting of any premises, entered into between the landlord and the tenant or the licensee, as the case may be, after the commencement of this Act, shall be in writing and shall be registered under the Registration Act, 1908.
- (2) The responsibility of getting such agreement registered shall be on the landlord and in the absence of the written registered agreement, the contention of the tenant about the terms and conditions subject to which a premises have been given to him by the landlord on leave and licence or have been let to him, shall prevail, unless proved otherwise.
- (3) Any landlord who contravenes the provisions of this section shall, on conviction, be punished with imprisonment which may extend to three months or with fine not exceeding rupees five thousand or with both.”

8. Explanation (b) to Section 24 lays down that an agreement of licence in writing shall be conclusive evidence of the facts stated therein. Section 55(2) lays down that in the absence of the written

registered agreement, the contention of the tenant about the terms and conditions subject to which the premises have been given to him by the landlord by leave and licence or have been let to him, shall prevail unless proved otherwise. In the present case, admittedly, leave and licence agreement is registered instrument. In view thereof, it is not open to the petitioners to contend that no leave and licence agreement was executed between the parties. It is also not open to them to contend that in fact they are inducted as tenant.

9. It is no doubt true that the Competent Authority granted leave to defend on 6.8.2012. I have already extracted the order passed by the Competent Authority. In the first place, the order does not disclose any reason that weighed for granting leave to defend. Secondly it is necessary to consider the scheme of Chapter VIII of the Act. The title of Chapter VIII is 'summary disposal of certain applications'. Section 39 lays down that the provisions of Chapter VIII or any rule made thereunder are having overriding effect notwithstanding anything inconsistent therewith contained elsewhere in the Act or in any other law for the time being in force. In other words, Sections 39 to 52 have been given over-riding effect over other provisions of the Act or any other law for the time being in force. Section 43 prescribes special procedure for disposal of the applications. The consequences of grant of

leave to defend or not to grant leave to defend is provided in Section 43(4)(a), which reads thus:

“43. Special procedure for disposal of applications:

- (4) (a) The tenant or licensee on whom the summons is duly served in the ordinary way or by registered post in the manner laid down in sub-section (3) shall not contest the prayer for eviction from the premises, unless within thirty days of the service of summons on him as aforesaid, he files an affidavit stating grounds on which he seeks to contest the application for eviction and obtains leave from the Competent Authority as hereinafter provided, and in default of his appearance in pursuance of the summons or his obtaining such leave, the Statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant or the licensee, as the case may be, and the applicant shall be entitled to an order for eviction on the ground aforesaid;”

10. A perusal of the above extracted provision shows that the tenant or licensee on whom summons is duly served in the ordinary way or by registered post in the manner laid down in sub-section (3) is precluded from contesting the prayer for eviction from the premises unless within 30 days of the service of summons on him he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Competent Authority and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the

application for eviction shall be deemed to be admitted by the tenant or the licensee, as the case may be, and the applicant shall be entitled to an order for eviction on the ground as aforesaid. Thus, the stage of grant of leave to defend is a very crucial stage in the proceedings before the Competent Authority.

11. Mr. Nikam submitted that the fact that the petitioners are inducted in the year 1999 and though the alleged agreement of leave and license agreement was executed on 24.3.2003, the fact that respondent No.1 instituted the proceedings under Section 24 of the Act on 24.6.2010 weighed with the Competent Authority. In short, the fact that respondent No.1 belatedly filed the proceedings under Section 24 of the Act weighed with the Competent Authority while granting leave to defend. It is not possible to accept this submission. The order granting leave to defend is bereft of any reason. That apart, even if the petitioners are disputing execution of registered leave and license agreement, in view of explanation (b) of Section 24 as also Section 55 of the Act, an agreement of license in writing is conclusive evidence of the facts stated therein.

12. In view thereof, in my opinion the Competent Authority was not justified in granting leave to defend. Mr. Nikam submitted that respondent No.1 did not challenge the order granting leave to defend. If

that be so, the Competent Authority ought to have given opportunity to lead evidence. In order to consider this submission, it is necessary to consider the scope of Article 227 of the Constitution of India. In the case of **Surya Dev Rai v. Ram Chander Rai and others, (2003) 6 SCC 675**, the Apex Court has exhaustively dealt with the scope of Article 227 of the Constitution of India.

13. In paragraph-22, the Apex Court observed that “It is well-settled that the power of superintendence so conferred on the High Court is administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved **or may even be exercised *suo motu***. The paramount consideration behind vesting such wide power of superintendence in the High Court is paving the path of justice and removing any obstacles therein. The power under Article 227 is wider than the one conferred on the High Court by Article 226 in the sense that the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction.”

(emphasis supplied)

14. In paragraph-24, the Apex Court observed that “The power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate Courts and

Tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the Court or Tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction.”

15. In paragraph-25, the Apex Court observed that “In exercise of supervisory jurisdiction the High Court may not only quash or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances of the case may warrant, may be by way of guiding the inferior Court or Tribunal as to the manner in which it would now proceed further or afresh as commended to or guided by the High Court. In appropriate cases the High Court, while exercising supervisory jurisdiction, may substitute such a decision of its own in place of the impugned decision, as the inferior court or tribunal should have made. Lastly, the jurisdiction under Article 226 of the Constitution is capable of being exercised on a prayer made by or on behalf of the party aggrieved; the supervisory jurisdiction is capable of being exercised *suo motu* as well.”

16. In paragraph-26, the Apex Court observed that there may be

cases where but for invoking the supervisory jurisdiction, the jurisdictional error committed by the inferior court or tribunal would be incapable of being remedied once the proceedings have concluded. It was also held that where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion.

17. In paragraph-38, the Apex Court summed up the conclusions.

Clauses 4, 5, 7 and 9 read thus :

“38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:-

XXXXX
XXXXX

- (4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.
- (5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i)

the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

- (6) xxxx
- (7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.
- (8) xxxx
- (9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts

in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari the High Court may annul or set aside the order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.”

18. Applying the tests laid down by the Apex Court in the case of **Surya Dev Rai** (supra) to the facts of the present case and for the reasons indicated above, I am more than satisfied that the Competent Authority was not justified in granting leave to defend. The Competent Authority has failed to exercise a jurisdiction which it does have and such failure occasioned a failure of justice. The manner in which the Competent Authority granted leave to defend has shocked the judicial conscience of this Court that dictates to act lest a gross failure of justice or grave injustice should occasion. In order to ensure that grave miscarriage of justice is not further carried, I deem it appropriate to exercise *suo motu* power for setting aside the order dated 6.8.2012 granting leave to defend. The order dated 6.8.2012 passed by the

Competent Authority granting leave to defend is accordingly set aside.

19. Once the order granting leave to defend is set aside and having regard to the fact that there is registered leave and license agreement between the parties as also in view of explanation (b) to Section 24 as also Section 55 of the Act, it is not open to the petitioners to claim tenancy rights in respect of the suit premises. In view thereof, I do not find that the Authorities below committed any error in allowing the application under Section 24 of the Act. Hence, petition fails and the same is dismissed.

20. At this stage, Mr. Nikam orally applies for stay of this order for a period of eight weeks from today. Mr. Nikam states that the petitioners are in possession and they have neither created third party interest nor parted with the possession. They will hereafter neither create third party interest nor part with the possession. He further states that the petitioners and all adult family members using/residing with them are ready and willing to give usual undertaking within two weeks from today. Learned Counsel for the respondents opposes said prayer.

21. Having regard to the fact that the petitioners desire to challenge this order before the Apex Court, in my opinion, ends of justice would be met by staying operation of this order for a period of eight weeks from today subject to the petitioners and all adult members

residing with them/using the suit premises giving usual undertaking to this Court within two weeks from today incorporating therein that :

- (i) they are in actual possession of the suit premises and nobody else is in possession;
- (ii) they have so far neither created third party interest nor parted with the possession of the suit premises;
- (iii) they will hereafter neither create third party interest nor part with the possession of the suit premises; and
- (iv) in case the petitioner are unable to obtain suitable orders within eight weeks from today from the higher Court, they will deliver vacant and peaceful possession of the suit premises to the first respondent.

22. In view thereof, notwithstanding dismissal of the Petition, this order shall remain stayed for a period of eight weeks from today, subject to the petitioners filing undertaking in the aforesaid terms within two weeks from today. In case the petitioners do not file undertaking in the above terms within two weeks from today, the interim order shall stand vacated without further reference to the Court and respondent No.1 would be at liberty to execute the order. List the Petition for reporting compliance after two weeks. Order accordingly.

(R. G. KETKAR, J.)