

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

CRIMINAL WRIT PETITION NO.1302 OF 2018

Nilam
Santosh
Kamble

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by Nilam Santosh
Kamble
Date: 2018.08.29
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Prime Trade Test Centre Private
Limited Through Mr.Abulaas Siddiqui ...Petitioner

Versus

The Commissioner Rationing
Controller Officer and Ors. ...Respondents

Mr.Afroz Siddiqui a/w Mr.Sajid Qureshi i/b Mr.Mateen Shaikh for
the Petitioner.

Mrs.P.P. Shinde, APP for the Respondent-State.

**CORAM : RANJIT MORE &
SMT.BHARATI H. DANGRE, JJ.**

DATE : 27th AUGUST 2018

P.C.

1. Heard learned counsel for the petitioner.
2. By this petition, the petitioner is seeking recall of order dated 22.11.2017 passed in Writ Petition No.590 of 2017 and restoration of the criminal writ petition in the interest of justice.
3. The Writ Petition No.590 of 2017 was filed by the Respondent No.3 seeking direction to unseal/deseal Gala No.25 situated at Gulshan Estate, Andheri Ghatkopar Link Road, Sakinaka,

Mumbai-400 072 and hand over the same to him on any terms and conditions. The petition was disposed of by the order dated 22.11.2017. Since, we found that the subject gala was sealed for temporary purposes and panchnamma was referred to the name of Respondent No.3 being in possession of the said gala, we issue direction to the Investigating Officer to de-seal the subject gala and give possession of the same to the petitioner.

4. The present petitioner claims to be the owner of the said Gala. Learned counsel invited our attention to the fact that the petitioner was party Respondent No.4 in Writ Petition No.590 of 2017. However, his name was deleted under the order of this Court and thereafter the order dated 22.11.2017 was obtained. The learned counsel submits that since the petitioner is the owner of the subject gala, the possession ought not to be given to the Respondent No.3 and should have been given to the petitioner.

5. We can not accept the submission of the learned counsel for the petitioner inasmuch as he does not dispute that the Respondent No.3 was in possession of the said gala at the relevant time. The counsel submits that he is in possession, however, in capacity of the watchman and not as tenant. The learned counsel

however does not dispute that the respondent no.4 approached this Court and filed a suit for declaration that he is a tenant. By the order dated 22.11.2017, we have made it clear that we have not entered into a question regarding respondent No.3 who is in possession of the subject gala and this issue is kept open specifically.

6. The issue whether the Respondent No.3 was a tenant or watchman, as contended by the learned counsel for the petitioner, cannot be gone into in exercise of the writ jurisdiction of this Court. If the petitioner has any grievance, he can contest the issue in Civil Court. We are concerned with the impugned order dated 22.11.2017 in Writ Petition No.590 of 2017 inasmuch as we only directed Investigation Officer to give possession of the subject gala to the Respondent No.3 since at the time of the resealing of the said gala, Respondent No.3 was in possession.

7. In the above circumstances, we refused to hold that the petitioner is entitled for possession of the Gala in question. The writ petition is without merit and substance and hence dismissed.

(SMT.BHARATI H. DANGRE, J.)

(RANJIT MORE, J.)