

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11037 OF 2018

Nirmala Bajirao Hande ... Petitioner
Vs.
Sandeep Ramchandra Vinerkar and others ... Respondents

Mr. R. M. Haridas i/b. Mr. Jagdish G. Reddy for Petitioner.
Mr. Akshay R. Kapadia for Respondent No.1.
Mr. A. R. Metkari, AGP for Respondents No.2 and 3.

CORAM : R. G. KETKAR, J.
DATE : OCTOBER 09, 2018

P.C. :

Heard Mr.Haridas, learned Counsel for the petitioner,
Mr.Kapadia, learned Counsel for the respondent No.1 and Mr. Metkari,
learned AGP for respondents No.2 and 3 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the orders dated 10.01.2018 passed by the Competent Authority (Rent Act) Konkan Division, Mumbai (for short 'Competent Authority') as also the order dated 27.08.2018 passed by the Additional Commissioner, Konkan Division, Mumbai (for short 'Commissioner') in Revision No.98 of 2018. By the first order dated 10.01.2018, the Competent Authority rejected leave to defend application filed by the petitioner. By the second order dated 10.01.2018, the Competent Authority allowed the application made by the first respondent under Section 24 of the Maharashtra Rent Control Act, 1999 (for short 'Act') and directed the petitioner to handover vacant and peaceful possession of flat No.A-303, 3rd floor, Suryoday CHS Group No.2, Tagore Nagar, Vikroli (E), Mumbai – 400 083 (for short 'suit premises'). The Competent Authority further directed the petitioner to pay double the rate of monthly licence fee being Rs.10,500/- x 2 =

21,000/- from 30 days of default i.e. 30.09.2015 from the date there is a default on the licence fees in the suit premises till handing over vacant possession. By order dated 27.08.2018, the Additional Commissioner rejected Revision Application preferred by the petitioner.

3. In support of this Petition, Mr. Haridas raised following conditions:

- a. application filed by the first respondent under Section 24 of the Act itself is not maintainable in view of Section 5 of the Maharashtra Housing and Area Development Act, 1976 (for short 'MHADA Act');
- b. petitioner had paid valuable consideration of Rs.16 lakhs to the respondent No.1 for purchasing the suit premises and he has instituted Suit for specific performance of contract;
- c. petitioner is occupying the suit premises from 2014. As the petitioner is residing for a considerable long time, the Authorities below ought to have granted leave to defend;
- d. as the Petition has triable issues, petitioner is entitled to defend the proceedings filed by the first respondent.

4. Mr. Haridas invited my attention to the second order dated 10.01.2018 passed by the Competent Authority and in particular paragraph 20. In paragraph 20, the Competent Authority specifically recorded contention of the petitioner that as the suit premises are covered under MHADA Act, they cannot be let out on leave and licence basis. In view of Section 5 of the MHADA Act, the provisions of the Rent Act or any law corresponding thereto for the time being in force in any area to which MHADA Act extends are not applicable to any land or building belonging to, or vesting in, the Authority under or for the purpose of MHADA Act. Mr. Haridas further submitted that even the Commissioner though noted contention of the petitioner in paragraph

20, the same was not dealt with by the Commissioner.

5. On the other hand, Mr. Kapadia supported the impugned orders. He submitted that petitioner had earlier instituted Suit for specific performance of contract and the same was withdrawn unconditionally. Subsequently, petitioner instituted second Suit for specific performance of contract. Respondent No.1 filed application under Order VII, Rule 11(d) of the Code of Civil Procedure, 1908 for dismissal of the Suit. That application was allowed and the subsequent Suit filed by the petitioner is dismissed.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. In so far as the first contention raised by Mr. Haridas that the provisions of the Rent Act are not applicable is concerned, he relied upon Section 5 of the MHADA Act, which reads thus,

“5. Non-applicability of Rent Act or any corresponding law.- The Rent Act or any law corresponding thereto for the time being in force in any area to which this Act extends,-

(a) shall not apply to any land or building belonging to, or vesting in, the Authority under or for the purpose of this Act;

(b) shall not apply as against the Authority to any tenancy, license or other like relationship created by any existing Board or the Authority in respect of any such land or building;

(c) but shall apply to any land or building let, or given on license, to any existing Board or the Authority,”

7. Section 39 of the Act lays down that the provisions of Chapter VIII or any Rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained elsewhere in the Act or **in any other law for the time being in force**. The MHADA Act was passed in the year 1976 and the present Rent Control Act is passed in the year

1999. Section 39 gives overriding effect to the provisions of Chapter VIII. In view thereof, I do not find any merit in the submission of Mr. Haridas that in view of Section 5 of the MHADA Act, Rent Act is not applicable.

8. In so far as the second ground namely, filing of specific performance Suit is concerned, it is not disputed that earlier Suit was withdrawn unconditionally and the subsequent Suit is dismissed. Thus, that Suit, as of today, is also not pending. Lastly, Mr. Haridas submitted that the petitioner is residing since 2014. The contention is stated to be vague. The Authorities below have considered that parties entered into registered leave and licence agreement dated 10.11.2014. The suit premises was given on residential purpose. In view of explanation (b) to Section 24 of the Act, an agreement of licence in writing is conclusive evidence of the fact stated therein. In view thereof, I do not find that the Authorities below committed any error in passing the impugned orders. Hence, Petition fails and the same is dismissed.

9. At this stage, Mr. Haridas orally applies for continuation of the ad-interim order dated 28.09.2018 for the period of 8 weeks from today.

10. It is not possible to accept this request as admittedly, petitioner has failed to comply the order dated 10.01.2018 passed by the Competent Authority of depositing the amount as per clause (iii) of that order subject to the adjustment of Rs.31,500/-. Hence, oral application is rejected. Respondent No.1 is permitted to withdraw the amount deposited by the petitioner, unconditionally.

(R. G. KETKAR, J.)