

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11858 OF 2018

The Vasai Taluka Parsee Panchayat Charitable Trust
through its Managing Trustee Ruzbe Dupetawalla ... Petitioner
Vs.
Navil Hakim and others ... Respondents

AND

WRIT PETITION NO.11861 OF 2018

The Vasai Taluka Parsee Panchayat Charitable Trust
through its Managing Trustee Ruzbe Dupetawalla ... Petitioner
Vs.
Frenny Khambata and others ... Respondents

AND

WRIT PETITION NO.11870 OF 2018

The Vasai Taluka Parsee Panchayat Charitable Trust
through its Managing Trustee Ruzbe Dupetawalla ... Petitioner
Vs.
Hector Daruwala and others ... Respondents

AND

WRIT PETITION NO.11871 OF 2018

The Vasai Taluka Parsee Panchayat Charitable Trust
through its Managing Trustee Ruzbe Dupetawalla ... Petitioner
Vs.
Mahernoz Jivasha and others ... Respondents

AND

WRIT PETITION NO.11873 OF 2018

The Vasai Taluka Parsee Panchayat Charitable Trust
through its Managing Trustee Ruzbe Dupetawalla ... Petitioner
Vs.
Khushru Dandiwala and others ... Respondents

AND

WRIT PETITION NO.11874 OF 2018

The Vasai Taluka Parsee Panchayat Charitable Trust
through its Managing Trustee Ruzbe Dupetawalla ... Petitioner
Vs.
Vispi Icchaportia and others ... Respondents

AND

WRIT PETITION NO.11883 OF 2018

The Vasai Taluka Parsee Panchayat Charitable Trust
through its Managing Trustee Ruzbe Dupetawalla ... Petitioner
Vs.

Neline Sukhadia and others ... Respondents

AND

WRIT PETITION NO.11970 OF 2018

The Vasai Taluka Parsee Panchayat Charitable Trust
through its Managing Trustee Ruzbe Dupetawalla ... Petitioner
Vs.

Hoshang Dangor and others ... Respondents

AND

WRIT PETITION NO.12006 OF 2018

The Vasai Taluka Parsee Panchayat Charitable Trust
through its Managing Trustee Ruzbe Dupetawalla ... Petitioner
Vs.

Tehmul Asundaria and others ... Respondents

AND

WRIT PETITION NO.12046 OF 2018

The Vasai Taluka Parsee Panchayat Charitable Trust
through its Managing Trustee Ruzbe Dupetawalla ... Petitioner
Vs.

Eric Bacha and others ... Respondents

AND

WRIT PETITION NO.12047 OF 2018

The Vasai Taluka Parsee Panchayat Charitable Trust
through its Managing Trustee Ruzbe Dupetawalla ... Petitioner
Vs.

Rohinton Bhathena and others ... Respondents

AND

WRIT PETITION NO.12048 OF 2018

The Vasai Taluka Parsee Panchayat Charitable Trust
through its Managing Trustee Ruzbe Dupetawalla ... Petitioner
Vs.

Cyrus Dangor and others ... Respondents

AND

WRIT PETITION NO.12051 OF 2018

The Vasai Taluka Parsee Panchayat Charitable Trust
through its Managing Trustee Ruzbe Dupetawalla ... Petitioner
Vs.

Khubcher Mehta and others ... Respondents

AND

WRIT PETITION NO.11865 OF 2018

The Vasai Taluka Parsee Panchayat Charitable Trust
through its Managing Trustee Ruzbe Dupetawalla ... Petitioner
Vs.

Khurshed Anklesaria and others

... Respondents

Mr. Pramod G. Kathane for Petitioner in all the Petitions.

Mr. Astad Randeria a/w. Mr. Bhavik Lalan i/b. Mr. Rajat Gupta for Respondent No.1 in all the Petitions.

Mr. P. P. Pujari, AGP for Respondents No.2 and 3 in all the Petitions.

CORAM : R. G. KETKAR, J.

DATE : OCTOBER 31, 2018

P.C. :

Heard Kathane, learned Counsel for the petitioner, Mr. Randeria, learned Counsel for the respondent No.1 and Mr. Pujari, learned AGP for respondents No.2 and 3-State in all the Petitions at length.

2. By these Petitions under Article 227 of the Constitution of India, petitioner - The Vasai Taluka Parsee Panchayat Charitable Trust (for short 'Trust') registered under the Bombay Public Trusts Act, 1950 has challenged the orders dated 20.07.2017 passed by the Competent Authority, Konkan Division, Mumbai (for short 'Competent Authority') as also the orders dated 21.04.2018 passed by the Additional Commissioner, Konkan Division (for short 'Commissioner'). By orders dated 20.07.2017, the Competent Authority granted leave to defend to the first respondent, hereinafter referred to as 'respondent', to contest the proceedings filed by the Trust under Section 24 of the Maharashtra Rent Control Act, 1999 (for short 'Act'). Aggrieved by these orders, petitioner filed Revision Applications under Section 44 of the Act before the Commissioner. By orders dated 21.04.018, the Commissioner rejected the Revision Applications.

3. The Petitions were heard at length on 26.10.2018 and were kept today so as to enable the parties to explore the possibility of settlement of the entire controversy raised between the parties as also for passing orders.

4. Mr. Kathane states that Ruzbe Feroze Dupetawalla, Managing Trustee of the Trust is present in the Court. He has tendered photocopy of his PAN Card, which has been taken on record and marked 'A' for identification.

5. Mr. Randeria states that respondents namely, Hector Daruwala, Mahernoz Jivasha, Vispi Icchaporia, Hoshang Dangor, Tehmul Asundaria and Rohinton Bhathena in Writ Petition No.11870 of 2018, 11871 of 2018, 11874 of 2018, 11970 of 2018, 12006 of 2018 and 12047 of 2018 respectively are present in the Court. He has tendered photocopy of their identity cards, which are taken on record and marked 'B Colly.' for identification. Mr. Randeria, on instructions, states that respondents namely, Khushru Dandiwala, Nesline Sukhadia, Eric Bacha, Cyrus Dangor in Writ Petition No.11873 of 2018, 11883 of 2018, 12046 of 2018, 12048 of 2018 respectively are ready and willing to handover possession of premises in their respective possession to the Trust by removing their articles / belongings on or before 04.11.2018. He further states that they will pay arrears of licence fee @ Rs.1,750/- from the date of expiry of their respective licences till 31.10.2018 in three equal monthly installments. The statements made by Mr. Randeria, on instructions, are accepted in the form of undertaking to this Court. Writ Petitions No.11873 of 2018, 11883 of 2018, 12046 of 2018, 12048 of 2018 are accordingly disposed of.

6. The learned Counsel appearing for the parties have tendered draft leave and licence agreement. The same is taken on record and marked 'C' for identification. By consent of the parties, some of the clauses of the agreement are modified in the following terms:

a. In clause 4(A) instead of '5th day of each English Calendar month', the same shall be substituted by the words and figure '**15th day of each**

calendar month'.

b. In clause 4(C), the sentence “*Failure to do so will automatically render this agreement to be void ab initio.*” shall stand deleted.

c. In clause 6(B), after the sentence “*The LICENSOR shall be entitled to terminate the license with immediate effect if any unauthorized changes or work is carried out in the flat, and the license fee / compensation paid for the remaining part of the month shall stand forfeited.*”, the following sentences shall be incorporated in the agreements:

“Before terminating the licence with immediate effect, the Trust shall give 14 days clear notice calling upon the concerned licensee to rectify and restore the premises to its original position. Despite receipt of notice, if the concerned licensee fails to rectify and restore the premises, the licensor will be entitled to terminate the licence with immediate effect.”

d. In clause 7(N), the following sentence:

“*However, if she is responsible for any damage or injury to the structure or fabric of the building, the LICENSOR shall be entitled to recover the cost of repairing or restoring the same and the LICENSEE undertakes to reimburse the LICENSOR the amount within seven days receiving the pertinent notice of demand.*”

shall be substituted by the following sentence:

“However, if he / she is responsible for any damage or injury to the structure or fabric of the building, the LICENSOR shall be entitled to recover the cost of repairing

or restoring the same and the LICENSEE undertakes to reimburse the LICENSOR the amount within fourteen days of receiving the notice of demand along with supporting documents.”

- e. In clause 7(T), following sentences shall be added:
“Board of Trustees agree to immediately display policy / policies as and when they are finalized on the notice board of the Trust. They will also give inspection on demand by the licensee/s. Board of Trustees will also furnish photocopy of the policy on demand by the licensee/s subject to payment of reasonable charges.”

7. It is further agreed between the parties that respondents in Writ Petitions No.11870 of 2018, 11871 of 2018, 11874 of 2018, 11970 of 2018, 12006 of 2018, 12047 of 2018, 11858 of 2018, 11861 of 2018, 12051 of 2018 and 11865 of 2018 will go on paying licence fee @ Rs.2850/- from November 2018 onwards.

8. Mr. Randeria, on instructions, states that the respondents in Writ Petitions No.11870 of 2018, 11871 of 2018, 11874 of 2018, 11970 of 2018, 12006 of 2018, 12047 of 2018, 11858 of 2018, 11861 of 2018, 12051 of 2018 and 11865 of 2018 will pay the arrears of licence fee from the date of expiry of their respective licences till 31.10.2018 in three equal monthly installments @ Rs.1750/-.

9. Mr. Randeria, on instructions, further states that within one week from today, respondents namely, Hector Daruwala, Mahernoz Jivasha, Vispi Icchaporia, Hoshang Dangor, Tehmul Asundaria and Rohinton Bhathena in Writ Petition No.11870 of 2018, 11871 of 2018, 11874 of

2018, 11970 of 2018, 12006 of 2018 and 12047 of 2018 respectively, who are present in the Court, will make representations along with the supporting documents for reducing the licence fee of Rs.2850/- per month. Statements made by Mr.Randeria, on instructions, are accepted.

10. The petitioner Trust will sympathetically consider the representations and communicate its decisions within one week from receipt of such representations.

11. In view thereof, proceedings instituted by the petitioner Trust under Section 24 of the Act are disposed of and the parties shall enter into leave and licence agreements within one week from today. Writ Petitions No.11870 of 2018, 11871 of 2018, 11874 of 2018, 11970 of 2018, 12006 of 2018, 12047 of 2018, 11858 of 2018, 11861 of 2018, 12051 of 2018 and 11865 of 2018 are disposed of accordingly.

(R. G. KETKAR, J.)

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