

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 163 OF 2017

Shri. Ashok Eknath Sutar
And Anr.

...Petitioners

Versus

Shri. Eranna Malleshi Darphale
And Ors.

...Respondents

WITH

Writ Petition NO. 619 OF 2017

Shri. Gangadhar Baloba Ghadge
(Since Deceased) Through LRs.
Smt. Suman Gangadhar Ghadge
And Ors.

...Petitioners

Versus

Shri. Eranna Malleshi Darphale
And Anr.

...Respondents

WITH

Writ Petition NO. 12251 OF 2017

Smt. Shantabai Digambar Badodkar
And Ors.

...Petitioners

Versus

Shri. Eranna Malleshi Darphale
And Anr.

...Respondents

....

Mr. S.C. Wakankar, Advocate for the Petitioners in all Writ Petitions.
Mr. Chaitanya Nikte, Advocate for Respondents No.1 & 2 in all Writ Petitions.

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CORAM : R. G. KETKAR, J.

DATE : 18th APRIL, 2018

P.C.

1. Heard Mr.S.C. Wakankar, learned counsel for the petitioners and Mr. Chaitanya Nikte, learned counsel for respondents No.1 & 2, in all Writ Petitions, at length.

2. W.P No.163/2017 takes exception to the judgment and decree dated 18.11.2015 passed by the learned 6th Additional Judge, Small Causes Court, Pune in Civil Suit No.228/2010 as also the judgment and decree dated 16.9.2016 passed by the learned Adhoc District Judge-1, Pune in Civil Appeal No.202/2016. By these orders, the Courts below decreed the suit instituted by respondents No.1 and 2, hereinafter referred to as the 'plaintiffs', and directed the petitioners, hereinafter referred to as the 'defendants', to hand over vacant and peaceful possession of the premises more particularly described in paragraph-1 of the plaint. The Courts below decreed the suit instituted by the plaintiffs under Section 16(1)(i) read with Section 16(6) of the Maharashtra Rent Control Act, 1999 (for short, 'Act').

3. W.P No.619/2017 takes exception to the judgment and decree dated 18.11.2015 passed by the learned 6th Additional Judge, Small Causes Court, Pune in Civil Suit No.227/2010 as also the judgment and decree dated 16.9.2016 passed by the learned Adhoc District Judge-1, Pune in Civil Appeal No.201/2016. By these orders, the Courts below

decreed the suit instituted by the plaintiffs and directed the defendants to hand over vacant and peaceful possession of the premises more particularly described in paragraph-1 of the plaint. The Courts below decreed the suit instituted by the plaintiffs under Section 16(1)(i) read with Section 16(6) of the Act.

4. W.P. No.12251/2017 takes exception to the judgment and decree dated 18.11.2015 passed by the learned 6th Additional Judge, Small Causes Court, Pune in Civil Suit No.226/2010 as also the judgment and decree dated 16.9.2016 passed by the learned Adhoc District Judge-1, Pune in Civil Appeal No.190/2016. By these orders, the Courts below decreed the suit instituted by the plaintiffs and directed the defendants to hand over vacant and peaceful possession of the premises more particularly described in paragraph-1 of the plaint. The Courts below decreed the suit instituted by the plaintiffs under Section 16(1)(i) read with Section 16(6) of the Act.

5. Since common questions of law and facts arise in these Petitions, the same can conveniently be disposed of by this common order. In order to appreciate the controversy raised between the parties, the facts from Writ Petition No.619/2017 are taken into consideration.

6. In support of these Petitions, Mr. Wakankar strenuously

contended that during pendency of the suit, Court Commissioner was appointed. He did not measure the carpet area of the premises in possession of the defendants. He has invited my attention to the cross-examination of PW-4 Amar Prakash Kalaskar, who was appointed as a Court Commissioner for carrying out the measurements of the suit premises. During the course of cross-examination, he admitted that he did not include the measurements of length and width of the suit premises. He further admitted that said measurement is not referred in the report submitted by him.

7. Mr. Wakankar also invited my attention to the cross-examination of PW-3 Shripad Pandurang Padhye. During the course of cross-examination, PW-3 admitted that so long as the plaintiffs do not surrender the possession of area going under road widening, the Corporation will not sanction the FSI. He further admitted that in the plan at Exhibit-57, the area of balcony is included. If the area of balcony is excluded then the area of the premises proposed to be constructed will be less than 15 square meters. He submitted that as per the Development Control Rules of Pune Municipal Corporation, the minimum area required is 15 square meters. As the plaintiffs have shown the area less than 15 square meters in the plans, the plans cannot be sanctioned. He has invited my attention to the findings

recorded by the learned trial Judge and in particular paragraphs-5, 40 to 42 & 47 of the District Court judgment as also the findings recorded by the learned District Judge in paragraphs-8 and 9. He submitted that the Courts below were not justified in decreeing the suit mainly on the ground that at the time of instituting the suit, the plaintiffs did not submit the sanctioned plans and that the area of premises to be offered to the defendants in the newly constructed building is less than 15 square meters.

8. Insofar as W.P. No.163/2017 is concerned, he invited my attention to paragraph-8 of the District Court judgment. In paragraph-8, the learned District Judge noted that the plaintiffs have shown two suit properties in one premises, namely, property 1A admeasuring 9.44 square meters and property 1B which is attic. He submitted that thus there are two tenancies and, therefore, the plaintiffs are bound to hand over possession of two separate and independent premises to the defendants. The Courts below were, therefore, not justified in passing the decree of eviction on the ground that the plaintiffs have shown their willingness to hand over the area equivalent to the present area of the suit property, namely, 22.35 square meters (suit property 1A admeasuring 9.44 square meters and suit property 1B admeasuring 12.91 square meters). He therefore submitted that the Petitions require

consideration.

9. On the other hand, Mr. Nikte supported the impugned orders. He submitted that at the time of instituting the suits, the plaintiffs had filed undertakings. Apart from that the plaintiffs have also filed additional undertaking. He submitted that in the additional undertaking, the plaintiffs have undertaken to pay the premium charges for inclusion of the balcony so as to make the premises not less than 15 square meters. He, therefore, submitted that the plaintiffs have satisfied the condition laid down under Section 16(6) of the Act. The Courts below were, therefore, justified in decreeing the suit.

10. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the plaintiffs had instituted suit for recovery of possession under Section 16(1)(i) read with Section 16(6) of the Act. It is not in dispute that during pendency of the suits, PW-4 Amar Prakash Kalaskar was appointed as a Court Commissioner, who carried out the measurements. In re-examination, PW-4 had produced the rough notes showing the measurement and same was produced at Exhibit-74 along with the map. The learned trial Judge has considered this aspect in paragraph-40 and observed that at the time of carrying

measurements, nobody raised objections as regards measurements. The learned trial Judge considered the report at Exhibit-69 (original report at Exhibit-19) as also the rough notes at Exhibit-74 and recorded a finding that PW-4 has measured the carpet area of the suit premises.

11. Insofar as W.P. No.619/2017 is concerned, in paragraph-4 the learned District Judge noted that the defendants have restricted their challenge to the decree passed by the learned trial Judge only on two grounds, namely, (i) undertaking not filed along with the suit and (ii) plans are not sanctioned by the Corporation.

12. As noted earlier, the plaintiffs have filed undertaking at the time of institution of the suits and also filed additional undertaking. The learned District Judge has referred to the decision of this Court (Coram: J.H. Bhatia, J.) in the case of **Kisan Vanaji Satpute v. Baburao Jakhuji Wakankar (since deceased) through L.Rs. Pandharinath & Another** in C.R.A. No.564/2007 and other companion Civil Revision Applications dated 13.12.2007 wherein this Court permitted filing of additional affidavit/undertaking by the plaintiffs in this Court.

13. As the plaintiffs have already filed undertakings at the time of institution of the suits as also filed additional undertaking, I do not find

any merit in the submission of Mr. Wakankar that the plaintiffs did not comply with the requirements of Section 16(6) of the Act by not filing undertaking at the time of institution of the suits.

14. As far as other challenge that the plaintiffs are handing over possession of area less than 15 square meters in the newly constructed building and consequently the Corporation cannot sanction the plans is concerned, equally I do not find any merit in this submission. In paragraph-9, the learned District Judge noted that if the area of balcony is excluded, construction of premises in the new building will be less than 15 square meters. As per the DC Rules, if the landlord pays the premium for closing the balcony area, the area of the balcony can be closed and in that event, the area of the premises in the new building will not be less than 15 square meters. Mr. Nikte has reiterated that the plaintiffs will hand over possession of area not less than 15 square meters in W.P. Nos.619/2017 & 12251/2017. Insofar as W.P. No.163/2017 is concerned, the Courts below have recorded a finding that the defendants are in possession of area admeasuring 22.35 square meters and that the plaintiffs have shown their willingness to give equivalent area in the proposed new building by filing undertaking at Exhibit-10.

15. In view thereof, I do not find that the Courts below have committed any error in decreeing the suit. The defendants are not in a position to demonstrate that the findings recorded by the Courts below are perverse, being based upon no evidence or that they are contrary to the evidence on record. The defendants are also not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the Courts below. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petitions fail and the same are dismissed.

(R. G. KETKAR, J.)

Deshmane (PS)