

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7367 OF 2017

Virendra Mantora & Ors.

..... Petitioners

VERSUS

Piyush Gangaram Gantha & Ors.

..... Respondents

Mr.Mayur Khandeparkar, a/w. Mr.Amol Jawale, i/b. APS Law Associates for the Petitioners.

Mr.Rajeev Narula, i/b. Jhangiani Narula & Associates for the Respondent nos. 1, 4 to 7 and 9.

CORAM : R.D. DHANUKA, J.

DATE : 11th JUNE, 2018

P.C.

By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 27th September,2016 passed by the learned Joint Charity Commissioner, Greater Mumbai Region, Mumbai rejecting the application filed by the petitioners under section 41-D of the Maharashtra Public Trust Act, 1950.

2. The petitioners claim to be the person interested in the affairs of the respondent no.10 trust. The impugned order is challenged merely on the ground that the trust deed of the respondent no.10 had permitted the trustees to give the premises of the trust on rent in two categories i.e. to the members of community without charging any rent or nominal rent or to the persons who are not from the same community

at the ordinary rent. The trustees however have not collected any premium or if the same is collected, the same was collected in cash.

3. Mr.Khandeparkar, learned counsel for the petitioners placed reliance on section 56 of the Maharashtra Rent Control Act, 1999 in support of the submission that the said provision permits collection of premium on transfer of tenancy. Though the purported tenancy is created after enactment of the said Maharashtra Rent Control Act, 1999, the trustees have not shown the collection of any of the payment in the tenancy documents. He submits that the trustees have alleged to have collected a sum of Rs.90 lacs and Rs.35 lacs respectively for transfer of the two tenanted premises. He also placed reliance on the valuation considered by the stamp duty department for the purpose of collection of stamp duty of these three documents.

4. It is submitted that the authority has passed the impugned order rejecting the application filed by the petitioners under section 41-D and has adopted a casual approach in the matter and has ignored the evidence led by the petitioners. He also invited my attention to the averments made in the written statement filed by the trustees in support of the submission that the trustees had admitted that the two of the tenanted premises were given to the outsiders.

5. Mr.Narula, learned counsel for the trust on the other hand invited my attention to various portions of the cross examination of the witness examined by the petitioners. It is submitted that the petitioner was put up by the rival members of the trust and was not at all aware of

the affairs of the trust. In support of this submission, learned counsel invited my attention to the evidence on pages 158, 160, 164 and 167 of the writ petition. He submits that the witness of the petitioners admitted in the cross examination that the premises were given by the trustees on tenancy basis for residential purposes. The petitioners also could not produce any proof in support of the allegation of the petitioners that any premium was collected by the trustees for transfer of tenancy in respect of the three of the tenaments.

6. Learned counsel also invited my attention to various findings of fact rendered by the learned Joint Charity Commissioner in the impugned order rejecting the application filed by the petitioners under section 41-D of the Act and would submit that the findings of fact being not perverse, cannot be interfered with by this court in this petition under Article 227 of the Constitution of India.

7. A perusal of the trust deed indicates that the trustees are allowed to create tenancy in respect of the tenaments to the members of the Bombay Halai Lohana Mahajan Community either free of any rent or at such nominal or reduced rent as the trustees shall in their absolute discretion deem fit. The trust deed also permits the trustees to give the ground floor premises at ordinary rent to enable the trustees to pay the municipal taxes, insurance premium, expenses of ordinary repairs and of collection of rents etc.

8. It is not in dispute that the out of the three tenants, one tenament was given to the member of the community whereas the two tenaments

were given to the parties outside the community.

9. A perusal of the agreement entered into between the trustees and the tenants does not indicate that any premium was collected by the trustees from the tenants. The rent amount is mentioned in the documents. A perusal of the cross examination of the witness of the petitioners clearly indicates that he was not at all aware of the affairs of the respondent no.10 trust. He did not have any personal information about the affairs of the trust. He also admitted in his cross examination that the premises were given for residential purposes by the trustee to the three tenants. The witness also admitted that he did not have any proof to show that the trustees had collected any amount of premium from these three tenants.

10. A perusal of the impugned order passed by the learned Joint Charity Commissioner indicates that the learned Joint Charity Commissioner has dealt with the oral as well as documentary evidence produced by both the parties and has rendered various findings of fact. It is held by the learned Joint Charity Commissioner that the petitioners have failed to prove that the trustees had wrongly entered into two tenancy agreements in respect of rooms described in favour of Mrs.Kavita Jayantilal Lunkar and Mr.Jayantilal Lunkar. The applicants also failed to prove that the trustees had entered into the tenancy agreements in respect of the room described therein in favour of Krishna Karya. Learned counsel appearing for the petitioners could not produce any proof even before this court in support of the submission that the trustees had collected any premium from any of the

tenants under those three agreements.

11. In my view, the findings of fact rendered by the learned Joint Charity Commissioner are based on the evidence oral as well as documentary led by the parties and being not perverse, this court cannot interfere with such findings of fact in this petition under Article 227 of the Constitution of India.

12. The petition is devoid of merits and is accordingly dismissed. No order as to costs.

[R.D. DHANUKA, J.]