IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9805 OF 2019
WITH WP/9807/2019 WITH WP/9808/2019
WITH WP/9813/2019

BALAJI RAGHUNATH SHERKHANE
VERSUS
MAHARASHTRA STATE ROAD TRANSPORT CORPORATION
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Advocate for Petitioners : Shri Kakade N.K.
Advocate for Respondent 1 : Shri Dhongade A. B.
Advocate for Respondent 2 : Shri Gapat P.B.
AGP for Respondent 3 : Shri Yadav-Lonikar S.R.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 28, 2019
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PER COURT :-

1. These matters were heard for quite some time.

2. Rent Appeals against all these petitioners have been allowed by identical judgments dated 2.5.2019 passed by the appellate Court. The judgment of the competent authority dated 21.11.2014, protecting the petitioners / tenants has been quashed and set aside and these petitioners have been directed to handover the vacant possession of the shops at issue within 30 days.

3. The record reveals that these petitioners have preferred Regular Civil Suits before the trial Court in 2011. Temporary

injunction was granted in their favour. The defendants preferred Misc. Civil Appeal and by order dated 29.8.2011, the said proceedings were partly allowed and the respondent / MSRTC was granted the liberty to evict these petitioners by following the due process of law. It is, thereafter, that the MSRTC approached the Resident Deputy Collector, Latur under Section 4 of the Maharashtra Government Premises (Eviction) Act.

4. The learned Advocate for respondent No.2, who was the developer of the property on BOT principle in favour of respondent No.1 / MSRTC, submits that there is some dispute between these respondents as regards whether the developer has received his entire consideration and whether the rent being deposited by the petitioners before the trial Court could be withdrawn by the MSRTC or the developer. I am not required to consider this aspect, since this issue is not addressed to this Court.

5. The record reveals that the Municipal Corporation, Latur has specifically rejected the revised plan, submitted by the developer, vide communication dated 26.12.2002, observing that the basement floor shall be used only for parking and as a store house and not for commercial purposes. The Town Planner has also informed the developer by communication dated 18.9.2003, that the basement

should not be used for commercial purpose and shall be restricted only for parking and storage. Yet, the developer entered into a lease agreement with these petitioners on 27.6.2007 for a period of five years and thus, allotted the basement area as shops to these petitioners. This appears to be an illegality. Moreover, after 27.6.2012, there has been no renewal of the lease agreement between the petitioner and the developer. This appears to be the second illegality.

6. Learned Advocate for the petitioners have taken instructions to submit that the suit can be expedited. I, however, find that the issue in these petitions is with regard to the eviction of persons, who are occupying Government premises. If the petitioners file an individual affidavit / undertaking that if the suit is decided against them, they would vacate the shop premises within 15 days and only thereafter, they would prefer further proceedings, they could be protected for some time.

7. Learned Advocate for the petitioners submits, on instructions, that these petitioners would file their individual affidavit / undertaking and would declare that the shop premises would be vacated within 15 days if the suit is decided against them. These affidavits would be filed by the end of the day on 30.8.2019.

8. Learned Advocate for the MSRTC has opposed the said proposal and submits that the premises should be vacated forthwith. There is default in payment of rent for almost 4 months as the petitioners have not deposited the rent before the trial Court. He, therefore, submits that these petitions deserve to be dismissed.

9. Considering the above and keeping in view that the suit is pending for eight years, the same could be decided within six months. No harm would be caused to the respondents. So also, the Civil Court would consider the aspect as to whether the suit is barred under Section 8-A of the Maharashtra Government Premises (Eviction) Act. These petitioners have been protected against eviction by different orders passed in various proceedings in the last eight years. I find it equitable to continue the protection upto 29.2.2020 or till the suit is decided, whichever is earlier, with the rider that the parties would not be permitted to seek adjournments on unreasonable grounds. The trial Court would deal with the pending suits expeditiously and if necessary, even on day to day basis.

10. In view of the above, these petitions are disposed off with the following directions:-

(A) The impugned operative part of the order of the Rent Appeal Court dated 2.5.2019 would be kept in abeyance only till 29.2.2020 or the date on which the suits are decided, whichever is earlier.

(B) In the event the suits are held to be barred by the law prescribed under Section 8-A of the Maharashtra Government Premises (Eviction) Act, these orders of the Rent Appeal Court dated 2.5.2019 would become applicable and the petitioners would vacate the premises within fifteen days from the date of such order.

(C) In the event the suits are held to be tenable and are decided against these petitioners, they would vacate the premises within fifteen days from the date of such judgment and there shall be no further protection till they vacate the premises.

(D) The affidavits of these petitioners, as noted above, shall be filed in this Court on/or before 30.8.2019 and the same shall be placed on record in these petitions and shall be a part of this order.

(E) As the petitioners are defaulters for a period of four months, they shall deposit the arrears of rent amount on/or before 7.9.2019 and would continue to deposit the monthly rent amounts on/or before the 10th day of each month before the trial Court.

(F) In the event of default in depositing the arrears as directed above or depositing of a single monthly rent, this

ad-interim protection shall stand vacated forthwith and the orders passed by the Rent Appeal Court, dated 2.5.2019, would become operable and the MSRTC can thereafter, forthwith evict these petitioners from the said shops.

(G) Since the petitioners have closed their evidence in the suit, they should not reopen the evidence on any pretext.

(RAVINDRA V. GHUGE, J.)

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