

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11316 OF 2019

**JANI KHAN BABAMIYA PATHAN THROUGH GPA SYED
GAFFAR SYED MAHEMOOD
VERSUS
MSRTC PARBHANI THROUGH DIVISIONAL CONTROLLER
AND ANOTHER**

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Advocate for the Petitioner : Shri N. K. Tungar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 16th SEPTEMBER, 2019.

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PER COURT :

1. The petitioner / original plaintiff is aggrieved by the order dated 03/01/2019 passed by the Trial Court, by which, his application Exhibit 5 seeking injunction under Order 39 Rules 1 and 2 of the Code of Civil Procedure, has been rejected. The petitioner is also aggrieved by the judgment of the Appellate Court dated 06/08/2019, by which, Misc. Civil Appeal No. 6/2019 has been rejected.

2. The learned Advocate for the petitioner / plaintiff submits that he is in possession of a small shop which belongs to the respondent Corporation. The MSRTC is illegally evicting

him from the premises. He sustains his family on the earnings from the said shop. Admittedly he is in possession. Even if he is an illegal possessor of the property, he can be dispossessed only by following the due procedure laid down in law. Reliance is placed upon the following judgments :-

(1) Baban Anantrao Naik Vs. Sau. Pramila Uttamrao Yenare & Anr., 2010 BCI 338,

(2) Krishna Ram Mahale Vs. Shobha Venkat Rao, 1989 AIR (SC) 2097,

(3) Mansharam Mirchumal Sangtani Vs. Dhule Nagar Palika (Municipal Council), Dhule, 1996 BCI 91,

(4) Rame Gowda (D) Vs. M. Varadappa Naidu (D), 2004 AIR (SC) 4609.

3. The learned Advocate has then drawn my attention to the grounds formulated in the memo of the petition and submits that though the petitioner has not entered into an agreement with the Corporation after 2018, since he is in possession of the shop at the Corporation bus stand, he cannot be evicted.

4. I find from the record that the Maharashtra State Road Transport Corporation has embarked upon public projects for renovating their bus-stands at various places in the State of Maharashtra. They intend to develop the property so as to generate revenue from the business which, in all probabilities, would be generated in view of the complex that they intend to erect.

5. The Record further reveals that the petitioner is a squatter on the property and does not have a renewed agreement after 2018. In between October 2009 to October 2018, there was an agreement executed and the same has expired in 2018.

6. It is further revealed that the Corporation published a public notice inviting tenders. The petitioner could have applied pursuant to the said advertisement and could have competed with all bidders. Instead of offering a tender, he has rushed to the Trial Court under the garb of he being illegally evicted by the Corporation. It is pointed out that from 2014 till 2018, the petitioner had an agreement. In this backdrop, the

petitioner could have submitted his bid and could have earned a right to an agreement.

7. Both the Courts below have concluded that the petitioner has approached the Trial Court so as to use the said suit to build a pressure point to compel the Corporation to enter into a fresh agreement.

8. Obviously, it is for the Corporation to adopt a procedure for evicting the petitioner. The publication of the auction bid notice would enable the petitioner to put forth a proper bid so as to earn a right to operate the said shop.

9. Insofar as the judgments cited are concerned, there is no dispute that the law expects a land owner to evict the tenant by following a procedure which is acceptable to law. No such circumstances have been brought on record by the petitioner before the Trial Court, as well as, before the Appellate Court, that the Corporation was resorting to illegal means of physically evicting him out of the shop.

10. In view of the above, I do not find that the concurrent findings of the Courts below could be termed as being perverse or erroneous. This petition, being devoid of merit is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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