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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4514 OF 2019

Allabaksha Mahmad Sharif Bagwan ..Petitioner.
V/s.
The Divisional Controller,
Maharashtra State Road Corporation,
Solapur Division, Solapur ..Respondent.

Mr.Bhushan U.Deshmukh for the petitioner.

Ms.Kavita Anchan with Ms.Meena Shaikh i/b. M.V.Kini for respondent.

CORAM : M.S.SONAK, J.

DATE : APRIL 9, 2019

ORAL JUDGMENT

Heard Mr.Deshmukh, learned counsel for the petitioner and Ms.Anchan, learned counsel for the respondents.

2. Challenge in this petition is to the orders dated December 31, 2018 and March 16, 2019 made by the learned trial Judge and Appeal Court refusing any injunction in favour of the petitioner.

3. The petitioner claims that he is in possession of the suit premises which is a shop inside the Solapur bus stand. It is the case of the petitioner that this shop was alloted to his predecessor-in-title vide

agreement dated January 16, 2009 which was for a tenure of 14 years. It is the further case of the petitioner even before the expiry of this term, the respondent-Corporation seeks to take law in its own hands and dispossess the petitioner.

4. Ms.Anchan, learned counsel for respondent refutes the contentions raised for and on behalf of the petitioner and she points out that the petitioner is bent upon taking undue advantage of some typographical error in the agreement. She points out that the agreement was not with the petitioner but with his mother. She points out that even though there is an agreement, there was no licence given to the petitioner. Such licence in any case ceased to operate upon the demise of the mother. She points out that thereafter, the petitioner was permitted to continue in the premises subject to a fixed term. The petitioner even gave an undertaking to vacate the premises on completion of the said term. She points out that both the Courts have considered the matter in proper perspective and, therefore, the petitioner may be dismissed.

5. Ms.Anchan points out that respondent have not taken law in their own hands and in fact, they have initiated proceedings under the Government Premises Act to secure eviction of the petitioner. She points out that a statement made by the petitioner that tenders were invited in respect of the suit shop were not correct. Tenders were

invited in favour of the neighbouring shops. She submits that the petitioner cannot illegally occupy the suit shop on the basis of an injunction order.

6. Though, the two Courts have declined to grant any injunction in favour of the petitioner, record reveals that both during the pendency of the suit as well as during the pendency of the appeal, the petitioner was protected. In fact, even after the dismissal of the appeal, the petitioner's possession is directed to be protected upto April 16, 2019.

7. Both the parties have raised arguable issues. However, what is most important is the submission of Ms.Anchan that, the respondents have initiated proceedings under the Government Premises Act for securing eviction of the petitioner. This means that atleast, *prima facie*, there is no threat to the petitioner being evicted, otherwise than due process of law. At the same time, the petitioner cannot continue in the suit premises without payment of the present market rate which can be substantially assessed at Rs.5,000/- per month. Therefore, interest of justice will be served if the petitioner is directed in so far as the proceeding about eviction otherwise than due process of law is concerned, subject no doubt to the petitioner paying to the respondent an amount of Rs.5,000/- per month and without claiming any equity in respect of the same. At the same time, interest of the

respondents can be protected by making it clear that the respondents can proceed with their action under the Government Premises Act. If the respondent-Corporation succeeds in securing eviction order against the petitioner under the Government Premises Act, then, there is no question of this protection coming to the aid of the petitioner. This is also because, as admitted by learned counsel for the petitioner, the petitioner will have remedy by way of instituting an appeal before the Appellate Authority i.e. the District Court. Needless to add, all contentions of all the parties can always be kept open in such proceedings.

8. Accordingly, this petition is disposed of by passing following order :-

a) The petitioner is directed to pay to the respondent, without prejudice to his rights and contentions, an amount of Rs,.5,000/- per month with effect from May 1, 2019. The said payment will have to be made on or before fifth of each month. The first such payment will have to be made on or before May 5, 2019;

b) The respondents shall not evict the petitioner, otherwise than due process of law. This means that the respondents can evict the petitioner by taking out appropriate proceedings as permissible under the law; The respondents are, therefore, permitted to continue with the proceedings already taken out under the

Government Premises Act ;

c) No doubt all objections of all parties in this proceedings are specifically kept open. The aforesaid means that if the respondent succeeds in getting eviction order in the proceedings initiated under the Government Premises Act, then, the restraint order will not apply. However, this is also without prejudice to the rights of the petitioner to institute appeal against such decision before the appropriate forum. Again all contentions of the all parties are specifically left open;

d) The civil suit shall be disposed of as expeditiously as possible by the learned trial Judge. The learned trial Judge to specifically consider the issue of maintainability of the suit, now that the proceedings under the Government Premises Act have already been initiated. The suit be disposed of one way or the other, latest by December 31, 2019.

9. The petition is disposed of in the aforesaid terms. There shall be no order as to costs.

10.. All concerned to act on the basis of an authenticated copy of this order.

(M.S.SONAK, J.)