

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7400 OF 2016

Prakash Kisanlal Agarwal	... Petitioner
V/s.	
State of Maharashtra and Ors.	... Respondents

Mrs. Anita Agarwal, for the Petitioner
Mr. R.P. Kadam, AGP for the Respondent Nos. 1 and 2.
Mr. A.A. Garge, AGP for Respondent Nos. 3 and 4.

CORAM: K.K. TATED, J.

DATED : JANUARY 11, 2019

P.C. :

- 1 Heard learned counsel for the parties.
- 2 By this Writ Petition under Article 227 of Constitution of India, the Petitioner is challenging the order dated 27th July, 2015 below Exhibit 5 in Civil Appeal No. 268 of 2015 rejecting the Petitioner's application for interim stay.
- 3 In the present proceeding, initially the Respondent No. 3 – Lonavala Municipal Corporation, Lonavala issued order dated 30th April, 2015 calling upon the Petitioner to hand over vacant and peaceful possession of premises i.e. Gala No. 4, Jaychand Chowk, Loanavala, Tal. Mawal, Dist. Pune under the provision of Bombay Government Premises (Eviction) Act, 1955 (Amended Act, 2007).
- 4 Being aggrieved by the order dated 30th April, 2015 the

Petitioner preferred Civil Appeal No. 268 of 2015 before the learned Civil Judge, Pune. In that Appeal the Petitioner preferred application below Exhibit 5 for stay of the order of eviction passed on 30th April, 2015 in Eviction Proceeding No. Eviction/SR/26/12 pending hearing and final disposal of the Appeal. The learned Judge after considering the material on record dismissed the application preferred by the Petitioner below Exhibit 5. Learned District Judge in his order dated 27th July, 2015 in paragraph 10 recorded that the residential Collector, Pune has given full opportunity to the Petitioner to file written statement and even written notes of argument and thereafter decided the matter against the Petitioner. Paragraph 10 of the said order reads thus :

“Thus, prima facie, even though, the appellant has paid the tax of thousands of rupees to the respondent No.3 and has also deposited the fine etc. with it and the respondent No. 3 has passed the resolution about the transfer of the shop block on the name of the appellant, but still it is the purely direction of the Govt./ Collector, Pune either to transfer or not to transfer the shop block on the name of the appellant. The appellant cannot force the Government/ Collector, Pune to allot the shop block on his name. As the respondent No. 3 has already built a big complex behind the shop block and as the Government has refused to transfer the shop block on the name of appellant, then the appellant has no option than to

vacate the same. The respondents have now followed the due process of law under the Eviction Act and hence the stay to the said process cannot be given. As observed earlier, prima facie the Residential Collector, Pune has given opportunity to the appellant to file written statement and even written notes of argument and I did not find any illegally, perversity in the said order. As the appellant is in unauthorized possession of the shop block and the respondents are following the process of law, then this Court is not expected to exercise its power under Order 41 Rule 5 of the Code of Civil Procedure to give go by to the due process of law followed by the respondents. So I did not find that the appellant would suffer any substantial loss if the stay to the operation of the impugned order is not granted. On the contrary, for the aforesaid reasons the impugned order and its operation cannot be stayed. Thus, I did not find any substance in this application and the same is liable to be rejected. Hence, the order.”

5 Being aggrieved by order dated 27th July, 2015 passed.

6. The main contention raised by the Petitioner is that the Respondent without following due process of law passed the impugned eviction order. She submits that even the authority below, without considering their written submissions, passed the

order and directed the Petitioner to handover the possession of the suit property to the Respondents. She further submits that during the pendency of the present Writ Petition because of pressure on the part of the Respondents, the Petitioner hand over the vacant and peaceful possession of the suit premises to Respondent – Council on 27th July, 2015 by executing receipt. She further submits that thereafter the Respondent – Council demolished suit premises and constructed shopping complex. She submits that in view of the subsequent development, the Respondents may be directed to provide the alternate accommodation to the Petitioner. In support of her contention, she relied on the judgment in the case of ***Jayprakash Vishwanath Jaiswal vs. Municipal Corporation of Cities of Kalyan and Dombivali and Ors., 2018 (6) Mh.L.J. 459.*** On the basis of this submission, she submits that the impugned order passed by the learned District Judge is required to be set aside directing the Respondents to provide another shop premises in the same vicinity. She further submit that if present Writ Petition will not be allowed irreparable loss will cause to the Petitioner.

7. The learned counsel for Respondent Nos. 3 and 4 vehemently opposed the present Writ Petition. He submits that the authority after following due process of law as required under the Bombay Government Premises (Eviction) Act, 1955 (Amended Act, 2007) passed the order directing the Petitioner to handover vacant and peaceful possession of the suit premises i.e. Gala No. 4, Jaychand Chowk, Loanavala, Tal. Mawal (Pune). He further submits that even the learned District Judge at the time of deciding the

Exhibit 5 for interim relief, considered all the documents and held in paragraph 10 that Residential Collector, Pune has given opportunity to Petitioner to file written statement and even written notes of argument and then passed the impugned order. He further submits that during the pendency of the present Writ Petition the Petitioner on his own hand over the vacant and peaceful possession of the suit premises to Respondent Nos. 3 and 4 on 31st July, 2015 by executing receipts which is at Exh A on page 122 to their affidavit in reply dt.25th July, 2016. He further submits that they already demolished suit premises & constructed shopping complex. He submits that in view of the subsequent development, nothing survives in the present Petition and the same may be disposed of.

8. Heard both the sides at length.

9. It is to be noted that in view of the subsequent development that Respondent Nos. 3 and 4 now demolished the suit premises and constructed the shopping complex and the Appeal preferred by the Petitioner is pending for hearing on its own merits, there is no question of granting any prayer in favour of the Petitioner directing Respondent Nos. 3 and 4 to provide alternate accommodation to the Petitioner. The same can be decided at the time of final disposal of Civil Appeal No. 268 of 2015 which is pending for hearing.

10. The authority cited by the Petitioner in the matter of ***Jaiprakash Jaiswal*** (supra) is not applicable to the facts of the present case. In the case in hand, the Petitioner on his own handed

over the possession of suit property to the Respondent and thereafter same was demolished by the Respondent. In view of these facts, I do not find any substance in the present Petition.

11. Writ Petition stands rejected.
12. No order as to the costs.
13. All contentions of both the parties are kept open in Civil Appeal No. 268 of 2015.

(K. K. TATED, J.)