

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12429 of 2018

Aziza Ahmed Ali Memon ... Petitioner

v/s.

State of Maharashtra & anr. ... Respondents

Ms. Shyamli Haleja i/b. H.& M. Legal associates for the petitioner.

Mr. Parag S. Mishra for respondent no.2.

CORAM : DAMA SESHADRI NAIDU, J.

10th July 2019.

P.C.

The petitioner's father secured the property on lease in 1962 from the landlord. He continued to be the tenant until 2008 when he died. He died, leaving behind four children—two sons and two daughters. One of the daughters is the petitioner. In 2015 one of the sons died leaving behind his widow.

2. The petitioner claims that despite her marriage, she never left

the matrimonial home. According to her, after her father's death, she continued to possess the leased property, though the other children, including her deceased brother, lived elsewhere. In the due course, she has accused her sister-in-law, that is her deceased brother's wife, of conspiring to throw her out of the property. She is said to have initiated false litigation against the petitioner. That sister is the 2nd respondent in this writ petition.

3. To elaborate, the petitioner pleads that she inducted a paying guest by name Ruksana into the property, besides her continuing to live in the same property. Initially, the 2nd respondent, the brother's widow, filed Regular Suit No.150/2015 claiming to be the owner of the property. She sought the eviction of the paying guest as if she herself inducted her into possession. After coming to know of that suit, the petitioner claims to have filed an affidavit before the trial Court asserting her right in the property. So the 2nd respondent withdrew the suit from the trial Court, to institute appropriate proceedings before the competent authority. The suit was withdrawn on 29th April 2016.

4. In the second week of May 2016, the second respondent, that is the petitioner's sister-in-law, applied before the Competent Authority under Section 24 of the Maharashtra Rent Control Act. Again, it was against the alleged paying guest. After securing an order of eviction, the 2nd respondent allegedly dispossessed the petitioner on 17th July 2017.

5. The petitioner claims that, first, the 2nd respondent did not

make her a party to the proceedings under Section 24 of the Act. Second, under the colour of the order from the Competent Authority, secured against the alleged paying guest, the 2nd respondent has actually dispossessed the petitioner.

6. Aggrieved, in October 2017, the petitioner filed the statutory Appeal No.1043/2017 before the Additional Commissioner, Konkan Division. Eventually, the learned Additional Commissioner, too, dismissed the petitioner's appeal.

7. As a matter of collateral development, the 2nd respondent has also filed Ordinary Suit No.357/2017, making for the first time the petitioner as a party. It was when the application for eviction under Section 24 of the Act was pending before the Competent Authority. This time the paying guest was not made a party, but the landlord was. That suit is said to be still pending.

8. Now assailing the order dated 27th August 2018, passed by the Additional Commissioner, Konkan Division, the petitioner has filed this writ petition.

9. Heard Ms.Shyamli Haleja, the learned counsel for the petitioner, and Mr. Parag Mishra, the learned counsel for the second respondent.

10. In the suit that stood withdrawn, the 2nd respondent seems to have claimed that her husband was the tenant of the property and that he inducted the defendant Ruksana as a paying guest. So she should be

evicted for the reasons stated in the Suit. Later, perhaps with the petitioners' attempt to come on record, she withdrew the suit.

11. Then, the second respondent filed an application under Section 24 of the Maharashtra Rent Control Act. She seems to have claimed that provision permits the tenant-turned-landlady to initiate the proceedings. Perhaps, the second respondent has asserted herself that after her husband's death, she is the landlady vis-à-vis the paying guest or the subtenant, whichever name she called the defendant with. Then, on the merits the competent authority allowed that application. Later she executed that. Though the petitioner filed an appeal, that was dismissed.

12. The petitioner's singular contention is that she had been dispossessed without the due process of law. The second respondent is said to have no right over the leased property. According to the petitioner's counsel, the 2nd respondent has taken recourse to abuse of process.

13. On the other hand, the 2nd respondent's counsel contends that during the life term of the original tenant, that is the petitioner's father, he assigned all rights of tenancy through a document on his son and the second respondent daughter-in-law. Under those assigned rights, the second respondent's husband, during his lifetime, is said to have inducted Ruksana as a sub-tenant or a paying guest. True, the petitioner claims Ruksana as her paying guest. The fact remains that

the second respondent took out the proceedings to evict Ruksana.

14. On the other hand, the petitioner could produce before the authorities under the Maharashtra Rent Control Act primarily these documents: The proof of having the electrical connection transferred on to her name, and the rent receipts the landlord issued on her name. According to the petitioner, without deciding the effect of these documents, the appellate authority has erred in dismissing her appeal.

15. From the record, I see the affidavit the petitioner filed before the Electricity Authorities. It reveals that she has solemnly declared that she is the only legal heir and successor to her father, the original tenant. *Ex facie*, the petitioner has not disowned this document. The second respondent's counsel contends that the petitioner secured the rent receipts, too, from the landlord lying to the same effect.

16. Indeed, any writ remedy is equitable, and the suitor's conduct must be above board. The petitioner's conduct, however, does not inspire confidence.

17. Besides that, the petitioner claims to have been in possession of the property and further claims to have been dispossessed without due process of the law. In that event, the petitioner could take recourse to, say, Section 6 of the Transfer of Property Act and seek restoration of possession.

18. To sum up, the petitioner's false affidavit, I reckon, disentitles her to an equitable remedy. This writ petition is under Article 227 of

the Constitution of India. It intends to keep the courts and tribunals, as well as the quasi-judicial authorities within their jurisdictional bounds. Nothing more. This supervisory jurisdiction is no disguised appeal to indulge in a roving inquiry into the disputed questions of fact.

19. Under these circumstances, I refuse to interfere with the order passed by the Additional Commissioner, Konkan Region. It is for the petitioner not only to reclaim possession but also to establish her right of tenancy in the manner legally permissible.

No order on costs.

(DAMA SESHADRI NAIDU, J)

L.S. Panjwani, P.S.