

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.2931/2017

Prabhudas Karsanbhai Patel

Vs.

The Senior Divisional Commissioner Manager, South East Central Railway, Nagpur.

Office notes Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri C.S.Kaptan, Senior Advocate with Shri H.R.Gadhia, Advocate for petitioner.

Shri M.M.Agnihotri, Advocate for respondent.

CORAM : A.S.CHANDURKAR, J.

DATED : NOVEMBER 21, 2019.

Heard.

The challenge raised in the present writ petition is to the judgment of the appellate Court in Miscellaneous Civil Appeal No.110/2017 dated 08.05.2017 dismissing the appeal preferred by the petitioner under Section 9 of the Public Premises Eviction Act, 1971 (for short, the said Act).

It is the case of the petitioner that on 17.02.1995 plot No.21-B admeasuring about 10,000 square feet was given on lease to his father by the respondent herein. The original licensee expired on 16.08.2013 after which the petitioner continued in occupation of the plot in question. The petitioner claimed entitlement to the said leasehold plot on the basis of a Will dated 10.08.2010 that was executed by the original licensee. The respondent however issued a notice dated 20.07.2016 to the petitioner stating therein that the petitioner was liable to be evicted from the leasehold plot after the death of the original licensee. His occupation was stated to be unauthorised. A reply

was given to the aforesaid notice. The respondent thereafter initiated proceedings under Section 5 (1) of the said Act before the Estate Officer seeking eviction of the petitioner. By order dated 31.03.2017 the Estate Officer allowed that application and directed eviction of the petitioner. Being aggrieved, the petitioner filed an appeal under Section 9 of the said Act which appeal has been dismissed by virtue of the impugned judgment. The same has therefore been challenged in the present writ petition.

Shri C.S.Kaptan, learned Senior Advocate for the petitioners submitted that the respondent had sought eviction of the petitioner on a wrong premise. Referring to the licence agreement dated 17.02.1995 and its various clauses, it was submitted that since the predecessor of the petitioner was permitted to erect a permanent structure, the licence in question became irrevocable by virtue of the provisions of Section 60(b) of the Easements Act, 1882 (for short, 'the Act of 1882'). He referred to various clauses of the licence agreement to submit that the said licence was not liable to be terminated only on the ground that the original licensee had expired. Execution of a Will by the original licensee did not amount to transfer or assignment within the meaning of the Transfer of Property Act, 1882. It was therefore submitted that in view of the effect of various clauses in the agreement, the impugned action of termination of the licence was illegal and contrary to law. In support of his submissions, the learned Senior Advocate relied upon the decisions in *Rahimbaz Vs. Samsu and others*, AIR 1951 Nagpur 215, *Mahadeo (dead) through Lrs Vs. Shakuntalabai* 2017 (2) Mh.L.J.371, *Ram Sarup Gupta (dead) by Lrs Vs. Bishun Narain Inter College and others* AIR 1987 SC 1242 and the judgment of the learned Single Judge of the Kerala High Court dated 16.03.2017 in R.S.A.No.764/2012(G) (Abdul Latheef and anr Vs. T.T.Joy and

others). It was thus submitted that the impugned judgment was liable to be set aside.

On the other hand Shri M.M.Agnihotri, learned Advocate for the respondent supported the impugned judgment. He submitted that by grant of licence on 17.02.1995 the licensee was permitted merely to erect a temporary structure. This was clear on reading of the terms of the licence. There was no permission to erect any permanent structure and therefore the provisions of Section 60 (b) of the Act of 1882 would not be applicable. According to him, various clauses of the agreement infact indicated that it was not permissible for the licensee to violate the terms of the agreement and erect a permanent structure. It was further not permissible to assign or transfer any rights received under the licence agreement nor were such rights heritable. Execution of the Will in favour of the petitioner therefore had no legal basis. He further submitted that the petitioner had infact sublet the property in question which had been brought on record by filing submissions before this Court and this aspect had not been denied by the petitioner. He referred to the communication dated 17.02.2018 wherein during the course of inspection it had been found that the petitioner had illegally sublet licenced property to a third party. Even on this count, the petitioner was liable to be evicted from the plot on question. The learned counsel placed reliance on the decisions in *Sunder Lal Vs. Sita Bali and another* AIR 2003 P & H 277, *Francis s/o Bennadic D'Souza Vs. Andrew alias Jairon s/o Bennadic D'Souza(Dead) by Lrs Lucy D'Souza wd/o Andrew D'Souza* 2008 (6) Mh.L.J. 450, *Kirtikumar Vallabhdas Gajaria and another Vs. Champaben Narottam Kapadia and others* 1998 (2) Mh.L.J.597, *Vasudeo Mirchumal Devjani and others Vs. Hindustan Chemical Works Ltd and another* 1984 Mh.L.J.503 and

B.M.Lall (dead) by His Lrs Vs. Dunlop Rubber Co.(India)Ltd. And another AIR 1968 SC 175 to submit that no interference was called for with the impugned order.

I have heard the learned counsel for the parties at length and with their assistance, I have perused the documents placed on record. The petitioner claims entitlement to continue on the plot in question on the basis of the agreement of licence dated 17.02.1995 that was entered into with his father. In that agreement, it has been stated that the purpose for granting the licence was for stacking of timber and erection of “Ty-structure” and saw mill. As per other terms of the agreement the licensee has been permitted to keep and maintain the structure by carrying out necessary repairs therein. The licensee has not been permitted to make construction of any building or erect any structure other than what has been permitted therein. The Divisional Engineer has been permitted to inspect the same and he has been authorized to act on behalf of the respondent. The licensee is also required to restore the site within a period of 15 days from the termination of the agreement. It has been clarified that the licence was only in respect of occupation rights of the land and the licensee was not permitted to carry of any business or activities of whatsoever nature on the said land. Similarly sub-letting has been prohibited.

While according to the petitioner, the licensee was permitted to erect a permanent structure and thus after such construction the licensee was not liable to be evicted by virtue of provisions of the Section 60 (b) of the Act of 1882, it is contended otherwise by the respondent by stating that erection of only a temporary structure was permitted. In the licence agreement itself it is seen that the licensee has been permitted to erect “Ty-structure”. According to the respondent, the word “Ty”

indicates the word temporary and hence it was not permissible to make any permanent construction thereon. On reading of the entire licence in question and especially clauses 11, 12, 14, 19 and 20 A thereof, it becomes clear that the respondent is justified in contending that the licence agreement was entered into to enable construction of a temporary structure since the licensee was granted rights merely to occupy the land and undertaking any permanent construction was not permitted. The licensee was permitted merely to erect a temporary structure and on termination the licensee was required to restore the land to its original status. The Estate Officer and thereafter the learned Judge of the appellate Court have both found that the licence agreement was granted for the purpose of stacking of timber and erection of a temporary structure. This finding recorded on the basis of a complete reading of the agreement dated 17.02.1995 is found to be reasonable and in exercise of writ jurisdiction this finding is not liable to be interfered with by exercising jurisdiction as an appellate Court. It is thus held that the licence agreement merely permitted the predecessor of the petitioner to erect a temporary structure.

There cannot be any dispute with regard to the ratio of the decisions cited by the learned Senior Advocate for the petitioner that on erection of a permanent structure on the basis of a licence granted would result in attracting the provisions of Section 60 (b) of the Act of 1882. However when the licence agreement merely permitted erection of a temporary structure, there is no occasion to hold that the licence became irrevocable under Section 60 (b) of the Act of 1882 since the predecessor of the petitioner erected a permanent structure. In *Tukaram Sawant* (supra) it has been held that the licensee should be in a position to show that he has undertaken the permanent construction

pursuant to a right granted to do upon the land something which would be unlawful in absence of such right.

Insofar as determination of the licence is concerned, it is the case of the respondent that under its policies there was no provision for transfer the licence in the name of a legal heir of the original licensee. It was also noted that after the death of the original licensee, the occupation of the petitioner was unauthorized. According to the petitioner, he claimed right to continue in possession on the basis of the Will in question. The Authorities have rightly found that under Clause 23 of the licence agreement, assignment of the rights was not permissible and that on the death of the original licensee, the licence was liable to be terminated. The notice in question dated 20.07.2016 has therefore been issued under the terms of the licence agreement itself. The reliance placed on behalf of the petitioner on the decision in *Mahadeo through LRs* (supra) does not assist the case of the petitioner in the light of Clause 23 of the licence agreement. Moreover, once it is found that the licence was not irrevocable, rights thereunder would be personal to the licensee which could neither be transferred nor could they be heritable.

It is thus found that under the licence agreement dated 17.02.1995 the licensee was permitted merely to erect a temporary structure. It was not permissible to transfer or assign rights under the licence in favour of any other party and hence the respondent has acted under the said agreement by issuing notice dated 20.07.2016. The Estate Officer and thereafter the learned Judge of the appellate Court have rightly found that the petitioner was liable to be evicted from the site in question. Hence no interference with the impugned judgment is called for. The writ petition is accordingly dismissed with no orders as to costs.

At this stage, the learned counsel for the petitioner seeks continuation of the interim relief that was granted on 12.05.2017. This request is opposed by the learned counsel for the respondent.

Considering the fact that the interim relief was operating since 12.05.2017 that order shall continue to operate for a period of six weeks from today and it shall cease to operate automatically thereafter.

Order accordingly.

JUDGE

Andurkar.