

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 6226/2019

Ramesh S. Gawai
..VS..
MSRTC

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri C.A. Joshi, Advocate for the petitioner
Shri V.G. Wankhede, Advocate for the respondent

CORAM : Z.A.HAQ, J.
DATED : 13/09/2019

Heard.

The petitioner is occupying the premises owned by the respondent – Corporation as per the licence agreement between the parties, the period of licence being from 24/10/2001 till 23/10/2015. Before expiry of the licence period, the respondent – Corporation issued notice to the petitioner calling upon the petitioner to vacate the premises, as he had shifted from the premises of which licence was granted to him to some other premises without obtaining permission of the concerned authority. As the petitioner failed to comply with the requirements of notice, the respondent – Corporation initiated proceedings under the Maharashtra Government Premises (Eviction) Act, 1955. After conducting the trial, the Competent Authority passed an order on 29/09/2016 directing eviction of the petitioner from the premises. The Competent Authority also permitted the respondent – Corporation to recover the amount of arrears of the occupation charges. This order was challenged by the

petitioner before the District Court in appeal which is dismissed by the impugned judgment.

The contention of the petitioner is that he is not granted opportunity to defend and to cross-examine the witness of the respondent – Corporation. It is on record that the witness of the respondent – Corporation was partly cross-examined on behalf of the petitioner, however, subsequently the witness failed to attend the proceedings and the Competent Authority discarded the evidence of the respondent – Corporation's witness. In these facts, it cannot be said that the petitioner is not granted opportunity to cross-examine the witness of the Corporation.

Further contention of the petitioner is that after the respondent – Corporation failed to examine any witness, the Competent Authority should have fixed the matter for recording of evidence of the petitioner's witness, however, the matter was directly fixed for arguments. To support the submission that the Competent Authority is required to follow the procedure in conformity with the principles of natural justice, the advocate for the petitioner has relied on the judgment given by the Division Bench of this Court in the case of Nandini J. Shah and another vs. Life Insurance Corporation of India and others reported in 2008 (4) Mh.L.J. at page 106. It is pointed out that this proposition is laid down by the Division Bench after considering the judgment given by the Hon'ble Supreme Court in Special Leave Petition (C) Nos. 8232/2006 and 10348/2006 (New India Assurance Co. Ltd. vs. Nusli Wadia and another). It is argued that as the Competent Authority failed to follow the procedure and failed to give opportunity of adducing evidence to the petitioner, the

order passed by the Competent Authority is illegal and unsustainable in law, and as the learned District Judge has failed to appreciate these aspects, the judgment passed by the learned District Judge also cannot sustain the scrutiny of law.

The proposition laid down in the above referred judgment is well settled and if the Competent Authority passes an order without complying with the principles of natural justice, such order cannot sustain the scrutiny of law. However, in the facts of the present case, the above referred judgment does not assist the petitioner. The roznama (copy of which is placed on record) shows that after the Competent Authority passed order on 25/07/2016 discarding the evidence of the Corporation's witness, the matter was fixed for arguments on 18/08/2016 and 31/08/2016. The advocate representing the petitioner argued the matter before the Competent Authority without raising any grievance that the petitioner is not given opportunity to adduce evidence. At the time of hearing, learned advocate for the petitioner has not been able to point out that the petitioner had made a request before the Competent Authority for grant of permission to adduce evidence / examine witness. Voluntary participation of the petitioner / his advocate in the further proceedings, and the act of learned advocate for the petitioner arguing the matter before the Competent Authority, dis-entitles the petitioner from raising grievance at this stage that he is deprived of the opportunity to examine witness / adduce evidence.

It is also argued that at the time of filing of the application under the Maharashtra Government Premises (Eviction) Act, there was no cause of action in favour of the

respondent – Corporation and hence, the Competent Authority could not have entertained the application.

The petitioner has not been able to point out that the finding of fact recorded by the Competent Authority and maintained by the learned District Judge that the petitioner shifted to some other premises without obtaining prior permission of the concerned authority, is not correct. It is not in dispute that licence of the petitioner is not renewed after 23/10/2015. On query, advocate for the petitioner fairly stated that the petitioner, today is in arrears of occupation charges. A feeble attempt is made to cover the lapse by submitting that rent / occupation charges were offered to the respondent – Corporation, however, the same was not accepted. It is not explained as to what prevented the petitioner from moving application before the Competent Authority or the District Court seeking permission to deposit the amount before the Competent Authority or District Court. Even while filing this petition, the petitioner has not sought such permission.

In view of the above, I am not inclined to show any indulgence in the extraordinary jurisdiction.

The writ petition is **dismissed** with costs quantified at Rs. 20,000/- to be paid by the petitioner to the respondent – Corporation.

At this stage, advocate for the petitioner requested for protecting the petitioner's possession over the premises in question for two months.

If the petitioner deposits the entire arrears of occupation charges and amount of costs with the concerned authority of the respondent – Corporation till 18/09/2019,

possession of the petitioner over the premises in question shall stand protected.

If the petitioner fails to deposit the amount till 18/09/2019, protection shall cease to operate from 19/09/2019 and the respondent – Corporation will be at liberty to take steps as per the impugned order and judgment.

JUDGE

Ansari