

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11940 OF 2019

THE MAHARASHTRA STATE ROAD TRANSPORT CORPORATION
THROUGH ITS DIVISION CONTROLLER, DIVISION PARBHANI,
TALUKA AND DISTRICT PARBHANI THROUGH AUTHORIZED
OFFICER
VERSUS
ANAND KRISHNARAO S/O DASAPPA DIED THROUGH HIS L.RS.
SMT. PRAMARAO W/O ANANT KRUSHNARAO THROUGH
POWER OF ATTORNEY HOLDER K. VASUDEVRAO S/O K.
GUNDURAO AND OTHERS

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Advocate for the Petitioner : Mr. Anand D. Wange
Advocate for Respondent No.1 : Mr. Milind M. Patil (Beedkar)
Respondent Nos. 2 and 3 served through paper publication.

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CORAM : V. K. JADHAV, J.
DATED : 12th MARCH, 2020

ORDER :-

1. Heard finally with consent at admission stage.
2. The petitioner Maharashtra State Road Transport Corporation (MSRTC) has initiated proceedings under Section 4 of the Maharashtra Government Premises (Eviction) Act, 1956 (for short, "Act of 1956") for eviction of the respondent. The petitioner is the corporate body as per the provisions of the Road Transportation Act, 1956 having its office at Mumbai, consisting of

various divisions across the State and the Divisional Controllers are the heads of such divisions. District Parbhani is one of the divisions of which the Divisional Controller is the Head. The Divisional Controller of the said Division is empowered and authorized to allot and grant licenses for various purposes such as to run canteen etc. and after the license period is over, get evicted the premises from the licensee. According to the petitioner, the petitioner-MSRTC has constructed a permanent building for canteen at the State Transport Bus Stand at Parbhani for the convenience of general public and passengers. The said premises is the Government premises within the meaning of the Act of 1956. The petitioner-MSRTC had called a tender for running the said canteen at S.T. Bus Stand, Parbhani and respondent no.1 had submitted his tender to run the canteen. His offer was accepted by the petitioner-MSRTC and he was granted license with effect from 01.10.1985 for a term of two years. Respondent no.1 was a licensee in respect of the State Transport Bus Stand canteen from October 1985 till 1987. After lapse of the license period, respondent had requested the petitioner to give continuation and accordingly, continuation was given for one year and again till 30.09.1990. Further, during that period, the respondent did not fulfill the conditions, nor

deposited the license fees. The petitioner-MSRTC therefore issued a notice to the respondent and informed him to hand over possession of the canteen. According to the petitioner, the license period was over on 30.09.1990 and during this period, respondent no.1 was the licensee and respondent nos. 2 and 3 stood surety. Respondent no.1 is now unauthorizedly occupying the said canteen. According to the petitioner, respondent no.1, namely Anant Krishnarao s/o Dasappa died on 12.10.2002. Respondent no.1 had executed general power of attorney in the name of one Vasudevrao on 25.09.2002. However, the person who runs the canteen in the capacity as power of attorney, his occupation of the canteen premises is unauthorized. The respondent is in default of rent. According to the petitioner-MSRTC, there is no renewal of the agreement and therefore, further occupation is unauthorized.

3. Respondent no.1 had appeared in the proceedings and filed a written statement. It is stated that the petition itself is not maintainable. The respondent is running the canteen since long and this is the only earning source and livelihood of his family. According to the respondent, notice under Section 4 (2) of the Act

of 1956 is mandatory and the same should be in form “B” as provided under the Rules. In the said notice, the grounds for eviction are necessary to be mentioned. Instead of issuing such notice, the petitioner-MSRTC had directly issued notice under format “A” for the eviction. According to the respondent, the petitioner-MSRTC claims that the respondent is unauthorized occupant and also claims that the rent is due from the respondent. The MSRTC has accepted rent from the respondent and as such, the respondent became a deemed tenant. Thus, the respondent cannot be treated as an unauthorized occupant.

4. The competent authority, by judgment and order dated 20.10.2018 in file no. 2005/S/BGPE/5/41/Remand, allowed the petition filed by the petitioner-MSRTC and evicted respondent no.1 from the establishment of the S.T. Canteen situated within the premises of MSRTC Bus Stand, Parbhani, Taluka and District Parbhani and directed respondent no.1 to hand over possession of the establishment of S.T. Canteen situated within the premises of the MSRTC Bus Stand, Parbhani, Taluka and District Parbhani within 10 days from the date of the order. Being aggrieved by the same, respondent no.1 preferred Regular Civil Appeal No. 119 of

2018 before the District Judge, Parbhani and the learned District Judge-4, Parbhani, by the impugned judgment and order dated 22.08.2019, allowed the appeal and set aside the judgment and order passed by the competent authority. Hence this Writ petition.

5. Learned counsel for the petitioner-MSRTC submits that the petitioner-MSRTC had filed an application under Section 4 of the Act of 1956 on 23.06.1993 before the Resident Deputy Collector, Parbhani (RDC)/competent authority for eviction of the respondent Anant Krishnarao s/o Dasappa (now deceased) from the establishment of the S.T. Canteen situated within the premises of the MSRTC Bus Stand, Parbhani. Respondent no.1 Anant filed a written statement and denied the contents of the application and prayed for rejection of the application. The District Judge, Parbhani, by order dated 06.07.1999 in Rent Appeal No. 6 of 1993, remanded the matter to the competent authority. After remand, the competent authority, by judgment and order dated 26.05.2008, allowed the application filed by the petitioner-MSRTC and directed the respondent to evict the premises. Being aggrieved by the same, the respondent preferred Rent Appeal No. 3 of 2008 and the Principal District Judge, Parbhani, by judgment and order dated

02.01.2013, allowed the appeal, set aside the order dated 26.05.2008 passed by the Residential District Collector, Parbhani, remanded the matter to the Residential District Collector, Parbhani/competent authority for disposal afresh and the petitioner-MSRTC was directed to move an application for impleading the present respondents as legal heirs of original opponent no.1 as party respondents and further directed the Residential District Collector/competent authority to dispose off the application within a period of six months. Learned counsel submits that thereafter, by judgment and order dated 20.10.2018, the RDC-competent authority allowed the application filed by the petitioner and evicted the respondent from the establishment of the S.T. Canteen and further directed respondent no.1 to hand over possession of the said establishment. Learned counsel for the petitioner submits that the District Judge, Parbhani in Regular Civil Appeal No. 119 of 2018, has erroneously quashed and set aside the well reasoned order passed by the competent authority. Learned counsel submits that the learned District Judge has confirmed the findings of the competent authority including the finding that deceased Anant Dasappa was an unauthorized occupant. So far as point no.3 is concerned, by giving reference to the provisions of

Section 4(1) of the Act of 1956, the learned District Judge held that the competent authority should have given time as prescribed in the Act to vacate the premises. Learned District Judge has therefore come to the conclusion that the competent authority did not follow the mandatory provisions in the Act of 1956 and thus, the order of the competent authority is perverse in the eyes of law. Learned counsel for the petitioner submits that the respondent is not only a defaulter of the huge amount of rent/license but also guilty of unauthorized occupation of the S.T. Canteen premises. Learned counsel for the petitioner submits that furthermore, now the said S.T. Canteen premises is required for renovation and for introducing a snacks bar etc. The competent authority has thus rightly allowed the application.

6. Learned counsel for the petitioner-MSRTC further submits that the original licensee Anant Dasappa died on 12.10.2002. However, the general power of attorney holder had filed a written statement in the year 2004 without disclosing about the death of the original licensee. On the death of the original licensee, no legal right exists in favour of the general power of attorney holder. It is clearly recited in the 'deed of license' that if the licensee dies during

the continuance of this license, his heirs, executors and administrators shall have no right over the continuance of the conduct of the stall and the licensor shall be at liberty to treat this deed of license as null and void and shall in addition to other remedies, be further entitled to recover its dues. There is no further agreement between the petitioner-MSRTC and present respondent no.1-general power of attorney. Thus, the further occupation of the S.T. Canteen premises is unauthorized and illegal. In terms of the explanation to Section 4 of the Act of 1956, the competent authority has therefore rightly passed the eviction order.

7. Learned counsel for the respondent submits that the respondent is not the unauthorized occupant of the suit premises. The continuation granted by the petitioner-MSRTC from year to year is sufficient to infer that the possession of respondent no.1 over the said premises is permissible. Furthermore, acceptance of rent amount time to time by the petitioner towards the licence fees also demonstrates that the present respondent no.1 is in authorized possession of the premises. Learned counsel submits that the petitioner had also filed another application before the competent authority for recovery of the due amount of S.T. Canteen vide file

no. 2015/A1/BGPE/54 and though it was allowed by the competent authority by order dated 20.10.2018, the present respondent has immediately filed an appeal in the District Court, Parbhani, bearing Regular Civil Appeal No. 120 of 2018 which is pending for adjudication. Learned counsel submits that unless and until the said appeal is decided by the District Court, it would not be proper to conclude that the answering respondent is in unauthorized possession over the premises without paying any amount towards the rent to the MSRTC. Learned counsel submits that even without admitting the claim of the petitioner regarding the arrears of rent, in the year 2015, respondent no.1 has paid the amount of Rs.1,00,000/- through cheques of Rs.50,000/- each and those were encashed. Similarly, the amount of Rs.1,00,000/- was deposited with the petitioner-MSRTC towards the licence fees and a receipt to that effect was issued on 30.03.2016, though under protest. Learned counsel submits that further, the premises is sought for the *bonafide* purpose as the petitioner-MSRTC intends to convert the S.T. Canteen into snacks bar, however, the witness of the petitioner-MSRTC, namely Laxman Marotrao Sutar has admitted in his cross-examination that the said scheme of snacks bar was dropped by the State Transport in the year 1995 itself.

Learned counsel submits that the ground of requirement of the premises has been changed and now the petitioner-MSRTC wants to renovate the bus stand by carrying out permanent construction. The said ground was not raised before the competent authority. Thus, the order of eviction on such altogether new ground which was not raised before the competent authority may not be entertained. Learned counsel submits that the District Judge has rightly appreciated the relevant provisions including Section 4(1) of the Act of 1956 and further held that the ten days time granted by the competent authority instead of granting one month time is contrary to the provisions of the Act of 1956 and accordingly, quashed and set aside the order passed by the competent authority. Learned counsel submits that though the appeal bearing Regular Civil Appeal No. 119 of 2018 was pending in the District Court, the petitioner-MSRTC sealed the suit premises behind the back of the respondent and the same is intact till date. The furniture and other articles, including the kitchen utensils, are still laying inside the suit premises and the respondent is therefore unable to carry on his business at any other place. The said action by the petitioner-MSRTC is unlawful. Learned counsel submits that the learned District Judge has, therefore, rightly allowed the appeal. There is

no substance in this Writ petition and the Writ Petition is liable to be dismissed.

8. I have carefully considered the submissions advanced by the learned counsel for the petitioner so also the learned counsel for respondent no.1. With their able assistance, I have perused the pleadings, grounds taken in the petition, annexures thereto and the reply filed by respondent no.1.

9. It is undisputed that the original licensee Anant Krishnarao s/o Dasappa died on 12.10.2002. It is also part of record that respondent no.1-general power of attorney holder, without disclosing the fact of death of the original licensee, has filed the written statement in the year 2004. It also part of record that there is a specific recital in the “deed of licence” in terms of clause 4(M) that “if the licensee dies during the continuance of this licence, his heirs, executors and administrators shall have no right over in continuance of the conduct of the stall (establishment) and the licensor shall be at liberty to treat this deed of license as null and void and shall, in addition to other remedies provided by law, be further entitled to recover its dues”. Further, I do not find any

agreement between the petitioner-MSRTC and the present respondent no.1-general power of attorney that after death of the original licensee, the suit premises was given to the respondent no.1-general power of attorney in his personal capacity as a licensee. Even the competent authority, by judgment and order dated 20.10.2018, allowed the application filed by the present petitioner-MSRTC and held that the occupation of the S.T. Canteen premises by respondent no.1 is unauthorized and there is a huge amount of arrears of the license along with interest amount to the tune of Rupees one crore approximately. The competent authority has directed respondent no.1 herein to pay the said amount alongwith the service tax, property tax with simple interest at the rate of 12% per annum. Furthermore, I am not inclined to consider some stray admission by the witness for the petitioner-MSRTC about the dropping of the preliminary idea of creating a snacks bar. The petitioner-MSRTC wants the S.T. Canteen premises for giving better food services to the passengers and for that purpose, wanted to evict the person who is in unauthorized occupation of the suit premises. So far as the defective order directing the respondent to vacate the premises within a period of 10 days is concerned, it seems that the learned District Judge has allowed the appeal on

that ground alone. Respondent no.1 has not challenged the other findings recorded by the learned District Judge against him. Now it is almost more than the said prescribed period of one month as contemplated under Section 4(1) of the Act of 1956. Furthermore, even though only a seal is affixed on the suit property prohibiting respondent no.1 to use it unauthorizedly, the petitioner-MSRTC is not in a position to convert the said premises into the proposed food center/snacks bar. Thus, considering the entire aspect of the case, in my opinion, the judgment and order passed by the competent authority deserves to be confirmed by setting aside the order passed by the District Judge. The Respondent no.1 has preferred the appeal as against the judgment and order passed by the competent authority pertaining to the dues and the said appeal is still pending. Thus, the appellate authority, without getting influenced by the observations made herein above, should decide the said appeal on its own merits in terms of the evidence adduced by the parties. Hence, I proceed to pass the following order:

ORDER

- I. Writ Petition is hereby allowed in terms of prayer Clause "B".

II. The judgment and order passed by the Competent Authority and Resident Deputy Collector, Parbhani dated 20.10.2018 in File No.2005/S/BGPE/5/41/Remand stands confirmed with the following modifications:-

a] Respondent no.1 is ordered to hand over the possession of the S.T. Canteen situated within the premises of M.S.R.T.C. Bus Stand, Parbhani, Tq. and District Parbhani within a period of 30 (Thirty) days from the order passed by this Court, if the possession is already not handed over.

III. Writ Petition is accordingly disposed off.

(V. K. JADHAV, J.)

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