

WRIT PETITION NO.6523 OF 2021

Petitioner

Versus

Respondents

Mr.N.B.Khandare, advocate holding for Mr.Mahesh S. Deshmukh,
advocate for the petitioner.
Mr.Kishor Hoke Patil, AGP for Respondent No.3.

CORAM : AVINASH G. GHAROTE, J.

DATE : 16th July, 2021.

PC :

1 Heard Mr.Khandare, learned Counsel for the petitioner.

2 The petition challenges the judgment dated 06.02.2021, passed by the District Judge-2, Udgir, in MCA No.05 of 2021, confirming the order of dismissal of Exhibit-5 by the Civil Judge, Senior Division, Udgir in RCS No.12 of 2020, dated 15.01.2021. It is the contention of learned Counsel for the petitioner that shops no.4, 5 and 8, were granted on lease, in the

old shopping complex, by the respondents to the petitioner. As the Respondent No.1, intended to reconstruct the shopping complex, it had entered into an agreement with Respondent No.3 on 29.05.2005. It is further contended that under the terms of the agreement, 27 shops were to be given by Respondent No.3 to the Municipal Council, which were to be placed on the ground floor in the newly constructed building. Certain other construction was also to be given to the Municipal Council, with which we are not concerned.

3 It is contended by the petitioner, that in view of demolition of the three shops, which were already occupied by him on lease, 3 shops, on the ground floor of the newly constructed Block G were placed in his possession in consonance with the obligation of the respondent no.3, to accommodate the earlier lessees of the Municipal Council. Learned Counsel for the petitioner further submits that adjacent to the said 3 shops, two more shops were allotted by respondent no.3 to the petitioner. Thus, the petitioner, had been allotted total 5 shops in newly constructed Block G which the petitioner claims to be in possession since 2010.

4 Since there was a dispute between the Municipal Council and Respondent No.3 the matter *inter se* between them was referred to the arbitrator, in which an award came to be passed on 27.2.2020, in which, the arbitrator, vide direction no.2-D directed that in the project, the original allottees of the shops should be rehabilitated. It was also directed that the petitioner, should be removed from the present occupation and the two shops, allotted to him, should be given in G Building on Ground floor/Basement. It is in pursuance to this award, that the communication came to be issued by respondent no.1 to the petitioner, on 02.11.2020, asking the petitioner to vacate the blocks in occupation of the petitioner and shift to G Building, within seven days. The said direction was reiterated in the reminder dated 11.12.2020.

5 The petitioner, being aggrieved by the same, approached the trial Court by way of RCS No.12 of 2020, seeking a declaration that the aforesaid communications were null, void and not effective against the petitioners and a perpetual injunction, restraining the Municipal Council from interfering, obstructing and attempting to evict the petitioner from his lawful possession as a lessee for a period of thirty years over shops no.A-GF-3, 12, 13, 14

and 15, situated in A Building of Municipal Council, Udgir. The trial Court found that the claim of the petitioner, of being a lessee, was ill-founded as there was no document of lease placed on record. It further found that though the petitioner had claimed to have paid Rs.17.50 lakhs to Respondent No.3 as a premium for the lease, no receipt or documentary proof was placed on record to suggest the said payment. It was also found that what had been directed in the impugned notices, was to shift from A Building to G Building. It also held that mere long standing possession, without lawful authority and in absence of a contract, did not entitle the petitioner for the relief claimed and, therefore, rejected the application at Exhibit-5.

6 The appellate Court noted the directions contained in the award of the arbitrator and found that, what was directed was shifting. It further found that the reliance placed upon the agreement of lease dated 22.12.1999 between the petitioner and the Municipal Council was not worthy of belief, for the reason, that though the period in the agreement was mentioned as from 01.04.1998 to 31.03.2001, it was written on a stamp paper dated 22.09.1999. There was no date of execution of the document and even otherwise the agreement was up to 31.03.2001 and nothing

subsequent thereto was placed on record thereafter. It further held that in absence of any contract, it was difficult to trace the legality of the possession being claimed by the petitioner and, therefore, dismissed the appeal confirming the findings of the learned trial Court.

7 Mr.Khandare, learned Counsel for the petitioner, submits that since the petitioner, was a lessee of Respondent No.1 in respect of 3 shops in the old building, the petitioner was entitled to be accommodated in the new building, which was so done by placing the petitioner in possession of the above mentioned shops in the newly constructed "A" block. He further invites my attention to the receipt issued by the respondent no.3, dated 29.05.2005, in favour of the petitioner, which was in respect of shops A-03, 12, 13, 14 and 15 (Ground Floor), and which indicated that the total amount was Rs.17.50 lakhs and the scheme discount of old shops nos.33, 34 and 37, to the extent of each 9 lakhs, was given. The receipt also indicated that the booking amount of Rs.51,000/- was paid. He, therefore, submits that under the receipt, the petitioner was entitled to the lease of thirty years from the date of possession. Learned Counsel, therefore, submits that the Courts below, clearly erred in holding that the petitioner has no right *vis-a-vis* the shop

blocks mentioned above.

8 Certain averments in the plaint, filed before the trial Court, being material, are reproduced as under:

2 It is submitted that, the deft. No.3 for the purpose of raising funds for construction of the shops issue advertisement in newspapers calling the applications from the interested businessman who are interested in taking the shops on lease for 30 years. And for registration purpose prescribed from with term and conditions were obtained by deft. No.3. And accordingly the plaintiff registered his name for taking 05 shops bearing Nos. A.G.F. No.03, 12, 13, 14 & 15 and required registration fees of Rs.51,000/- (Fifty One thousand rupees) also paid through cheque dated 12/04/2005 and this way the plaintiff booked the said 05 shops which were under construction at that time and after construction of those shops the possession of shops was given to the plaintiff in the year 2010. And since then plaintiff is running the business in which the business of selling the electrical and electronic items is going on.

3 It is submitted that, prior to occupying

the said few shops the plaintiff was lease holder of deft. No.1 and he had occupied 03 shops of Nanded Bidar road and after occupying the aforesaid few shops the plaintiff terminated the tenancy with deft.No1 and handed over the vacant possession of the said 03 shops to the deft. No.1.

9 A perusal of the above averments in the plaint clearly indicates that the plaintiff/petitioner, who claimed to be a lease holder of respondent no.1, in respect of 3 shops in the original complex, had himself terminated the tenancy with the respondent no.1 and had handed over vacant possession of the said 3 shops to the Municipal Council. There is nothing on record to indicate, that in lieu of this surrender, the Municipal Council agreed to adjust the petitioner in 3 shops in the proposed new construction. The receipt dated 29.05.2005, which is relied upon by the petitioner, is an independent receipt between the respondent no.3 and the petitioner. Though it makes a mention about the old shops, the same is restricted to give a discount, on the scheme to the extent of Rs.Nine lakhs in the total cost of five blocks, mentioned in the receipt dated 29.05.2005. This would clearly indicate that the original tenancy, which the petitioner claimed in respect of 3 shop blocks in the old building, was no longer in existence due to its

termination by the petitioner himself, which was followed by surrender of vacant possession. Neither there is anything on record to point out that in spite of surrender of tenancy of 3 shops in the old building, there was any agreement/contract between the petitioner and respondent no.1 for adjusting the petitioner in the new building proposed to be constructed.

10 The learned Counsel for the petitioner, today, has placed on record a list of 27 shops, which are supposed to be given by respondent no.1, in which against shops no.4, 5 and 8, the name of the petitioner and his father is shown. However, the list does not disclose that there has been an allotment of 3 shops in favour of the petitioner. Needless to say that the respondent no.1, being a Municipal Council, has to follow the procedure of law, and there cannot be any allotment unless the procedure prescribed therein is followed. There is no document, whatsoever, from the Municipal Council, placed on record, to substantiate the re-allotment of three shops in favour of the petitioner.

11 That apart, when the petitioner claims lease for a period of thirty years, as is evident from prayer clause (B) in the plaint in RCS No. 12 of 2020, such a claim, necessarily needs to

be reflected and backed by documents issued by the respondent no.1 – Municipal Council. Though the learned Counsel for the petitioner has relied upon the award given by the arbitrator, to contend that it indicates allotment to the petitioner, the entire award dated 27.02.2020 does not speak anything about 3 shops being allotted to the petitioner in “A” building and that the petitioner was to be rehabilitated in 27 shops, to be given to Respondent No.1 by respondent no.3, under the contract between them.

12 It is, thus, clear that the very averments in the plaint, demolish the theory put forth by the learned Counsel for the petitioner that 3 shops in occupation of the petitioner in the old building, were to be adjusted in the 27 shops, to be given by the contractor to respondent no.1 under the contract between them *inter se*. The impugned notice, merely seeks the compliance of directions 2(d) of the award dated 27.02.2020 passed by the arbitrator, which directs the shifting of the petitioner, in two blocks in the basement/ground floor of building “G” and nothing else, which, in absence of any right being created in favour of the petitioner *vis-a-vis* the respondent no.1, cannot be faulted with.

13 The petition, therefore, is without merit and is accordingly dismissed. Needless to say that the petitioner, will be entitled to whatever remedy, he may have against the respondent no.3, as permissible in law. No costs in the circumstances.

14 Mr Khandare, learned Counsel for the petitioner seeks a direction that the trial Court be directed to decide the suit expeditiously as the business of the petitioner is claimed to have come to a standstill. The learned trial Court shall endeavour to decide the suit as expeditiously as possible and in any case, within a period of one year from the receipt of the order of this Court.

(AVINASH G. GHAROTE)
JUDGE