

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5620 OF 2022

1. Yunuskha Mahemudkha Golandaj,
Age 66 years, Occupation Business,
R/o Bhisti Galli, Jama Masjid,
Ahmedpur, Tq. Ahmedpur,
Dist. Latur.
2. Mallikarjun s/o Dhondiba Shetkar,
Age 51 years, occupation Business,
3. Baburao s/o Dhondiba Shetkar,
Since deceased through L. Rs.

Sunil s/o Baburao Shetkar,
Age 52 years, occupation Business,
4. Shaikh Munir Madarsa,
Age 53 years, occupation Business,
5. Suresh Manikrao Ratnaparkhe,
Age 57 years, Occupation Business,
6. Sayyad Amaluddin Nasroddin,
Age 70 years, Occupation Business,
7. Maruti s/o Dnyanoba Sabde,
Age 51 years, Occupation Business,
8. Prabhakar s/o Vasantrao Hamane,
Age 65 years, Occupation Business,
9. Sambappa s/o Vasantappa Bavachkar,
Age 57 years, Occupation Business,
10. Gurunath s/o Gangadhar Ukirde,
Since deceased through L. Rs.

Basavraj s/o Gangadhar Ukirde,
Age 57 years, Occupation Business,

11. Shakuntala s/o Vishwanath Hundekar,
Age 65 years, Occupation Business,

12. Abdul Gani Abdul Hamid
Since deceased through L.Rs.

Alim Salimsab Sayyad,
Age 40 years, Occupation Business,

13. Sharifoddin Rais Shabirmaujan,
Age 50 years, Occupation Business,

14. Kishor s/o Ganpatrao Aradwad,
Age 45 years, Occupation Business,

15. Anil s/o Baburao Mahajan,
Age 54 years, Occupation Business,

16. Nagu Shamrao Mahajan,
Age 57 years, Occupation Business,

17. Suresh s/o Baburao Suryawanshi,
Age 55 years, Occupation Business,

18. Abdul Jabbar Qureshi,
Age 42 years, Occupation Business,

19. Subhash s/o Gopalrao Gore,
Since deceased through L.Rs.

Suresh s/o Gopalrao Gore,
Age 57 years, Occupation Business,

20. Khayumaddin Mohamad Hanif,
Age 52 years, Occupation Business,

21. Sayed Imam Sayed Pasha,
Age 40 years, Occupation Business,

22. Babu Shankarrao Kare,
Age 52 years, Occupation Business,
 23. Sayyad Mujammil Atiksab,
Age 42 years, Occupation Business,
 24. Arjun Devrao Gaikwad,
Age 38 years, Occupation Business,,
 25. Sayyad Nadim Atiksab Rajesab,
Age 35 years, Occupation Business,
 26. Suman Jagannath Swami,
Age 65 years, Occupation Business,
 27. Baburao Baswantrao Biradar,
Age 76 years, Occupation Business,
 28. Subhash Laxmanappa Shetkar,
Age 62 years, Occupation Business,
 29. Sudhakar Nagnath Shivpuje,
Age 58 years, Occupation Business,
 30. Sunil Dhansing Rathod,
Age 48 years, Occupation Business,
 31. Shivkumar Baburao Utge,
Age 48 years, Occupation Business,
 32. Chandrashekhar Mahesh Utge,
Age 26 years, Occupation Business,
 33. Jalil Ahmed Fateh Ahmed,
Age 57 years, Occupation Business,
 34. Shaikh Salim Shaikh Usmansab,
Age 40 years, Occupation Business,
- All R/o Plot No.39, Ahmedpur,

Tq. Ahmedpur, Dist. Latur.

...Petitioners

VERSUS

1. The State of Maharashtra,
Through the Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai-400 032.
2. The District Collector,
Latur, Tq. And Dist. Latur.
3. The Chief Officer,
Municipal Council, Ahmedpur,
Tq. Ahmedpur, Dist. Latur.

...Respondents

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Advocate for Petitioners : Mr. S. B. Madde
AGP for Respondent Nos.1 and 2 : Mr. P. K. Lakhotiya
and Mr. P. S. Patil
Advocate for Respondent No.3 : Mr. V. P. Latange

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**WITH
WRIT PETITION NO.5772 OF 2022**

1. Somprakash S/O Dagduappa Kalayani,
Age 42 years, Occupation Business,
R/o At Rani Laxmibai Road,
Ligayyat Galli, Ahmedpur,
Tq. Ahmedpur, Dist. Latur.
2. Ganpatrao s/o Gangaram Aradwad,
Age 80 years, Occupation Business,
3. Abdul Gafar Gulam Mahamd Qureshi,
Age 76 years, Occupation Business,
4. Suryakant s/o Laximanappa Shetkar,
Age 60 years, Occupation Business,

5. Dilipsing s/o Chandsing Dube,
Age 52 years, Occupation Business,
6. Surekha w/o Digamber Tambre,
Age 51 years, Occupation Business,
7. Ram s/o Manik Balalle,
Age 53 years, Occupation Business,
8. Maharudra s/o Baburao Whatte,
Age 81 years, Occupation Business,

All R/o At Plot No.39, Ahmedpur,
Tq. Ahmedpur, Dist. Latur.

...Petitioners

VERSUS

1. The State of Maharashtra,
Through the Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai-400 032.
2. The District Collector,
Latur, Tq. And Dist. Latur.
3. The Chief Officer,
Municipal Council, Ahmedpur,
Tq. Ahmedpur, Dist. Latur.

...Respondents

.....

Advocate for Petitioners : Mr. S. B. Madde
AGP for Respondent Nos.1 and 2 : Mr. P. K. Lakhotiya
and Mr. P. S. Patil
Advocate for Respondent No.3 : Mr. V. P. Latange

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**WITH
WRIT PETITION NO.5890 OF 2022**

Sayyed Sajid s/o Sayyed Kabir,
Age 53 years, Occupation Business,

R/o Chartangi, Ahmedpur,
Tq. Ahmedpur, Dist. Latur.

...Petitioner

VERSUS

1. The State of Maharashtra,
Through the Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai-400 032.
2. The District Collector,
Latur, Tq. And Dist. Latur.
3. The Chief Officer,
Municipal Council, Ahmedpur,
Tq. Ahmedpur, Dist. Latur.

...Respondents

.....
Advocate for Petitioners : Mr. G. K. Sontakke
AGP for Respondent Nos.1 and 2 : Mr. P. K. Lakhotiya
and Mr. P. S. Patil
Advocate for Respondent No.3 : Mr. V. P. Latange
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**CORAM : RAVINDRA V. GHUGE &
ARUN R. PEDNEKER, JJ.**

**Date of Reserving the Judgment : 17/08/2022
Date of Pronouncing the Judgment : 20/08/2022**

JUDGMENT : (Per ARUN R. PEDNEKER, J.)

1. Rule. Rule made returnable forthwith. With the consent of the parties heard finally.

2. By the present petitions, the petitioners are challenging the eviction notices dated 27/05/2022, issued by respondent No.3 –

Municipal Council, Ahmedpur, directing petitioners to vacate their premises within seven days.

3. It is the case of the petitioners that they were given vacant land on lease between years 1985-1991. The petitioners constructed tenements on it. In the year 1997, respondent No.3 Municipal Council had issued a notice of eviction to the petitioners to vacate the leased land within a period of ten days of the notice. The said notices were challenged by the petitioners by filing civil suits, for perpetual injunction before the Court of Civil Judge Senior Division, Ahmedpur. The said suits were decreed and the defendant i.e. the Ahmedpur Municipal Council, Ahmedpur was restrained from causing obstruction and interfering with the petitioners leased land without taking recourse to law. Thereafter, there was no action on the part of the Municipal Council and the petitioners continued to be in possession of the leased land by paying rent until the present similar notices being issued by the Municipal Council dated 27/05/2022.

4. The impugned notices indicated that the Municipal Council intends to construct 'Commercial Complex' (व्यापारी संकुल) at the place where the shops of the petitioners are located. The notice also indicates that the

possession given of the premises on rental basis, is quashed. The notices also indicated that the original lease agreement has expired and the petitioners were directed to vacate the land, restore it to its original position and hand over it to the Municipal Council within seven days.

5. The petitioners, thereafter, approached the Vacation Bench of this Court and this Court by its order dated 31/05/2022, stayed the aforesaid notices issued to the petitioners. The petitioners contend that they are in lawful possession of the leased land and have constructed structures on it and are running their shops from the date of allotment of plots for last more than 30 years.

6. The petitioners further contend that the decree of the Civil Court for perpetual injunction prohibits the respondent from issuing eviction notice, without lawfully terminating the tenancy of the petitioners. The respondents have not taken any steps to lawfully terminate the tenancy of the petitioners under Section 106 of the Transfer of Property Act. The petitioners further contend that the Municipal Council being a public authority cannot terminate the tenancy of the petitioners under Section 106 of the Transfer of Property Act, without there being valid reasons in support of the same. The petitioners contend that there is no sanctioned proposal for construction of a Commercial Complex on the

leased plots. The action of the respondent is high handed and interferes with the rights of the petitioners in continuing their peaceful, lawful possession over the leased land and also the right of the petitioners in conducting business over the leased land/ property is infringed. The stand of respondent No.3- Municipal Council is reflected in the impugned notices – as noted above at paragraph No.4.

7. Considering the record and submissions made, we find that number of petitioners had individually filed civil suit in the year 1997 challenging eviction notices before the Civil Court Senior Division, Ahmedpur, whereby the Civil Court has passed similar Judgments and we are quoting from one of the Judgments of Civil Court, as under :-

"16. After carefully gone through rival pleadings of parties along with their evidence and documentary proofs it is crystal clear that, the plaintiff is lessee of the defendant over the suit plot for the period of 11 months and it is admitted fact that, said tenancy was till 1992, but the defendant has issued notice to the plaintiff to vacate the possession over the suit plot in the year 1997. On considering the legal provisions of Transfer of Property Act it is a monthly tenancy between them and there was necessary to issue statutory notice of 15 days to the plaintiff after expiry of tenancy period. On considering above legal provision it is clearly seen that, the defendant has not followed due process of law. On considering the significant aspects in respect of rent receipts even though

the defendant denied the receipts of rent which are placed on record by the plaintiff. But the pleading of defendant and their evidence clearly admitting rent receipt. So on considering these present aspects there was responsibility of municipal council to bring specific proof on record to show that, the plaintiff has placed on record bogus and false receipts. But the defendant counsel not brought any single proof on record. Therefore, after carefully gone through the said legal provision and admission in pleading it is crystal clear that, the receipts of rent which are placed on record by the plaintiff are acceptable. Having regard to above all facts and circumstances it is crystal clear that, the plaintiff is continued possession over the suit plot till today and also paying the rent regularly which is acceptable by municipal council. These facts and circumstances clearly going to show that, the plaintiff is holding over the tenancy over the suit plot. It is settled principle of law that, even though the lessee is trespasser or also in juridical possession over the land in these circumstances also the land owner should go through due process of law to recover the possession of the land. So on considering all above facts and circumstances there is held that, this court has jurisdiction to try and decide the present suit and plaintiff is also entitled to decree in terms of prayer clause. It is therefore issue no.3 to 5 are answered in affirmative and I proceed to pass following order.

ORDER

- 1) The suit is hereby decreed.
- 2) Defendant hereby permanently restrained from

obstructing and interfering in possession of plaintiff over suit plot out of sanctioned development plan site No.6(A) till the defendant-council by due process of law evict the plaintiff from the said suit plot situated at Ahmedpur, Tq. Ahmedpur, District Latur.

3) No order as to costs.

4) Decree be drawn accordingly.”

8. From the reading of the Judgment of the Civil Court, the facts emerging are that the petitioners were granted leases of land by the Municipal Council and the petitioners continued to be in possession of the leased land after the expiry of lease period. The petitioners have continued paying rent thereafter for the leased land. The tenancy of the petitioners has not been terminated under the Transfer of the Property Act and, accordingly, the Civil Court held that the possession of the petitioners over the leased land is legal and they have right to continue over the leased land until their tenancy is lawfully terminated. The Civil Court has also directed the respondent not to evict the petitioners without following the due process of law. We note that after passing of the above Judgment, the respondent Municipal Council has not initiated any action of termination of tenancy.

9. We, thus, accordingly hold that the respondent Municipal Council are in violation of the order of the Civil Court for initiating eviction

proceedings without validly terminating the tenancy of the petitioners, and accordingly, we quash the eviction notices dated 27/05/2022. However, we leave it to respondent No.3 to follow the due process of law as stipulated in the order of the Civil Judge Senior Division, Ahmedpur, in the event it desires to vacate the tenants on the leased property. We also leave open all the lawful remedies available to the petitioners in the event of termination of tenancy is undertaken by the respondent Municipal Council. The petitions are disposed off. Rule made absolute in the above terms.

(ARUN R. PEDNEKER, J.)

(RAVINDRA V. GHUGE, J.)

vjg/-.