

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4339 OF 2021

Shri. Sardar Mohammed Pathan ..Petitioner
Versus
Shri. Shaikh Siddique Atikurrahman & Anr. ..Respondents

Mr. Vishal Kanade i/by S. P. Pandey, for the Petitioner.
Mr. Mahindra Deshmukh, for the Respondent No.1.
Mr. P. P. Pujari, AGP for the Respondent No.2.

CORAM : NITIN W. SAMBRE, J.

DATE : 29th JUNE, 2022

P.C.

1. Heard.
2. This petition is by the licensor questioning the order impugned passed in appellate jurisdiction on 1st April, 2021, whereby the prayer moved under Section 44 of the Maharashtra Rent Control Act, 1999 (hereinafter referred to as "the said Act" for the sake of brevity) came to be rejected whereby the order of competent authority delivered on 6th January, 2021 in Eviction Application No.64 of 2020 came to be confirmed.
3. Facts necessary for deciding the present writ petition are as under :-

The petitioner based on registered leave and licence agreement approached the competent authority for eviction. The said proceedings were rejected on the ground that the petitioner lacks title to the suit property.

4. As regards existence of registered leave and licence agreement on 16th June, 2020 prior to which another agreement was entered into for a period from 01.04.2019 to 29.02.2020 are not in dispute.

5. In the aforesaid background, while dealing with the claim of the petitioner, since it is noticed that the petitioner has failed to demonstrate its title to the property, the orders impugned came to be passed.

6. Mr. Vishal Kanade, while questioning sustainability of both these orders has invited attention of this Court to the nature of inquiry contemplated in the matter of passing of the order of eviction *qua* existence of leave and licence agreement. According to him, once there is leave and licence agreement, the respondents have accepted the petitioner as landlord. Such proceedings are taken out having regard to the provisions of Section 24 of the said Act. According to him, the authority as such is not vested with the power to go into the issue of title and that being so, the orders impugned are not sustainable. So as to substantiate his contention,

he has drawn support from the judgment of this Court in the matter of **Surendra B. Agrawal & Anr. Vs. AML Merchandising Pvt. Ltd.** decided in **Writ Petition No.2682 of 2009 on 11th September, 2009**, so also judgment in the matter of **Mrs. Geeta Hemant Kanojia Vs. Sabhapati Shivmurti Pandey & Ors.** delivered in **Writ Petition No.407 of 2014 decided on 26th February, 2014**. As such, according to him, the orders impugned are liable to be set aside by remanding the matter back to the competent authority for deciding it afresh without going into the issue of title of ownership.

7. While countering the aforesaid submissions, counsel for the respondents Mr. Mahindra Deshmukh would oppose the claim. Drawing support from the provisions of Section 24 r/w definition of landlord as provided under Section 7(3) of the said Act, he would urge that the burden is on the petitioner to *prima-facie* satisfy that the petitioner has title to the suit property and that being so, he has no right to take out proceedings under Section 24 of the said Act for termination of leave and licence agreement. He would draw support from the judgment of this Court in the matter of **Dinkar Keshav Deshmukh Vs. Vasantdada Sugar Institute, Pune** delivered in **Writ Petition No.4316 of 1993 on 16th August, 1996** so as to claim that the authority has every right to go into the issue of

lawful title of the petitioner to the suit property. As such, according to him, the orders impugned are justified and the petition is liable to be dismissed.

8. I have considered the said submissions.

9. In the light of the definition of landlord as prescribed under the provisions of the said Act, particularly, Section 7(3), it is quite apparent that a person who is entitled to receive rent can be termed as a landlord, it is not necessary that such person who receives the rent should be an owner or having title over the suit property. In the aforesaid background, the claim put forth by Mr. Vishal Kanade that the authority cannot go into the title of the petitioner appears to be justified. Counsel for the petitioner has rightly so drawn support from the above referred judgments viz. *Surendra B. Agrawal and Mrs. Geeta Hemant Kanojia (cited supra)*.

10. As far as the aforesaid findings are concerned, rightly so pointed out that the issue is well settled and need not require reconsideration.

11. In this background, this Court is of the opinion that both the authorities below while passing orders impugned have exceeded their jurisdiction thereby recording a finding on the title of the petitioner to the suit

property.

12. In the aforesaid background, the orders impugned are not sustainable and liable to be set aside. Accordingly, the petition stands allowed in terms of prayer clause (a). As a sequel of above, the proceedings which are initiated by the petitioner under Section 24 stands restored to the authority who is directed to decide the same afresh in accordance with law.

13. Parties hereto agree that they shall appear before the first authority on 18th July, 2022.

14. In view thereof, issuance of fresh notice is dispensed with.

[NITIN W. SAMBRE, J.]