

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

WRIT PETITION NO. 1312 OF 2022

Amit Raghunathan Saran Sharma and another

vs.

Amitabh Ramsharan Nigam

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. R. D. Dhande, Advocate for petitioners.
Mr. A. M. Sudame, Advocate for sole respondent.

CORAM : MANISH PITALE J.

DATE : 19/09/2022

The learned counsel appearing for the respondent has handed over a pursis informing this Court that in compliance with order dated 21/07/2022, the possession of the premises have been handed over to the petitioners. The pursis is taken on record. The learned counsel for the petitioners submits that possession of the premises is indeed handed over to the petitioners.

2. The learned counsel for the petitioners submits that the impugned order dated 31/01/2022 passed by the Additional Commissioner is unsustainable on the face of it, because it is based on erroneous appreciation of the admitted facts in the

present case. It is submitted that the only ground on which the Additional Commissioner remanded the matter back to the Rent Controller was that an opportunity of cross-examination was not provided to the respondent. The ground itself was untenable, because the respondent by an order of the Rent Controller had been denied leave to defend. The said order denying the leave to defend was confirmed by this Court by dismissing Writ Petition No.6626 of 2019 by a judgment and order dated 04/03/2020, which in turn was confirmed by the Hon'ble Supreme Court by dismissing the SLP No.2696 of 2021 by an order dated 18/02/2021. It was submitted when the respondent was denied leave to defend by an order of the Rent Controller which was upheld upto the Supreme Court, there was no question of granting an opportunity to the respondents for cross-examination and therefore, the only ground on which the matter was remanded to the Rent Controller was untenable. On this basis, it was submitted that the impugned order may be set aside and the matter be remanded to the Additional Commissioner for deciding the revision application on merits.

3. Mr.Sudame, the learned counsel appearing for the sole respondent submitted that as on today, the respondent has filed Writ petition No.3753 of

2022, challenging the constitutional validity of Section 43(4)(a) of the Maharashtra Rent Control Act, 1999 and that therefore, this Court may keep the present writ petition pending.

4. It is informed that the Division Bench of this Court has already issued notice on 08/07/2022 in Writ Petition No.3753 of 2022. This Court is of the opinion that mere pendency of the aforesaid writ petition, challenging the constitutional validity of Section 43(4)(a) of the Maharashtra Rent Control Act, 1999 ought not to result in the present petition remain pending.

5. Considering the admitted facts in the present case, which demonstrate that the respondent was denied leave to defend and the order had attained finality upto the Hon'ble Supreme Court, the only ground on which the Additional Commissioner partly allowed the revision application, is found to be unsustainable. There was no reason for the Additional Commissioner to have remanded the matter to the Rent Controller in the teeth of admitted facts.

6. In view of the above, the writ petition is partly allowed. The impugned order dated

31/01/2022, is quashed and set aside. The matter is now remanded to the Additional Commissioner for consideration on merits. The parties shall appear before the Additional Commissioner on **03/10/2022**. The Additional Commissioner shall dispose of the revision application expeditiously.

7. According to the petitioners, the respondent has shifted residence and therefore, latest correct address may be supplied to the petitioners. The respondent shall do so at the earliest.

JUDGE

*Digitally signed by*RAVIKANT
CHANDRAKANT KOLHE
*Signing Date:*04.10.2022
15:57