

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO.186 OF 2015

- 1] Gram Panchayat, Aurala,
Tal. Kannad, Dist. Aurangabad,
Through its Village Development Officer,
Shri Madhukar Laxmanrao Chavan.
- 2] Sarpanch, Aurala,
Tal. Kannad, Dist. Aurangabad. .. **APPLICANTS**
[Orig. Defendant]

VERSUS

Kailas Rangnath Vare,
Age 50 years, Occ. Business / Agriculture,
R/o. Aurala,
Tal. Kannad, Dist. Aurangabad. .. **RESPONDENT**
[Orig. Plaintiff]

...

Mr.D.P.Palodkar, Advocate for the applicants
Mr.S.B.Rajebhosale, Advocate for the respondent

...

CORAM : ARUN R. PEDNEKER, J.

Reserved on : 06.07.2023
Pronounced on : 08.08.2023

JUDGMENT :

- 1] By the present Civil Revision Application, the
applicants are challenging the judgment and order dated

06.07.2015 passed by the Joint Civil Judge Junior Division, Kannad in Regular Civil Suit No.143 of 2012 whereby the suit instituted by the respondent under Section 6 of the Specific Relief Act, 1963 came to be decreed.

Brief facts leading to filing the present Civil Revision Application is as under :

2] The respondent – plaintiff instituted Regular Civil Suit No.143 of 2012 for restoration of the possession under Section 6 of the Specific Relief Act. It is contended by the respondent – plaintiff that on 01.01.1991 the appellants – defendants allotted open space admeasuring 15 feet x 12 feet to the respondent – plaintiff on rent for running flour mill. The respondent – plaintiff installed flour mill and started business therein. The suit property was allotted to the respondent – plaintiff for 10 years i.e. till 01.01.2000 and he continued to be in possession after determination of the lease. It was contended that he was dis-posessed on 28.06.2012 without following due process of law and that on 06.07.2012, his shed and structure came to be removed. The plaintiff filed suit on 02.07.2012. The plaintiff

contended that the said action is against the provisions of Section 106 of the Transfer of Property Act and Section 53 of the Maharashtra Village Panchayats Act.

3] *Per contra*, the case of the defendants is that on 01.01.1991 the suit land was given on rent to the plaintiff only for a period of 11 months. The said agreement was extended upto the year 1998 and thereafter the agreement was cancelled vide Resolution No.9 dated 30.12.1998 and on 31.12.1998, the agreement came to be terminated by the defendants by issuing notice in writing to the plaintiff and he was also directed to hand over the vacant possession of the suit land. The plaintiff did not comply with the said directives and therefore written intimation was given to M.S.E.B. to disconnect the electricity supply. The plaintiff applied for renewal of the lease and the said application was discussed in monthly meeting of the village panchayat held on 26.04.2011. After discussion, the application of the plaintiff was rejected vide Resolution No.10/2. On 27.12.2011, vide Resolution No.13/3, it was resolved to

remove the unauthorized occupation of the plaintiff over the suit land.

4] The land was reserved for construction of water tank for supply of water to the villagers vide Resolution No.9 dated 26.01.2008 and the State Government had directed the defendants to commence and complete the construction of water tank within 11 months. The applicants further submits that notices were issued to the plaintiff on 29.06.2012 and 30.06.2012. As the plaintiff failed to remove the unauthorized constructions, the same came to be removed on 05.07.2012 by conducting panchanama.

5] On eviction, the plaintiff filed a suit under Section 6 of the Specific Relief Act with the prayer as under:

A] The suit of the plaintiff may please be decreed with cost.

B] The defendant, the agent / servant be directed to restore the possession of the suit

property described in para 1 of the plaint alongwith super structure as was standing on the date of suit.

6] The trial Court on examination of the material had formulated the following issues :

Sr.No.	Issues	Findings
1	Does the plaintiff prove that he was in settled possession of the suit property within a period of 6 months before filing the suit ?	..In the affirmative
2	Does the plaintiff prove that defendants dispossessed him of the suit property without his consent and otherwise than in due course of law?	...In the affirmative
3	Is the plaintiff entitled to recover the possession of the suit property along with the structure that was standing thereupon?	...In the affirmative
4	Whether this court has jurisdiction to try the suit?	...In the affirmative
5	What order and decree ?	..Suit is decreed.

7] The trial Court held that bar contained under Section 6 of the Specific Relief Act is that the suit is not maintainable against the Government and there is no bar to file the same

against the village panchayat and the suit for specific performance under the Specific Relief Act against the village panchayat is maintainable. The trial Court further held that as per Section 106 of the Transfer of Property Act, 6 months notice is mandatory prior to determination of lease. As per Section 52 of the Maharashtra Village Panchayat Act, notice for not less than 30 days is mandatory for removal of encroachment. As such, the trial Court held that the plaintiff was in possession before its removal and thus directed the defendants to deliver the possession of the suit property along with the structure thereupon to the plaintiff within two months from the date of order.

8] The admitted facts of the case are that the tenant plaintiff was in initial legal possession of the suit premises / suit land for a period of 10 years as a leasee. The dispute is only as regards to the continuation of the tenancy. Even if it is held that the tenant is in unauthorised possession of the tenanted premises / land after termination of the tenancy vide resolution no.9 dated 30.12.1998 of the village panchayat and tenancy came to an end by notice dated 31.12.1998, the possession of the tenant after the termination of lease over the premises / land was juridical

possession and the eviction of the tenant has to be in accordance with law. As regards other requirement for the suit for specific performance being filed within 6 months from dis-possession, the suit was filed within 6 months of dispossession is undisputed.

9] The law on the subject has been discussed in the case of *M/s. Chandra and Co. Vs. State* reported in **AIR 1981 Raj. 217**. In the said judgment while discussing the various judgments of the other High Court and the Supreme Court, the Rajasthan High Court has held at para nos.19, 21 and 27 as under:

19. The decisions referred to above lead to the conclusion that a person who is in peaceful possession of property cannot be deprived of the possession of the same by the State, or its officers, except in accordance with law and in a case, where the State or its officers have dispossessed such a person of the property in his possession without any authority of law it would be open to him to seek redress against the aforesaid unlawful action of the State and its officers by invoking the jurisdiction of this Court under Article 226 of the Constitution. The aforesaid decisions further show that a person who has been dispossessed of

the property in his possession by the State or its officers, without the authority of law, cannot be non-suited on the ground that he was an unauthorised occupant of the said property and had no right or title in the same.

21. In my opinion, the said contention of the learned Deputy Government cannot be accepted. In the matter of dispossession of a person in possession of immovable property, the law in India differs from the English law in the sense that while English law permits a person who is actually entitled to the possession of immovable property and is out of possession to enter without breach of peace if he can, the Indian law does not permit a person to take the law in his own hands and to dispossess a person in actual possession without having recourse to a Court. Section 6 of the Specific Relief Act 1963 (Section 9 of the Specific Relief Act, 1877) empowers a person, who has been dispossessed without his consent of immovable property, otherwise than in due course of law, to secure possession thereof notwithstanding any other title that may be set up, by filing a suit within a period of six months from the date of dispossession. The object of the aforesaid provision is to discourage people from taking the law into their own hands, however,

good their title, and to provide a summary and speedy remedy through the medium of the Civil Court for restoration of possession to party dispossessed by another, leaving the parties to fight out the question of their respective titles in a regular suit.

27. The aforesaid decisions show that the law affords protection to a person in judicial possession of property and If such a person is dispossessed of the said property otherwise than in due course of law, he can enforce his right to be restored to possession and the said right is available against a person claiming superior title in the property. The possession of a tenant who continues in possession after the termination of the tenancy is juridical possession as it is protected by Section 6 of the Specific Relief Act, 1963.

10] A tenant who continues to hold tenanted property after the expiry of the lease or termination of lease is in juridical possession of the tenanted property and that the tenant cannot be removed from the possession of the tenanted premises without following due process of law.

11] It is to be noticed that the suit for specific performance is filed under Section 6 of the Specific Relief Act as the tenant had continued to remain in possession after termination of the lease by the village panchayat and that he was dispossessed without following due process. There are no provisions under the Maharashtra Village Panchayat Act brought to my notice that tenant can be evicted by initiating action under the provisions of the Village Panchayat Act. A tenant, who is in possession of the tenanted premises after expiry of lease, thus cannot be evicted under the provisions of the Village Panchayat Act. Thus, the Village Panchayat was required to follow due process of law in removing the tenant from the premises held by the tenant after expiry of the lease.

11] In the instant case, it is to be noticed that the suit plot is reserved under the Town Planning scheme for development of water tank and the same is also constructed by the village panchayat during pendency of the suit. Since the suit plot is reserved for water tank under the Regional Town Planning Act and that the tank has been constructed, it would not be

possible to restore the possession of the plaintiff. The suit land also cannot be used for any other purpose, once it is reserved for water-tank in the regional plan.

12] In view of the same, the present Civil Revision Application is partly allowed. The Village Panchayat is directed to pay compensation of Rs.50,000/- to the respondent – original plaintiff as compensation towards unauthorised eviction. The compensation would not preclude the respondent – original plaintiff from seeking further compensation from the village panchayat on account of unauthorised eviction from the suit premises by following due process of law.

13] In view of the same, the present Civil Revision Application is partly allowed as aforesaid.

[ARUN R. PEDNEKER]
JUDGE

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