

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

WRIT PETITION NO.406 OF 2020

The Navjivan Co-op. Housing Society Ltd.
A Co-op. Hsg. Society registered under the
Bombay Co-operative Societies Act and
deemed to have been registered under the
Maharashtra Co-operative Societies Act,
1960 having its registered office at Dr.
Bhadkamkar Marg, 1st Floor, Building No.6,
Mumbai – 400 008.

Petitioner
(Orig. Respondent)

V/s.

Gangadin s/o Shri Ramprasad Nirmal,
Aged: Not known, Occ: Business,
Adult Indian Inhabitant, having address at
Navjivan Society between Building No.9 &
10, Lamington Road, Mumbai – 400 008.

Respondent
(Orig. Applicant)

WITH

WRIT PETITION NO.460 OF 2020

The Navjivan Co-op. Housing Society Ltd.
A Co-op. Hsg. Society registered under the
Bombay Co-operative Societies Act and
deemed to have been registered under the
Maharashtra Co-operative Societies Act, 1960
having its registered office at Dr. Bhadkamkar
Marg, 1st Floor, Building No.6, Mumbai – 400
008.

Petitioner
(Orig. Respondent)

V/s.

1. Madhav Prasad s/o Ram Dulara
Nirmal (since deceased)
Through legal heirs.
- 1a. Kamleshkumar Madhavprasad Kanojiya
Aged: Not known, Occ: Business,
Adult Indian Inhabitant

1b. Gulabchand Madhavprasad Kanojiya,
Aged: Not known, Occ: Business,
Adult Indian Inhabitant

1c. Jitendrakumar Madhavprasad Kanojiya
Aged: Not known, Occ: Business,
Adult Indian Inhabitant

All having address at Navjivan Society,
Lamington Road, Mumbai – 400 008.

Respondents
(Orig. Applicants)

Mr. Rajesh B. Jain a/w Mr. Rohit Jain & Ms. Neha Doshi i/by. Legal
Juris for the Petitioner.

Mr. Rajesh Parab for the Respondent

CORAM : SHIVKUMAR DIGE, J.

DATED : 24th MARCH, 2023

Oral Judgment:

1. Heard.

2. Rule. Rule made returnable forthwith by consent. Heard finally at admission stage.

3. In both writ petitions, the order under challenge is order passed by the Small Causes Court, Mumbai dated 11th December, 2019 on the same issue. Hence, I am deciding these two writ petitions by this common judgment.

4. It is contention of learned counsel for the Petitioners, that the Petitioners in both writ petitions had raised preliminary objection about maintainability of suit by filing two applications before the Small Causes Court, at Mumbai and on that basis preliminary issues

were framed in both applications.

5. The learned counsel for Petitioners argued on preliminary objections and cited case laws in support of their case. It was contention of the Petitioners in the said applications that the suit premises being open plot can't come within the purview of definition of premises under the provisions of Maharashtra Rent Control Act, 1999 and in support of their contentions, the Petitioners had relied on some judgments. While passing the order, the learned Trial Court has observed that tenancy of open land created prior to the enactment of the said Act and the Respondents are protected. Hence, the Small Causes Court has jurisdiction to entertain the suit and on that basis applications were rejected.

6. The learned counsel further submits that, the learned Trial Court has rejected the applications, without giving sufficient reasons and without discussing the case-laws relied by the learned counsel for the Petitioners. Hence, requested to allow the Writ Petitions.

7. It is contention of learned counsel for Respondents in both Writ Petitions that applications of the Petitioners, were not maintainable as per amendment of 27th June, 2018. By the said amendment, Section 9(A) is repealed and the Respondents are protected tenant in the suit premises prior to the enactment of new Maharashtra Rent Control Act, 1999. Hence, the order passed by the learned Trial Court is legal and valid.

8. I have heard both learned counsel. Perused the impugned order passed by the learned Trial Court. While passing the order, the

learned Trial Court has observed that the Maharashtra Rent Control Act, 1999 is prospective and the tenancy of open land created prior to the enactment of the said Act, are protected. Hence, the Court has jurisdiction to try applications. While deciding these applications, the learned Trial Court has not discussed the case laws relied by the learned counsel for the Petitioners. The learned Trial Court has not considered the submissions of both learned counsel and no reasoned order is passed. Hence, I pass following order:-

ORDER

- (i) Both Writ Petitions are partly allowed.
- (ii) The order passed by the learned Small Causes Court, Mumbai dated 11th December, 2019 in both RES Application No.01 of 2015 and RES Application No.02 of 2015 are quashed and set aside.
- (iii) The matter is remanded back to the learned Small Causes Court, Mumbai to decide above applications below Exhibit-1 in both RES Applications afresh and pass reasoned order, after considering the submissions of both learned counsel along with citations relied by them.
- (iv) The learned Small Causes Court, Mumbai is requested to decide both applications as early as possible preferably within two months after the receipt of this order.

All contentions of both the parties are kept open.

All pending civil applications, if any, are disposed of.

(SHIVKUMAR DIGE, J.)