

SA Pathan

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

WRIT PETITION NO.6640 OF 2022

Jayant Bhagvantrao Gangurde ... Petitioner
V/s.
Pushpaben D. Shah & Ors. ... Respondents

Mr. J. P. Mishra for Petitioner.

Mr. Dias for Respondents No.1(A) to 1(C).

Mr. C. D. Mali, AGP for Respondent No.2-State.

CORAM : S.G. DIGE, J.

DATED : 27th MARCH 2023.

P.C.:

1. Heard learned Counsel for the Petitioner and the learned Counsel for the Respondents No.1(A) to 1(C) and learned AGP for Respondent No.2-State.

2. Learned Counsel for the Petitioner submits that the Petitioner had filed an Application for restoration of possession before the trial Court. But, the trial Court dismissed the said Application. Learned Counsel further submitted that the Petitioner was not in possession of the suit premises and he had filed the suit for declaration of tenancy. During pendency of the said suit, the petitioner was dispossessed from the suit premises. Hence, his possession be restored in the suit premises and direction be given to keep suit premises vacant till disposal of the suit.

3. Learned Counsel for the Respondents No.1(A) to 1(C) submits that this Court Coram (Doctor Manjula Chellur, C.J., & G.S. Kulkarni, J.) by order dated January 31, 2017 has observed that the suit property

was part of the requisitioned property under the Bombay Land Requisition Act, 1948 and the Petitioner can raise the controversy before learned Small Causes Court where order of eviction was confirmed.

4. Learned AGP, submits that the petitioner has vacated the said suit premises on 18.04.2014.

5. I have heard learned Counsel for the parties. There is contention of the learned Counsel for the Petitioner that he has been dispossessed from the suit premises whereas it is contention of learned Counsel for the Respondents that the Petitioner has vacated the suit premises. This Court cannot restore the possession as prayed by the Petitioner mere on the Application. The petitioner can raise this ground before the trial Court by leading appropriate evidence.

6. In view of above, I pass the following order:

O R D E R

1. Petition is dismissed.
2. All contentions of the parties are kept open.

(S.G. DIGE, J.)