



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

WRIT PETITION NO.10045 OF 2023

Pawan Kumar Umapati Pathak

...Petitioner

Versus

Additional Commissioner, Konkan Division,
Mumbai & Ors.

...Respondents

Mr. Anand V. Upadhyay i/b. Mr. Pawan Kumar Umapati Pathak, for
the Petitioner.

Mr. Chaitanaya Chavan a/w. Mohammed Naved I. Mulla i/b. L R &
Associates, for Respondent No.3 to 5.

Mr. S. D. Rayrikar, AGP, for the Respondent-State.

CORAM : MADHAV J. JAMDAR, J.

DATED : 18th AUGUST 2023

P.C. :

1. Heard Mr. Upadhyay, learned counsel appearing for the
Petitioner, Mr. Chavan, learned counsel appearing for the
Respondent Nos. 3 to 5 and Mr. Rayrikar, learned AGP
appearing for the Respondent-State.

2. Mr. Upadhyay, learned counsel appearing for the
Petitioner raised the following four contentions:-

- i. The Petitioner has not been served with the
summons of the Eviction Application No.157 of
2022 filed under Section 24 of the Maharashtra

Rent Control Act, 1999 (hereinafter referred to as **“the MRC Act”**) in the Court of Competent Authority Rent Control Act, Konkan Division, Mumbai.

ii. Leave and license agreement dated 6th January 2018 is not registered leave and license agreement and therefore, the same cannot be relied upon and the same is not conclusive of the facts stated therein as per Explanation (b) to Section 24 of the MRC Act.

iii. The owner of the property has executed agreement for sale dated 28th January 2018 in favour of the present Petitioner and agreed to sell the suit property i.e. shop for consideration of Rs.30,00,000/- and the owner has accepted Rs.10,00,000/- in cash. Therefore, it is the submission of Mr. Upadhyay that by setting aside impugned order passed by the Competent Authority Rent Control Act, Konkan Division, Mumbai and impugned order passed by the Additional Commissioner, Konkan Division, Mumbai, the matter be remanded back to the Competent Authority.

iv. The suit premises are the shop premises and therefore, the Competent Authority has no jurisdiction to deal with the said Eviction Application No.157 of 2022 filed under Section 24 of the MRC Act.

3. It is the contention of Mr. Chavan, learned counsel appearing for Respondent Nos.3 to 5 that leave and license agreement in question is a written leave and license agreement and therefore, as per Explanation (b) to Section 24 of the MRC Act, an agreement of license in writing shall be conclusive evidence of the fact stated therein. As far as the agreement for sale is concerned, he submitted that the said agreement came to the knowledge of the Respondent Nos.3 to 5 after suit has been filed in the City Civil Court. He submitted that the alleged signature on said agreement is not of Suman Vijay Sharma i.e. the licensor/owner. Deceased said Suman Sharma is the wife of the present Respondent No.3 and mother of the present Respondent Nos.4 and 5. He further submitted that two NCs were filed on 21st August 2021 and 6th September 2021 respectively by the present Petitioner with the Sakinaka Police Station, Mumbai. In both NCs, the Petitioner has stated that he is staying in the suit premises as tenant and therefore, the said contention regarding agreement of sale is fraudulent. He further submitted that the Petitioner has filed suit in the City Civil Court on the basis of said forged agreement of sale dated

28th January 2018 and the City Civil Court has refused to grant any interim relief and dismissed the Notice of Motion filed in Suit (ST) No.1282 of 2022. He therefore, submitted that no interference is warranted in the impugned order.

4. Before considering the rival submissions, it is necessary to set out the factual position. Deceased Suman Vijay Sharma was the owner of the suit premises bearing Room No.10, B-Wing, Monarch Manor Co-operative Housing Society Ltd., 90 Feet Road, Sakinaka, Kurla (West), Mumbai 400072 (hereinafter referred to as **“the said premises”**). It is the contention of the Petitioner that the said Room No.10 is in fact shop.

5. Respondent Nos. 3 i.e. Vijay Kumar Sharma is husband of deceased Suman Vijay Sharma and Respondent No.4-Pooja and Respondent No.5-Rupali are the daughters of said deceased Suman Vijay Sharma. Leave and license agreement dated 6th January 2018 was executed between deceased Suman Vijay Sharma and the present Petitioner. As per the said leave and license agreement, the said premises are to be used only for the residential purpose. The period of leave and license agreement

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was w.e.f. 1st January 2018 to 1st January 2021 and agreed monthly compensation was Rs.15,000/- per month.

6. It is the contention of the Respondent Nos.3 to 5 that notice dated 15th January 2021 was issued to the Petitioner and also police complaints were filed as the Petitioner refused to vacate the suit premises. In the meanwhile, deceased Suman passed away on **11th October 2018**.

7. It is the contention of the Petitioner that after the execution of agreement of leave and licence, agreement for sale dated 28th January 2018 was executed by said deceased Suman Vijay Sharma in favour of the present Petitioner. By said agreement for sale, deceased Suman Vijay Sharma agreed to sell the said premises for consideration of Rs.30,00,000/- and Rs.10,00,000/- were paid in cash. The Petitioner filed Short Cause Suit No.1282 of 2022 claiming rights on the basis of said agreement of sale dated 28th January 2018 and also took out Notice of Motion seeking injunction. However, the said Notice of Motion was dismissed by order dated 8th February 2022.

8. Thereafter, on 9th July 2022, the present Respondent Nos.3 to 5 filed Eviction Application No.157 of 2022 before the

Competent Authority, Rent Control Act Court, Kokan Division, Bandra, Mumbai under Section 24 read with Section 43(1) of the MRC Act.

9. In the light of the above factual position, it is necessary to consider the contentions raised by the contesting parties. It is the submission of Mr. Upadhyay, learned counsel appearing for the Petitioner that the Petitioner has not been served summons of Eviction Application No.157 of 2022. However, the paragraph No.3 of order passed by the Competent Authority shows that notice as contemplated under Section 43 (2) (3) of MRC Act was sent to the Respondents and the same has been returned unclaimed. The Competent Authority has held that the same is deemed service.

10. Even if it is assumed that the Petitioner has not been properly served, the Supreme Court in **State of U.P. vs. Sudhir Kumar Singh & Ors.**¹ has held that natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused. Where procedural and/or

1 2020 SCC Online 847

substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest. No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

11. This Court in the decision dated 28th June 2023 of **Mehboob Mohammed Salim Qureshi through his Constituted Attorney Salma Salim Qureshi vs. Additional Commissioner Konkan Division, Mumbai & Ors.**² has considered the aspect of the prejudice with reference to Explanation (b) to Section 24 of the MRC Act which is special rule of evidence. The relevant discussions are in paragraph Nos.13 to 19, which read as

2 Writ Petition No.6007 of 2023

follows:-

"13. The Supreme Court in its decision in **State of U.P. Vs. Sudhir Kumar Singh and Others**, discussed the aspect whether mere non-observance of principles of natural justice is sufficient for aggrieved person or is he also required to show prejudice caused to him. After analysing the various decisions of the Supreme Court on this point, the Supreme Court summarised the legal position in paragraph 39 as follows:

"39. An analysis of the aforesaid judgments thus reveals:

(1) **Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.**

(2) **Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed.**

Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

(3) No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

(4) In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

(5) The “prejudice” exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice.

"Thus, a person claiming violation of the

principles of natural justice has to also show the prejudice that he has suffered as a result of said violation. If a person is not able to dispute the case of the other side, then in that case it cannot be said that any prejudice is caused to such person. The present case is required to be examined in the light of above legal position.

14. The Explanation (b) to Section 24 of the Rent Act provides that, an agreement of license in writing shall be conclusive evidence of the facts stated therein. The same is special rule of evidence. The object of expression 'conclusive evidence of fact stated therein' is aimed to give finality to the establishment of the existence of the fact or facts stated in the written leave and license agreement from the proof of another.

15. Explanation (b) to Section 13A(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 is similar provision as Explanation (b) to Section 24. The said provision is subject matter of consideration of various judgments of this Court. This Court in the decision of *Ramesh Ramrao Hate vs. Parvez B. Bhesania* has held as follows.

“8. The controversy centers round the **Explanation (b)** which makes a provision that an agreement of licence in writing shall be conclusive evidence of the facts stated therein. Though the expression used in explanation is "conclusive evidence" it cannot be differentiated with the expression "conclusive proof". In *1. Smt. Sonawanti and others v. The State of Punjab and others*, the **Apex Court** compared the expressions 'conclusive evidence' and held that there is no difference between the two expressions. The Supreme Court thus held---

"18. A distinction is sought to be made between "conclusive proof" and "conclusive evidence" and it is contended that where a law declares that a fact shall be conclusive proof of another, the Court is precluded from considering other evidence once such fact is established. **Therefore, where the law makes a fact conclusive proof of another the fact stands proved and the Court must proceed on that basis.** But, the argument proceeds, where the law does not go that far and makes a fact only "conclusive evidence" as to the existence of another fact, other evidence as to the existence of the other fact is not shut

out. In support of the argument reliance is placed on section 4 of the Evidence Act which in its third paragraph defines 'conclusive proof' as follows :

"When one fact is declared by this Act to be conclusive proof of another, the Court, shall on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it. This paragraph thus provides that further evidence is barred where, under the Evidence Act, one fact is regarded as proof of another. But it says nothing about what other laws may provide.

There are a number of laws which make certain facts conclusive evidence of other facts : (see Companies Act, 1956, section 132; the Indian Succession Act, 1925, section 381; Christian Marriage Act, 1872, section 61; Madras Revenue Act, 1869, Section 38; Oaths Act, 1873, section 11). The question is whether such provision also bars other evidence after that which is conclusive evidence is produced.

19. The object of adducing evidence is to

prove a fact. The Evidence Act deals with the question as to what kind of evidence is permissible to be adduced for that purpose and states in section 3 when a fact is said to be proved. That section reads thus : "Evidence" means and includes---

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;

(2) all documents produced for the inspection of the Court; such documents are called documentary evidence.

A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists."

Since evidence means and includes all statements which the Court permits or requires to be made, when the law says that a particular kind of evidence would be conclusive as to the existence of a particular fact it implies that fact can be proved either

by that evidence or by some other evidence which (sic) the Court permits or requires to be advanced. Where such other evidence is adduced it would be open to the Court to consider whether, upon that evidence, the fact exists or not. Where, on the other hand, evidence which is made conclusive is adduced, the Court has no option but to hold that the fact exists. If that were not so, it would be meaningless to call a particular piece of evidence as conclusive evidence. Once the law says that certain evidence is conclusive it shuts out any other evidence which would detract from the conclusiveness of that evidence. In substance, therefore, there is no difference between conclusive evidence and conclusive proof. Statutes may use the expression 'conclusive proof' where the object is to make a fact non-justifiable. But the legislature may use some other expression such as 'conclusive evidence' for achieving the same result. There is thus no difference between the effect of the expression 'conclusive evidence' from that of 'conclusive proof', the aim of both being to give finality to the establishment of the existence of a fact from the proof of another".

9. Once the legislature by Explanation (b) of section 13A(2) has provided that a written agreement of license shall be conclusive evidence of the facts stated therein, it provided a special rule of evidence for the purpose of proceedings under section 13A(2) of the Bombay Rent Act. The intention of the legislature was to give finality to the existence of a facts occurring in the written agreement of leave and licence. In other words legislature intended to shut out any other evidence which would detract from the conclusiveness of that evidence. The object of expression 'conclusive evidence of fact stated therein' is aimed to give finality to the establishment of the existence of the fact or facts stated in the written leave and licence agreement from the proof of another. The argument of learned Counsel for the petitioner that Explanation (b) only makes the written agreement of licence conclusive evidence as regards the licencor and not against the licensee is very difficult to be appreciated. Once it is provided by the legislature that an agreement of licence in writing shall be conclusive evidence of the

facts stated therein, it prohibits from leading any other evidence which may affect the conclusiveness of that evidence. The law laid-down by the Apex Court in Smt. Somavanti and others' case (supra), is clear answer to the contention of the learned Counsel for the petitioner wherein the Apex Court has held that once the law says that certain evidence is conclusive it shuts out any other evidence which would detract from the conclusiveness of that evidence. Not only that when a certain evidence is made conclusive evidence, it prohibits any other evidence to be led which may detract from the conclusiveness of that evidence, but also the Court has no option to hold the existence of the fact otherwise when such evidence is made conclusive. Once an execution of the agreement of leave and licence is not disputed before the Competent Authority in an application under section 13A(2) based on such leave and licence agreement, it is conclusive evidence of the facts stated therein and no other evidence can be led inconsistent with the said facts by either of the parties and is conclusive between the parties of the facts stated therein. The

Competent Authority has no option but to hold that the facts stated therein do exist. Same position holds good also in a case where the execution of written agreement of leave and licence is denied and the Competent Authority after recording evidence reaches the conclusion that execution of such agreement for leave and licence has been proved by the licencor.”

(Emphasis added)

Thus, it is clearly held by this Court that, the intention of the legislature was to give finality to the existence of facts occurring in the written agreement of leave and license. In other words, legislature intended to shut out any other evidence which would detract from the conclusiveness of that evidence. The object of expression 'conclusive evidence of fact stated therein' is aimed to give finality to the establishment of the existence of the fact or facts stated in the written leave and license agreement from the proof of another.

16. This Court in Ramesh Ramrao Hate (supra) has relied on the Judgment of Hon'ble Supreme Court in the case of *Somavanti & Others Vs The State Of Punjab*

& Ors., wherein it has been held that once the law says that certain evidence is conclusive it shuts out any other evidence which would detract from the conclusiveness of that evidence. Not only that when a certain evidence is made conclusive evidence, it prohibits any other evidence to be led which may detract from the conclusiveness of that evidence, but also the Court has no option to hold the existence of the fact otherwise when such evidence is made conclusive. The said observations of this court are squarely applicable to the present case.

17. A learned Single Judge in the decision of **Jasmeet Hoon Vs. Smt Rita Johar & Ors.**, has held that Section 13A(2) of the Bombay Rent Act (i.e. same provision as contained in explanation (b) to section 24 of the Maharashtra Rent Control Act) lays down a special procedure for eviction of licensees before the Competent Authority which is a special forum constituted under Part IIA of the Act. Explanation (b) to Section 13A(2) prescribes a special rule of evidence. It provides that an agreement of license in writing shall be conclusive evidence of the

facts stated therein. In view of this special rule of evidence, this Court has held that it is not permissible for the Court to go behind the document to find out the real intention of the parties or to arrive at a conclusion that the document is of a lease and not of leave and license. The licensee cannot lead evidence to establish that the real transaction was of tenancy or is not what it professes to be. The agreement is conclusive evidence that the transaction is of leave and license.

18. In view of the above legal position the contention of Ms. Bhatia that the real transaction between the parties is sale of the said Bungalow in favour of the petitioner cannot be looked into. Although the Competent Authority by giving reasons on the basis of Hon'ble Supreme Court's Judgment in the case of *K. Bhaskaran* (*supra*) has held that the petitioner has been properly served, however, even if it is assumed that the Petitioner has not been properly served still, in view of the admitted position that there is a registered leave and license agreement, the Competent Authority could not have gone into the aspect that the

real transaction between the petitioner and Respondent No. 3 is of sale of the said bungalow and therefore no prejudice has been caused to the petitioner.

19. Mr. Chavan, learned counsel appearing for the Respondent No.3 has also relied on the decision of a learned Single Judge in the case of *Raj Prasanna Kondur Vs. Arif Taher Khan & Ors.*, and more particularly on paragraph no. 20 of the said judgment. The said paragraph no. 20 reads as under.

20. Clause (a) of Sub-section (4) of Section 43 of the said Act provides that the licensee on whom the summons is duly served in the ordinary way or by registered post in the manner laid down in Sub-section (3) of Section 43, shall not contest the prayer for eviction for the premises, **unless, within 30 days of the service of summons on him as aforesaid, he files an affidavit stating grounds on which he seeks to contest the application for evidence and obtains leave from the competent authority in the manner provided in the said Act**, and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made

by the landlord in the application for eviction shall be deemed to be admitted by the licensee, and the applicant shall be entitled to an order for eviction on the ground aforesaid. The Apex Court in Prakash Jain's case (supra) has clearly ruled that :-

"Clause (a) of Sub-section (4) of Section 43 mandates that the tenant or licensee on whom the summons is duly served should ontest the prayer for eviction by filling, within thirty days of service of summons on him, an affidavit stating the grounds on which he seeks to contest the application for eviction and obtain the leave of the competent authority to contest the application for eviction as provided therefor. The legislature further proceeds to also provide statutorily the consequences as well laying down that in default of his appearance pursuant to the summons or obtaining such leave, by filling an application for the purpose within the stipulated period, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant or licensee, as the case may be, and the applicant shall be entitled to an order for eviction of the ground so stated by

him in his application for eviction."

(Emphasis added)

In view of Section 43 of the Rent Act read with explanation (b) to Section 24, it is important to note that the Petitioner should disclose factual aspects by which he will be entitled for leave to defend. Except the contention regarding oral agreement of purchase of said bungalow, there is no other contention raised. Admittedly, the said oral transaction is prior transaction and as per the contention of the Respondent No. 3 as the Petitioner has failed to arrange for funds for purchase of said bungalow and as the Petitioner wanted to stay in said bungalow temporarily, the leave and license agreement was executed. Thus, the terms and conditions of said registered leave and license agreement dated 24th September 2020 are the conclusive evidence of the facts stated therein."

12. Thus, in view of Section 43 of the MRC Act read with Explanation (b) to Section 24, it is important that the Petitioner to disclose factual aspects by which he will be entitled to leave to defend. As per Explanation (b) to Section

24, an agreement of license in writing shall be conclusive evidence of the fact stated therein. As set out hereinabove, the agreement of leave and license specifies the period of license from 1st January 2018 till 1st January 2021. It is specifically mentioned in the leave and license agreement that the said premises are to be utilized only for the residential purpose. Therefore, the contention raised by Mr. Upadhyay, learned counsel appearing for the Petitioner about agreement of sale with respect to the suit premises cannot be looked into as it has been consistently held that once the statutory provision provides that certain evidence is conclusive it shuts out any other evidence which would detract from the conclusiveness of that evidence.

13. Therefore, in view of Explanation (b) to Section 24, it has to be held that premises were given on leave and license basis. The period is from 1st January 2018 to 1st January 2021 on the monthly compensation of Rs.15,000/- per month and the same are given for residential purpose.

14. As far as the contention that leave and license agreement is not registered, it is to be seen that Explanation (b) to Section

24 specifically states that an agreement of license in writing shall be conclusive evidence of the fact stated therein. Therefore, for the purpose of Section 24, the agreement of leave and license need not be registered. A learned Single Judge of this Court in the decision of **Vimalaben Gosalia & Anr. vs. Veena Dushyant Malgaonkar**³ has held that as far as Section 24 read with Section 43 of the MRC Act is concerned, the agreement of leave and license to be held conclusive, the same need not be registered. The relevant paragraph No.18 reads as follows:-

“18. In paragraph 15, the contention advanced on behalf of the licensee that the provisions regarding requirement of registration of leave and licence agreement found in Section 55(1) of the Act will have to be read along with the list of compulsorily registerable documents under Section 17 of the Registration Act, 1908 was not accepted. It was observed that **while providing for the consequences of failure on the part of the landlord to get such agreement registered, the provisions of law in the said Act nowhere exclude unregistered agreement of leave and license to be inadmissible in evidence. On the contrary, the said agreement has been made specifically admissible under Clause (b) of the**

3 2018 SCC Online Bom 2103; (2018) 5 AIR Bom R 293

explanation to Section 24 of the Act which is not in consonance with the provision of law comprised under Section 49 of the Registration Act, 1908. If it was the intention of the legislature that the provision regarding the requirement of registration of leave and license agreement has to be read along with Section 17 of the Registration Act, 1908, nothing would have prevented the legislature to introduce amendment to Section 17 itself or at least to make such agreement inadmissible in the evidence rather than specifically providing for admissibility of such document in evidence as being a conclusive proof of the facts stated therein irrespective of the fact that the agreement is not registered.”

(Emphasis added)

15. The evidence on record shows that the service of summons on the Petitioner is deemed to be served as the notice sent through post remained unclaimed. Even if the case of the Petitioner is accepted that he has not been served, still as the Petitioner is not in position to show any prejudice in view of the conclusiveness of the evidence of fact stated in the leave and license agreement the said contention is not relevant.

16. Reliance of the Petitioner on agreement for sale dated 28th January 2018 is totally misconceived, as the said agreement cannot be looked into, in view of prohibition as contained in Explanation (b) to Section 24. In this behalf it is also relevant to note the contention of Mr. Chavan, learned counsel appearing for Respondent Nos. 3 to 5 that the signature as appearing on the said agreement for sale is not the signature of deceased Suman Vijay Sharma. He also pointed out that NCs were filed by the Petitioner on 21st August 2021 and 6th September 2021 with Sakinaka Police Station. In both NCs, the Petitioner described himself as tenant of suit premises and therefore, said agreement dated 28th January 2018 is fabricated document. It is also admitted position that the Petitioner has not filed any suit for specific performance of said agreement dated 28th January 2018 and the suit filed is merely for injunction.

17. Therefore, there is no substance in the Writ Petition. Accordingly, the Writ Petition is dismissed however, with no order as to costs.

18. It is clarified that observations made in this order as well

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as order passed by the Competent Authority, Additional Commissioner, Kokan Division, Mumbai are in the light of provisions under Section 44 read with Section 24 of the MRC Act and it is further clarified that if any proceedings are filed by the Petitioner on the basis of said alleged agreement for sale dated 28th January 2018, then the same shall be decided uninfluenced by the observations made in this order and order of the Competent Authority and Additional Commissioner, Kokan Division, Mumbai.

19. In view of the above discussion, the Writ Petition is rejected, however with no order as to costs.

[MADHAV J. JAMDAR, J.]

Note: This order is modified as per order dated 11th October 2023 and the correction is shown in bold in paragraph No.6