

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR, NAGPUR.

...

SECOND APPEAL NO. 322/2004

with

SECOND APPEAL NO. 311/2007

with

SECOND APPEAL NO. 174/2011

with

SECOND APPEAL NO. 517/2006

with

SECOND APPEAL NO. 265/2004

with

SECOND APPEAL NO. 92/2011

with

SECOND APPEAL NO. 152/2002

1) SA. NO. 322/2004:

Dinesh Waman Appa Gadve

Aged about 43 years, occu: Business

R/o Morshi, Dist. Amravati.

.. APPELLANT

VERSUS

Nagar Parishad Morshi

Through Its Chief officer

Morshi Dist. Amravati.

.. RESPONDENT

2) SA. NO. 311/2007:

Manojkumar Rajendraprasad Tiwari

Aged about 38 years,

R/o Morshi (Gandhi Market, Shop No.39)

Morshi Tq. Morshi Dist. Amravati.

.. APPELLANT

VERSUS

Municipal Council, Morshi

Through Its Chief officer

Morshi, Dist. Amravati.

.. RESPONDENT

3) SA. No. 174/2011

Sabir Beig Nazir Beig

Aged 50 years, occu: Business

R/o Shop No.36, Gandhi Market

Morshi, Tq. Morshi

Dist. Amravati.

..APPELLANT

v e r s u s

Nagar Parishad, Morshi

(Th: its Chief Officer), Tq. Morshi

Dist.Amravati.

..RESPONDENT

4) SA. NO. 517/2006

Radheshyam Badrilal Saboo

Aged 55 years, occu: Business

through its power of attorney holder

Kamalkishor Bhikamchand Gattani

R/o Yerla, Tq Morshi

Dist. Amravati.

..APPELLANT

v e r s u s

Municipal Council, Morshi

Th: Its Chief Executive Officer, Tq. Morshi

Tq. Morshi, Dist.Amravati.

..RESPONDENT

5) SA. No. 265/2004

Prabhakar s/o Mahadeorao Jane

Aged 50 years, occu: Business

R/o Morshi, Dist. Amravati.

..APPELLANT

v e r s u s

Nagar Parishad, Morshi

Through it's Chief Officer, Morshi

Dist.Amravati.

..RESPONDENT

6) SA. No. 92/2011

Mohan s/o Pundlikrao Tetu

Aged 50 years, occu: Business

R/o Udkhed Tq. Morshi Dist. Amravati.

..APPELLANT

v e r s u s

Nagar Parishad, Morshi

Through it's Chief Officer, Morshi

Dist.Amravati.

..RESPONDENT

7) SA. No. 152/2002

Digambar Shyamrao Asolkar

Shop No.37, Gandhi Market

Morshi Dist. Amravati.

..APPELLANT

v e r s u s

Municipal Council, Morshi

Through the Chief Officer,

Morshi, Dist.Amravati.

..RESPONDENT

.....
Mr. C.B. Dharmadhikari, Adv. for appellant in SA No. 322/2004

Mr.PS.Tembhare, Adv. for appellant in SA No. 311/2007

Mr S.B. Mohta, Adv. for appellants in SA Nos. 174/11, 92/11, 517/06, 265/2004 and 152/2002

Mr. Pravin P. Deshmukh, Adv.for Respondent-Municipal Council, in all matters.

.....
CORAM: ANIL L. PANSARE, J.

DATE OF CLOSING: 11.07.2023.

DATE OF PRONOUNCEMENT: 13.07.2023.

JUDGMENT:

Heard the learned counsel for the respective parties, at length.

2. All the above-referred Appeals have been admitted on the following substantial question of law :-

“ Whether the lease of the appellant is deemed to have been renewed in view of the resolution passed by the Municipal Council on 09.02.1993?

3. Both the Courts below have held that the lease has not been extended by the Respondent-Council in terms of the aforesaid resolution. Both the Courts below have also held that the Respondent-Council, who was plaintiff before the trial court, have validly terminated the tenancy of the appellants who were defendants before the trial Court. Accordingly, the suit filed by the Respondent-Council came to be decreed. The appellants/defendants were directed to hand over the possession of the suit shops and to pay damages as quantified in respective suits to the Respondent-Council.

4. The appellants are aggrieved by the concurrent findings recorded by both the Courts below and, therefore, have challenged the respective judgments passed by the first Appellate Court.

5. The relevant facts are as under :-

The Respondent-Council had filed a suit for ejectment and damages against the appellants/defendants. The Respondent -Council has constructed a market, named and styled as ‘Gandhi market’ at Morshi. The appellants/defendants were inducted as tenants in various shops admeasuring 10’x10’ at monthly rent of Rs.251/-. The appellants were found in arrears of rent and, therefore, the Respondent-Council issued notice and terminated the tenancy. The appellants though

received notice, failed to vacate the suit shops and, therefore, the Respondent Council filed suit seeking ejectment and damages. As stated earlier, both the Courts below have found merit in the suit filed by the Respondent-Council and accordingly, decreed the same, not on the count that the appellants were in arrears of rent but mainly on the ground that the tenancy came to an end by efflux of time and also because Section 95(3) as then existing, of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short "M.N.Act") provides that the Respondent-Council cannot extend the lease beyond the period of seven years.

6. I need not go into the resolution dated 9th February, 1993 and its effect on the tenancy, for the appeals can be disposed of in the light of the subsequent developments. Not only that the provisions of law has undergone change but also the circumstances and stand of the Council. The Section 92(3) as amended now authorizes the Municipal Council to extend the lease upto nine years and further the Respondent - Council has now by passing Resolutions dated 27th June 2007 and 25th February, 2011 decided to extend the lease of appellants in Second Appeal Nos. 174/2011, 517/2006, 265/2004, 92/2011 & 152/2002.

7. Mr.S.B. Mohta, learned Advocate has invited my attention to both the resolutions. He submits that the Respondent-Council has considered the representation made by 15 shop owners which includes the aforesaid five appellants herein for extension of lease. The Council decided to extend the same subject to enhancement in the rent as mentioned in the resolutions. By the resolution dated 27th June 2007, the lease has been extended for three years with effect from 1st

September, 2007 and by the Resolution dated 25th February, 2011, the lease has been extended by thirty years with effect from 1st April, 2011. These resolutions have been passed and the lease extended on the ground that because of pendency of litigation, the Respondent-council though succeeded in getting the decree, is unable to get the fruits and further unable to get the required market rent.

8. Thus, the Respondent-Council has now decided to extend the lease of those tenants who have made representation. In other words, the Respondent-Council has given up its claim of termination of tenancy and ejection of plaintiff from the suit shops. The five appellants mentioned above are the beneficiaries of the said two resolutions. Their respective appeals, therefore, can be disposed of in view of the subsequent developments.

9. The fate of other two appellants would, however, require further scrutiny. Mr. C.B. Dharmadhikari and Mr. P.S. Thembare, learned counsel appearing for appellant/s in SA No. 322/2003 and 311/2007, have correctly argued that the authority like the Municipal Council cannot give a hostile and invidious discriminatory treatment to the similarly situated tenants merely because they have not made representation for extension of the lease.

10. Mr. P.P. Deshmukh, the learned counsel for the Municipal Council has made an attempt to justify such a discrimination but on realising that he should not stretch the submission beyond advisable limits, acceded to pass appropriate orders in these two appeals. He, however, submits that the Council will have to obtain sanction from the

State Government in terms of Section 92(1) of the M.N.Act. He further submits that proposal in this regard is already forwarded to the State Government.

11. Having given my thoughtful consideration to the subsequent developments there appears no reason why the benefit extended to the five appellants mentioned above, vide Resolutions of 2007 and 2011 should not be extended to the other two appellants. Once the Council has decided to extend the lease of the shop owners who are similarly situated as that of the remaining appellants, the benefit should be extended to all the shop owners, except to those who are differently situated. That being not the case in respect of the aforesaid two appellants, the benefits needs to be extended to them as well. So far as sanction of State Government is concerned, the Council shall prepare its proposal for acceptance and shall extend similar treatment to the other appellants as well. The fact, however, remains that by passing these two resolutions, the Council has given up its claim of termination of the tenancy.

12. At this stage, learned counsel for the Municipal council submits that the suit shops are now in a dilapidated condition. If that be so, the Respondent-Council is at liberty to take appropriate steps in this regards but strictly in accordance with the law.

13. For the reasons stated above, the relief in the Second Appeals ought to be moulded, in the light of the subsequent developments. All the appellants are entitled for extension of lease in terms of the Resolutions of 2007 and 2011 passed by the Respondent-

Council. Hence the following order.

ORDER

- i) All the Second Appeals are allowed.
- ii) The judgments and decrees passed in **(i)** RCA No. 9/2002 passed by learned Addl. District Judge, Achalpur on 20.11.2003 arising out of judgment and decree passed in RCS No.306/1987 passed by learned Civil Judge, Jr.Dn. Morshi on 30.11.1999 **(ii)** RCA No.42/20023 passed by the learned Principal District Judge, Amravati on 20.12.2006 arising out of judgment and decree passed in RCS No.130/1990 passed by learned Joint Civil Judge,J.D. on 02.12.2002; **(iii)** RCA No.60/2002 passed by learned District Judge-3 Amravati on 25.08.2010 arising out of judgment and decree dated 04.09.2003 passed by learned Civil Judge, Jr. Dn. Morshi in RCS No.95/1990; **(iv)** RCA No.236/2003 passed by the learned Additional District Judge,Amravati on 16.02.2006 arising out of judgment and decree passed by learned Civil Judge, Jr.Dn. Morshi in RCS No. 185/1988; **(v)** RCA No. 10/2002 passed by learned Additional District Judge,Achalpur on 20.11.2003 arising out of the judgment and decree in RCS No.304/1987 passed by learned Civil Judge, J.D. Morshi, **(vi)** RCA No.111/2004 passed by learned District Judge-3 Amravati on 25.08.2010 arising out of the judgment and decree dated 04.09.2003 passed by I/c C.J.JD Morshi in RCS No. 296/1987 **(vii)** RCA No. 188/1995 passed by learned Joint District Judge, Amravati on 03.12.2001 arising out of the judgment and decree dated 01.03.1995 passed by learned CJ JD Morshi in RCS No.98/1990, are quashed and set aside.
- iii) The Municipal Council shall extend the benefits of Resolutions of 27th June, 2007 and 25th February,2011 to the appellants, in terms of the what has been said in the body of the judgment.

iv) The Respondent-Council is at liberty to take appropriate steps in respect of the dilapidated shops, but strictly in accordance with law.

All the Second Appeals are disposed of in the aforesaid terms. No costs.

JUDGE

sahare