

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

...

SECOND APPEAL NO. 216/2008

Kishor s/o Vallabhdas Laddha,
By his Mukhtyar Gajanan s/o Ukandrao
Mozare, aged 35 years, Occ. Business,
r/o Morshi, Tq. Morshi, Dist. Amravati.

.. APPELLANT

VERSUS

Municipal Council, Morshi,
Through its Chief Officer, Morshi,
Dist. Morshi.

.. RESPONDENT

.....
Ms Archana Lanjewar, Advocate instructed by Mr. N. R. Saboo, Advocate
for appellant.

Mr. P. P. Deshmukh, Advocate for respondent-Municipal Council
.....

CORAM: ANIL L. PANSARE, J.

DATE : 28.07.2023

JUDGMENT:

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

2. The appeal has been admitted on the following substantial
questions of law :-

“(i) Whether the appellate court has erred in placing burden on the appellant to prove that Exh.56 i.e. the copy of the Resolution filed by respondent is not applicable to the shop of the appellant, particularly when the said resolution was general resolution made applicable to the occupants of other similar shops against whom the proceedings for determination of the lease were pending?

(ii) Whether the learned appellate Judge was correct in shifting the burden on the appellant to prove that the resolution dated 09.02.2003 was not applicable to the shop occupied by the appellant?"

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, has 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 appellant/defendant was 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 appellant is aggrieved by the concurrent findings recorded by both the Courts below and, therefore, has challenged the judgment 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 appellant/defendant. The Respondent-Council has constructed a market, named and styled as 'Gandhi market' at Morshi. The appellant/defendant was inducted as tenant in the shop admeasuring 3'x6' at monthly rent of Rs.970/-. The appellant was found in arrears of rent and, therefore, the Respondent-Council issued notice and terminated the tenancy. The appellant though received notice, failed to vacate the suit shop 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 appellant was 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 appeal 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 up to 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 the other tenants who are/were appellants in Second Appeal Nos. 174/2011, 517/2006, 265/2004, 92/2011 & 152/2002. The said appeals have been allowed by this Court vide judgment dated 13.07.2023.

7. Mr. N. R. Saboo, 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 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 representations. In other words, the Respondent-Council has given up its claim of termination of tenancy and ejectment of plaintiffs/tenants in other suits. The five appellants mentioned above are the beneficiaries of the said two resolutions.

9. Mr. N. R. Saboo, learned counsel appearing for appellant has correctly argued that the authority like the Municipal Council cannot give a hostile, invidious and discriminatory treatment to the similarly situated tenants merely because he has not made representation for extension of the lease. Thus, it is argued that the benefit of the subsequent resolutions must be extended to the appellant herein.

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 let the Court pass appropriate orders in the appeal. 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.

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 present appellant. Once the Council has decided to extend the lease of the shop owners who are similarly situated, 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 appellant, the benefits needs to be extended to him 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 appellant 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.

13. 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 Appeal ought to be moulded, in the light of the subsequent developments. The appellant is 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) The Second Appeal is allowed.
- ii) The judgment and decree passed in R.C.A. No. 167/2002 passed by learned Ad hoc District Judge – 2, Amravati on 02.07.2007, arising out of judgment and decree passed in R.C.S. No.29/1992 passed by learned Civil Judge, Jr. Dn. Morshi on 22.07.2002 is 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 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.

The Second Appeal is disposed of in the aforesaid terms.

No costs.

(Anil L. Pansare, J.)

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