



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION (WP) NO. 8033 OF 2022

Mrs. Shobharani W/o Jagmohan Khandelwal

Versus

Nazul Nayab Tahsildar, Collector Office, Civil Lines, Nagpur and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Shyam Dewani, Advocate for the petitioner.

Shri A.M.Deshpande, Government Pleader for
respondent Nos. 1 and 2/State.

CORAM : ANIL S. KILOR, J.

DATED : 23rd AUGUST, 2023.

The present petition is arising out of the judgment and order dated 1st December, 2022 passed in Regular Civil Appeal No.115 of 2020, dismissing the appeal filed under Section 7 of the Bombay Government Premises (Eviction) Act, 1955 (in short hereinafter referred as "Eviction Act, 1955").

2. The dispute pertains to Plot No. 219, Sheet No.205, City Survey No.457, situated at Kelibagh Road, Mahal area of Nagpur City. The said plot was leased out to the father-in-law of the petitioner Shri Chiranjilal Daulatram Khandelwal by the Government of Central Provinces and Berar on 11th February, 1949 for five years.

3. The renewal of the lease was thereafter denied which gave a cause to Shri Chiranjilal to file Civil Suit No.823 of 1966 for declaration that the lease in question was the permanent lease.

4. Shri Chiranjilal failed in the said suit as well as in the first appeal before the appellate Court. Thereafter, he preferred second appeals before this Court namely, Second Appeal Nos. 312 of 1970 and 248 of 1970.

5. Both the said appeals came to be dismissed vide judgment and order dated 17th June, 1982. However, certain findings made in the said judgments are relevant which read thus:

“.... I do not think that this argument can be accepted in view of the working of clause no.(3) and (4) of the lease deed. These clauses read as under :-

“(3) the leasee shall not erect or cause to be erected any permanent structure on the said land or any part thereof”.

(4) This lease shall be liable to termination by the lessor by giving to the lessee at any time fifteen days notice in writing. The lease shall be entitled to no claim for compensation whatsoever.”

On perusal of the above two clauses it is clearly indicated that the lease could never have been intended to be a permanent lease.”

6. Thus, it is evident that this Court had categorically held that the lease was not permanent lease.

7. This Court further permitted Chiranjilal to make an application for grant of lease. Accordingly, Shri Chiranjilal made an application on 30th January, 1984 to the Nazul Naib Tahsildar, Nagpur. Admittedly, there is no decision on the said application, meaning thereby that after the lapse of lease granted for five years in the year 1949, there was no renewal of lease in favour of Shri Chiranjilal, father-in-law of the petitioner.

8. Shri Chiranjilal died in the year 1985 and thereafter the petitioner applied for mutation of her name in the revenue records as owner of the property in question on the ground that Shri Chiranjilal executed a Will and he had bequeathed the said property to the petitioner.

9. Shri Dewani, learned counsel for the petitioner though submits that the petitioner had also made an application for grant of permanent lease, but, no application is filed on record. He has drawn attention of this Court to a map in support of his submission. However, it was not clear from the map that it was submitted for the purpose of grant of lease.

10. Even otherwise, it is the case of the petitioner that she became owner of the land in dispute by virtue of the Will-deed executed by Shri Chiranjilal. Therefore, it is difficult to accept that, she applied for grant of lease, as both things cannot go hand in hand.

11. Shri Dewani, learned counsel disputes that the petitioner claimed ownership of the land. According to him, she claimed the ownership of the premises.

12. Nonetheless, the record shows that the petitioner claims ownership over the shop as well as area admeasuring 21 square meters bearing City Survey No. 457, Sheet No. 205, Mouza : Nagpur.

13. Be that as it may, the fact remains that after 1954 there is no lease granted in favour of Chiranjilal or in favour of the petitioner at any point of time.

14. The Nazul Naib Tahsildar on 4th July, 2019 issued notice in the name of Chiranjilal to vacate the land, as the said land is required for public purpose i.e. for construction of 24 meter width road from Central Avenue to Badkas Square as per the sanctioned development plan.

15. Though the notice was in the name of Shri Chiranjilal, the petitioner submitted the reply claiming ownership over the premises as well as the land and requested to recall the notice.

16. Thereafter, on 21st August, 2019 the Resident Deputy Collector issued another notice for vacation of the land in question. The said notice was also addressed to Shri Chiranjilal and it was replied by the petitioner and thereby she again claimed ownership and possession over the land.

17. Thereupon, the Resident Deputy Collector, Nagpur, after hearing the petitioner and other parties, passed an order on 10th January, 2020 and directed to vacate the Government land within one month and handed over the possession to the Government.

18. The petitioner, feeling aggrieved by the said order dated 10th January, 2020, preferred an appeal under Section 7 of the Eviction Act, 1955 which came to be dismissed vide impugned judgment and order dated 1st December, 2022.

19. It is pertinent to mention here that, this Court on 19th August, 2023, after hearing the learned counsel for the petitioner at length, granted time to the petitioner to satisfy this

Court on the point of *locus standi* as the petitioner, being daughter in law of Chiranjilal cannot be treated as legal heir of Chiranjilal and further as there is/was no lease in favour of the petitioner at any point of time.

20. Today, when the matter was heard, it was submitted that whenever the lease amount was paid by the petitioner after the death of Shri Chiranjilal, it was accepted by the Revenue Authorities and therefore, it cannot be said that the petitioner does not have any locus to agitate and oppose the eviction notice.

21. As far as lease amount is concerned, there was no document to show that there was any demand notice issued by the concerned departments to the petitioner and thereupon the lease amount was deposited.

22. Moreover, the petitioner is claiming to be the owner of the land as well as premises and this fact can be seen from the reply filed by the petitioner to the notices. In the reply dated 7th July, 2019, while claiming the ownership of the land and the premises, the petitioner has stated as under:

“... Shri Chiranjilal Daulatram Khandelwal, had executed a registered Will dated 20/08/1979, which is duly registered in the books of Sub-Registrar, Nagpur City No. 1, Nagpur in its Book No.3, Serial

No. 1492 on 21/08/1979, by virtue of which said will, a shop and other area admeasuring 21 Sq.Mtrs bearing City Survey No. 457, Sheet No.205, Mouza-Nagpur was bequeathed to me and thus by virtue of the said Will, I became the owner and possessor of the said area..”

23. Similarly, in the reply to the second notice dated 31st August, 2019, the petitioner has averred as under:

5. It is in pursuance thereto, Shri Chiranjilal duly approached the Honourable Collector, Nagpur with all requisite documents and with a request for considering his request for grant of permanent lease of said site, however, till date no reply is even tendered upon his said request. It is worthwhile to state here that Shri Chiranjilal expired on 14/09/1985 and by virtue of his last Will dated 20/08/1979, which is duly registered in the books of Sub-Registrar, Nagpur City No.1, Nagpur in its Book No.3, Serial No. 1492 on dated 21/08/1979, the Noticee became the owner and possessor of the said area.”

24. Thus, it is apparent from the face of record that, the petitioner never claimed as ‘lessee’ but all the time she claimed as ‘owner’ of the land in dispute. Moreover, the Will bequeathing the land in dispute to the petitioner is itself illegal as Chiranjilal has no right to bequeath the Government land.

25. It is pertinent to note here that Chiranjilal died in the year 1985 and despite the same on 12th October, 2012, the

amount was deposited with the Government in the name of Chiranjilal. Hence, as nothing has been pointed out to show that the petitioner is an owner or legal heir or lessee of the suit property, I have no hesitation to hold that the petitioner has no locus to file this petition.

26. It is the case of the petitioner that the notices issued for vacation of premises, are nullity in the eyes of law as the notices were issued in the name of dead person.

27. From the record, it can be seen that it was never made known to the Collector that Chiranjilal died in the year 1985.

28. As far as the application for mutation filed by the petitioner is concerned, that cannot be treated as an intimation to the Government about the death of Chiranjilal for the purpose of lease is concerned.

29. Moreover, nothing has been pointed out by the petitioner that after the death of Chiranjilal any intimation was given to the Nazul Tahsildar or the Collector about the death of Chiranjilal and as such the name of Chiranjilal was continued in the record of the Government and accordingly the notices were issued in the name of Chiranjilal.

30. Furthermore, the petitioner appeared in the proceedings and participated. She was heard before passing both the orders and therefore, I do not find any merit in the submission of the learned counsel for the petitioner that because the notice was in the name of Chiranjilal, it vitiates.

31. It is further submitted that the notice dated 25th September, 2012 issued by the Collector shows that the inquiry was initiated under Section 20(2) of Maharashtra Land Revenue Code, 1966. However, in the notice of the eviction, there is no mention about the status of the said inquiry and further without giving any reason for such eviction, the notice was issued and hence the notice is not as per the provisions of Section 4 of the Eviction Act, 1955.

32. The Nazul Naib Tahsildar on 4th July, 2019 issued notice in the name of Chiranjilal to vacate the land, as the said land is required for public purpose i.e. for construction of 24 meter width road from Central Avenue to Badkas Square as per the sanctioned development plan.

33. It is pertinent to note that the petitioner is not disputing that the land is required for public purpose. Thus, as per the provisions of the Eviction Act, 1955, the Government is entitled to take possession.

34. In the circumstances, the submission of the learned counsel for the petitioner that no reasons are stated in the notice is liable to be rejected, as the said submission is contrary to the record.

35. I have already herein above observed that, there is no lease in favour of the petitioner or there is no document showing that at any point of time she applied for the lease. Hence, I have no hesitation to hold that, there is no legal right in favour of the petitioner to continue in possession of the land in question.

36. In light of the above referred findings, I have reached to the conclusion that, on merit as well as on the point of locus, the petition needs to be dismissed. Accordingly, I pass the following order :

- i) The writ petition is **dismissed**.
- ii) The stay granted by this Court on 14th December, 2022 stands vacated.
- iii) In the peculiar facts of this case certain directions are necessary to be issued as the land in dispute is a Government land, a public property. Accordingly,

the Resident Deputy Collector is directed to initiate inquiry for calculating the charges of unauthorised occupation from 1955 till the property in question is vacated by the petitioner, as per the prevailing rates of Government, at the relevant time and submit the calculations within one month from today.

- iv) Thereupon, a copy of it be supplied by the office of Government Pleader to the learned counsel for the petitioner and to the petitioner so as to enable the petitioner to file her objection if any to such calculations and to make her submission as to why the said amount should not be recovered from her. The petitioner may file her say within 15 days from the date of receipt of such calculations and report.
- v) Moreover, considering the facts that lease period was expired in the year 1955 and from 1955 till 2019 for about 65 years as no steps were taken by the concerned authorities to take possession of the land and premises in question, the Collector is directed to submit the names of the erring officers, within one month.

Place this matter for further consideration and compliances, on **16th October, 2023**.

[ANIL S. KILOR, J.]

37. At this stage, Shri Dewani, learned counsel for the petitioner submits that since it is a question of livelihood of the petitioner, she may be protected for one month.

38. It is a settled law that in case of conflict between public interest and personal interest, public interest will outweigh the personal interest. Hence, the request is rejected, as the land is required for construction of road as per the sanctioned development plan and because of the premises in dispute, the development work is stalled. The photographs show that the road is already constructed and the shop in dispute is in the middle of the road creating obstacle in the smooth flow of traffic.

39. Moreover, I have already observed that the petitioner has no locus. Thus, on this ground also there is no question to extend the stay.

40. The learned counsel for the petitioner now submits that he has filed a writ petition before the Division Bench for direction for grant of lease.

41. However, it cannot be the valid reason to extend the stay. If the Government grants lease, the petitioner can take the possession back and make the construction.

42. The parties to act on the authenticated copy of this order.

[ANIL S. KILOR, J.]