

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO.1111 OF 2024
IN
WRIT PETITION NO.1487 OF 2024**

Dhun Dhunji Patel ... Applicant

V/s.

Kersi Minocher Gherda Deleted (Since
Decd) and Ors. ... Respondents

Mr. R. V. Govilkar, Senior Advocate, a/w Adv. Shaba N. Khan i/b
Adv. Anoop Sharma, Advocate for the Applicant.

Mrs. Lakshmi G. Vora Advocate for the Respondent.
Mr. Y. D. Patil – AGP for the Respondents-State.

CORAM : RAJESH S. PATIL, J.

DATED : 14 FEBRUARY 2024

P.C.:

1. This Writ Petition challenges the impugned (i) Judgment and Order dated 5 August 2022, passed on application seeking leave to defend, (ii) Order dated 1 November 2022, passed by Competent Court in the main proceedings, (iii) Order dated 2 January 2024, passed in Revision by Divisional Commissioner Konkan Division.

2. The Respondents Nos.1 to 5 herein are the owners / landlord being the trustees of “Bai Hirabai Tata Memorial Public Charitable Trust”. It is the case of the Respondent original plaintiff that the premises being Flat No.4, Lady Dorab Tata Building No.2, S. V. Road, Bandra (West), Mumbai – 400 050, admeasuring 900 sq.ft

(for short “suit premises”) was given on leave and license basis pursuant to agreement dated 11 January 2011, for a period of three years. It was the case of the plaintiff trust that such premises are given to Parsee Zoroastrian who can't possess any premises to live. After, the license period expired a subsequent leave and license agreement was entered into between the respondent trust and the petitioner dated 16 February 2016, for a period of sixty months.

3. It is the case of the plaintiff that as the leave and license period came to an end on January 2021, and since, the petitioner refused to vacate the suit premises they preferred an Application under section 24, of Maharashtra Rent Act, for eviction on 21 December 2021, before the Competent Authority (Konkan Division), Bandra, Mumbai, being Case No.277 of 2021.

4. After the petitioner / defendant was served with the copy of the eviction application being Case No.277 of 2021, the petitioner / defendant preferred an Application, seeking leave of the Competent Authority to appear and to defend the Application. So also an Application was preferred under section 10 of the Civil Procedure Code, seeking stay of the proceedings, in view of, she filing a declaratory suit on 15 December 2021.

5. On 7 February 2022, respondent / original plaintiffs filed their reply to the Application of the original defendant application filed under section 10 of the Civil Procedure Code.

6. The Competent Authority by its Order dated 5 August 2022, passed an Order thereby refusing to grant 'leave' to the defendant.

7. The Competent Authority thereafter decided the main eviction Application No.277 of 2021; by its Judgment and Order dated 1 November 2022 and it held that the leave and license agreement between the applicant and respondent in respect of the suit premises is proved. The term of leave and license agreement has expired. Hence, respondent was directed to hand over vacant and peaceful possession on the suit premises within 30 days from the date of the order. The respondent was directed to pay damages to the applicant at the rate of Rs.300/- per month from 1 February 2021 till handing over the vacant possession.

8. Being dissatisfied the petitioner filed a revision under section 44 of the Maharashtra Rent Control Act, before the Divisional Commissioner, Konkan Region Mumbai. The said revision application challenged both the orders passed by the Competent Authority i.e. Order dated 5 August 2022 (refusing to grant leave) and 1 November 2022, decided the main proceedings.

9. On behalf of the petitioner submissions were argued by her advocate so also submissions were made on behalf of the respondent / landlord. After hearing submissions of both the counsel, the Court came to a conclusion that the leave and license period had come to an end on 31 January 2021. The eviction proceedings were filed in the month of December 2021. As regards the contention of the petitioner about filing of the R.A.D. suit, the Divisional Commissioner held that there is a bar of jurisdiction for Civil Court to entertain the matter and only Competent Authority has jurisdiction to hear the eviction matter under leave and license agreement, for residence, under section 47 of Maharashtra Rent

Control Act. It further held that as per the provisions of section 24 (b), the agreement is in writing which is a conclusive evidence of fact stated therein. The leave and license agreement is on record. It is an admitted position that the Applicant is occupying the suit premises, even after expiry of license period and I have also further failed to pay the license fees to the landlord. Therefore, the Revision Application of the petitioner was rejected.

10. The present Writ Petition is challenging the orders passed by both by the Competent Authority and by the Divisional Commissioner.

11. Mr. Govilkar, Senior Advocate made his submissions on behalf of the petitioner.

(i) Mr. Govilkar submitted that the tenancy was created in favour of the petitioner in the year 1980. Thereafter a separate tenancy agreement was entered into in the year 1996. However, both these documents are not available with the petitioner, therefore, the same were not produced before the Competent Authority.

(ii) Mr. Govilkar further submitted that thereafter on 11 January 2011 an agreement titled as leave and license agreement was entered into between the parties. He submitted that the petitioner had no option but to sign these documents as the petitioner was not in a position to bargain or change any of the clauses of the said agreement. He further submitted that a similar kind of agreement was entered on 16 February 2016 which was again titled as a leave and license agreement however, the arrangement

between the parties was of tenancy.

(iii) Mr. Govilkar further submitted that before the landlord could file an Application under section 24 for eviction, the petitioner had already filed the R.A.D. suit seeking a declaration of tenancy in respect of the suit premises. He submitted that unless and until the R.A.D. proceedings is decided the eviction proceedings filed by the landlord should not be proceeded.

(iv) He further submitted that even as of today this Court has to consider the R.A.D. proceedings filed by the petitioner before the Small Causes Court, as subsequent right of the petitioner could be decided in the proceedings.

(v) He further submitted that the impugned Orders have not considered these aspect at all, about the filing of the R.A.D. proceedings by the petitioner.

(vi) He further submitted that the veracity of the leave and license agreement should have been gone into before passing of an eviction decree against the petitioner.

(vii) He further submitted that the provisions of Order 8 Rule 10 were applicable to this case and a leave to defend should have been granted to the petitioner so that they could have filed their evidence and after the evidence was lead by the party, the proceedings should have been decided.

(viii) Mr. Govilkar to buttress his submission has referred to two judgments (a) Delhi High Court Judgment of *D. N. Gupta Vs. Jaswant Singh* reported in *AIR 1982 Delhi, 250* (b) Supreme Court

Judgment in ***Balraj Taneja Vs. Sunil Madan*** reported in (1999) 8 Supreme Court Cases 396.

(ix) Mr. Govilkar further submitted that the impugned Judgment and decree should be quashed and set aside and the matter should be remanded back to the Competent Authority. Mr. Govilkar also read the provision of section 24 and 43(4)(b), and 43(5) of the Maharashtra Control Act.

12. Mrs. Lakshmi Vora appear on behalf of the Respondents, and made her submissions:

(i) She submitted that there is no perversity in the impugned Orders. She submitted that the premises were given on leave and license and the same can be reflected in the agreement which is brought on record.

(ii) The leave and license agreement is dated 16 January 2016 which is a registered document.

(iii) She further submitted that the leave and license period came to an end in the month of January 2021. Thereafter since the petitioner refuse to vacate the premises the eviction application was filed under section 24 of the Maharashtra Rent Control Act in the month of December 2021.

(iv) She submitted that once the applicant had produced on record the leave and license agreement there could have been no option, and as the license period was over there was no other option to the Competent Authority, but to pass a decree of eviction against the petitioner.

(V) She submitted that there is no merit in the Writ Petition and the Writ Petition should be dismissed with cost.

ANALYSIS AND CONCLUSIONS :-

13. I have heard both the sides and have also gone through the impugned orders and the document on record.

14. The landlord / licensor had filed an eviction application under section 24 of the Maharashtra Rent Control Act in the month of December 2021. In the said eviction application they had submitted that the owner of the suit premises is a charitable trust and one of the aims and objects of the trust, is that to allot residential premises to the needy, middle class, Zoroastrian Parsee, after verifying their economic condition and considering their eligibility as per the aims and objects of the Trust. It is further stated in the eviction application that in the year 1984 the respondent applied to the trust to allot her a premises since the premises where she was residing was her in-laws tenancy premises at Tardeo, Mumbai was insufficient to reside. Accordingly in the year 1984 a premise consisting of one Room, one Kitchen, and a toilet bathroom was granted to the petitioner viz, Flat No.3, Bai Ratanbail Tata Building, Bandra, (West) Mumbai – 400 050, on leave and license basis. After the year 1984, the petitioner time and again exchanged flats on occasion of one or the other ground. Petitioner kept on moving to a bigger flat and thereafter executing a new leave and license agreement. Ultimately, the petitioner entered into a leave and license agreement dated 11 January 2011 for a period of three years for the suit premises, and after the said

period was over, a new leave and license agreement dated 16 February 2016 was entered into with the landlord for a period of five years.

15. During the course of the argument a photocopy of Plaint filed in R.A.D. suit by the petitioner was tendered. In the said R.A.D. suit the petitioner is seeking a declaration of tenancy. In paragraph no.1 the petitioner (plaintiff therein) has admitted that she has being in occupation of the suit premises only in the year 2011. Paragraph No.1 of the Plaint is reproduced hereinbelow:-

“The plaintiff states that on or about October 1984, acting on her Application for allotment of premises in Tata Blocks, Bandra (West), Defendant Trust acting in consonance with the scheme and / or recitals of the Indenture of Trust Deed dated 1st November 1927 was pleased to allot and accept the Plaintiff as her tenant and at the relevant time she was allotted premises viz. Flat No.3, Ground Floor, Bai Ratanbai Tata Building, Bandra (West), Mumbai -400 050 (“Bai Ratanbai premises”) on a monthly rent of approximate Rs.350/-. However, the agreement under which it was let out to the Plaintiff on non-renewable basis is not traceable and the Plaintiff shall reply upon the same as and when produced. The Plaintiff states that the Bai Ratanbai premises was very small consisting of 1 Room, 1 Kitchen and toilet bathroom and there was no ventilation, no sunlight, no privacy and instances of theft compelled the Plaintiff to approach the erstwhile trustees for exchange of the said premises. Due to change in circumstance as mentioned above, the Defendant Trust acting on the request of the Plaintiff was then allotted premises at Flat No.9, Seth Naval Tata Building (“Seth Naval Tata premises”) in lieu of exchange of Bai Ratanbai premises on monthly rent of Rs.4452/- on or about 1995 and ultimately thereafter was allotted in exchange of Seth Naval Tata premises to Flat No.4, Lady Dorab Tata Building No.2, S. V. Road, Bandra (West), Mumbai – 400 050 on a monthly rent of Rs.150/- on or about February 2011 which rent now payable is Rs.1,500/- (hereinafter referred to as “**the Suit premises**” for the sake of brevity and convenience). The Plaintiff has been residing with her husband and her daughter in the suit premises till date”.

16. It is further mentioned in the said R.A.D. suit that the earlier agreement of the year 1984 and 1996 are misplaced.

17. It is pertinent to note hear that therefore, there is no doubt that the petitioner had being the possession of the suit premises only in the year of 2011. There is also no dispute that agreement titled as leave and license dated 11 January 2011 was entered into between the parties pursuant to which the petitioner came in possession of the suit premises. The petitioner has been disputed that even though the said agreement is titled as leave and license agreement, in fact the said agreement is a tenancy agreement. There is no dispute that the petitioner has signed the said leave and license agreement dated 11 January 2011. So also the leave and license agreement dated 16 February 2016 have been signed by the petitioner.

18. To the present petition at Exhibit-A a photocopy of application form for allotment of flat has been enclosed. The said allotment form is dated 7 January 2011. In column no.8 it has been mentioned by the petitioner that her daughter who is working out of country since last 15 years and she wants to settle in Bombay in order to take care of the petitioner and her husband.

19. Today while submissions were made before me, it has been mentioned by the counsel appearing for the petitioner, on instruction of the petitioner that the daughter of the petitioner is married and is staying in Delhi It is an admitted position that petitioner's husband has also now inherited the premises at Tardeo, Mumbai. However, the said premises is in lock and the petitioner and her husband, as of now are not using the said premises. The said premises is also residential premises admeasuring 450 sq.ft situated in the area of South Mumbai.

20. The said suit premises at Tardeo is on a tenancy basis and the landlord of the said premises is a Parsee trust, and the trustees of the present trust are also the trustees of the said trust. It is also submitted before me that only two persons are staying in the present premises that is the petitioner, aged 70 years and her husband aged 81 years.

21. According to me, once there is an signed document and the signature on the document is not disputed, the document be titled as a leave and license agreement and the clauses of the agreement specifically mentioning the date when the leave and license period comes to an end. And the owner / licensor want to file suit for eviction of such a residential premises, the said application can be filed under section 24 of the Maharashtra Rent Control Act. All that the Competent Authority had to see is that whether there was a leave and license agreement entered into between the parties, duly signed by the parties. And whether the term of the leave and licence had come to an end. In the present proceedings the Competent Authority observed that the document is a leave and license agreement and its term had come to an end and only thereafter the present eviction suit was filed. The Competent Authority also took into consideration while disposing of the proceedings by judgment and order dated 1 November 2022 and has confirmed by the Competent Authority on 2 January 2024, the argument as regards the pending R.A.D. suit will have no bearing in the present proceedings since the Competent Authority only has the jurisdiction to decide the leave and license (residential premises) agreement and hence they have proceeded further to

deal with the eviction application.

22. It is an admitted fact that even though the R.A.D. proceedings was filed before the eviction application the petitioner has not preferred any kind of application seeking stay to the eviction proceedings, before the Judge deciding the R.A.D. proceedings.

23. As regards the submission made by the advocate appearing for the petitioner, section 24 of the Maharashtra Rent Control Act. According to me, the under section 24 though the mentions that the Competent Authority has to be satisfied that the period of license has expired, and shall thereafter pass an order for eviction of license. In the present proceedings the Competent Authority has come to a conclusion that it has been satisfied that the period of license has expired. The Competent Authority deemed it fit thereafter as regards section 43(4)(b) which mentions above a leave to contest is granted only if the Competent Authority is satisfied that the licensee has disclosed such facts as would disentitled the landlord from obtaining an order for the recovery of possession of the premises. In the present proceedings the Competent Authority came to a finding that no such leave can be granted to the petitioner herein and hence the leave to defend was not granted. Further at the time of disposal of the main proceedings the Competent Authority has come to the conclusion that a leave and license agreement has been signed by the petitioner and there is no dispute as regards the signing of the leave and license agreement. The leave and license agreement dated 16 February 2016 is a registered document, the earlier leave

and license agreement dated 11 January 2011 is not registered, but the signature of the said document is not been disputed. This Court in the Judgment of *Amit B. Dalal vs. Rajesh K. Doctor* reported in *2010(7)Mh.L.J.* has held that an eviction proceedings against unregistered leave and license agreement is maintainable under section 24 of the Maharashtra Rent Control Act.

24. As regards the judgment referred of Delhi High Court of D. N. Gupta (Supra) by the petitioner. The said proceedings arises out of the a Delhi Rent Control Act where eviction decree is passed against the tenant. Therefore, with due respect the said finding of the Delhi High Court judgment is not applicable to the present proceedings. As regards the judgment referred in Balaji Taneja (Supra) by the petitioner, the same arises out of a specific relief act, and thereby referring to the provisions of Order 8 Rule 10. The fact in the said judgment are quite different then the present proceedings therefore, the ratio laid down in the said judgment which is under the specific relief act, could not be applicable to the present proceedings.

25. In view of the above facts there is no merit in the present Writ Petition.

26. This Writ Petition is dismissed. No cost. The petitioner is granted four weeks time to vacant the suit premises.

(RAJESH S. PATIL, J.)