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

WRIT PETITION NO.1521 OF 1999

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Dilip Ganpat Sakre & Ors.

... **Petitioners**

V/s.

Indrajit Kansen Ganjawala, since
deceased through heirs & LRs

1A. Vatsala Indrajit Ganjawalla & Ors.

... **Respondents**

Mr. Pradeep J. Thorat with Ms. Aditi S. Naikare and Mr.
Anish Jadhav for the petitioners.

Mr. Girish Godbole, Senior Advocate with Mr. Kunal
Mehta, Mr. Gautam Sahni, Mr. Aviral Jain, Mr. Sukrit
Parashar & Ms. Saanchi Dhulla i/by Vasta Legal for
respondent Nos.10, 10A to 10D.

Mr. Anand Khairnar with Mr. R.Y. Sirsikar for
respondent No.17 – MCGM.

CORAM : AMIT BORKAR, J.

RESERVED ON : MARCH 22, 2024

PRONOUNCED ON : MAY 10, 2024

JUDGMENT:

1. This writ petition under Article 227 of the Constitution of India is directed against concurrent judgments of the Courts below by which Obstructionists Notice taken out by the decree-holder for removal of the petitioners had been made absolute.

2. Respondents Nos.1 to 16 are original plaintiffs who filed an Obstructionists Notice for removal of the petitioners who resisted the execution of the decree passed against respondent No.17 – The Municipal Corporation of Greater Bombay. The suit premises are Room Nos. 22 to 25 and 27 to 25 in the Calcuttawala Building at 71, Lamington Road, Mumbai. The building was let out to the Municipal Corporation of Greater Bombay ("Corporation" for short) to run a school. Respondent Nos.1 to 16 filed R.A.E. Suit No.543/5893 of 1965 in the Court of Small Causes at Mumbai for eviction of the Corporation. Said suit was decreed on the ground of change of user. The Court of Small Causes confirmed the decree in Appeal No.567 of 1973 confirming findings of change or user by judgment and decree dated 3 October 1985.

3. Respondent Nos.1 to 16 filed Obstructionists Notice No.98 of 1988 as the petitioners obstructed warrant of possession, claiming to be in lawful occupation of the premises. The respondents, therefore, prayed for the removal of the petitioners and vacant possession of Rooms Nos.22 to 25 and 27 to 35.

4. The petitioners contested the Obstructionist's Notice by raising a defence that they were residing as tenants of Govindji L. Labanputra before 1948. The Corporation took over the property for the construction of a municipal hospital. In 1964-1965, the petitioners were asked to vacate their premises and were allotted the suit property as tenants of the Corporation. It is stated that the petitioners were paying rent to the Corporation, and the Corporation issued rent receipts for the payment. The petitioners,

therefore, objected to the Obstructionist Notice on the ground that after passing the decree against the Corporation, the petitioners became tenants of respondents Nos.1 to 16.

5. The Executing Court made the Obstructionists Notice absolute and directed the petitioners to hand over possession of the suit premises by holding that the obstructionists are not entitled to protection under Section 15-A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ("the said Act" for short); persons in possession of the suit premises by way of allotment are not protected under the said Act.

6. The petitioners, therefore, filed Appeal No.403 of 1994 before the Court of Small Causes in Mumbai. The Appellate Court, by the impugned judgment dated 11 September 1998, dismissed the petitioners' appeal on the ground that the suit premises having been granted to the Local Authority as a tenant, given Section 4(1) of the said Act, the obstructionists are not entitled to claim protection under Sections 14 or 15-A of the said Act as the premises are exempted from the application of the said Act.

7. Mr. Thorat, learned Advocate for the petitioners, submitted that the petitioners are lawful sub-tenants and, therefore, entitled to protection in view of the provisions of Section 14 of the said Act. He submitted that the petitioners had been inducted into the suit premises by the Corporation, which was the original tenant. The petitioners have been in occupation of the suit premises as tenants since 1964-1965, before 1 February 1973, and, therefore, are entitled to the protection of the said Act. The Executing Court

erroneously held that the provisions of the said Act are inapplicable to the suit premises as the same were allotted. The Lower Appellate Court held that the said Act is not applicable in view of Section 4(1) of the said Act. He submitted that Section 4(1) of the said Act will apply regarding the premises let or given on license to the Government or Local Authority. He further submitted that during the pendency of the present writ petition, the entire land bearing City Survey No.251 along with suit building Nos.71-71A has been acquired by the Maharashtra Housing and Area Development Authority and, therefore, respondents Nos.1 to 16 are not entitled to the possession of the suit premises.

8. Per contra, Mr. Godbole, learned Senior Advocate on behalf of the respondents/landlord, submitted that there is absolutely no evidence on record to indicate that the petitioners were inducted as tenants of the Corporation nor any materials are placed on record to show that the petitioners paid rent to the Corporation. The petitioners have come up with a positive case that they are tenants of the Corporation. They were paying rent to the Corporation, and accordingly, the Corporation issued them rent receipts. However, the petitioners have failed to produce such rent receipts. He, therefore, submitted that the petitioners cannot be termed as sub-tenants before 1 February 1973 and are not entitled to the protection under Sections 14 or 15-A of the said Act.

9. Relying on the judgment in **Om Prakash Gupta v. Ranbir B. Goyal** reported in (2002) 2 SCC 256, he submitted

that though this Court can take notice of subsequent events but that is to be done merely inter-parties to shorten the litigation and not to give to a defendant an advantage because a third party has acquired the right and title of the plaintiff. He submitted that merely because the plaintiff loses his title, *pendente lite*, there is no reason for allowing his adversary to win if the corresponding right is vested in the adversary but in a third party. He submitted that in the facts of the present case, the corresponding right of ownership was vested with MHADA during the pendency of the present litigation. Therefore, the petitioners are not entitled to the benefit. He, therefore, submitted that the writ petition is liable to be dismissed.

10. I have heard learned Advocates for the parties and perused the record and proceeding, including original record of documents placed and proved before the Executing Court by the parties.

11. The first contention raised on behalf of the petitioners is that they were lawful subtenants on 1 February 2023 and, therefore, were entitled to the protection of Section 14 of the said Act. According to the petitioners, they were inducted into the suit premises in 1964-1965 as tenants, and they paid rent to the Corporation, which issued them rent receipts accordingly.

12. To ascertain the legality of the submission made on behalf of the petitioners, I have scrutinized the original record, including receipts proved or placed on record by the petitioners. Pages 128 to 145 are some of the receipts produced by the petitioners to indicate payment of rent or compensation to the Corporation. The

receipts appear to be for the period from 1979 to 1993. No receipts or documents are provided by the petitioners to show that the petitioners paid rent or compensation to the Corporation before 1 February 1973. Moreover, it has to be noted that it is undisputed that the petitioners were allotted the suit premises by the Corporation by way of alternative accommodation as the building wherein the petitioners were residing as tenants was acquired by the Corporation for building a hospital. Therefore, in the absence of positive evidence produced by the petitioners, it is not possible to accept the creation of a relationship of landlord and tenant between the Corporation and the petitioners as contended by the petitioners. Therefore, the petitioners failed to prove that they were sub-tenants before 1 February 1973. Therefore, I am of the opinion that the petitioners are not entitled to the protection under Section 14 of the said Act.

13. Mr. Thorat next contended that during the pendency of the present writ petition, land bearing City Survey No.251 and the suit buildings were acquired by the MHADA, and, therefore, the respondents' title over the building having been extinguished, the respondents are not entitled to possession of the suit premises.

14. To counter the submission made on behalf of the petitioners, the respondents have rightly relied on the judgment of the Apex Court in **Om Prakash Gupta** (supra), wherein the Apex Court was considering the power of the Court to take note of subsequent events that occurred during the pendency of the appellate proceedings held as under:

“13. Power of the Court to take note of subsequent events, specially at the appellate stage, came up for the consideration of a Full Bench of the Nagpur High Court presided over by Justice Sinha (as His Lordship then was) in *Chhote Khan v. Mohd. Obedulla Khan* [AIR 1953 Nag 361] . Hidayatullah, J. (as His Lordship then was) held, on a review of judicial opinion, that an action must be tried in all its stages on the cause of action as it existed at the commencement of the action. No doubt, courts “can” and sometimes “must” take notice of subsequent events, but that is done merely “inter partes” to shorten litigation but not to give to a defendant an advantage because a third party has acquired the right and title of the plaintiff. The doctrine itself is of an exceptional character only to be used in very special circumstances. It is all the more strictly applied in those cases where there is a judgment under appeal. His Lordship quoted the statement of law made by Sir Ashutosh Mookerjee, J. in a series of cases that merely because the plaintiff loses his title *pendente lite* is no reason for allowing his adversary to win if the corresponding right has not vested in the adversary but in a third party.....”

15. The Apex Court held that the Courts "can" and sometimes "must" take notice of subsequent events, but that is done merely "inter parties" to shorten litigation but not to give a defendant an advantage because a third party has acquired the right and title of the plaintiff. Quoting a statement of law made by Sir Ashutosh Mookerjee, J., it is observed that merely because the plaintiff loses his right *pendente lite* is no reason for allowing his adversary to win if the corresponding right has not vested in the adversary but in a third party. In the present case, according to the petitioners, the title of the property is vested with MHADA and not with the petitioners. Therefore, in my opinion, the respondents are entitled

to the benefit of observations made in paragraph 13 by the Apex Court in **Om Prakash Gupta** (supra).

16. Moreover Respondents Nos. 1 to 16 got decree of eviction against tenant Corporation in their capacity as a landlord on the ground of change of user. Decree was not passed on the ground of personal use in recognition of their right as owner of the property therefore extinguishment of their proprietary right over the suit property during execution shall have no effect on executability of the decree.

17. For the foregoing reasons, the writ petition is liable to be dismissed and accordingly dismissed with costs.

18. At this stage, learned advocate for the petitioner seeks extension of ad-interim relief which was in force during pendency of the writ petition. Considering the fact that the ad-interim relief was in force for period of more than 20 years, the same is extended subject to the petitioners filing usual undertaking that in case they fail before the superior Court, they will deliver possession of the premises as per the decree. The interim relief is extended for period of eight weeks from today.

19. Undertaking to be filed before 24 June 2024.

(AMIT BORKAR, J.)