

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

WRIT PETITION NO. 15222 OF 2022

Veridical Hospitality
Through its Proprietor
Ms. Anindita Chatterjee
Flat No. 901, Panchsmruti,
Panch Shrishti Complex,
Chandivali Farm Road,
Off Hiranandani Gardens,
Powai, Mumbai-400 072

...Petitioner.

V/s.

1. Additional Commissioner
State of Maharashtra, Konkan Division,
15, Madam Cama Road, Mantralaya, Fort,
Mumbai, Maharashtra 400032.

2. The Competent Authority (Rent Act)
5th Floor, MHADA Building,
3R4X+32P Gruhnirman Bhavan,
Gandhi Nagar, Bandra East,
Mumbai, Maharashtra 400051.

3. Ms. Radha Prabhas Pande nee
Mrs. Radha Pande Padwal
Residing at 2801, BLISS, City of Joy,
J. S. Dosa Road, Near Lok Everest Society,
Mulund (West), Mumbai-400 080.

...Respondents

**WITH
WRIT PETITION NO. 15224 OF 2022**

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Through its Proprietor
Ms. Anindita Chatterjee
Flat No. 901, Panchsmruti,
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5th Floor, MHADA Building,
3R4X+32P Gruhnirman Bhavan,
Gandhi Nagar, Bandra East,
Mumbai, Maharashtra 400051.

3. Mr. Prabhas Umashankar Pande
Residing at Flat No. 1504/1505,
Panchmahal, Leela Mahal C. H.S. Ltd.
Chandivali, Nr. S. M. Shetty School,
Powai, Mumbai-400 072.

...Respondents

Mr. Satish J. Agarwal with Mrs. Dhara Shah, Advocates for Petitioners in both writ petitions.

Mr. Atul Vanarase, AGP for Respondent No.1 and 2 in both writ petitions.

Mr. Rakesh Misar with Mr. Rahul Pujari, Advocates for Respondent No. 3 in both writ petitions.

CORAM :ABHAY AHUJA, J.
RESERVED ON : 26th JULY, 2023
PRONOUNCED ON:2nd JANUARY, 2024

JUDGMENT:-

1. These writ petitions have been filed under Article 227 of the Constitution of India, impugning the orders of the Revisional Authority

dated 13th July, 2022 and by the Competent Authority dated 20th December, 2021.

2. The Respondent No. 3 is the original applicant before the Respondent No. 2, who had filed the applications being eviction applications no. 90 of 2021 and 89 of 2021 respectively under Section 24 of the Maharashtra Rent Control Act, 1999 (the “said Act”) to recover the vacant and peaceful possession of Flats No. 605 and 604 (the “said flats”) on the 6th floor, each admeasuring 670 square feet, Panchsmruti CHS Ltd., Building No.7, Panchshrishti Complex, Near S. M. Shetty School, Chandivali, Mumbai-400 072 from the Petitioner. That the eviction applications were allowed by orders dated 20th December, 2021 passed by Respondent No.2 on the ground that Petitioners were in possession of the said flats after the termination of the leave and license agreement and hence, the Respondent No. 3 is entitled to arrears of license fee as per the provisions of Section 24(2) of the said Act upto 22nd November, 2021, i.e. the date on which the Petitioner has handed over possession of the said flats.

3. Being aggrieved by the orders of the Competent Authority, the Petitioner filed Revision Applications before the Additional Commissioner, Konkan Division, however, the Additional Commissioner dismissed/rejected the Applications and confirmed the orders of the Competent Authority. Being aggrieved by the said rejections the Petitioner is before this Court in the two petitions.

4. It is not in dispute that the said flats had initially been given to the Petitioner for the purpose of corporate residential accommodation for a period of three years and accordingly, the leave and licence agreement expired on 14th June, 2020. That, after the expiry of the said leave and licence agreement a fresh leave and licence agreement commenced from 15th June, 2021 ending 14th June, 2022. Licence fees was fixed and every 12 months there was an increase in the amounts with interest free refundable security deposits. That there was also a lock-in period for the first twelve months i.e. 15th June, 2019 ending on 14th June, 2020, during which period neither party could terminate the agreement. The Petitioner failed to pay licence fee from the month of April, 2020 and by email dated 22nd June, 2020. The Plaintiff informed the Respondent No.3 that paying rents was stressful for her but she was ready to pay maintenance charges

for the society. The Respondent No.3 rejected complete waiver of the licence fee but on humanitarian grounds proposed to reduce licence fee by 10% for 3 month i.e. April 2020 to June 2020.

5. However, the Petitioner, by email dated 27th June, 2020, expressed her inability to continue the agreement and payment of licence fee. The Respondent No.3, by email dated 28th June, 2020, sought a date when the Petitioner actually wanted to hand over possession of the said flats and also submitted the details about the pending licence fee. The Respondent No.3 through his accountant's email dated 30th June, 2020 informed the Petitioner that her email dated 27th June, 2020 did not mention the date for handing over the possession and that she would consider the email dated 27th June, 2020, as one month termination notice. The Petitioner by email dated 5th July, 2020, informed that the society was not allowing the guests into the society and hence she could not pay licence fee. The Respondent No.3, addressed email dated 6th July, 2020 considering the Petitioner's email dated 27th June, 2020 as the termination notice and called upon the Petitioner to hand over possession of the said flats on 26th July, 2020. By email dated 13th July, 2020, the Respondent No.3, called upon the Petitioner to hand over peaceful possession of the said flats on

27th July, 2020. The Petitioner by email dated 19th July, 2020 submitted that possession of the said flats would be handed upon refund of the security deposits.

6. That, the Petitioner did not vacate the said flats after the termination of the leave and licence agreement i.e. from 28th July, 2020 till 22nd November, 2021, when on the said date, during the pendency of the application before the Competent Authority, the Advocate for the Petitioner handed over the keys of the said flat to the Advocate for the Respondent No.3 which were accepted by the Advocate for the Respondent No.3. Accordingly, the Competent Authority on 20th December, 2021 directed the Petitioner to make payment of arrears of licence fee under Section 24 of the Maharashtra Rent Control Act, 1999 from 28th July, 2020 to 22nd November, 2021 holding that the Respondent No.3 was entitled for licence fee at the double rate for the said period and also that the Respondent No.3 was at liberty to appropriate the security deposit, if any, thereby rejecting the Application for leave to defend by the Petitioner.

7. That the Petitioner preferred a revision application against the order dated 20th December, 2021 before Respondent No.1. That Respondents

No.3 appeared and filed their replies. On 13th July, 2022, Respondent No.1, passed order rejecting the revision application and confirmed the order dated 20th December, 2021 passed by Respondent No.2. That on 17th September, 2022, Respondent No. 3 preferred execution applications no. 112 and 111 of 2022 respectively before Respondent No. 2. That the Petitioner preferred a review against the order dated 13th July, 2022 before Respondent No.1 and by an order dated 2nd November, 2022, the same was rejected at admission stage as not maintainable and on 18th November, 2022 the Petitioner preferred the present writ petitions.

8. The Petitioner has claimed that the said flats were given to her for commercial activity. That as per the provision of Clause 1 of the leave and license agreements dated 1st October, 2019 and 22nd August, 2019 respectively between Respondent No. 3 and the Petitioner, the said flats were given to the Petitioner to use the said flats for corporate residential accommodation for its clients/ business associates/representatives for a period of 36 months commencing from 15th June, 2019 to 14th June, 2022. That apart from the leave and licence agreement, the Respondent No.3, has himself given a declaration to the society dated 29th June, 2016 by

signing undertaking form for utilization of the said flats for commercial purpose and that the said premises are let out for commercial purpose.

9. During the period of lock down due to the pandemic situation in the country where the society in which the said flats were situate restricted the entry of outside people. The Petitioner made a request to the Respondent indicating her readiness to make payment of society maintenance bill in respect of the said flats against relaxation of the monthly license fees, which was however, not agreed to by the Respondent No.3. That Petitioner then decided to vacate the said flats and hand over the same to Respondent No.3 due to restriction in the entry of the customers of the Petitioner.

10. The Petitioner has submitted that the Respondent No.3 was not co-operating with the Petitioner and neither returning the security deposit and also compelling the Petitioner to pay license fees for the period under lockdown which the Petitioner had disagreed.

11. The argument of the Petitioner is that the Respondent No.3 is not entitled to file the eviction petition under section 24 of the Rent Control

Act as the said flats have been let out for the commercial use and not for residence and therefore, the Competent Authority has no jurisdiction to entertain the eviction application.

12. Learned Counsel for the Petitioner has relied upon the following decisions in support of his contentions:

- (i) *New Delhi Municipal Council Vs. Sohan Lal Sachdev (Dead)*¹
- (ii) *Darshansingh Indarsingh Sodh and Anr. Vs. Poddar Education and Sports Trust Through Its Managing Trustee Pawan Poddar and Anr.*²

13. On the other hand, it is submitted on behalf of Respondent No.3 that the said flats were given on license only for residential accommodation. That during the subsistence of the above-mentioned leave and license agreements, Respondent No. 3 has never issued any consent/permitted the Petitioner to carry out any commercial activities from the said flats. That the said flats are situated in residential co-operative housing society, hence, also the said flats could not be given on license for any commercial activities. That the Petitioner never informed Respondent No.3 that she was running a commercial activity from a residential premises. That the Petitioner has not produced any document

¹ (2000) 2 SCC 494

² WP 8823 of 2016 dated 3rd October, 2016

showing that she has informed the Respondents no.3 that she is running a commercial activity.

14. That the Petitioner has not mentioned whether she had taken permission from the society or Municipal corporation of Greater Mumbai, for a commercial activity. That Respondent No.3 has never proposed or offered to convert the said flats to commercial premises and that as per the provisions of Section 30 of the Rent Control Act, the landlord shall not permit the commercial use of a residential premises. That as per provisions explanation (b) to Section 24 of the Rent Control Act, the agreement in writing shall be conclusive evidence of the facts stated therein. In the said leave and license agreements, nowhere Respondent No. 3 has authorised / permitted the Petitioner to use the said flats for a commercial purposes. Hence, as per the registered agreements between the parties, the intention of the parties was only for letting the said flats for residential accommodation purpose. That Petitioner did not make the payment of rent from April 2020 till the possession of the said flats were handed over to the Respondent No. 3 on 22nd November, 2021. That since June 2020, Respondent No.3 offered to the Petitioner to hand over the keys, pay the outstanding amount and that accordingly the security

deposits would be refunded as per the Clause 3 of the leave and license agreements, however, the Petitioner continued to remain in the possession of the said flats till November, 2021.

15. It is submitted that as the registered agreements between the parties are not disputed by the Petitioner and inspite of one month notice by the Petitioner, she had not vacated the respective premises from April, 2020 till November, 2021, therefore, Respondent No.2 had rightly passed orders dated 20th December, 2021 directing the Petitioner to make payment of arrears of license fee and damages stated therein within 30 days. It is further submitted that as the Petitioner failed to produce any document showing the consent of Respondents No.3 for commercial activity during the subsistence of agreements and on her admission that she was using the said flats as residential accommodation for her business associates / representatives, the Respondent No.1 has rightly rejected the revision of the Petitioner.

16. Learned Counsel for Respondent No.3 has sought to distinguish the decisions relied upon by the learned Counsel for the Petitioner and relied upon the decision of Hon'ble Supreme Court in the case of *New Delhi*

*Municipal Council Vs. Sohan Lal Sachdev (Dead) (supra) and Nand Kishore Vs. Yashpal Singh*³ in support of his contentions.

17. I have heard the learned Counsel for the parties and considered the rival contentions.

18. The basic facts do not appear to be in dispute. The main ground of challenge taken up by the Petitioner is that both the orders viz. orders date 20th December, 2021 passed by the Competent Authority and orders dated 13th July, 2022, passed by Additional Commissioner in Revision are without jurisdiction, in as much as, Section 24 of the Maharashtra Rent Control Act, 1999 clearly provides that an application to recover licensed premises on the expiry of the term is to be in respect of premises given to the licensee for residential purpose only and not for commercial purpose.

19. It is not in dispute that the said flats No.604 and 605 had been taken on leave and license by the Petitioner from the Respondent No.3 to use and occupy the said flats for temporary “Corporate Residence Accommodation purpose” for the Petitioner’s client/business associates/representatives. Recital (d), Clauses 10 (ii), (v) and 11 of the

³ (2009) 16 SCC 634

Leave and License Agreement which clearly suggest the residential purpose, are usefully quoted as under :

d. The Licensor has agreed to grant a license to the Licensee, to use and occupy the Licensed Premises for the purpose of corporate residential accommodation by Licensee's client/business associates/representatives during the term of the license on the terms and conditions hereinafter contained.

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(ii) It shall not transfer, assign, sub-let, mortgage or create, lien or encumbrance or grant license or part with possession of the Licensed Premises or any part thereof in favour of any third party. Provided however nothing contained herein shall be construed as preventing the Licensee from permitting its employees/clients/Business associates/representatives, an access to the Licensed Premises at all times and such permission would not amount to breach by the Licensee of any of the terms and conditions of this agreement. The Licensed Premises are being taken on leave and License for the temporary corporate residence accommodation purpose of Licensee and its client/business associates/representatives.

(v) the occupants of the Licensed premises under this agreement, shall use the Licensed Premises with proper care and caution and as ordinary men of prudence would do and in keeping with the municipal rules and regulations and other public laws also rules of the Housing Society.

11. Nothing herein contained shall be construed as creating any right, title, interest, easement, tenancy or sub-tenancy in favour of the Licensee in or over or upon the Licensed Premises or transferring any interest therein in favour of the Licensee other than the license hereby created in favour of the Licensee to use the Licensed Premises for the residential purpose of its business activities and during the subsistence of this License only.

20. A perusal of the abovesaid recital and clauses clearly indicates that the said flats have been granted to the Petitioner for using them for residential accommodation purposes of Petitioner's clients, business associates/representatives. The Petitioner has also referred to an undertaking dated 29th June, 2016, to submit that by the said declaration the Respondent No.3 has given the said flats for commercial purpose. I have perused the said undertaking and note that contrary to the submissions made on behalf of the Petitioner the undertaking clearly records that the Flat No. 604 would be utilized only for residential purpose and as service apartment to the Petitioner.

21. In the case of *Automatic Electric Limited, Vadala Vs. Shardea V. Chitnis (supra)*, this Court, while considering the provisions of section 13(A-2) of the erstwhile Bombay Rent Hotel Lodging Housing Control Act, 1947 which is pari materia to section 24 of the Rent Control Act, in a case where premises were given on leave licence basis to a Company for use by its officers as rest house, while considering whether the premises were given for residence so as to give jurisdiction to the Competent Authority to decide the matter under Section 13(A-2) of the Bombay Rent Control Act, observed that use of the licenced premises as rest house by its officers

cannot lead to the conclusion that the premises were given for non-residential use even if they may be incidentally, holding meetings and keeping files. This Court held that the Petitioner, a corporate sole, acts through its officers and its officers may be discussing matters after visiting the factory but that does not mean that the premises were given for holding meetings or storing files. This Court interpreted the phrase “rest house” in a manner to mean “residence”. That the phrase “residence” cannot partake the character of mere casual occupation or lodger in a hotel. That phrase residence requires to be interpreted in a wider and broader manner and if the user does not strictly fall within one of the other purposes, other than residence as enumerated in Section 6, then it is construed as given for residence. That the Competent Authority was right in holding that the premises was licenced for residence. In the said case, it was contended that the premises were given for residence and not non-residential or business purpose and the Competent Authority had rightly found it was given for residence. In this case also, it was the contention of the other side that using the premises as a rest house was for business purpose and not the residential purpose. That from a reading of the various clauses it was held that the intention of the parties was that the

premises were given on licence for residential purpose. Paragraph 32 of the said decision is usefully quoted as under :-

32. I find there is much similarity as regards the various terms of the licence deed and the terms contained in the lease deed before the Apex Court in (1994) 2 SCC 10 (cited supra). Even in our case, there is “clause 8. The licensees shall not during the period of the licence make any structural alterations in the said licensed premises without the written consent of the Licensor but shall be at liberty to install fans, refrigerators and domestic electric appliances which shall remain the property of the Licensees and shall be removed by the Licensees on vacating the said licensed premises,” which is similar to clause 11. Various clauses and the articles mentioned in the schedule of the licence deed clearly spell out the intention of the parties i.e. the premises were given on licence for residential purpose. The phrase ‘residence’ cannot partake the character of the mere casual occupation or a lodger in a hotel. But here the company’s officers stay in section 13-A2 of the Act. Considering the object of introducing section 13-A2 in the enactment, as mentioned above, it is amply clear that the phrase ‘residence’ requires to be interpreted in a wider and broader manner. If the user does not strictly fall within any one of the other purposes, other than residence, as enumerated in section 6 of the Act, then it is to be construed as given for residence. In the present case, it cannot be said that the premises were given to the petitioner for education, business, trade or storage. Hence the Competent Authority was right in holding that the premises were licenced for residence.

22. In my view, therefore, the said decision assists the case of the Respondent No.3; that it is the purpose for which the premises has been let out is what is pertinent.

23. Let us now consider Section 24 of the Maharashtra Rent Control Act, 1999, which is applicable to the case at hand. The said Section is usefully quoted as under :-

24. Landlord entitled to recover possession of premises given on licence on expiry.

(1) Notwithstanding anything contained in this Act, licensee in possession or occupation of premises given to him on licence for residence shall deliver possession of such premises to the landlord on expiry of the period of licence; and on the failure of the licensee to so deliver the possession of the licensed premises, a landlord shall be entitled to recover possession of such premises from a licensee, on the expiry of the period of licence, by making an application to the Competent Authority, and, the Competent Authority, on being satisfied that the period of licence has expired, shall pass an order for eviction of a licensee.

(2) Any licensee who does not deliver possession of the premises to the landlord on expiry of the period of licence and continues to be in possession of the licensed premises till he is dispossessed by the Competent Authority shall be liable to pay damages at double the rate of the licence fee or charge of the premises fixed under the agreement of the licence.

(3) The Competent Authority shall not entertain any claim of whatever nature from any other person who is not a licensee according to the agreement of licence.

Explanation – For the purposes of this section,-

(a) the expression “landlord” includes a successor-in-interest who becomes the landlord of the premises as a result of death of such landlord; but does not include a tenant or a sub-tenant who has given premise on licence;

(b) an agreement of licence in writing shall be conclusive evidence of the fact stated therein.

(emphasis supplied)

24. The above quoted provisions of Section 24, also clearly refers to licence “for residence”, which in my view means the purpose for which the licence has been given. What the Section 24 is concerned with is the purpose for which the premises is let. A reading of the clauses in the leave and licence agreement quoted above clearly indicate that the intention of the parties is that the licence is for the purpose of residential accommodation of the the Petitioner’s clients / business associates/representatives. The Petitioner has not mentioned whether she had taken permission from the society or Municipal corporation of Greater Mumbai, for a commercial activity. That Respondent No.3 has never proposed or offered to convert the said flats to commercial premises and that as per the provisions of Section 30 of the Rent Control Act, the landlord shall not permit the commercial use of a residential premises. That as per provisions explanation (b) to Section 24 of the Rent Control Act, the agreement in writing shall be conclusive evidence of the facts stated therein. In the said leave and license agreements, nowhere Respondent No. 3 has authorised / permitted the Petitioner to use the said flats for a commercial activity/use or purposes. Hence, as per the registered agreements between the parties, the intention of the parties was only for letting the said flats for residential accommodation purpose. Just

because the said flats are being used by the client/business associates/representatives of the Petitioner does not mean that the purpose will change from residential to commercial. Being guided by the decision of this Court in the case of *Automatic Electric Limited, Vadala Vs. Shardea V. Chitnis (supra)*, I am also of the view that the use of the said flats by the Petitioner for corporate residential accommodation purpose for its client/business associates/representatives is only for residence purpose as contemplated in Section 24 of the Rent Act and cannot be said to be commercial purpose.

25. In the case of *Nand Kishor Vs. Yashpal Singh (supra)*, relied upon by the Respondent No.3 the Hon'ble Supreme Court was deciding a case under Section 11 of the East Punjab Urban Rent Restriction Act, 1949, which restricts a person licensor/licensee to convert a residential building into non-residential without the permission of the rent controller. As per Section 30 of the Maharashtra Rent Control Act, residential premises cannot be converted for commercial use. Therefore, applying the ratio of the Hon'ble Supreme Court as above to the facts of the present case, the case of the Petitioner that the Application under Rent Control Act are not

maintainable, is not tenable. In any event the Petitioner is not permitted to use residential premises for a commercial purpose.

26. Learned Counsel for the Petitioner has relied upon the decision of the Hon'ble Supreme Court in the case of *New Delhi Municipal Council Vs. Sohan Lal Sachdev (Dead) (supra)*. In my view the said decision is not applicable as it was rendered in the context of the provisions of Section 23 of the Indian Electricity Act, wherein the issue was with regard to the category of charges of electricity levied on a premises, admittedly, being used as a guest house. In the facts of the case the agreement, as noted above, refers to the use of the premises for residence purpose and therefore the said judgment is not relevant to the facts of this case. The learned Counsel for the Petitioner has also relied upon the decision of the Aurangabad bench of this Court in the case of *Darshasingh Indarsingh Sodhi and Anr Vs. Poddar Education and Sports Trust Through its Managing Trustee Pawan Poddar and another (supra)*. In my view the said decision is distinguishable on facts in as much as in the said case the premises was given for a commercial purpose for running a school whereas in the present case, the Respondent No.3 had given the said flats

to the Petitioner for corporate residential accommodation purpose. Therefore the said decision would not assist the case of the Petitioner.

27. The Additional Commissioner after recording that the only contention that was raised by the Petitioner was that the said flats were given for commercial purpose and not for residence purpose and therefore, the competent authority had no jurisdiction to entertain the eviction petition, held that it was clear that the said flats were used for residence purpose and not for commercial use.

28. The Additional Commissioner has also considered the failure of the negotiation between the Petitioner and the Respondent to pay maintenance bill against relaxation of monthly license fees and that the Petitioner had decided to vacate the said flats and hand over the same to the Respondent due to the restrictions of entry of customers but since the Respondent was not returning the security deposits but compelling payment of license fees for the period under the lock-down, Petitioner was in occupation till November-2021. That according to the Respondent No.3 as per clause 3 of the leave and license agreement, the Respondent has to refund the security deposit after deducting all dues recoverable and the

balance amount, if any, as payable is to be refunded upon handing over the possession of the said flats by the Petitioner.

29. After holding that the Respondent No.3 proves his ownership rights to the said flats which is not disputed by the Petitioner, after having recorded the existence of the registered leave and license agreement executed between them and after having recorded that after the termination of license, the Petitioner failed to vacate the premises and even failed to pay the monthly compensation, the Revisional Authority held that the Petitioner had failed to pay the leave and license fees and also vacated the said flats after the expiry of the license and upheld the orders of the Competent Authority, Konkan Division dated 20th December, 2021 directing the Petitioner to make payment of arrears of license fee and damages to the Respondent No. 3 with liberty to appropriate the security deposits.

30. In my view, the Competent Authority as well as Revisional Authority has correctly exercised jurisdiction under Section 24 of the Rent Control Act. I, therefore, do not find any jurisdictional error nor any perversity nor any illegality in the orders dated 13th July, 2022 passed by the Additional

Commissioner, Konkan Bhavan in confirming the order dated 20th December, 2021 passed by Competent Authority.

31. The Writ Petitions are therefore, dismissed. No order as to costs. Interim orders also stand vacated.

(ABHAY AHUJA, J.)

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signed by
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GADGIL
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