

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL WRIT PETITION NO.4400 OF 2024****Sanath Kumar Sanjib Das****....Petitioner****V/s.****1. Fernandes Anthony John****2. Mrs. Fernandes Jacintha Anthony****3. The State of Maharashtra****....Respondents**

Ms Kranti S. S. Anand for Petitioner.**Mr. Yogesh S. Adhiya for Respondent No.1****Mr. B.B. Dahiphale, AGP for Respondent No.3-State**

CORAM : SANDEEP V. MARNE, J.***Reserved on : 5 July 2024******Pronounced on : 11 July 2024*****Judgment :-**

1) Petitioner has filed this petition challenging the Order dated 11 March 2024 passed by the Additional Commissioner, Konkan Division, dismissing the Revision Application filed by him and confirming the order dated 13 February 2024 passed by the Competent Authority by which he is directed to handover possession of the premises to Respondent Nos.1 and 2 with further direction to pay damages @ Rs.2 per month from 22 June 2023 till date of

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handing over of the possession of the premises. Respondent Nos.1 and 2 are granted liberty to appropriate the amount of damages from security deposit and refund the balance amount to Petitioner.

2) Brief factual background leading to filing of the Petition is that Respondent Nos.1 and 2 are owners in respect of Flat No.G-601 admeasuring 662 sq.ft. built up area situated on 6th floor of the building- Blumount Edifice, Survey No.92, Sun City, Vasai Road West, village- Divanaman, Vasai, District -Palghar (**licensed premises**). Leave and license agreement dated 13 June 2020 came to be executed, by which Respondent Nos.1 and 2 granted license in favour of Petitioner to occupy the licensed premises for a period of 55 months commencing from 15 June 2020 and ending on 14 January 2025. Petitioner paid security deposit of Rs.3,00,000/- to Respondent Nos.1 and 2 on account of which the license fee was fixed at nominal rate of Rs.1 per month. The licensee had a responsibility of paying the maintenance charges in respect of the licensed premises. It is Petitioner's case that he had observed the terms of license agreement and that during currency of the license, Respondent Nos.1 and 2 agreed to sell the licensed premises to Petitioner for consideration of Rs. 56,00,000/-. Accordingly, Memorandum of Understanding (**MoU**) came to be executed between the parties, under which the amount of security deposit of Rs.3,00,000/- was adjusted against the agreed consideration of Rs. 56,00,000/- and Petitioner agreed to pay the balance consideration of Rs. 53,00,000/- within a period of three months. It appears that the transaction has not fructified. Respondent Nos.1 and 2 terminated the license and approached the Competent Authority seeking recovery of possession of the

licensed premises. It appears that though Petitioner appeared before the Competent Authority, he failed to file application seeking leave to defend within the time prescribed under Section 43 of the Maharashtra Rent Control Act, 1999 (**MRC Act**) within time. The Competent Authority thereafter proceeded to pass order dated 13 February 2024 observing that the leave and license agreement has expired on 21 June 2023 on account of issuance of termination notice. The application was accordingly allowed and the Petitioner was directed to handover possession of the licensed premises to Respondent Nos.1 and 2 within 30 days. The Petitioner was also directed to pay damages to Respondent Nos.1 and 2 at the rate of Rs.2 per month from 22 June 2023 till handover of possession of the licensed premises. Respondent Nos.1 and 2 are granted liberty to appropriate the amount of damages from the security deposit and refund the balance deposit to Petitioner. Petitioner filed Revision Application under Section 44 of the MRC Act before the Additional Commissioner, Konkan Division. The Revision Application is however, summarily rejected at admission stage by order dated 11 March 2024. Aggrieved by the orders passed by the Competent Authority and the Additional Commissioner, Konkan Division, Petitioner has filed the present Petition.

3) Ms Kranti Anand, the learned counsel appearing for the Petitioner would submit that the Competent Authority has erroneously passed the order of eviction by travelling outside the scope of his jurisdiction. That the only basis for passing the order of eviction is alleged non-fulfillment of obligations by Petitioner under the MoU dated 29 June 2021. That while exercising jurisdiction under Section 24 of the MRC Act, the Competent

Authority could not have looked into the covenants of the MoU. That the leave and license agreement continues to subsist till 14 January 2025 and that no default in payment of license fees is committed by the Petitioner. That the Competent Authority has erred in holding that the leave and license agreement has expired on 21 June 2023. She would further submit that the Petitioner is cheated in respect of the entire transaction by the Respondent Nos.1 and 2. That the MoU for purchase of licensed premises was executed on 29 June 2021, under which Respondent Nos.1 and 2 were under obligations to execute registered agreement for sale in order to enable Petitioner to secure loan from financial institutions. That the MoU and license agreement were to be cancelled as per clause 5 of the MoU only in the event of Petitioner failing to pay balance consideration of Rs. 53,00,000/- within 90 days of registration of agreement for sale. That till date, agreement for sale has not been registered by Respondent Nos.1 and 2 and that therefore, license has not come to an end even as per clause 5 of the MoU. Inviting my attention to letter of Respondent Nos.1 and 2 dated 3 July 2021, she would submit that they proceeded to revoke the MoU within four days of its execution by the said letter. That non-fructification of the purchase transaction in respect of the flat in pursuance of the MoU is solely attributable to the conduct of Respondent Nos.1 and 2 alone. That the Competent Authority and the Revisionary Authority have failed to take into consideration these vital aspects and have erroneously directed Petitioner's eviction from the licensed premises. She would therefore pray for setting aside both the impugned orders.

4) *Per contra*, Mr. Yogesh Adhiya, the learned counsel appearing for Respondent Nos. 1 and 2 would oppose the petition and support the orders

passed by the Competent Authority and the Divisional Commissioner. He would submit that the license agreement has been terminated by Respondent Nos.1 and 2 on account of failure on Petitioner's part to adhere to the terms and conditions of the MoU. That under the MoU, it was obligatory on the part of Petitioner to pay balance amount of Rs.53,00,000/- within 90 days from the date of execution of MoU. That under Clause 6 of the MoU, production of loan sanction letter was a pre-condition of registration of agreement for sale. That admittedly Petitioner did not produce loan sanction letter, on account of which the MoU came to be revoked by a separate letter issued on 3 July 2021. The license agreement was also terminated and Petitioner was called upon to vacate the license premises by 31 July 2021. That there is direct link between the license and the MoU and that the MoU provided for revocation of license in the event of failure to pay balance of amount of consideration by the Petitioner. He would submit that Respondents are senior citizens and Petitioner is harassing them by unauthorizedly holding on to their flat. Inviting my attention to paragraph No.20 of Petitioner's reply dated 10 July 2023 he would submit that the real reason for non-vacation of the flat by Petitioner is non-availability of other place of residence. That the real intention of the Petitioner is thus very clear and that this Court may not exercise writ jurisdiction at the instance of the Petitioner, who is unlawfully occupying the licensed premises. He would pray for dismissal of the petition.

5) I have considered the submissions canvassed by the learned counsel appearing for the parties. Perusal of the license agreement dated 13 June 2020 would indicate that the tenure of license is for 55 months commencing

from 15 June 2020 and ending on 14 January 2025. Thus, as on the date of the passing of order by the Competent Authority, the license period had not come to an end as per covenant of the agreement. Clause 1 of the license agreement reads thus:-

1) Period: That the Licensors hereby grants to the Licensee herein a revocable leave and license to occupy the Licensed Premises, described in Schedule I hereunder written without creating any tenancy rights or any other rights, title and interest in favour of the Licensee for a period of 55 Months **commencing from 15/06/2020 and ending on 14/01/2025.**

(emphasis supplied)

6) According to Respondent Nos.1 and 2, the license agreement has been terminated and this theory appears to have been accepted by the Competent Authority. The Competent Authority has held in paragraph 7 of its order that '*leave and license agreement is expired on 21 June 2023 by way of termination notice*'. It is incomprehensible as to how the Competent Authority has held that the license has expired on 21 June 2023. It appears that the Competent Authority has relied upon Notice dated 21 June 2023 addressed on behalf of Respondent Nos.1 and 2, for recording the said finding. However, Petitioner has placed on record two letters received by him from Respondent Nos.1 and 2 on 3 July 2021. The said two letters are in respect of cancellation of MoU and for termination of the license agreement. Respondent Nos.1 and 2 sought to terminate the MoU executed on 29 June 2021 on the ground that Petitioner failed to furnish loan sanction letter by 2 July 2021. Since the MoU was cancelled, Respondent Nos.1 and 2 also proceeded to terminate the license agreement on 3 July 2021.

7) Both the parties have relied upon various covenants of the MoU executed on 29 June 2021. True it is that some connection is sought to be

established between the license agreement and the MoU, paragraph 5 whereof reads thus:-

5. It is mutually agreed by and between the parties herein that in the event the Purchaser fail to make the remaining balance amount of Rs.53,00,000/- within the stipulated period i.e. within 90 days from the date of registration of Agreement for sale, then in such event the Sellers shall revoke and cancel this MoU and in such event **the leave and license agreement executed by the parties herein shall be cancelled/revoked** forthwith and in such case the purchaser shall hand over the peaceful possession of said flat to the Sellers forthwith upon cancellation of leave and license agreement.

(emphasis supplied)

8) In my view, however, the arrangement between the parties for purchase of the flat by execution of MoU dated 29 June 2021 cannot be linked with the license agreement dated 13 June 2020. Petitioner's entry into the licensed premises is on the strength of the license agreement. He might have agreed to purchase the licensed premises by virtue of subsequently executed MoU. However, the jurisdiction of the Competent Authority is not to interpret or to deal with the terms and conditions of the said MoU. The jurisdiction of the Competent Authority under Section 24 of the MRC Act is to only examine whether the tenure of the license has expired or not. Admittedly the tenure of the license is upto 14 January 2025. The Competent Authority has however, erroneously gone into the correspondence between the parties relating to termination of the license agreement by linking the same with MoU for the purpose of arriving at erroneous finding that the license agreement has expired on 21 June 2023. Perusal of the termination notice dated 21 June 2023 would indicate that the same extensively refers to the covenants of MoU and conduct of parties, post execution of the MoU. Who is at fault for non-completion of sale

transaction is something which would be outside the scope of enquiry before the Competent Authority. The Competent Authority therefore ought to have restricted its consideration only to the covenants of the leave and license agreement. Section 24 of the MRC Act provides thus:-

24. (1) Notwithstanding anything contained in this Act, a 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 licenced 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 of 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 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.

9) The Competent Authority thus is vested with the jurisdiction to decide the eviction proceedings only if the license has expired. Thus, expiry of license is a jurisdictional fact, in absence of which, the Competent Authority cannot exercise jurisdiction under Section 24 of the MRC Act. In the present case, since the license continues to subsist, exercise of jurisdiction by the Competent Authority under Section 24 of the Act is clearly faulty. Rights and obligations of parties under the MoU is an altogether separate aspect, which the parties can agitate before the Civil Court. Merely because the MoU provides for cancellation of leave and license agreement on occurrence of a particular event, it is not for the Competent Authority to examine the covenants of the same MoU for

assuming that the license has expired on account of non-fulfillment of a particular act, when in fact, same continues to subsist till 14 January 2025.

10) In my view therefore, the Competent Authority has committed a jurisdictional error in passing the impugned eviction order dated 13 February 2024. The Revisionary Authority ought to have corrected the error committed by the Competent Authority and accordingly the order passed by the Revisionary Authority on 11 March 2024 is also unsustainable.

11) Both the learned counsel appearing for the parties have made extensive submissions qua interpretation of the terms and conditions of the MoU. However, while conducting limited enquiry under the MRC Act it is neither for the Competent Authority nor for this Court to interpret the terms and conditions of the MoU or to consider conduct of any party *qua* those terms and conditions. This has to be left to the jurisdiction of the competent Civil Court. If Plaintiff /Petitioner wants Respondent Nos.1 and 2 to specifically perform the MoU, he can file suit seeking specific performance thereof. Mere reference to the license agreement in the MoU would not clothe the Competent Authority with jurisdiction to deal with terms and conditions of the MoU. The license granted in favour of the Petitioner stands on a different footing than the agreement for purchase of licensed premises. The remedies exercisable in respect of two independent rights are also altogether distinct. I am therefore of the view that parties can agitate their grievances in respect of the alleged non-fulfillment of obligations under MoU before appropriate civil court.

12) Having held that impugned eviction order dated 13 February 2024 passed by the Competent Authority is unsustainable the next issue is about entitlement of Petitioner to occupy the licensed premises and till what period. In ordinary course, after holding that the tenure of license still subsists and that the order of the Competent Authority is erroneous, the Petition could be allowed by setting aside the Orders of the Competent Authority and Revisional Authority. This would mean that licensors will have to initiate fresh eviction proceedings for eviction of Petitioner after 14 January 2025. Respondent Nos.1 and 2 appear to be at advanced ages and cannot be driven into another lengthy round of litigation to seek recovery of possession of the license premises after 14 January 2025. Under the license agreement, Petitioner has no right to remain in the licensed premises after 14 January 2025. He needs to initiate separate Civil proceedings in respect of his alleged rights under the MoU. I am therefore, of the view that though the order of the Competent Authority and the Revisionary Authority are held to be invalid, Petitioner at the same time cannot remain in occupation of the license premises beyond 14 January 2025. With a view to obviate another round of litigation between the parties, it is appropriate to direct Petitioner to vacate the licensed premises on 15 January 2015. The same shall however without prejudice to rights and contentions of Petitioner in respect of the MoU.

13) I accordingly proceed to pass the following order:

- (a) Order dated 13 February 2024 passed by the Competent Authority as well as Order dated 11 March 2024 passed by the Additional Commissioner, Konkan Division, are set aside.

(b) Petitioner is permitted to occupy the licensed premises till 14 January 2025 subject to adherence of terms and conditions of the license agreement dated 13 June 2020.

(c) Petitioner shall vacate the possession of the suit premises on 15 January 2025 and hand over the same to Respondent Nos. 1 and 2. It is clarified that it shall not be necessary for Respondent Nos. 1 and 2 to file a separate application for eviction of Petitioner after 15 January 2025.

(d) At the end of the licensed period on 14 January 2025 and simultaneously with handing over possession of the suit premises, Respondent Nos.1 and 2 shall refund the amount of security deposit to the Petitioner after adjusting arrears of license fees, if any.

(e) Parties shall be at liberty to adopt appropriate proceedings in competent court of law *qua* the rights and obligations arising out of the MoU dated 29 June 2021 and vacation of premises by Petitioner on 15 January 2025 shall not affect his rights, if any, arising out of the MoU.

14) With the above directions, the Writ Petition is partly allowed. Rule is made partly absolute. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]