

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1886 OF 2023

Dilip Champalal Jain & Ors ...Petitioners
Versus
 Maharashtra Housing and Area Development ...Respondents
 Authority & Ors

Mr Karl Tamboly, *with Davar & Kevin Pereria, i/b Ashwin Sawlani,*
for the Petitioners.
Mr Ishan P, *i/b Manisha Jagtap, for Respondent No. 1-MHADA.*
Mr Abhijeet Joshi, *with Varsha Sawant & Advait V, for Respondents*
Nos 4 to 6.

CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 14th March 2024

PC:-

1. The name of the 4th Respondent is incorrect. An amendment to be carried out immediately. Reverification is dispensed with.

2. This is one of these peculiar cases where both Petitioners and the contesting Respondents are correct. The claim of the Petitioners is that they are the heirs of the original tenant of premises, Room No 102, Amarwadi, Khattargalli Lane, Girgaon, Mumbai 400 004. The property is owned by Shreepati Jewels (AoP), the 4th Respondent, represented by Mr Joshi. The Petitioners' mother's name was

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Shantaben Champalal Jain. That she was shown by the Maharashtra Housing Area and Development Authority (“MHADA”) as the tenant of Room No 102 is undisputed. Her name is shown against Flat no 102 in the MHADA Certification at Exhibit “A” at page 33.

3. Mr Tamboly for the Petitioners, most vigorously assisted by Mr Daver, submits that it is not possible to terminate the tenancy just because the landlord would wish it so. The death of Shantaben does not extinguish the tenancy. No proceeding has been filed for a decree of eviction or for possession of tenanted premises. As Mr Tamboly puts it, if old tenanted premises are surrendered for redevelopment, and the tenant dies in the meantime, this does not and cannot in law mean that the tenancy is extinguished.

4. Mr Joshi is perhaps correct in pointing out that the prayers in the Petition even after an ambitious amendment are such that no Writ Court can or should contemplate granting these in the form in which they are cast. His instructions are to say that there was unlawful subletting. There was non-payment of rent for a long period of time. Neither Shantaben nor her heirs were in possession of the premises. According to Mr Joshi, Shreepati Jewels “took possession”.

5. But every single one of these submissions about the tenancy is only a ground for seeking eviction. But eviction must be sought from a Court. That can only be done in the Court that has special and exclusive jurisdiction namely the Court of Small Causes at Bombay. Whether the eviction is sought on the ground of unlawful subletting,

non-user of premises, non-payment of rent, or some other ground, there still must be an eviction suit. A tenancy ends in only one of two ways. There is either a surrender of tenancy or there is a decree of a Court. There is no third way and certainly, there is no concept in law of a landlord unilaterally deciding that the tenancy has “ended” and resuming possession.

6. There is no purpose achieved by simply alleging that the Petitioners were not residing with Shantaben at the time of her death and that Shantaben herself was not in the premises. These are matters for adjudication in the Court of Small Causes at Bombay, not here in our Writ Court. Our only concern is with the unchallenged MHADA Certification at page 33. If Shantaben’s name appears in that list, then clearly her heirs are entitled to her rights.

7. So far as MHADA is concerned, and that is our only objective because we are exercising writ jurisdiction, this necessarily means that MHADA must ensure that the interest of all the tenants who are mentioned in Certification List must be taken care of. It is not contentious that Permanent Alternate Accommodation Agreements (“PAAA”) have been executed with all other tenants mentioned in that Certification List except the heirs of Shantaben.

8. Accordingly, we mould the relief and in doing so grant the lesser relief namely, we direct the MHADA to ensure that an appropriate PAAA is executed between Shreepati Jewels (AoP) and jointly with all heirs of Shantaben. A copy of this PAAA is to be filed

with MHADA. MHADA will make it clear that a failure to execute such a PAAA with the heirs of Shantaben would conceivably result in further MHADA action against Shreepati Jewels (AoP) including possibly a cancellation of its No Objection Certificate since this is a condition. However, we make it clear that all the contentions of Shreepati Jewels (AoP) in regard to the tenancy are expressly kept open. The execution of the PAAA will not constitute an admission by Shreepati Jewels (AoP) of the tenancy of either Shantaben or her heirs. The future steps in redevelopment including possession of the redeveloped premises and payment of transit rent will also be on a without prejudice basis and subject to the outcome of appropriate proceedings in the Court of Small Causes at Bombay.

9. But we are equally mindful of the fact that this is not a situation that can be left open-ended. Specifically, it is unacceptable that no steps are taken by Shreepati Jewels (AoP) in regard to its contentions about Shantaben's tenancy indefinitely and that at some late stage several years or decades later some action is then initiated. Consequently, we direct that Shreepati Jewels (AoP) must institute appropriate proceedings in the Court of Small Causes at Bombay within a period of six months from today. If that is not done and no such Suit is filed and no Writ of Summons is served within that time, then Shreepati Jewels (AoP) will not be entitled to claim that the tenancy of Shantaben or her heirs has been extinguished.

10. This is the only reasonable method by which the rival contentions on both sides can be properly balanced. Subject to this,

the other terms of the PAAA will be on parity with all other persons who are in the Certification List prepared by MHADA.

11. There are multiple Petitioners before us. It is not possible for us to decide which among them is exclusively entitled to transit rent. Mr Joshi may well have a problem about this aspect of the matter as also about the question of possession. We therefore clarify that for the entire order and all future actions Mr Joshi's clients will proceed on the basis that subject to the outcome of and without prejudice to any proceedings in the Small Causes Court all five Petitioners will have to be treated on parity for the purposes of the without prejudice PAAA, payment of transit rent and possession when ready.

12. If there is any dispute between the five Petitioners, then it is open to Mr Joshi through Shreepati Jewels (AoP) to refuse to pay transit rent to any one Petitioner to the exclusion of the others and equally to refuse to deliver possession of the redeveloped premises to one Petitioner to the exclusion of the others. In that situation, an appropriate application in that regard must be made either in a rent suit that Shreepati Jewels (AoP) files or by way of an Interim Application in this Writ Petition.

13. The Writ Petition is disposed of in these terms. No costs.

(Kamal Khata, J)

(G. S. Patel, J)