

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL REVISION APPLICATION NO.627 OF 2024**

1. Smt. Meenakshi Balaso Magdum
Age: 72, Occu: Housework,
R/o. Plot No.146, R.K. Nagar,
Main Society, Morewadi,
Tal. Karveer, Dist. Kolhapur.
2. Mr. Umesh Balasao Magdum
Age: 40, Occu: Business,
R/o. Plot No.146, R.K. Nagar,
Main Society, Morewadi,
Tal. Karveer, Dist. Kolhapur.
3. Mrs. Leena Bajirao Bhosale,
Age: 44, Occu: Household,
R/o. 1182/146-147, Plot No.G/2
Sanchayani Retreat, mali Colony,
Takala, Dr. Amate Road, Rajarampuri,
Dist. Kolhapur – 416008.

..Applicants

(Orig. Defendant No.1 to 3)

Versus

1. G. B. Industries Reg. Partnership Firm
Through its Partners,
 - A) Mr. Vishal Sharadchandra Bhogte,
Age: 44, Occu: Business,
R/o. 744, E Ward, Shahupuri 3rd Lane,
Tal. Karveer, Dist. Kolhapur.
 - B) Mr. Eknath Balwant Ghorpade,
Age: 52, Occu: Business,
R/o. 546/12, Rajendra Nagar,
Tal. Karveer, Dist. Kolhapur.
2. Government of Maharashtra,
Through District Collector, Kolhapur,
Swarajya Bhavan, Nagala Park, Kolhapur.

3. The Competent Authority,
Sub Divisional Officer, Karveer,
Swarajya Bhavan, Nagala Park, Kolhapur.
 4. Vivek V. Kale, Deputy Collector,
Coordination of Land Acquisition
Collector's Officer, Swarajya Bhavan,
Nagala Park, Kolhapur.
 5. Executive Engineer, Public Works
Department, Tarabai Park,
Opposite Hotel Vrushali, Kolhapur.
 6. Assistant Engineer Grade I
Public Works Department, Tarabai Park,
Opposite Hotel Vrushali, Kolhapur.
 7. Chief Officer, Maharashtra Industrial
Development Corp.,
Udyog Bhawan, Next to Swarajya Bhawan
Assembly Road, Kolhapur.
- ..Opponents
(Orig. Plaintiffs and Defendants 4 to 9)
- ...
- Mr. Prasad P. Kulkarni a/w Mr. A. R. Chavan, Mr. Nakul Shukla, Mr.
Tejas Dalavi, Mr. Amol Kanaki, Advocate for Applicants.
Mr. S. G. Mangle, Advocate for Respondent Nos.1A and 1B.
- ...

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 17th SEPTEMBER, 2025.

PRONOUNCED ON : 15th OCTOBER, 2025.

JUDGMENT:-

1. The present applicants/original defendant nos.1 to 3 impugns
order dated 24.10.2024 passed below Exhibit-33 in Regular Civil Suit
No.849/2023, by Civil Judge Senior Division, Kolhapur, thereby
declining to entertain applicants prayer for rejection of plaint.

2. The respondent no.1 instituted Regular Civil Suit No.849/2023 seeking relief of declaration and injunction in respect of suit property bearing CTS No.288/A/1-3 to the extent of 40R, more particularly specified in paragraph no.2 of plaint. It is contention of plaintiff that plaintiff is registered partnership firm and obtained open land admeasuring 1 acre under Leave and License Agreement dated 07.03.2015 executed by defendants. The defendants permitted plaintiff to put up shed and after expiry of period of license, it was to be removed. According to plaintiff, in year 2020 term of Leave and License expired. The plaintiff has paid license fees in terms of agreement. However, on expiry of period of Leave and License Agreement, they continued in possession, so also paid amount of Rs.4500/- per month. Eventually, plaintiff become statutory tenant over suit plot. The defendant nos.1 to 3 issued notice dated 07.02.2023 asking plaintiff to hand over vacant possession, which has been replied by plaintiff. According to plaintiff, land was under acquisition for Airport. The defendants are trying to evict plaintiff under garb of acquisition without paying compensation to him. Accordingly, plaintiff pleaded cause of action dated 07.02.2023 and filed present suit.

3. Although plaintiff had incorporated multiple prayers including prayer for injunction against State Authorities from disturbing his possession and perpetual injunction, during pendency of suit prayer

Clauses (c) to (q) have been not pressed and suit is continued for limited prayer seeking declaration that plaintiff has acquired tenancy since date of expiry of Leave and License Agreement and continued in possession as tenant.

4. The defendant nos.1 to 3 filed written statement contending that open plot of land was given in possession of plaintiff under Leave and License Agreement. The term of Leave and License Agreement is expired on 06.03.2020. As such, plaintiff has no right to continue in possession of suit property. According to defendants, suit is malafidely instituted and sans cause of action. The defendants also filed application below Exhibit-33 under Order VII Rule 11 of Code of Civil Procedure praying for rejection of plaint. The Trial Court rejected said application vide order dated 24.10.2024. Hence, this Civil Revision Application.

5. Mr. Prasad Kulkarni, learned Advocate appearing for applicants vehemently submits that suit instituted by respondent no.1 is vexatious. Further, it sans cause of action. The respondent no.1 was admittedly put into possession of suit property on the basis of Leave and License Agreement. The term of agreement expired on 06.03.2020. The plaintiff cannot assert tenancy right on the basis of continuation of unauthorized possession over suit property. He would submit that when land in question was subjected to acquisition, present suit is filed only with intention to extract money by blackmailing to

applicants. He would submit that apart from present suit, respondent no.1 had filed Writ Petition No.17261/2024 before this Court seeking Writ of Mandamus against State Authorities to not to dispossess plaintiff from tenanted land and shed thereon without following procedure as contemplated under Land Acquisition Act, 2013 and payment of compensation to him. However, this Court rejected said Writ Petition observing that petitioner has no semblance of right in land. In that view of matter, application filed by applicants under Order VII Rule 11 of Code of Civil Procedure for rejection of plaint ought to have been granted.

6. Per contra, Mr. Mangle, learned Advocate appearing for respondent no.1 supports impugned order. According to him, plaint can be rejected only on the grounds specified in sub-clauses (a) to (e) Order VII Rule 11 of Code of Civil Procedure. According to him, possession of plaintiff over suit property as on date of institution of suit is not disputed. The plaintiff has specifically pleaded that on expiry of Leave and License Agreement, defendants land owner accepted rent. As such, plaintiff acquired statutory tenancy right. The suit is filed for such declaration, since land owners had issued notice to plaintiff for handing over of possession to defendants. As such, suit is based on specified cause of action and it cannot be said to be barred by law.

7. Having considered submissions advanced by learned Advocates appearing for respective parties and on perusal of material tendered

into service, contentious issue that raised in present Civil Revision Application is as to whether plaint in suit filed by defendant no.1 is liable to be rejected in exercise of Order VII Rules (a) to (e) of Code of Civil Procedure. The Supreme Court in case of ***Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) and Others***¹ has laid down certain parameters for entertaining application filed under Order VII Rule 11 of Code of Civil Procedure for rejection of plaint. It has been observed that “cause of action” means every fact which would be necessary for plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for plaintiff to prove in order to entitle him to reliefs claimed in suit. While considering an application under Order VII Rule 11 Code of Civil Procedure what is required to be decided is whether plaint discloses a real cause of action, or something purely illusory. What is required is that a clear right must be made out in plaint. If, however, by clever drafting of plaint, it has created illusion of a cause of action, it should be nipped in bud, so that bogus litigation will end at earliest stage. The Court must be vigilant against any camouflage or suppression, and determine whether litigation is utterly vexatious, and an abuse of process of Court. While making aforesaid observations, Supreme Court gave reference to earlier judgments in case of ***T. Arvivandandam Vs. T. V. Satyapal***² and ***Swamy Atmananda & Ors. Vs. Sri Ramakrishna Tapovanam & Ors.***³.

¹ (2020) 7 SCC 366.

² (1977) 4 SCC 467.

³ (2005) 10 SCC 51.

8. In light of aforesaid exposition of law, it is necessary to find out whether plaintiff has real cause of action to institute suit or cause of action shown in plaint is illusory and camouflage. Even this Court will have to examine whether suit is vexatious or seeks to raise genuine dispute, which requires adjudication on merit.

9. On plain reading of plaint alongwith documents appended thereto it is discernible that plaintiff was put into possession of suit land on the basis of Leave and License Agreement having its validity from 07.03.2015 to 06.03.2020. The relevant clauses of Leave and License Agreement depicts that portion of 96R open land was put in possession of plaintiff, who was at liberty to raise structure. Clause (E) clearly stipulates that there shall not be any tenancy right or any kind of right and title in favour of licensee.

10. The purpose of license was for non-agriculture use of land by plaintiff. Once it is open land was put into possession of plaintiff under Leave and License Agreement, whether he can claim tenancy right on expiry of term of license period is mute question. In paragraph no.6 of plaint, it is contention of plaintiff that he acquired right of tenancy under provision of Maharashtra Rent Control Act. The aforesaid statement is unacceptable, when admittedly open land was put into possession of plaintiff under Leave and License Agreement. The portion of land, which was subject matter of Leave and License Agreement cannot be termed as premises within meaning of Rent Act,

so no claim as to tenancy can be made out. Even otherwise, when land is not given for agriculture purpose, provision of Maharashtra Tenancy and Agriculture Lands Act would not apply in facts of present case. Pertinently, in Writ Petition No.17261/2024 filed by plaintiff similar plea was raised. The Division Bench of this Court while rejecting contention of petitioner observed in paragraph nos.21 and 22 of judgment as under:

“21. We have no manner of doubt whatsoever and more particularly from the facts which are absolutely glaring that the petitioner having failed to obtain any orders in the Civil Suit against the respondents. The Suit as also the present Writ Petition is filed by the petitioner with the sole intention to cause harassment to respondent Nos.1 to 3 so that respondent Nos.1 to 3 do not receive the land acquisition compensation by negotiation. The Civil suit itself was filed with such intention asserting untenable rights, purporting to be tenancy rights which are also asserted in the present proceeding. On a scrutiny of such plea as argued by Mr. Ganbavle such rights even remotely are not seen to be available to the petitioner, who was a mere licensee.

22. With Mr. Ganbavle’s assistance, we have gone through the provisions of the Maharashtra Rent Control Act, Mr. Ganbavle was not in a position to point out any provision under which the petitioner could have claimed any rights of tenancy under the Maharashtra Rent Control Act. The petitioner having failed on this count, Mr. Ganbavle submitted that possibly the tenor of the plaint could be that the petitioner was claiming an agricultural tenancy and would fall under the provisions of Bombay Tenancy and Agricultural Lands Act, 1948 (“BTAL Act” for short). Such submission of Mr. Ganbavle would in fact shock our conscience as to how such plea could be taken by a commercial licensee, and as to how petitioner can claim to be an agricultural tenant and asserts rights under the BTAL Act. Such plea of the petitioner is frivolous to say the least.”

11. Admittedly, suit land was subject matter of acquisition for Airport and same has been already taken into possession by Competent Authority. Therefore, at present land in question is possessed by respondent nos.2 to 7.

12. In light of aforesaid observations, if prayer Clause (b) in plaint is considered, this Court has no hesitation to hold that plaintiff has no semblance of right to raise claim of tenancy over suit property and possession in capacity of tenant. Further, there is no consequential prayer in pursuance to such declaration. This Court has no hesitation to hold that present suit sans cause of action, so also vexatious in nature. Hence, following order:

ORDER

- a. Civil Revision Application is allowed in terms of prayer Clause (b).
- b. The application at Exhibit-33 in Regular Civil Suit No.849/2023 is allowed.
- c. Eventually, plaint in Regular Civil Suit No.849/2023 stands rejected.

(S. G. CHAPALGAONKAR)
JUDGE