

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5536 OF 2025

1. Pradip Bajirao Ninave	}	
Aged 70 years,		
2. Mrs Sunetra Pradip Ninave	}	
aged 59 years,	}	
both are residing at 5-C	}	
503, Mumbai Tower CHS Ltd,	}	
Rustamji Bangela Marg,	}	
New Hind Mills Compound,	}	
Mazgaon, Mumbai-400 010.	}	...Petitioners

V/s.

1. Saguna Nivruti Tapare	}	
Aged 62 years,	}	
widow of deceased Nivruti T. Tapare	}	
2. Mr. Dayanand Nivruti Tapare,	}	
Aged 41 years.	}	
3. Mr. Vivekanand Nivruti Tapare	}	
Aged 36 years,	}	
both are sons of deceased	}	
Nivruti Tukaram Tapare,	}	
All residing at Post-	}	
Taparewadi, Taluka- Bhor,	}	
Dist-Pune 412 205	}	
4. The State of Maharashtra	}	
through the Additional	}	
Commissioner, Konkan Division,	}	
Mumbai.	}	Respondents

Mr. Vikram Sathaye with Shobhana Waghmare, for the petitioners.
 Mr. Arun Nimbalkar, for the respondents.
 Ms. S.D. Chipade, AGP, for the State.

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CORAM : N.J. JAMADAR, J.

DATE : 5th AUGUST 2025

ORAL JUDGMENT:

1. Heard the learned counsel for the parties.
2. Rule. Rule made returnable forthwith and, with the consent of the counsel for the parties, heard finally.
3. The challenge in this petition is to an order dated 15th April 2025, passed by the Additional Commissioner, Konkan Division, Mumbai in Revision Application No. 62 of 2025, whereby the revision preferred by the applicants against an order passed by the Competent Authority under Section 24 of the Maharashtra Rent Control Act, 1999 (the Act, 1999) directing the eviction of the applicants from flat No. 503, 5th floor, C-Wing, Building No. 5,, New Hind Mills Compound, Mazgaon, Mumbai (the Suit Flat) came to be dismissed, affirming the order passed by the Competent Authority.
4. Nivruti Tukaram Tapare was a mill worker. Under an allotment letter dated 7th May 2014, the subject flat was allotted to Nivruti Tapare, the predecessor-in-title of the respondent nos. 1 to 3. On 28th July 2014, late Nivruti Tapare executed a leave and licence agreement

in favour of the petitioners, thereby allowing the petitioners to use the subject flat as licencees for a period of five years commencing from 1st August 2014 to 31st July 2019. Under the terms of leave and licence agreement, a sum of Rs. 26,25,000/- was paid to the licensor by way of security deposit. It was, inter alia, agreed between the parties that the licencee was not pay any monthly compensation for the use and occupation of the licenced premises. Nivruti Tapare passed away on 22nd January 2021.

5. The respondent nos. 1 to 3 preferred an application under Section 24 of the Act, 1999 before the Competent Authority, asserting that the term of the licence has expired in the year 2019 and yet the petitioners had not vacated the licensed premises.

6. The petitioners appeared before the Competent Authority and filed an application for leave to defend. By an order dated 17th October 2024, the said application came to be rejected. On the very same day, by a separate order, the Competent Authority was persuaded to allow the application for eviction observing, inter alia, that the term of the licence had expired on 31st July 2019. The leave and licence agreement was a conclusive evidence of the transaction evidenced by the said agreement. Hence, the petitioners were directed to vacate the subject

flat, and the respondent nos. 1 to 3 were directed to deposit the amount of Rs. 26,25,000/- before the Competent Authority for remitting the same to the petitioners, after the petitioners vacated the subject flat.

7. Being aggrieved, the petitioners preferred a revision before the Divisional Commissioner, Konkan Division, Mumbai. By the impugned order the Divisional Commissioner was persuaded to dismiss the revision application, concurring with the views of the Competent Authority.

8. Mr. Sathaye, the learned counsel for the petitioners, submitted that both the authorities have not delved into the voluminous material placed on record by the petitioners, which indicated that the real transaction between the parties was different than the one with the apparent tenor of the leave and licence agreement indicates.

9. Attention of the Court was invited to an agreement for sale executed by late Nivruti Tapare in favour of the petitioners on the very day on which the leave and licence agreement was executed and registered. In the said agreement for sale, the predecessor-in-title of the respondent nos. 1 to 3 acknowledged having received the very

same amount of Rs. 26,25,000/ which was shown as a security deposit in the leave and licence agreement, by way of consideration for the sale. In addition to this, late Nivruti Tapare had executed a Will bequeathing the subject flat in favour of both the petitioners. An irrevocable Power of Attorney was also executed by late Nivruti Tapare. The respondent nos. 1 to 3 had also sworn affidavits acknowledging the said nature of the transactions between the parties.

10. In the face of aforesaid documents, the authorities below could not have proceeded simply on the premise that a registered leave and licence agreement was executed between the predecessor-in-title of the respondent nos. 1 to 3 and the petitioners, submitted Mr. Sathaye.

11. Mr. Sathaye further submitted that petitioners have also instituted a suit, being Suit No. 105510 of 2024, before the City Civil Court seeking specific performance of the agreement for the sale of the subject flat. In the said suit the respondent nos. 1 to 3 have appeared and filed the written statement. An application for temporary injunction awaits adjudication.

12. In these circumstances, the impugned order deserves to be interfered with. At any rate, the possession of the petitioners deserves

to be protected, urged Mr. Sathaye.

13. In opposition to this, Mr. Nimbalkar, the learned counsel for the respondent nos 1 to 3, submitted that the petitioners have suppressed the material fact that after the expiry of the first leave and licence agreement, a second leave and licence agreement was executed on 2nd October 2019, evidencing the fact that the suit flat was given on licence to the petitioners for a further term of 5 years commencing from 1st August 2019 to 31st July 2024. In the said leave and licence agreement, the petitioners had also agreed to pay a compensation of Rs.100/-p.m. towards the use and occupation of the suit flat. In the face of these registered leave and licence agreements, the unregistered documents, which have been relied upon by the petitioners with a view to usurp the suit flat, which has been allotted to the mill worker, do not command any credence and must yield to the registered instruments.

14. Mr. Nimbalkar, further submitted that, even otherwise, the Competent Authority being a creature of statute and having a limited jurisdiction, could not have delved into the issues sought to be raised on behalf of the petitioners. The questions of title or for that matter, the existence of a different transaction between the parties could not

have been adjudicated by the Competent Authority. Therefore, the impugned orders passed by the Revisional Authority as well as the Competent Authority are legal and proper and do not warrant any interference in the exercise of writ jurisdiction.

15. To lend support to this submission, Mr. Nimbalkar placed reliance on a judgment of a learned Single Judge of this Court in the case of *'Surendra B. Agarwal and Anr. Vs AML Merchandising Pvt. Ltd'*¹, and the judgments of the Supreme Court in the cases of *'Shakeel Ahmed Vs. Syed Akhlaq Hussain'*² and *'Mahnoor Fatima Imran and Ors. Vs. M/s Visweswara Infrastructure Pvt Ltd. and Ors.'*³,

16. To begin with, it is necessary to note that the execution of the leave and licence agreement dated 28th July 2014 is not in contest. Though initially the petitioners did not place on record the copy of the second leave and licence agreement dated 2nd October 2019, yet it is incontestable that the second leave and licence agreement for a further term of five years commencing from 1st August 2019 to 31st July 2024 came to be executed between the parties. The fact that the subject flat was allotted to late Nivruti Tapare by MHADA, as a mill worker and

1 Writ Petition No. 2682 of 2009

2 Civil Appeal No. 1598 of 2023

3 (Civil Appeal No. of 2025 @ Special Leave Petition © No. 1866 of 2024

there were restrictions in the matter of the transfer of the subject flat for a period of ten years from the allotment is also not in dispute.

17. The essential controversy between the parties revolves around the nature of the jural relationship formed by the transactions between the petitioners and late Nivruti Tapare. On the one hand, there are registered leave and licence agreements which indicate that the parties agreed to form the jural relationship of licensor and licensee. On the other hand, the petitioners rely upon a number of documents, namely, an agreement for the sale of the subject flat; the purported Will executed by late Nivruti Tapare; the irrevocable Power of Attorney and affidavits sworn by the respondent nos. 1 to 3 purportedly admitting the transaction of a different nature than a licence. The respondent nos. 1 to 3, however, assert that all those documents are false and forged and have been brought into effect to usurp the subject flat.

18. In the light of the aforesaid rival contentions, the pivotal question that arises for consideration is whether the contentious issue of existence of a different transaction between the parties, could have been legitimately enquired into by Competent Authority under Section 24 of the Rent Act, 1999.

19. Section 24 of the Rent Act, 1999 reads as under:

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

(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 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 licenced 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.

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 premises on licence;

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

20. On a plain reading, it becomes abundantly clear that the Competent Authority is a creature of the statute and has a limited jurisdiction. The remit of the jurisdiction of the Competent Authority is confined to determine the claim for eviction of a licensee filed by a licensor-landlord. Sub Section (3) expressly bars the Competent

Authority from entertaining a claim of any third party who is not a licensee. To arrive at the satisfaction that the period of licence has expired, the Competent Authority can embark upon an enquiry as to:

- i) Whether the landlord/licensor has given the subject premises on licence for residential purpose?
- ii) Whether there is a leave and licence agreement? Is it registered?
- iii) Whether the term of licence has expired.
- iv) Whether the licensee has delivered the possession of the licensed premises, after the expiry of term of licence?

21. Explanation (b) to Section 24 incorporates a presumption to the effect that an agreement of licence in writing shall be conclusive evidence of the facts stated therein.

22. Moreover, the provisions contained Act, 1999 envisage a summary procedure for the determination of the applications filed under Section 24 of the Act, 1999. Neither the question of title nor existence of rights emanating from a different jural relationship asserted by the licensee, in subject premises, can be legitimately inquired into in such summary proceeding.

23. In the case of **Surendra B. Agarwal** (Supra), on which reliance

was placed by Mr. Nimbalkar, the learned Single Judge of this Court considered the nature and import of the provisions contained under Section 24 of the Act, 1999 and the nature of the jurisdiction exercised by the Competent Authority. It was, inter alia, held that the pendency of the suit relating to the title of the licensor or for a declaration instituted by the licensee claiming certain rights in the subject premises can not preclude the Competent Authority from determining the application for eviction under Section 24 of Act.

24. Observations in Paras 10 to 12 of the said judgment read as under:

“10. Thus, the special provision has been made under the said Act for evicting the licencees of premises given on licence for residence.

A special procedure laid down under Chapter VIII governs the application made under [section 24](#) of the said Act. The said Act contemplates a summary disposal of the applications. By the very nature of the proceedings as reflected from the aforesaid statutory provisions, the jurisdiction of Competent Authority is very limited. It can decide a dispute between a landlord (licensor) and the licensee.

It is obvious that considering the summary nature of the proceedings, issue of title to the disputed premises can never be decided in such proceedings. The sub-[section 1](#) of [section 24](#) starts with non-obstante clause. Moreover [section 39](#) of the said Act gives overriding effect to the provisions of Chapter VIII. Therefore, pendency of a suit governed by [section 33](#) of the said Act or a suit on title cannot prevent the competent authority from deciding an application for eviction. There is no statutory power vesting the Competent Authority to stay the proceedings of the application under [section 24](#) of the said Act on the ground of pendency of a civil suit relating to the property.

11. All that is required to be considered by the Competent Authority is whether the landlord has given the premises on licence for residence and whether on expiry of period of licence the licensee has not delivered the possession of the premises subject matter of licence. Sub-[section 3](#) of [section 24](#) of the said Act specifically prevents the Competent Authority from considering a claim of any stranger. The intention of legislature of making an Agreement of Licence in writing as a conclusive evidence of the facts stated therein cannot be altogether ignored.

12. Hence, once application under [section 24](#) of the said Act is filed by the licensor, the Competent Authority has to decide the said application in accordance with law. The Competent Authority is not really concerned with the title of the licensor. All that is required to be examined is whether the applicant is a licensor and whether the opponent is the licensee and whether there was a Leave and Licence Agreement for residential use of the suit premises. In a case where licensee is claiming some other rights in relation to the premises in dispute, adjudication of the said rights cannot be made by the Competent Authority. Therefore, if a suit relating to the title of the licensor is pending or if a suit for declaration filed by the licensee claiming declaration of rights is pending, that is no ground to detain the hearing of application under [section 24](#) of the said Act. The pendency of suits in the Civil Court or other Competent Court relating to the premises in dispute does not affect the jurisdiction of the Competent Authority to decide the application. While deciding the application under [section 24](#) of the said Act the Competent Authority cannot decide the issue of title.”

(emphasis supplied)

25. The aforesaid being the position in law, the submission on behalf of the petitioners that the Competent Authority ought to have embarked upon an enquiry as regards the real nature of the jural relationship between the parties in the light of the documents and material brought on record by the petitioners, does not merit

consideration.

26. What is of critical salience is the fact that, after the expiry of the first agreement, the parties entered into a second leave and licence agreement for a further term of five years. In the face of these registered leave and licence agreement, the presumption contained in the Explanation (b) to Section 24 operated with full force and rigour. In a sense, the nature of jural relationship formed by the first agreement was reinforced by the second agreement. Therefore, the impugned orders which proceed on the promise of jural relationship of licensor and licensee, evidenced by the two leave and licence agreements, cannot be faulted at.

27. At the same time, the Court needs to be alive to the fact that the petitioners have instituted a suit for specific performance of the agreement for sale of the subject flat purportedly executed by late Nivruti Tapare. The character of the documents executed between the parties and the nature of the relationship formed thereby would be matters for adjudication by the Civil Court. Whether the petitioners were put in possession of the subject flat under the agreement for sale, or for that matter, the entirety of the circumstances indicates a transaction different than the one evidenced by the leave and licence

agreements, are the matters which can be legitimately adjudicated by the Civil Court and not by the Competent Authority. Since the petitioners have already instituted a suit for specific performance of the contract and injunction, the petitioners can seek the appropriate remedy before the Civil Court.

28. In this view of the matter, in exercise of the supervisory writ jurisdiction, no interference is warranted in the impugned order. However, the petitioners deserve a limited protection to approach the Civil Court and obtain an appropriate order. The Court is informed that the Civil Suit is listed before the City Civil Court on 21st August 2025.

29. Thus, this Court considers it appropriate to direct that the impugned orders be not executed for a period of two weeks from 21st August 2025.

30. In the meanwhile, if the petitioners move the City Civil Court, the learned Judge, City Civil Court seized with the suit is requested to decide the application for interim relief on its own merit and in accordance with law.

31. Hence, the following order :

- i) The petition stands dismissed.

ii) The impugned orders be not executed for a period of two weeks from 21st August 2025.

iii) Rule discharged.

iv) It is hereby clarified that this Court has not entered into the merits of the matter regarding the claim of the petitioners in the civil suit, and the learned Judge, City Civil Court shall not be influenced by any of the observations hereinabove, while deciding the application for interim relief/suit.

No costs.

(N.J. JAMADAR, J)