

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12163 OF 2025
WITH
INTERIM APPLICATION NO.38563 OF 2025

Jairam S. Mulchandani
Through POA Priti Jairam Mulchandani ...Petitioner
Versus
Stanley Dsouza ...Respondent

Mr. Manoj Mhatre a/w. Mr. Vasant P. Rainade, for the Petitioner.
Mr. Shailesh R. Gawande, for the Respondent.

CORAM: MADHAV J. JAMDAR, J.
PRONOUNCED ON: 20 JANUARY 2026
UPLOADED ON: 01 FEBRUARY 2026

JUDGMENT:

1. Heard Mr. Manoj Mhatre, learned Counsel appearing for the Petitioner and Mr. Shailesh Gawande, learned Counsel appearing for the Respondent.

2. By the present Writ Petition filed under Article 227 of the Constitution of India, the challenge is to the order dated 23rd December 2024 passed by the learned Additional Divisional Commissioner, Konkan Division, Mumbai in Revision No.746 of

2020 filed under Section 44 of the Maharashtra Rent Control Act, 1999. By the impugned order, the Additional Divisional Commissioner by setting aside the order dated 25th June 2024 passed by the Competent Authority, Konkan Division, Mumbai in Case No.47 of 2012 has directed the present Petitioner to hand over vacant and peaceful possession of the subject premises bearing Room No.34, AQS Mansion, behind Seaview Apartment, Chimbai Road, Bandra (W), Mumbai 400 050 to the Respondent and further directed payment of double license fee of Rs.6,000/- per month from 28th May 2018 till vacant possession of the said premises is delivered to the Applicant and directed that Rs.6,000/- per month rent charges from 11th June 2012 till delivery of possession of the subject premises be paid to the Respondent.

3. It is the submission of learned Counsel appearing for the Petitioner that the Petitioner has not been served in said Revision No.746 of 2024 and therefore, the impugned order has been passed without following the principles of natural justice. He further submits that in fact, the Petitioner purchased the subject premises and therefore, the Petitioner is the owner of the subject premises.

4. On the other hand, Mr. Gawande, learned Counsel appearing for the Respondent submitted that the subject premises has been given on leave and license basis. The Leave and License Agreement was executed on 28th July 2011, registered on 29th July 2011 and the period of the same was 11th July 2011 to 10th June 2012. It is specifically stated in the Leave and License Agreement that the Respondent-Licensor is the owner of the subject premises. Learned Counsel submitted that the said premises has been given on leave and license basis for residential purpose and the agreed license fees is Rs.3,000/- per month and security deposit is Rs.2,00,000/-. He submits that Leave and License Agreement is registered document therefore, no evidence can be led contrary to the terms and conditions of the leave and license in view of explanation (b) to Section 24 of the Maharashtra Rent Control Act, 1999.

5. Before considering the rival contentions, it is necessary to set out certain factual aspects. Admittedly, the Petitioner in capacity as Licensee and the Respondent in capacity as Licensor executed Leave and License Agreement on 28th July 2011. Admittedly, the said Leave and License Agreement is registered on 29th July 2011. The signature on the said Leave and License Agreement is

accepted. By the said Leave and License Agreement, the premises are given for residential purpose. It is specifically recorded in the said Agreement that the Respondent/Licensor is the owner of the subject premises.

6. In view of above admitted position, it is required to note, Explanation (b) to Section 24 of the Maharashtra Rent Control Act, 1999, which specifies that an agreement of licence in writing shall be conclusive evidence of the facts stated therein. As per the settled legal position, Leave and License Agreement is conclusive evidence of the facts stated therein and no other evidence can be led inconsistent with the said facts by either of the parties and is conclusive between the parties of the facts stated therein.

7. In view of the above legal position, it is necessary to set out certain terms and conditions of the Leave and License Agreement. The First and Second recital and Clause Nos.1 to 3 and 7 of the said Leave and License Agreement are relevant and read as under:

“WHEREAS the Licensor is the Owner, occupier and possessor in respect of a Room Premises, being and situated at Room Premises bearing Hut No. 77/HW/SG/36/14/263/186 year 1978 situated at

Room No. 34, AQS Mansion, Behind Sea View Apts., Chimbai Road, Bandra (W), Mumbai- 400 050, and the said hutment was surveyed in the year 1990 hereinafter called and referred to as the 'said Room Premises';

AND WHEREAS the Licensee being in need of Residential Premises, approached and requested the Licensor to grant his above Room Premises on leave and license basis and considering the genuine need of the Licensee granted the above said Room Premises to the Licensee on temporary basis for a period of 11 (Eleven) months, on certain terms and conditions which the parties have reduced into writing for their future reference and record as under: -

THAT THIS AGREEMENT THEREFORE WITNESSETH AS UNDER:-

- 1. That this Agreement has commenced from 11th day of July, 2011 and shall expire on 10th day of June, 2012, if the same is not terminated by either of the parties to this agreement, before the expiry as per the terms embedded in clause 6 of this Agreement.*
- 2. That the Licensee has deposited a sum of Rs.2,00,000/- (Rupees Two Lac Only) with the Licensor as and by way of Security Deposit towards the use and occupation of the above said Room Premises as agreed by and between the parties.*
- 3. That the Licensee shall pay a sum of Rs. 3,000/- (Rupees Three Thousand Only) as and by way of Monthly Compensation towards the use and occupation of the Licensed Premises and the said*

amount shall be deducted from the Security Deposit Amount as agreed by and between the parties.

7. The Licensee doth hereby promises to handover peaceful and exclusive possession of the said premises to the Licensor on expiry of this agreement period or earlier termination and the licensor doth hereby promises to the licensee to refund the balance amount of deposit amount.”

(Emphasis added)

8. Thus, it is clear that Leave and License Agreement specifically records that the licensor i.e. Respondent is the owner of the said premises. Said Leave and License Agreement has commenced from 11th July 2011 and expired on 10th June 2012. The Licensee deposited sum of Rs.2,00,000/- with the Licensor as and by way of security deposit towards the use and occupation of the above said premises and a sum of Rs.3,000/- as and by way of monthly compensation towards the use and occupation of the premises and the said amount shall be deducted from the security deposit amount as agreed by and between the parties.

9. Thus, the above terms and conditions of the Leave and License Agreement shows that admittedly the Respondent i.e. licensor is the owner of the said premises, the period of Leave and

License Agreement is from 11th July 2011 till 10th June 2012 and the Licensee i.e. the present Petitioner has agreed to handover peaceful and exclusive possession of the said premises to the Licensor i.e. the present Respondent on expiry of the license period. Thus, by no stretch of imagination, the Petitioner can be allowed to lead the evidence to the effect that the Petitioner is owner of the premises in question which is contrary to the express terms of the Leave and License Agreement and leading such evidence is not permissible in view of explanation (b) to Section 24 of the MRC Act.

10. Although it is the contention of learned Counsel appearing for the Petitioner that as the Petitioner has not been served, the order passed by the Additional Commissioner is contrary to the principles of natural justice, however, the Additional Divisional Commissioner, Konkan Division, Mumbai has specifically observed that the Petitioner has been served. Therefore, there is no substance in the contention of learned Counsel appearing for the Petitioner that the Petitioner has not been served and therefore, the impugned order is passed without following the principles of natural justice.

11. However, even if it is assumed that the Petitioner has not been served and the impugned Order is contrary to the principles of natural justice, then also it is relevant to note that the Supreme Court in the decision in the case of *State of Uttar Pradesh vs. Sudhir Kumar Singh & Ors.*¹ has considered the issue whether in the cases where it is found that the principles of nature justice are not followed, then in such a situation it is required to set aside the impugned Order and the matter is remanded back to the learned Court. The relevant paragraph of said judgment i.e. paragraph No.42, is as under:

“42. An analysis of the aforesaid judgments thus reveals:

42.1. Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

42.2. Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

¹ (2021) 19 SCC 709

42.3.No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

42.4. In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

42.5. The “prejudice” exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice.”

(Emphasis added)

12. Thus, what the Supreme Court has held that natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the *audi alteram partem* rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused. Where procedural and/or substantive provisions of law embody the principles of natural justice, their

infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest. It is further held that no prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice. It is further held that in cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person. It is further held that the “prejudice” exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of

likelihood of prejudice flowing from the non-observance of natural justice.

13. In this particular case, admittedly the Leave and License Agreement is registered document. It is an admitted position that the Petitioner has executed the said Leave and License Agreement. The said Leave and License Agreement specifically records that the Respondent is the owner of the premises. The Agreement prescribes the period from 11th July 2011 till 10th June 2012 as license period. As noted herein above, Explanation (b) to Section 24 of the Maharashtra Rent Control Act, 1999 is very clear that an agreement of license in writing shall be conclusive evidence of the fact stated therein. Thus, there is no prejudice which is caused to the Petitioner even assuming that the Petitioner has not been served and there is violation of the principles of natural justice.

14. Thus, there is no substance in the Writ Petition. Accordingly, the Writ Petition is dismissed, however, with no order as to costs.

15. In view of the dismissal of the Writ Petition, nothing survives in the Interim Application and the same is also disposed of.

16. At this stage, learned Counsel appearing for the Petitioner seeks stay of this order. However, in the facts and circumstances, when the period of Leave and License Agreement has expired on 10th June 2012, no case is made out for grant of stay. Accordingly, the said request is rejected.

[MADHAV J. JAMDAR, J.]

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