
(2016) 10 BOM CK 0002

In the Bombay High Court

Case No : Writ Petition No. 8823 of 2016.

**Darshansing Indarsing Sodhi and Another - Petitioners @HASH Podar
Education and Sports Trust Through Its Managingtrustee Pawan Podar
and Another**

Date of Decision : 03-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Maharashtra Rent Control Act, 1999 — Section 41(c), Section 43(4)

Citation : (2016) 6 BCR 259 : (2017) 1 RCRRent 361

Hon'ble Judges : T.V. Nalawade, J.

Bench : Single Bench

Advocate : Murkute J.M., Advocate, for the Petitioners; S.N. Kendre, AGP, for the Respondent No. 2; S.B. Deshpande, Advocate, for the Respondent No. 1

Final Decision : Dismissed

Judgement

T.V. Nalawade, J. - The petition is filed to challenge the judgment and order of Revision No. 244/2015, which was pending before the learned Additional Commissioner, Aurangabad Division, Aurangabad. The revision was filed against the order made by the learned Deputy Collector, Aurangabad in Rent Application No. 1/2014. The proceeding is dismissed by the authority in revision by holding that it is not tenable before the competent authority under the Maharashtra Rent Control Act, 1999 (hereinafter referred to as "the Act" for short). Both the sides are heard.

2. Under the leave and licence agreement made in the year 2007, the petitioners had given their property bearing plot Nos. 1, 4 and 26 situated at Shahanurwadi Chowk, Aurangabad for the period of five years. Under the agreement, there are some terms, giving right to the party to extend the period and there are also terms and conditions that licensee will be liable to pay compensation, if licensee continues possession, when there is no continuation of licence period. In view of the points involved in the present matter, other terms and conditions of the agreement are not discussed.

3. In the proceeding which was filed under the provisions of sections 24 r/w. 42 of the Act, the licensee filed application contending that the competent authority created under the Act has no jurisdiction over the matter as the premises was given to the licensee for running school and it was not given for residential purpose. The learned Deputy Collector, the competent authority created under the Act, rejected the application of the present respondent by holding that there was jurisdiction to the competent authority. This decision is set aside by the learned Additional Commissioner and it is held that as the premises is given to run the school under the licence, there is no jurisdiction to the competent authority.

4. This Court has carefully gone through all the provisions of the Act to see the scheme of the Act. The scheme shows that in the State, where there are Small Causes Courts, jurisdiction is given to Small Causes Court and where there is no Small Causes Court, the jurisdiction is given to the Court of Civil Judge, Junior Division. Even if there are Courts, the matters would lie before the competent authority created under the Act, under section 40 of the Act for subject matters mentioned in Chapter VIII of the Act. The Small Causes Court and the Court of Civil Judge Junior Division will not have jurisdiction if the jurisdiction is specifically given to the competent authority under the Act. If there is no such authority established by the State Government, then there would be the jurisdiction in respect of those subject matters also to the Small Causes Court or to the Court of Civil Judge, Junior Division, as the case may be. The relevant provisions are being quoted hereinafter.

5. In section 7 (1) of the Act, "competent authority" is defined and it says that "competent authority" means the competent authority appointed under section 40 of the Act. For the present matter, the provisions of Chapter VII and VIII of the Act are relevant and the remaining provisions for other special categories need not be considered. In section 33 (1), which is a part of Chapter VII of the Act, it is made clear that the jurisdiction of Courts (Small Causes Court and Court of Civil Judge, Junior Division) given under section 33 is subject to the provisions of Chapter VIII of the Act. The provision of section 39 which is part of Chapter VIII runs as under :-

"39. Provisions of this Chapter to have overriding effect.- The provisions of this Chapter or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained elsewhere in the Act or in any other law for the time being in force."

6. Section 40, which is again a part of Chapter VIII of the Act shows the power is kept with the State Government to appoint competent authority for exercising power under Chapter VIII of the Act. The notification No. MRA-2000/C.R.-14/Bhanika dated 19.5.2000 shows that for Aurangabad Municipal Corporation area S.D.O. (Sub Divisional Officer of the Revenue Department) is appointed as competent authority.

7. In section 41 of the Act, the definition of "landlord" is given and it is made clear that this definition is for the purpose of only the provisions of Chapter VIII of the Act. In view of these provisions of the Act, the definition of "landlord" given in section 7 (3) of the Act cannot be used for the purpose of provisions of Chapter VIII of the Act. The relevant provision of section 41 (c) is as under :-

"41. Definition of landlord for the purpose of Chapter VIII.- For the purpose of this Chapter, landlord means a landlord who is.-

(a)

(b)

(c) a person who has given premises on licence for residence or a successor-in-interest referred to in Section 24."

This provision shows that the licensor, who has given premises for residential purpose only can file a proceeding before the competent authority created under Chapter VIII. Section 24 is also mentioned in section 41 (c) of the Act and that section runs 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 licensed 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 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.

Explanation.- For the purpose 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."

8. The aforesaid provision, section 41 (c) of the Act shows that only if the premises is given for residence purpose under licence, the matter will fall under Chapter VIII of the Act. In that case, only competent authority will have jurisdiction and the Court of Small Cause or Court of Civil Judge, Junior Division will not have jurisdiction. As in the present matter, admittedly the premises was given to present respondent to run educational institution, it was not given for residence purpose and so, the subject matter does not fall under the provision of Chapter VIII of the Act. The provisions of section 42 and 43 mention the procedure which is required to be followed for getting relief from the competent authority and so, those provisions need not be discussed. The provision of section 43 (4) of the Act shows the restriction on the rights of the licensee and the necessity for licensee to seek permission, leave of the competent authority to defend the proceeding filed before the competent authority. The provisions of Chapter VIII of the Act shows that the proceeding is of summary nature. It appears that the present petitioners want to use this procedure due to the nature of procedure mentioned in Chapter VIII of the Act. As the subject matter itself does not fall under Chapter VIII of the Act, this Court holds that the learned Additional Commissioner has not committed any error in allowing the revision and dismissing the proceeding which was filed before the competent authority. There is no room to interfere in the order made by the learned Additional Commissioner.

9. In the result, the petition stands dismissed.