
(2019) 12 BOM CK 0014
In the Bombay High Court
Case No : Writ Petition No. 5838 Of 2019

Manu

APPELLANT

Vs

Nilima And Ors

RESPONDENT

Date of Decision : 03-12-2019

Acts Referred:

Maharashtra Rent Control Act, 1999 — Section 24, 24(1), 24(3), 43, 44, 44(2)
Punjab Tenancy Act, 1887 — Section 8

Citation : (2019) 12 BOM CK 0014

Hon'ble Judges : A.S. Chandurkar, J

Bench : Single Bench

Advocate : Romill Jain, Dr Anjan De, M. Anilkumar, S.B. Bissa

Final Decision : Dismissed

Judgement

1. The challenge raised in the present writ petition is to the order passed by the Additional Commissioner in proceedings under Section 44 of the Maharashtra Rent Control Act, 1999 (for short, the said Act). By that order the revision application preferred by the petitioner for challenging the order passed by the Competent Authority on 14/01/2019 allowing the application preferred by the respondent No.1 and directing eviction of the respondent No.2 is under challenge.

2. It is the case of the respondent No.1-licensor that on 18/08/2010 an agreement of licence was entered into between the respondent No.1 and respondent No.2. The property owned by the respondent No.1 was given on Leave and Licence basis to the respondent No.2 for a period of 11 months from 01/04/2010 to 28/02/2011. Since the respondent No.2 did not hand over vacant possession the respondent No.1 filed proceedings under Section 24 of the said Act seeking eviction. The Competent Authority by its judgment dated 14/01/2019 allowed that application and directed the respondent No.2 to vacate the suit premises within a period of 90 days. The respondent No.2 was also directed to pay damages at Rs.34860/- per month from 01/03/2011 till delivery of possession. The respondent No.2 has challenged the aforesaid judgment by

filing a revision application under Section 44 of the said Act which is pending. The petitioner also filed a revision application under Section 44 of the said Act on the ground that she was in possession of the suit premises on the basis of an oral agreement entered into with the respondent No.1 and that by virtue of the order passed by the Competent Authority she was not liable to be evicted. In that revision application the respondent No.1 raised an objection to the maintainability of the said proceedings. By the impugned order dated 04/07/2019 the Additional Commissioner held that the revision application preferred by the petitioner was not maintainable. Being aggrieved that order has been challenged in this writ petition.

3. Shri R. Jain, learned counsel for the petitioner submitted that though initially possession of the property in question was with the respondent No.2, the petitioner on the basis of an oral agreement with the licensor was put in possession and she was occupying the same. Amount of rent of Rs.2,19,600/- was paid by her to the respondent No.1 being rent for the period from 01/03/2011 to 28/02/2013. According to the learned counsel even thereafter rent has regularly been paid at the rate of Rs.9300/- per month. Referring to the provisions of Section 44(2) of the said Act it was submitted that any person aggrieved by the order passed by the Competent Authority had liberty to challenge such order. Since the petitioner was being evicted on the basis of the order passed by the Competent Authority in which proceedings the petitioner was not arrayed as a party, the petitioner was entitled to challenge that order. By accepting rent from the petitioner, her status as licensee was recognised. He therefore submitted that the revision petition ought to be entertained and decided on merits.

4. Shri A. De, learned counsel for the respondent No.1 supported the impugned order and submitted that the petitioner was not the licensee of the respondent No.1. The respondent No.2 had been given the suit property on the basis of the agreement that was entered into on 18/08/2010. The said property was taken by the respondent No.2 for residential use of the General Manager of the said Company for a period of eleven months. Instead of the General Manager vacating the same after the period of license came to an end, the petitioner who was the wife of the General Manager in absence of any right whatsoever and without there being any agreement started occupying the same. The Additional Commissioner rightly held that the revision application preferred by her was not maintainable. He therefore submitted that there was no interference required with the impugned order.

Shri M. Anilkumar, learned counsel for the respondent No.2 referred to the submissions filed on behalf of the respondent No.2. He further submitted that the order passed by the Competent Authority against the respondent No.2 had been challenged by filing a separate revision application.

5. I have heard the learned counsel for the parties and I have given due consideration to their respective submissions. It is an admitted fact that a Leave

and License agreement was entered into between the respondent No.1 and respondent No.2 on 18/08/2010. The license was for a period of eleven months and the husband of the petitioner who was an Officer with the respondent No.2-Company was residing therein. The petitioner claimed to be in possession on the basis of an oral agreement which is denied by the respondent No.1. Under Section 24(1) of the said Act the respondent No.1 as the landlord had made an application seeking recovery of possession of the premises from the respondent No.2 after expiry of the period of license. Under Section 24(3) of the said Act the Competent Authority has no jurisdiction to entertain any claim of whatever nature from any other person who is not a licensee according to agreement of license. As per the Explanation to Section 24(3) of the said Act, an agreement of licence in writing shall be conclusive evidence of the fact stated therein. Chapter VIII of the said Act prescribes the manner in which applications referred to therein are required to be summarily disposed of. Section 43 prescribes the special procedure for disposal of applications. Under Section 44(2) of the said Act any person aggrieved by an order passed by the Competent Authority can invoke revisional jurisdiction of the State Government or the Authority delegated with such power.

The provisions of Section 24(3) have to be read alongwith the provisions of Section 44(2) of the said Act while considering the question whether the petitioner could be treated as a party aggrieved by the order passed by the Competent Authority. In *Tara Chand and ors. vs. Gram Panchayat, Jhupa Khurd and ors.* (2012) 13 SCC 269 the words "any person" as appearing in Section 8 of the Punjab Tenancy Act, 1887 and their time import fell for consideration. It was observed as under:

20. Generally, the phrase "any person" should be given the widest possible import, and the words may cover person other than those mentioned in various other provisions of the statute. But, if the statutory provisions suggest, that the legislature itself has intended to give a restricted meaning to the phrase "any person", then it is not open to the Court to give a wide or unrestricted meaning to the words "any person".

6. When the provisions of Section 24(3) of the said Act preclude the Competent Authority from entertaining any claim of whatever nature made any other person who is not a licensee then the question as to whether the person invoking revisional jurisdiction is a person aggrieved has to be determined in that context. If the petitioner who did not have any written Leave and License agreement in her favour could not have invoked the jurisdiction of the Competent Authority under Section 24(3) of the said Act, she also could not be treated as a person aggrieved by the order passed by the Competent Authority under Section 24 of the said Act for the purposes of Section 44(2) of the said Act. Since provisions of Chapter-VIII are in the nature of a complete Code in itself, the rights of the parties especially the licensor and the licensee would be governed by those provisions. The insistence appears to be on an agreement of licence in writing. In

so far as a person who is neither the licensee nor the licensor under an agreement of licence in writing, such person would be required to avail the remedy under the general law to agitate his right. In that view of the matter it is found that the revisional Authority rightly held that in absence of any written Leave and License agreement between the petitioner and the respondent No.1, the petitioner could not be treated as a person aggrieved for entertaining her revision application to challenge the order passed under Section 43 of the said Act. The impugned order therefore does not call for any interference.

7. This Court while issuing notice on 22/08/2019 had directed the petitioner to deposit the amount of Rs.7,53,300/- being the amount of rent from 01/03/2013 and onwards as a condition for protecting the petitioner's possession. The said amount has been determined by considering the rent to be Rs.9300/- per month. The aforesaid amount has been deposited by the petitioner. The respondent No.1 seeks permission to withdraw that amount. Though this request is opposed by the learned counsel for the petitioner, since the petitioner was permitted to continue in possession and she was directed to deposit amount of Rs.7,53,300/- for that purpose, the respondent No.1 is permitted to withdraw the aforesaid amount with accrued interest. It is open for the petitioner to get her rights adjudicated by invoking the due process of law and by approaching the Court of competent jurisdiction. The amount of rent paid by her and withdrawn by the respondent No.1 would be subject to such rights of the petitioner being determined in appropriate proceedings. The respondent No.1 is also at liberty to proceed against the petitioner if so advised to claim any damages from the petitioner.

With these observations the writ petition stands dismissed with no order as to costs.