
(2009) 04 BOM CK 0158

In the Bombay High Court

Case No : Writ Petition No. 3652 of 2009

Shivaji Dhondiram Mali

APPELLANT

Vs

The Divisional Controller, Maharashtra State Road Transport Corporation and Another

RESPONDENT

Date of Decision : 02-04-2009

Acts Referred:

Bombay Government Premises (Eviction) Act, 1955 — Section 4, 4(1), 7

Citation : (2009) 3 BomCR 30

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : S.G. Deshmukh, for the Appellant; G.S. Hegde and P.P. Kakade, AGP, for the Respondent

Final Decision : Dismissed

Judgement

Anoop V. Mohta, J.—By consent of parties, heard finally at this stage. Since the issues involved in these writ petitions are common, the same are being disposed of by this common order.

2. The petitioners in all these petitions are in possession of respective premises under respective Licence Deeds with respondent No. 1-Maharashtra State Road Transport Corporation (MSRTC). Apart from other clauses, the relevant Clause 15(c) is reproduced as under:

15(c)- The deed of licence can, during its currency, be terminated by either party by serving three calendar months' notice in advance without assigning any reason.

3. Admittedly, the notices dated 08.08.2002 as contemplated were issued to the concerned petitioners by the respondents. Thereafter, the respondents filed proceedings u/s 4 of the Bombay Government Premises (Eviction) Act, 1955 (for short, "the Act") before the Competent Authority (Resident Deputy Collector, Sangli) on 12.01.2002. The parties led evidence and after considering the rival

contentions by on 04.07.2007 passed the impugned order of eviction by allowing the application filed by respondent No. 1.

4. An Appeal u/s 7 of the Act was available. Therefore, all the petitioners preferred their respective Eviction Appeals. The Appellate Court also, after considering the grounds as raised by the petitioners, maintained the Orders of eviction and thereby rejected the Appeals of the petitioners.

5. Admittedly, the petitioners are in possession of the premises on the basis of Licence Deeds. Therefore, there was a specific contract between the parties. Their possession itself based upon the said contract of which Clause 15(c) as reproduced goes to the root of the present matters. Once it is agreed between the parties that either party can terminate the tenancy by giving three months notice without assigning any reason, in my view, such Applications for eviction are maintainable.

6. Section 4 of the Act contemplates various situations, whereby the respondents or such other Authority in a given case, where such licensee or such person fail to vacate the premises inspite of termination notice, they can apply to the Competent Authority for eviction. The requirement is that the Competent Authority satisfies that all those ingredients as mentioned in Section 4 of the Act are available or not. The second requirement is that the Competent Authority must give hearing to the parties. In the present case, as noted, the parties were heard and the impugned orders have been passed.

7. The submissions; that the Application refer only to Section 4(1)(iii) of the Act and; further they required these premises for commercial purposes, but, the ingredients as contemplated are not sufficient; for the modernisation of the Bus Depot, the construction is not possible on the land in question and, therefore, these Applications are not bonafide are unacceptable.

8. In my view, once the licence is terminated by giving due notice as per the agreed licence deeds/Agreements between the parties itself, these submissions now raised are not acceptable to interfere with the impugned orders passed, concurrently, by both the Authorities. Even otherwise, it is difficult to accept the contention as raised that the present Application u/s 4 of the Act as filed by the respondents were not maintainable as the same were filed within three months of the notices in question. There is no such provision and/or clause pointed out under the Act or in the Agreements that before filing such proceedings or before initiation of such proceedings, it is mandatory requirement to issue notices for filing such Applications for eviction. The requirement is the satisfaction of the Competent Authority as contemplated u/s 4 of the Act. There is no dispute about the termination notice dated 08.08.2002. Therefore, independently of these notices, in a given case, respondent No. 1 can invoke Section 4 to evict such persons who are in occupation of the premises based upon the Agreement/Licence. The requirement of termination of licence is due termination notice without assigning any reasons which in these cases have been complied with

apart from the additional grounds raised in the application. I see there is no perversity in those findings also. There is no reason to interfere with the orders of eviction as passed.

9. The modernisation of Bus Stand/Depot by respondent No. 1 is need of the time. For that a situation like this is always there, but considering the public interest such action of eviction by following due procedure of law cannot be said to be beyond the scope and/or power under the Act.

10. However, in case it is not possible for respondent No. 1 to construct any building or premises on the land in question, then in that case, they may consider to re-allot the same to the petitioners on licence or on such other basis, if possible and permissible under the law.

11. Resultantly, all these writ petitions are dismissed. No costs.

12. The learned Counsel for the petitioners seeks stay of this order for four weeks from today. Considering the fact that the petitioners are doing business in the premises since long, I am inclined to grant time to vacate the premises for four weeks from today on filing usual undertaking within two weeks from today. In the meantime, the petitioners shall not create any third party right or interest in the property.