

(2014) 03 BOM CK 0117

In the Bombay High Court

Case No : Writ Petition No. 9851 of 2013

The Association of Recognized Agents, Regional and State
Transport Authority

APPELLANT

Vs

The Chief Executive Engineer and Others

RESPONDENT

Date of Decision : 07-03-2014

Acts Referred:

Bombay Government Premises (Eviction) Act, 1955 — Section 4 4(2) 5

Civil Procedure Code, 1908 (CPC) — Section 151

Constitution of India, 1950 — Article 226

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 15 7 7(2)

Citation : (2014) 3 ABR 68 : (2015) 3 ALLMR 785 : (2014) 4 BomCR 618

Hon'ble Judges : G.S. Kulkarni, J

Bench : Single Bench

**Advocate : Yatin R. Shah, for the Appellant; Jaydeep Deo AGP for Respondent
Nos. 1 to 4, for the Respondent**

Final Decision : Dismissed

Judgement

G.S. Kulkarni, J

Rule Returnable forthwith. Counsel for the Respondents waive service. By consent of the Counsel taken up for hearing.

1. By these proceedings under Article 226 of the Constitution of India the petitioner which is an association of recognized Agents of the Regional Transport Authority is challenging the Judgment and order passed by the learned Judge of the Bombay City Civil Court in Misc. Appeal No. 81 of 2012. By the impugned Judgment, Misc. Appeal filed by the petitioner against the order of eviction passed by the Competent authority u/s 4 of Bombay Government Premises (Eviction) Act 1955 (hereinafter referred to as the said Act) and an order of demand of arrears of rent of Rs. 5,17,818/- passed u/s 5 of the said Act has been dismissed.

The facts in nutshell are:

The petitioner is a registered Association formed by the Regional Transport Officers" (RTO) agents who were given permission to occupy a room in the RTO Compound, located at Tulsiwadi, Tardeo Mumbai. It is the case of the petitioners that prior to 1950 office of the R.T.O. office was situated at Crawford Market and various persons were acting as R.T.O. agents from a table space provided to them in an open compound at Crawford Market, Mumbai. That sometime in the year 1950 office of the R.T.O. was shifted at Tardeo and hence the agents who were working at Crawford Market were required to be shifted to a new place where a table space was provided.

2. Sometime in the year 1964 the then Government of Bombay had accorded to the agents the status as recognized agents and thereafter the recognized agents organized themselves and formed the petitioner Association. On 4.7.1956 the petitioner Association was registered under the provisions of the Societies" Registration Act, 1860 and started functioning with the object of guiding and helping the motoring public in compliance of the Motor Vehicles Department rules and regulations so as to render services as a link between the department and the motoring public. After the operations of the Association commenced, recommendations were made by the Regional Transport Authority to the Government of Maharashtra that the petitioner be given a room in the compound of the R.T.O. on rent to house the office of the Association. The government had accepted the request and the petitioners were allotted a room admeasuring 300 sq. feet on a monthly rent of Rs. 65/-. A formal agreement of lease was executed on 18.6.1957.

3. The Executive Engineer, Residency Division, Mumbai issued a eviction notice dated 14.3.1984 inter alia stating that the petitioners were called upon to quit and deliver vacant possession of the said room admeasuring 300 sq. ft. on expiration of one month and in any case on 30.4.1984 failing which proceedings to evict by adopting due process of law would be initiated. The petitioners being aggrieved by the said eviction notice approached the Bombay City Court by filing S.C. Suit No. 2872 of 1984. By an order dated 26.9.1984 the Bombay City Civil Court had issued a temporary injunction against the respondents from acting and/or taking any further action on the basis of the termination notice dated 14.3.1984. This suit of the petitioners was pending till the year 2001. By an order dated 12.2.2001 the suit was dismissed for default and in view thereof the interim injunction stood vacated. Almost up to the year 2010, no action was taken by the petitioners to seek any orders for restoration of the suit.

4. The petitioners almost after more than nine years filed Notice of Motion No. 1796 of 2010 in the said suit and prayed for restoration of the suit which was dismissed by the order dated 12.2.2001. By an order dated 10.11.2010 the learned Judge of the Bombay City Civil Court restored the suit, subject to cost of Rs. 7000/- to be deposited by the petitioner on or before 30.11.2010. It appears from record that though the suit was restored no orders were passed to restore the temporary injunction. The suit was withdrawn by the petitioners on

25.3.2011 in view of the statement made by the officer on behalf of the R.T.O. stating that a fresh notice has been issued to the petitioners in the year 2010 under which inquiry proceedings were initiated.

5. The respondent nos. 1 and 2 from time to time had issued notices to the petitioners demanding rent. Notices were issued for several years. Those proceedings for eviction were initiated against the petitioners under the provisions of Bombay Government Premises (Eviction) Act 1955 by issuance of a show cause notice dated 13.10.2010 issued u/s 4(2) of the said Act and a notice demanding compensation of Rs. 5,58,978/- u/s (2) 5 of the Act. The petitioners appeared before the Competent Authority and contested the proceedings. The petitioners contended in their written statement that the demand of arrears of rent of an amount of Rs. 5,17,818/- was barred by limitation. It was contended that the eviction notice was issued without application of mind. It was contended against a similar notice S.C. Suit No. 2832 of 1984 was filed by the petitioner before the Bombay City Civil Court. It was disputed that the R.T.O. Authorities had any bonafide requirement in view of the increase in work in the R.T.O. office and shortage of space. An opportunity to lead evidence was sought for.

6. Proceedings before the Estate Officer/Competent authority culminated by an order dated 13.4.2012 passed by the Competent authority directing eviction of the petitioners from the suit premises and further a compensation of an account of arrears of rent of Rs. 5,58,978/- up to the period of March, 2012 was ordered to be recovered. In pursuance of this order passed by the Competent authority notice dated 13.4.2012 was issued calling upon the petitioners to hand over the possession of the premises within one month from the date of receipt of the said notice as also a notice calling upon the petitioners to deposit an amount of Rs. 5,58,978/- within a period of 10 days was issued.

7. The petitioners being aggrieved by the eviction order dated 13.4.2012 and the demand of Rs. 5,17,818/- as arrears of rent passed by the competent authority filed an appeal before the Bombay City Civil Court being Misc. Appeal No. 81 of 2012. By an interim order dated 7.2.2012 passed by the learned Judge of the Bombay City Civil Court, the respondents were directed not to take any coercive action in pursuance of the impugned eviction order passed by the Competent authority. The said Misc. Appeal was finally heard and decided by the impugned Judgment dated 26.7.2012 whereby the learned Judge was pleased to dismiss the petitioner's Misc. Appeal and confirmed the order dated 13.4.2012 passed by the Competent authority evicting the petitioners from the said premises and demanding Rs. 5,17,118/- as arrears of rent.

8. I have heard Mr. Ketan Shah learned counsel for the petitioners and Mr. Jaydeep Deo learned AGP appearing on behalf of the respondents. With the assistance of the learned counsel appearing for the parties, I have gone through the record of the present writ petition and the compilation of the documents submitted on behalf of the petitioner.

9. Learned counsel appearing for the petitioners contends that the impugned Judgment and order does not take into consideration that the petitioners were allotted the premises in 1957. He further submits that the demand of arrears of rent of Rs. 5,17,818/- as made by the respondents was wholly untenable and barred by limitation. It is submitted that the premises in occupation of the petitioners were very small and hence, considering the area available with the respondents at R.T.O. compound at Tardeo, Mumbai it cannot be said that there was real and bonafide requirement of the area for the R.T.O. It was submitted that requirement of law as laid down in the Judgment of the Supreme Court in the case of New Delhi Municipal Committee Vs. Kalu Ram and Another, completely prohibits the respondents from seeking arrears of rent from the year 1980.

10. On the other hand learned AGP appearing on behalf of the respondents submitted that the impugned order passed by the Bombay City Civil Court does not call for any interference. It is submitted that the petitioners were rank defaulters in payment of even meagre rent of Rs. 65/-. He submits that under clause 5(b) of the Agreement dated 18.2.1957 entered between the Government of Bombay and the petitioners there was an obligation on the part of the petitioners to deposit rent without being called upon to do so by the respondents. He submits that in view of the workload and expansion of the operations of the R.T.O. office Mumbai there was a bonafide requirement and need for more office space and that such a need is already on the record of the proceedings. It is submitted that this requirement of the premises by the government can in no manner be disputed by the petitioners. He submitted that the petitioners have no legal right to hold on to the premises and more so in contravention of the terms and conditions of the agreement dated 18.6.1957. He submits that the respondents were justified in terminating the agreement and seeking eviction of the petitioners and the notice dated 13.10.2010 also clearly indicated that the respondents have sought eviction of the petitioners from the suit premises as per the provisions of law. He further submits that but for the suit instituted by the petitioners in the year 1984 eviction proceedings were already and justifiably initiated against the petitioners in the year 1984 itself, could have attained finality. He submits that the petitioners however without any legal right and unanimously continued to occupy the said premises.

11. Taking into consideration the rival submissions of the parties, it is required to be examined whether the impugned judgment of the learned Judge of the Bombay City Civil Court requires any interference in the present proceedings. The record of the present proceedings indicate that the petitioners though were granted the premises in question under the agreement dated 18.6.1957, the petitioners however on various occasions had defaulted in payment of the rent of Rs. 65/- per month. In fact eviction proceedings were initiated against the petitioners in the year 1984 by issuance of eviction notice dated 14.3.1984 which came to be challenged by the petitioners filing a suit before the Bombay City Civil Court and obtaining an injunction. The injunction was in operation up to the year

2001 when the suit came to be dismissed for default. The petitioners almost in 2010 adopted proceedings and sought restoration of the suit. Admittedly, neither for the earlier period nor from 2001 till date the petitioners have paid any rent in respect of the premises much less the contractual rent. On a query being made by the Court, as to whether the petitioners had complied their obligation to deposit the rent of Rs. 65/- as agreed by them in the agreement dated 18.6.1965 the learned counsel for the petitioners could not show any material which would indicate that the petitioners had complied with their obligation under the agreement to make time to time payment of rent. The petitioners cannot have a higher right than the one conferred on them under the agreement dated 18.6.1957. If the petitioner acted in breach of the conditions of the said agreement the government becomes entitled to seek eviction of the petitioners from the said premises as per the provisions of law and such an action cannot be faulted with. The petitioners do not have any other legal right to seek occupation of the premises in perpetuity and that too by acting in breach of the agreement dated 18.6.1957. It therefore cannot be said that there was anything arbitrary much less illegal on the part of the concerned department to initiate eviction proceedings against the petitioner in these circumstance. A perusal of the record shows that no justifiable reason has been shown by the petitioners which can render the eviction action unjustified or unlawful. In my opinion, the learned Judge of the Bombay City Civil Court has rightly taken into consideration the entire factual matrix and the inquiry proceedings before the Competent authority and on appropriate consideration of the facts and the legal position has rightly upheld the order of eviction dated 13.4.2012.

12. The next contention as raised by the petitioner is that the respondents had no authority to demand arrears of rent and hence the demand of Rs. 5,58,978/- as raised by the respondents vide the notice dated 13.10.2010 is illegal. It is submitted that the demand of arrears of rent is barred by limitation. In this regard, reliance has been placed on the judgment of the Supreme Court in the case of New Delhi Municipal Committee vs. Kaluram (supra). The learned Judge of the City Civil Court has rejected the contention of the petitioner that the claim is time barred and has upheld the authority of the respondents to demand arrears of rent. In this context a reference is required to be made to Article 112 of the Limitation Act, 1963 which provides as under:

Part IX-Suits Relating to Misc. Matters

13. It is clear from the provisions of Article 112 of the Limitation Act that for a suit to be instituted by or on behalf of the State Government the prescribed period of limitation is 30 years. Therefore, respondents nos. 1 and 2 would be justified in making a claim for arrears so as to fall within the prescribed limitation of 30 years. The petitioners therefore may not be justified in relying on the judgment of the Supreme court in the case in New Delhi Municipal Committee vs. Kalu Ram (supra) as the Supreme Court in that case was dealing with an issue falling u/s 7 of the Public Premises (Eviction) of Unauthorised Occupants Act,

1958 in respect of the premises belonging to the New Delhi Municipal Committee and not government premises as in the present case so as to attract Article 112 of the Limitation Act, 1963.

This legal position was considered by a learned Single Judge of this Court in the context of the proceeding arising out of Public Premises (Eviction) of Unauthorised Occupants Act, 1958 in the case of Controller of Aerodrome, Nagpur Airport Vs. Homi D. Jahangir and Another, In this Judgment, the learned Single Judge after taking into consideration the judgment of the Supreme Court in the case of in the case New Delhi Municipal Committee vs. Kalu Ram has observed as under:

6. The next contention of Shri Kothari is that a claim which is not recoverable, cannot be entertained by the Estate Officer. According to him the claim was time barred and therefore, it was not a claim which could be entertained by the Estate officer for the purpose of recovery of arrears of rent in this case. Shri Kothari relied on the decision of the Supreme Court appearing in New Delhi Municipal Committee Vs. Kalu Ram and Another, . There is no dispute with the authority of the Supreme Court in this decision, but a mere look at the case would show that the public premises in question were owned by New Delhi Municipal Committee which was the appellant in the case. The Municipal Committee is obviously a Corporation and will be governed under Article 52 of the Indian Limitation Act and therefore, this authority will not be of any help to the non-applicant No. 1.

7. Shri Kothari further argued that Article 52 refers to a claim for arrears of rent and Article 112 does not refer to any such claim. It would be useful to see that Article 112 is in part IX of the Limitation Act under the head "Suits relating to Miscellaneous Matters." The Controller of Aerodromes, Nagpur Airport clearly represents the Union of India and therefore he presented the claim before the Estate Officer on behalf of the Union of India i.e. the Central Government and the claim in question would fall under Article 112 of the Indian Limitation Act, where the limitation is 30 years and not 3 years. The learned District Judge, therefore was clearly in error to taking the view that the claim is on behalf of the Corporation and is governed by Article 52 of the Limitation Act.

Applying the above principles the respondents will be entitled to recover arrears of rent for the period as permissible under Article 112 of the Limitation Act, 1963 and hence the contention that the period of limitation namely of 3 years under Article 52 of the Limitation Act would not apply to the facts of the present case as the premises in question are Government premises.

14. The other aspect which is required to be considered is as to whether the provisions of Limitation Act would apply to quasi judicial proceedings before the Estate Officer. In that context a reference has been made on behalf of the Respondents to the judgment of the Division Bench of the Madhya Pradesh High Court in the case of L.S. Nair Vs. Hindustan Steel Ltd., Bhilai and Others, In the context of an issue arising u/s 7 of Premises (Eviction) of Unauthorised

Occupants Act, 1958 Chief Justice G.P. Singh speaking for the bench observed as under:

It was also submitted that the recovery of damages for a period beyond 3 years was time barred. The Limitation Act has no application to the proceedings before the Estate Officer who is not a Court. Learned counsel for the petitioner relied upon the case of Kalu Ram Vs. New Delhi Municipal Committee and Another, in support of his submission. There is nothing in Section 7(2) which authorises the Estate Officer to assess the damages on account of the use and occupation of the premises and by order require the person to pay the damages, to show that there is any rule of limitation by which the Estate Officer is governed. As the Limitation Act has no application to proceedings before the Estate Officer and as the jurisdiction of Civil Court is entirely barred in matters governed by the Public Premises Act, it is difficult to accept the argument that there is any period of limitation for recovery of damages. The Punjab case on which reliance was placed, construed the words "rent payable" as they occurred in Section 7(I) of the Public Premises Act, 1958 and construed them to mean rent legally recoverable by a suit". The case has no application for construing Section 7(2) of the Public Premises Act, 1971 which deals with the power to assess and order payment of damages and where the language used is entirely different. Further Section 15 of the 1971 Act now bars a suit and the remedy under the Act is the only remedy which can be availed of. In such a situation, the Limitation Act cannot be inferentially applied to proceedings before the Estate Officer.

15. The Supreme Court in the case of L.S. Synthetics Ltd. Vs. Fairgrowth Financial Services Ltd. and Another, has also held that the provisions of the Limitation Act 1963 are not applicable to the proceedings before the quasi judicial tribunal and proceedings before bodies other than Courts. In para 33 of the said judgment, the Supreme Court has observed as under:

33. The provisions of the said Act are not applicable to the proceedings before bodies other than courts, such as quasi-judicial tribunal or even an executive authority. The Act primarily applies to the civil proceedings or some special criminal proceedings. Even in a Tribunal, where the CPC or Code of Criminal Procedure is applicable; the Limitation Act 1963 per se may not be applied to the proceedings before it. Even in relation to certain civil proceedings, the Limitation Act may not have any application. As for example, there is no bar of limitation for initiation of a final decree proceedings or to invoke the jurisdiction of the Court u/s 151 of the CPC or for correction of accidental slip or omission in judgments, orders or decrees; the reason being that these powers can be exercised even suo motu by the Court and, thus, no question of any limitation arises.

16. Considering the aforesaid clear position in law, the contentions raised on behalf of the petitioner that the respondents had no authority to demand arrears of rent is devoid of merits and is required to be rejected. The petitioner's contention that the demand for arrears of rent by respondent nos. 1 and 2 was

barred by limitation has been correctly rejected by the learned Judge of the Bombay City Civil Court and no fault can be found in respect of the said findings. In view of the foregoing discussion, the petitioner has failed to make out any case for interference in exercise of the jurisdiction of this Court under Article 226 of the Constitution of India. The Writ Petition accordingly fails and is rejected. There shall be no order as to costs.