IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13167 OF 2016

Anand Sadashiv Pranjape ...Petitioner
Versus
Divisional Controller, the
Maharashtra State Road Transport
Corporation & Ors. ...Respondents

.....

Mr. Rajshekhar V. Govilkar for the Petitioner.
Mr. Yashodeep P. Deshmukh for the Respondent No.1.

CORAM : A.S. OKA &
SMT. ANUJA PRABHUDESSAI, JJ.

DATED: 15th MARCH, 2017.

P.C.:-

Heard the learned counsel appearing for the Petitioner and the learned counsel appearing for the first Respondent. It is not in dispute that on the basis of a Deed of License executed on 23rd April, 2004 by the Maharashtra State Road Transport Corporation (for short 'the MSRTC') the Petitioner was granted a license to occupy of a stall admeasuring about 38 sq. ft. at Bus Depot at Karad. It is the case of the Petitioner as reflected from the agreements annexed to the Petition that the license was renewed from time to time. There is no dispute between the Petitioner and the first Respondent that lastly a registered document of renewal of license was executed by and between the

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Petitioner and the first Respondent on 12th July, 2012 a copy of which is annexed to the Exhibit-'D' (to the Petition). The said license is in respect of the same stall admeasuring 38 sq. ft. The license was renewed upto 30th March, 2016 and the license fee payable for the financial year 2015-2016 was Rs.31,551/- per month. The Petitioner was running a book stall in the said stall.

2. A notice was issued by the first Respondent to the Petitioner on 6th February, 2014, which was received by the Petitioner on 13th February, 2014 directing the Petitioner to vacate the premises. It is pointed out that on 13th February, 2014 the Petitioner was forcibly dispossessed from the book stall he was running.

3. The Petitioner filed a civil suit in the civil Court. We must note here that the learned counsel for the Petitioner, on instructions stated that civil suit will not be prosecuted. We accept the said statement.

4. The prayer in this Petition under Article 226 of the Constitution of India is for issuing writ of mandamus directing the first Respondent to restore the possession of the stall admeasuring 38 sq. ft.

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5. On 9th January, 2017 this Court passed following order:-

> " One of the grievances of the Petitioner is that though there was a license clearly granted by the S.T. Corporation till 31st March, 2016, the premises subject matter of the license were illegally demolished in the year 2014. We direct the first Respondent to file a reply within a period of three weeks from today setting out whether due process of law, if any, is followed while taking action of demolition."

6. On the basis of the said order, an affidavit in reply has been filed by Shri Vijay Shaligram Kshirsagar. Going by the said affidavit, the only due process of law followed by the first Respondent was by service of the aforesaid notice of seven days. The Petitioner was in a settled possession of the stall admeasuring 38 sq. ft. under a license agreement, which was admittedly in subsistence on 13th February, 2014. Even assuming that the license agreement had expired or was terminated, the Petitioner could have been dispossessed only by taking recourse of the provision of the Public Premises Eviction Act or the Government Premises Eviction Act. Admittedly, without following the due process of law, the Petitioner has been thrown out. Therefore, this Petition requires final hearing. We accordingly, issue Rule. The learned counsel for the first Respondent waives service. Heard the parties on the prayer for interim relief.

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7. Reliance is placed by the Petitioner on the consent terms filed between one Chirag Ramesh Gupta and the first Respondent in Writ Petition No.2965 of 2014 filed by the said Chirag Gupta. According to the case of the Petitioner, the case of Chirag Gupta is identical. He was running a canteen and snacks bar in the premises admeasuring 2058.63 sq. ft. at the same bus depot on the basis of an agreement dated 27th June, 2012. The Consent Terms show that the first Respondent agreed to allot a premises admeasuring 2058 sq.ft. to the Petitioner in the said Writ Petition for running a canteen and snacks Bar for a period of 14 years. The learned counsel for the Petitioners submitted that the Petitioner cannot be treated differently.

8. The learned counsel for the first Respondent states that the Petitioner took recourse to remedy of filing a civil suit. He did not seek appropriate relief in the said suit and in fact, he was not granted any relief in the said suit. He has submitted that said Chirag Gupta had approached this Court expeditiously and therefore, the first Respondent entered into a settlement with the said Chirag Gupta. He pointed out the averments made in paragraph 8 of the reply, in which it is stated that at present there is no alternative site available to

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accommodate the Petitioner on temporary basis. He has submitted that the building on the Bus Depot is still incomplete and there is no place available within the premises of the Bus Depot where the Petitioner can be accommodated. The learned counsel for the Petitioner placed on record the photographs showing present situation of the Bus Depot and has submitted that more than sufficient place is available.

9. Following are the admitted facts:

(i) When notice dated 6th February, 2014 was served upon the Petitioner, the period of license had not expired;

(ii) On 13th February, 2014 the Petitioner was dispossessed admittedly without following due process of law. Even on that day the license was subsisting;

(iii) MSRTC is a statutory corporation constituted under the Road Transport Corporation Act, 1950 and is therefore, a State within the meaning of Article 12 of the Constitution of India.

10. In our view, the Petitioner has been high handedly and illegally dispossessed by the MSRTC and by the first Respondent without following due process of law. A very strong prima facie case is

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made out.

11. We, therefore, pass following interim order:

(I) We direct the first Respondent to allot to the Petitioner either a constructed premises admeasuring 38 sq.ft. or a suitable plot in the compound of Karad Bus Depot to enable the Petitioner to reconstruct the demolished stall at his own cost;

(II) The allotment shall be made by the first Respondent within a period of one month from today. If the constructed stall is allotted to the Petitioner or if the Petitioner is permitted to re-erect the stall at the place allotted by the first Respondent, it will not create any equity in his favour. It will be open for the MSRTC to adopt appropriate proceedings against the Petitioner for evicting him in accordance with law;

(III) The Petitioner shall continue to pay a license fee, which was payable by him for the financial year 2015-2016;

(IV) The license fee will be payable from the date on which the Petitioner is put in possession of the constructed stall or from the date on which the Petitioner re-erects the stall on the place allotted by the first Respondent;

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(V) This arrangement will be subject to final outcome of the Writ Petition;

(VI) All concerned to act upon an authenticated copy of this order.

(ANUJA PRABHUDESSAI, J.) **(A.S. OKA, J.)**

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