



Diksha Rane

WP 4229-2001.doc

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4229 OF 2001**

1. RAMESH BHASKAR UTTURKAR (SINCE)
DECEASED))
- 1a. Smt. Sunanda Ramesh Utturkar)
1b. Mr.s Aditi Anand Gadgil)
1c. Ms. Aparna Ramesh Utturkar)
2. ASHOK BHASKAR UTTURKAR (SINCE)
DECEASED))
3. ANIL BHASKAR UTTURKAR)
4. SUBHASH BHASKAR UTTURKAR)
5. SMT. INDIRABAI BHASKAR UTTURKAR)
(SINCE DECEASED))
6. MRS. PRATIBHA VINAYAK GOKHALE)..PETITIONERS
- VS.
1. UNMESH TRIMBAK NARAVANE)
2. MS. RUJUTA TRIMBAK NARAVANE)..RESPONDENTS

Dr. Virendra Tulzapurkar. Senior Counsel i/b. Adv. Y. s. Bhate, Adv. Viraj Y. Bhate for the petitioners.

Adv. Pradeep Thorat a/w. Adv. Drupad Patil, Adv. Hemang Raythatha, Adv. Sunil Gangan, Adv. Swapnil Shikhare, Adv. Manav Chetwani i/b. RMG Law Associates for the respondents.

CORAM : RAJESH S. PATIL, J.

RESERVED ON : 22 APRIL 2026.

PRONOUNCED ON : 8 JUNE 2026

**JUDGMENT :**

1) The present Writ Petition filed under Article 227 of the Constitution of India challenges the impugned judgment and decree dated 6 February 2001, passed by the Appellate Bench of the Small Causes Court, which allowed the appeal filed by the respondents thereby reversing the judgment and decree passed by the trial Court.

FACTS:

2) The suit premises is a shop bearing No.250B, situated at ground floor of Godavari Bhuvan, L.J. Road, Dadar (West), Mumbai – 400 208, admeasuring about 250 sq.ft. The petitioners are the tenant, and the respondents are the landlords of the suit premises. For sake of convenience, parties are referred to as tenants and landlords hereinafter.

2.1) In the year 1944, tenancy was created in favour of the petitioners' father for monthly rent of Rs.30/-, and he was put into possession. On payment of rent, receipts were issued from time to time.

2.2) Since the landlord in the year 1956 was contesting for the Assembly Election of State of Maharashtra, he required space for opening office for election companion, and as the suit premises was



situated on the front side of a prominent road, the landlord requested the tenant to allow him to use the suit premises for a period of 3 to 4 months. As things materialized the landlord, by his letter dated 19 December 1956, addressed to tenant, confirmed that he was glad that tenant had agreed to give the suit premises for a period of 3 to 4 months for landlord's office for election purpose. And the premises will be given back whenever the tenant requires, with 48 hours notice.

2.3) In lieu thereof the tenant was permitted to occupy one room in a residential flat in nearby building 'Shivneri', to accommodate his servant and stock-in-trade.

2.4) As the time period concluded, and in spite of repeated reminders, the landlord did not hand over the possession of the suit premises, the tenant by written communication demanded back the possession. Since the landlord did not adhere to the demand, the tenant filed suit before the Bombay City Civil Court at Mumbai, seeking possession. In the said suit, the landlord raised an objection of jurisdiction of the Civil Court to try and entertain the suit. Based on objections raised, after hearing the parties, the learned Judge of Bombay City Civil Court, by his order dated 9 September 1998,



returned the plaint to be filed before a proper forum.

2.5) Subsequently, the tenant approached the Small Causes Court at Bombay, by adding new paragraphs to the plaint and sought main prayer of possession of suit premises. The suit was numbered as R.A.E. Suit No.4957 of 1982. The landlord contested the suit by filing his written statement. Issues were thereafter framed and parties led their evidence by stepping into witness box. The trial Court after hearing the parties, by its judgment and decree dated 15 June 1998, allowed the suit for possession.

2.6) Being aggrieved by judgment and decree passed by trial Court of possession, the landlord preferred an appeal before the Division Bench of the Small Causes Court at Bombay. After hearing the Advocates of both the sides the Appellate Court by its judgment and decree dated 6 February 2001, reversed the judgment and decree passed by the trial Court, and allowed the appeal. Dissatisfied by the judgment and decree passed by the appellate Court, the tenant has challenged the Appellate Court's judgment and decree by filing writ petition under Article 227 of the Constitution of India.

SUBMISSIONS:

3) Dr. Tulzapurkar appeared on behalf of the petitioner-tenant,



and made his submissions.

3.1) He first showed me the writing dated 19 December 1956 addressed by landlord to the tenant.

3.2) He submitted that even after executing the letter dated 19 December 1956, the petitioner-tenant continued to pay rent of the suit premises and the landlord issued receipts to that effect.

3.3) The Appellate Court has erroneously recorded that tenant has surrendered the tenancy, without there being any document on record. There is no explanation as to why the landlord did not record the alleged surrender in writing, when the landlord was a Doctor by profession and a M.L.A.

3.4) The impugned judgment of Appellate Court is perverse and the same requires to be set aside.

3.5) To buttress his submissions he relied upon the Full Bench judgment of Bombay High Court delivered in *Dattatraya Krishna Jangam vs. Jairam Ganesh Gore*¹.

4) Mr. Pardeep Thorat appeared for the respondent and made his submissions.

4.1) He submitted that the plaint was returned by the City

¹ 1964 SCC OnLine Bom 30.



Civil Court on the ground that the City Civil Court had no jurisdiction. After the matter went to the Small Causes Court, there was no averment made as far as eviction is concerned. Neither there is an averment of relationship of a licensor and licensee. All that was done was three pages were added to the plaint, which was filed in the City Civil Court.

4.2) For eviction under the Rent Act, there are grounds specified u/s. 12 and section 13 of the old Bombay Rent Act. None of those grounds are mentioned in the plaint. Therefore, the suit itself was not maintainable before the Small Causes Court. Because of the amendment to the 1959 to the Bombay Rent Act, the present petitioner (original plaintiff) got protection as far as the room in Shivneri is concerned. Both the parties had mutually agreed that the plaintiff would vacate the premises being a shop premises situated in Godavari building and will shift all his goods from the suit premises at Godavari building, to the room in Shivneri building, which is very close-by to the suit premises. So also, the relative of the plaintiff, one Mr. Abhyankar, who was staying in the suit premises, shifted his residence from the shop premises being the suit premises to Shivneri premises.



4.3) The receipts which have been shown in the present proceedings, in fact, as per evidence of the plaintiff also, were prepared by the plaintiff and the defendant was forced to sign the same. The area of the suit premises and the premises of Shivneri, measurements are almost the same. Hence, this Court should not entertain the present petition.

4.4) Mr. Pradeep Thorat, learned counsel appeared for the respondent, relied upon the following judgments :-

(a) *Nagindas Ramdas vs. Dalpatram Ichharam alias Brijram & ors.*²;

(b) *Cantonment Board and anr. vs. Church of North India*³;

(c) *Jagmittar Sain Bhagat and ors. vs. Director, Health Services, Haryana and ors.*⁴;

(d) *Balvant N. Viswamitra and ors. vs. Yadav Sadashiv Mule (dead) thr. LRs. and ors.*⁵

5) In the rejoinder, Dr. Tulzapurkar submitted that even if you presume the argument of Mr. Thorat about the suit actually being between the licensor and licensee, as per the case of the plaintiff, even then, the jurisdiction would have been to the Small Causes

2 (1974) 1 SCC 242

3 (2012) 12 SCC 573

4 (2013) 10 SCC 136

5 (2004) 8 SCC 706.



Court. Therefore, it does not make much difference if the suit is between landlord and tenant or else between a licensor and licensee. The jurisdiction will lie with the same Court, that is the Small Causes Court. He submitted that his client is ready and willing to hand over the premises, being a room in Shivneri building, but his shop-suit premises at Godavari building, should be handed over back to him.

6) I have heard counsel of both the sides and with their help I have gone through the documents on record.

CONCLUSION

7) Based on a writing dated 19 December 1956, the suit premises was given by the tenant to the landlord for the purpose of his office for election campaign. The said writing is on record and has been admitted by both parties and has been duly exhibited. The writing dated 19 December 1956, reads as under:

Date :
19th December 1956.

Dear Shri Utturkar,

In pursuance of the Talk I had with you I am glad that you have agreed to give me for use of my election office for a period of 3 - 4 months. The Shop in 250 B L. J. Road which you are occupying as my tenant I shall give the place in your charge whenever you require with 48 hours notice.

Yours Sincerely

Sd/-

(Dr. T.R. Naravane)



The only case which is raised by the landlord is that, in lieu of the suit premises, which is a shop, he had given one bed-room from a residential premises, on a second floor in a nearby building. However, on record there is no such document, neither it is the case of the landlord that there is any written document to that effect.

7.1) In the present proceeding, there is no such document on record to suggest that there was surrender of tenancy. In the suit filed by the tenant for return of possession, the trial Court had decreed the suit of the tenant, however, the Appellate Court has reversed the decree on the ground that there was a surrender of tenancy. According to me, this finding of Appellate Court itself is perverse, as the tenant has disputed the said fact and there is no document on record to suggest surrender of tenancy. So also, it would be pertinent to note that once according to the landlord, the tenancy was surrendered then there was no question of tenant paying the rent and landlord issuing receipt to that effect. The said event continued three years after the tenancy according to the landlord was surrendered. It is pertinent to note that the landlord was, at the relevant time, a Minister in the State Assembly of Maharashtra Government and the suit premises was given to him for his election campaign being a ground floor shop premises. One has to understand the frame of



mind of the tenant when he is facing a landlord a politician who ultimately became a Minister in the State Government. According to the tenant only for a limited time, he was permitted to use one bedroom of a residential premises on second floor to store his goods, from the suit premises to that premises. Part of his goods remained in the suit premises.

7.2) Admittedly, there are rent receipts even after there was shifting of the premises by the tenant till the year 1959 and thereafter, even though the rent was paid as per the tenant's case, receipts were not given.

7.3) The case of the landlord that after the shifting was done in the year 1956 till the year 1959, roughly around three years, the rent which was paid by the tenant was not that for the Godavari premises being a shop premises, but was for Shivneri premises being a residential room. I don't agree with this view simply because the landlord is not a rustic villager who does not understand or does not know to read and write. He is a well-educated and a doctor by profession who turned into a politician and then became Minister in the State Assembly of Maharashtra. He has signed all the receipts before and after 1956, which mentions about the suit premises being



a shop premises at Godavari building. Therefore, admittedly, even though there was a shifting, rent was collected for the suit premises of Godavari. Therefore, there is no doubt there is a relationship of a landlord and tenant between the parties. And if there is a relationship of a landlord and tenant, then the only Court which will have jurisdiction to decide the issue of possession would be the Small Causes Court.

7.4) If a tenant for some reason has been compelled by the landlord to vacate the suit premises temporarily for a few months, since the landlord needed the said premises for his political campaign, that will not mean that after the said period is concluded, the landlord will not hand over back the possession, and if that has happened, the only course of action for the tenant would be to approach the Small Causes Court because the relationship as far as the tenanted premises is concerned would always be of a landlord and tenant. However, for whatever advise the tenant received at the relevant time, the tenant first approached the civil court being the Bombay City Civil Court at Bombay. As the suit was pending before the Civil Court, an objection as regard to the jurisdiction of the court was raised by the landlord after around 10 or 11 years. Based on the submission of the landlord that the Bombay City Civil Court does not



have jurisdiction, the Bombay City Civil Court by its order dated 9 September 1981, returned the plaint to be filed before the Small Causes Court. Being aggrieved by passing of the said order by the Bombay City Civil Court, the tenant filed an Appeal from Order before this court being A.O. No. 8 of 1982. The said Appeal from Order was dismissed by an order dated 18 January 1982.

7.5) As the order passed by the Bombay City Civil Court was confirmed by High court, the tenant approached the Small Causes Court wherein he added three more pages to its original plaint which was filed before the Bombay City Civil Court. There is no doubt at least at two places there is a mention of the word 'licensee' in the said plaint. However, in the paras with reference to the jurisdiction of the court, there is no reference of licensor and licensee and very specifically it has been mentioned that the suit for eviction is u/s 28 of the Bombay Rent Act. The said section 28 deals with entertaining any suit between landlord and tenant, relating to the recovery of rent or possession of premises. In my view, the language of Section 28 of the Bombay Rent Act is wide enough to cover even a suit for re-possession filed by tenant.



7.6) The Bombay Rent Act 1947, is a beneficial legislature enacted to protect tenants. There are around 14 grounds as mentioned in Section 12 and 13, by which the landlord may recover possession. For the controversy involved in the present proceeding one needs to look into two grounds as mentioned in Section 13, i.e. 13(1)(h) and 13(1)(hh), which read as under:

13(1) (h) that the premises are reasonably and *bona fide* required by the landlord for carrying out repairs which cannot be carried out without the premises being vacated;

13(1) (hh) that the premises consist of not more than two floors and are reasonably and *bona fide* required by the landlord for the immediate purpose of demolishing them and such demolition is to be made for the purpose of erecting new building on the premises sought to be demolished; or]

(Emphasis supplied)

Under Section 13 (3A) and (3B), the landlord at the time of institution of suit on the ground of 13(1)(hh), has to produce a certificate granted by the Tribunal and also has to give an undertaking that the new building to be erected is as per rules and regulations and the eviction work will be completed within 15 months. The Tribunal will give certificate that the plans and estimates for the new building have been properly prepared, the necessary funds for erection of new building are available with the landlord.



In my view if a decree is passed in favour of landlord under Section 13(1)(h) or 13(1)(hh), and the tenant vacates the premises, after the new building is erected, the tenant needs to be given back the same area, which was in his possession as tenant earlier. If the possession is not given back to him, he has no alternative but to file suit under Section 28 of the Bombay Rent Act (Section 33 of the Maharashtra Rent Act, 1999) to get back possession of tenanted premises.

7.7) In the judgment of *Narhari Kanda* (supra), I have taken a view that the only way a possession is lost by the tenant is by a decree passed by this court or else by surrender of tenancy. No doubt in the present proceedings, it is nobody's case that the decree of eviction has been passed against the tenant. The ratio of this judgment is applicable to the present proceeding.

7.8) As far as the surrender of tenancy is concerned, in the present proceeding, there is no such agreement which is brought on record, neither it is anybody's case that there was an written agreement for surrender of tenancy. If both these grounds are not there, then the tenancy always remains and the tenant can't be told to part with his possession and that the possession will not be handed



over back to him by the landlord. One can't forget that the present landlord was a Minister in the State Government of Maharashtra and the suit premises temporarily taken by him was for his election campaign. From the date he has taken possession from the tenant, it is almost more than now 50 years and even today on a suggestion put up by this Court, he is not ready to hand over back the possession to the tenant against whom there is no eviction decree.

7.9) The case of the landlord that there was swapping of the premises thereby the tenant handed over the suit premises being a shop premises on the main road of one of the busiest road of Mumbai city to a one room in a second floor premises is hard to believe, apart from the fact that nobody would surrender a shop premises for one room from a flat on a second floor from main road to an interior road. It is nobody's case that any consideration was paid for the same. The letter dated 19 December 1956, requesting to shift does not mention about the one room premises and anything about swapping the premises. The said letter admittedly was written by the landlord to the tenant and not by the tenant to the landlord. Even after that said period of four months was over, rent has been accepted admittedly at least for three years because the rent receipt has been issued to that effect.



7.10) Therefore, according to me, the suit was appropriately filed before the Small Causes Court by the tenant who was seeking for repossession of his premises and except the Small Causes Court, he does not have any other Court to approach, and in any case he did first approach the Bombay City Civil Court but the Civil Court directed him to approach the Small Causes Court and that order was confirmed by the High court.

7.11) It is also to be noted that after the writ petition was filed before this court which is pending for last more than 25 years, ad-interim relief was granted in the favour of the tenant-petitioner, that the landlord should not create any third party interest in the said premises. As far as the issue about Small Causes Court having jurisdiction even for a licensor or licensee suit like it has for a landlord and tenant is concerned, there is no doubt about it, for both the proceeding one has to approach the Small Causes Court only.

7.12) In *Nagindas Ramdas* (supra), the Supreme Court was dealing with facts where suit for eviction was filed by landlord. In the said suit the parties entered into compromise. However, the tenant did not comply with the terms of compromise deed and raised an objection before the Executing Court that the decree has been passed



by the Court without satisfied itself as to the existence of a ground of eviction under the Rent Act. The objections were rejected. The ratio laid down in this judgment does not apply to the facts of present proceedings.

7.13) On behalf of landlord on the point of raising the issue of jurisdiction of Courts, three judgments were referred. In *Cantonment Board* (supra), the Supreme Court has dealing with Public Premises Act, when it held that inherent lack of jurisdiction is basic and fundamental which can be challenged at any stage. The judgment of the Supreme Court in *Jagmittar Sain Bhagat* (supra) was under the Consumer Protection Act, which held that jurisdiction of Courts/Forums cannot be conferred by consent of parties or acquiescence or waiver. In *Balvant N. Viswamitra* (supra), the Supreme Court held that a void decree can be challenged at any stage, even in execution. There is no doubt on the proposition of law laid down in these three judgments.

7.14) Full Bench of this Court in *Dattatraya Krishna Jangam* (supra) held that Bombay City Civil Court does not have jurisdiction to entertain suits for declaration of sub-tenancy or tenancy and injunction restraining eviction or interference with possession where



the claim arises under the Bombay Rent Control Act 1947. The law laid down by Full Bench is squarely applicable to the present proceedings.

8) In view of the findings recorded by me in the earlier paragraphs, the “Rule” is made absolute in terms of prayer clause (a).

8.1) The impugned judgment and order passed by the Appellate Court on 6 February 2001 in Appeal No.498/1998 is hereby quashed and set aside, and the impugned judgment and order passed by the trial Court dated 15 June 1998 in R.A.E. Suit No.4957/1982 stands confirmed.

8.2) The respondent should hand over possession of the suit premises to the tenant within a period of eight weeks from today.

(Rajesh S. Patil, J.)