

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1526 OF 2011**

Varsha

The Board of Trustees of the]
Port of Mumbai]
A Statutory Corporation]
having its Registered office at]
Vijay Deep, Shoorji Vallabhdas]
Marg, Fort, Mumbai- 400 001.] ... Petitioner

V/s

1. Maharashtra Minerals]
Corporation Limited,]
Industrial Assurance Building,]
5th floor, Churchgate,]
Mumbai – 400 020.]
2. M/s. Martek Engineering Works]
817, Raheja Chambers, 213]
Nariman Point, Mumbai- 400 021.]
3. The Estate Officer,]
Mumbai Port Trust, 2nd floor,]
Railway Manager's Office Building]
Ramjibhai Kamani Road, Ballard]
Estate, Mumbai – 400 001.] ... Respondents

CORAM : GAURI GODSE J

RESERVED ON : 26th MARCH 2026

PRONOUNCED ON : 8th JUNE 2026

Mr. Dhruva Gandhi a/w. Ms. Nina Motiwalla, Ms. Janhavi Kandekar,

VARSHA
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RAJGURU

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Ms. Anjali Kotecha i/b. Motiwalla and Co., for the Petitioner.

Mr. Rohan Savant, Mr. Aagam Mehta, Mr. Vipul Patel i/b. Haresh Mehta and Co., for Respondent No.1.

Mr. V.Y. Sanglikar for Respondent No.2.

JUDGMENT :-

1. This petition is filed to challenge the order passed by the City Civil Court, allowing the appeal filed by respondent no.1 against the order of eviction and compensation passed by the Estate Officer of the petitioner. The petitioner had applied for the eviction of the respondents and compensation towards arrears of rent. The Estate Officer had allowed the application for eviction against both the respondents under Section 5(1) of the Public Premises(Eviction of Unauthorised Occupants) Act (**'said Act'**).

2. The Estate Officer had passed an order directing payment of compensation under sub-section (2) and (2-A) of Section 7 of the said Act. The respondents were held liable to pay arrears of compensation, along with interest, from 1st October 1982 to 31st December 1991. The eviction order was passed on the ground that respondent no.1 had unauthorisedly inducted respondent no.2 and had carried out unauthorised construction. The order passed by the Estate Officer was challenged by respondent no.1 by filing an appeal

under Section 9 of the said Act. The proceedings were not attended by respondents, though served, and therefore the order was passed ex-parte. Respondent no.2 accepted the order and never challenged the order of eviction or the order for payment of compensation.

3. Learned counsel for the petitioner submitted that the terms and conditions for handing over the subject premises to respondent no.1 were recorded in a letter dated 6th March 1997. The terms and conditions were accepted by respondent no.1 by a letter dated 10th April 1997. Accordingly, the petitioner signed a charge certificate and the tenancy in respect of the subject plot commenced with effect from 1st April 1994. A lease document was not executed or registered between the parties, and respondent no.1 continued as a monthly tenant of the petitioner in respect of the subject premises. Respondent no.1 had failed to pay the rent and service charges from 1st August 2000. Hence, a notice of demand was issued on 26th July 2003, and the tenancy of respondent no.1 was terminated. Respondent No.1 unlawfully sublet the subject premises to Respondent No. 2, who was occupying the premises when the proceedings under the said Act were initiated. Thus, according to the petitioner, respondents were in unauthorised occupation of the

subject premises, and therefore, the petitioner was entitled to an order of eviction and recovery of arrears by way of an order of compensation.

4. The respondents were served, appeared before the Estate Officer, and requested time to file a written statement. Though time was given, no steps were taken to file the written statement and the application before the Estate Officer proceeded ex-parte. The application was finally argued before the Estate Officer on 8th March 2006. The Estate Officer issued a show-cause notice under Section 5(a) and 5(b); however, there was no response to the show-cause notice. Accordingly, after hearing the petitioner and considering the facts produced on record, the Estate Officer held that respondent no.1 was in arrears of payment of monthly charges and unauthorisedly let out the premises to respondent no.2. Hence, the order of eviction was passed. Since the show-cause notice was not responded to and nothing was produced on record to show that the due amounts were paid, the Estate Officer passed a separate order for payment of compensation under sub-section 2 and 2(a) of Section 7 of the said Act. The payment towards arrears was granted in terms of the statement annexed to the order.

5. Learned counsel for the petitioner relied upon the decision of the Hon'ble Apex Court in the case of *Anil Rishi Vs. Gurbaksh Singh*¹. He submits that in the facts before the Hon'ble Apex Court, respondent no.1 had claimed that respondent no.2 was in possession with the consent of the owner. Hence, it was held that the burden was upon respondent no.1 to prove that there was any consent or approval by the owner for inducting respondent no.2. Learned counsel for the petitioner therefore submitted that the respondents failed to file any defence or led any evidence to discharge the burden of any consent or deemed consent by the petitioner for inducting respondent no.2. Hence, in the absence of any evidence to show that the consent that inducted respondent no.2, the petitioner would be entitled to terminate the tenancy of respondent no.1 and seek eviction. The learned counsel for the petitioner relied upon the decision of the Hon'ble Apex Court in the case of *Rangammal Vs. Kuppuswami and Anr*².

6. Respondent no.2 did not take steps to challenge the order. However, respondent no.1, the original tenant, filed an appeal under Section 9 of the said Act before the learned City Civil Court. Even in

1 (2006) 5 SCC 558

2 (2011) 12 SCC 220

the said appeal, respondent no.1 produced nothing to show that there were no arrears in payment of monthly charges. Despite giving sufficient opportunity, respondent no.1 had remained absent before the Estate Officer. Hence, the appellate court held that respondent no.2 was willing to cooperate; however, did not get the opportunity to produce evidence on record regarding payment of dues.

7. So far as allegations of sub-letting are concerned, the appellate court held that the intention to assign or transfer was expressed by respondent no.1. However, the petitioner failed to take any decision on the request made by respondent no.1. Hence, it cannot be said that respondent no.2 was in unauthorised occupation of the premises. Thus, considering the contentions raised by respondent no.1 that sufficient intimation was given for inducting respondent no.2, the appellate court has reversed the eviction order and the order for payment of compensation. However, in the meantime, the possession was already handed over to the petitioner. Hence, the only issue to be argued in the petition would pertain to the payment towards arrears as contended by the respondents. He submits that since there was no dispute that respondent no.2 was inducted by respondent no.1, and no prior permission or any approval from the

petitioner was taken, the eviction order was rightly passed by the Estate Officer. According to the learned counsel for the petitioner, there was no reason for the appellate court to reverse the Estate Officer's order.

SUBMISSIONS ON BEHALF OF RESPONDENTS:

8. Learned counsel for respondent no.1 submitted that the terms of the lease were exchanged between the parties. However, it was due to the failure on the part of the petitioner that the lease agreement was not registered. As agreed in the draft of the terms of the lease exchanged between the parties, the charge certificate was also issued by the petitioner, confirming the commencement of the lease in favour of respondent no.1 with effect from 1st April 1994. Respondent No.1 had issued a response on 12th August 2003, informing sub-letting in favour of respondent no.2. Respondent no.1's letter was responded by the petitioner; however, there was no dispute on the intimation of sub-letting. Hence, there was implied consent of the petitioner. Respondent No. 2, therefore, cannot be held as a sub-lessee or an unauthorised occupant of the subject premises. In view of the response of the petitioner, no written consent would be necessary.

9. Learned counsel for respondent no.1, relied upon the decision of the Hon'ble Apex Court in the case of *Kamala Ranjan Roy Vs. Baijnath Bajoria*³, to support his submissions on the written consent. So far as recovery of arrears is concerned, no evidence is led by the petitioner to deny the contention of the reply received by respondent no.1. Hence, the contents of the reply of respondent no.1 were rightly considered by the learned appellate court for reversing the order of payment of compensation. Though respondent no.1 had paid an amount demanded by the petitioner, the Estate Officer granted an order for payment of compensation as mentioned in the particulars of the statement annexed to the order. In view of the payment already made by respondent no.1, it cannot be held that respondent no.1 was in unauthorised occupation on the ground of arrears. To support his submissions, learned counsel for respondent no.1 relied upon the decision of *Ashis Kumar Ghosh Vs. The State of West Bengal and Ors*⁴.

10. Learned counsel for respondent no.1 submitted that the prayer for recovering arrears could not have been granted as it was time-barred. As per the notice of demand issued by the petitioner, the

3 1950 SCC 746

4 2009 SCC Online Cal 1948

claim was from 1st October 1982. The statement annexed to the Estate Officer's order shows that the arrears mentioned in the statement were from 1st October 1982 to 24th September 2003. Hence, the prayer for recovering arrears beyond the period of three years upto the date of filing of the application would be time-barred. To support his submissions, learned counsel for respondent no.1 relied upon the decision of the Hon'ble Apex Court in the case of ***New Delhi Municipal Committee Vs. Kalu Ram and Another***⁵. On a similar proposition learned counsel for respondent no.1 relied upon the decision of the Hon'ble Apex Court in the case of ***New India Assurance Company Ltd Vs. Nusli Neville Wadia and Anr***⁶.

11. Learned counsel for respondent no.1 relied upon the letter issued by respondent no.1 annexed to the appeal memo before the Appellate Court. He relied upon the letter to show that the arrears were already paid by respondent no.1. Hence, according to respondent no.1, there was neither any unlawful sub-letting nor any arrears of rent. Hence, the appeal court has rightly allowed the appeal by setting aside the order passed by the Estate Officer.

12. Learned counsel appearing for respondent no.2 supported the

5 (1976) 3 SCC 407

6 (2008) 3 SCC 279

submissions made on behalf of respondent no.1 and further contended that a show-cause notice under Section 7(3) of the said Act was never issued to respondent no.2 and therefore respondent no.2 should be given an opportunity to contest the application on merit.

SUBMISSIONS IN REJOINDER ON BEHALF OF PETITIONER:

13. In response to the submissions made on behalf of the respondents, learned counsel for the petitioner submitted that even if the arrears cannot be granted, damages as per the statement annexed to the Estate Officer's order were within the four corners of law and therefore could not have been dealt with on merits by the appellate court. Though the reply letter dated 12th August 2003 is relied upon by respondent no.1 before the appellate court, the contents of the same were not proved. The opportunity given to lead evidence by the Estate Officer was never availed by the respondents. Hence, the appeal court could not have considered the letter produced for the first time in the appeal. The consent for inducting respondent no.2 cannot be assumed in the absence of any specific terms and conditions. Hence, the Estate Officer had rightly granted an order of eviction and payment of compensation, which could not have

been reversed by the appeal court by referring to the letter produced by respondent no.1, for the first time before the appellate court. Even the letter relied upon by respondent no.1 would show that there were arrears, and the amount due and payable was never paid. Hence, according to the learned counsel for the petitioner, there was no reason for the appellate court to reverse the order of eviction and compensation passed by the Estate Officer.

14. So far as respondent no.2 is concerned, the order of the Estate Officer was ex-parte and it was never challenged by respondent no.2. Hence, in the petition filed by the petitioner, i.e. the original applicant, respondent no. 2's request for granting any opportunity to contest the application on the merits cannot be considered. So far as respondent no.1 is concerned, the letter produced for the first time before the appeal court could not have been the ground to reverse the Estate Officer's order.

CONSIDERATION OF SUBMISSIONS AND ANALYSIS:

15. I have perused the papers of the petition. It is undisputed that the lease terms and conditions were exchanged between the parties, but the documents were never executed and registered. However, the

terms and conditions of the tenancy were accepted by the petitioner and respondent no.1 and accordingly, the charge certificate was issued by the petitioner. Thus, respondent no. 1 was liable to pay the contractual charges for occupying the premises. As per the terms and conditions agreed between the parties, respondent no.1 was not entitled to induct the third party without the permission of the petitioner. Admittedly, no such permission was ever granted by the petitioner. The only implied consent relied upon by respondent no.1 is the response letter issued by the petitioner. The intention of respondent no.1 to induct respondent no.2 was communicated to the petitioner. However, there was no consent issued by the petitioner. Hence, there was no question of assuming that there was a deemed consent on the part of the petitioner when, as per the terms and conditions of the tenancy, Respondent No. 1 was under an obligation to seek written consent for inducting a third party. The contention raised by the petitioner before the Estate Officer was not refuted by the respondents, as the proceedings were ex-parte against them. Despite being given an opportunity, the respondents failed to file a written statement or provide any evidence. Hence, the petitioner's contentions are rightly accepted by the Estate Officer by examining the documents produced by the petitioner.

16. So far as the grant of damages for arrears of monthly charges is concerned, the statement is annexed to the Estate Officer's order. The statement refers to the arrears from 1st October 1982 to 24th September 2003. However, the amount which is granted is from 1st October 2002 to 21st September 2003, after deducting the amount already paid. The appellate court has relied upon the reply allegedly issued by respondent no.1 and produced for the first time before the appellate court. Though a reply was taken on record, the contents of the same were not proved by respondent no.1. Admittedly, no steps have been taken by respondent no.1 to prove the contents of the reply produced before the appellate court for the first time. Hence, there was no reason for the appellate court to rely upon the reply for reversing the order of the Estate Officer in the absence of any pleadings and supporting evidence by respondent no.1 to prove the contents of the said letter.

17. The reasons recorded in the impugned order by the appeal court are based on the reply, for the first time produced before the appellate court. The appellate court completely lost track of the fact that respondent no.1 had not filed any pleadings before the Estate Officer to rebut the petitioner's contentions. Hence, there was no

reason to reverse the Estate Officer's order by referring to the documents produced before the appellate court for the first time without any supporting pleading. Hence, the reasons recorded in the impugned order to reverse the Estate Officer's order would not be sustainable.

18. In *Anil Rishi*, the Apex Court held that the initial onus is always on the plaintiff, and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same. In *Rangammal*, the Apex Court held that it is a well-established dictum of the Evidence Act that misplacing the burden of proof would vitiate the judgment. It is further held that it is also undoubtedly true that the burden of proof may not be of much consequence after both parties lay evidence, but while appreciating the question of burden of proof, misplacement of burden of proof on a particular party and recording findings in a particular way definitely vitiates the judgment. It is further held that a suit has to be tried on the basis of the pleadings of the contesting parties, which are filed in the suit before the trial court in the form of a plaint and written statement and the nucleus of the case of the plaintiff and the contesting case of the

defendant in the form of issues emerges out of that. In the present case, the appellate court has not only overlooked these legal principles but also relied on a document in the absence of any supporting pleading.

19. In ***Kamala Ranjan Roy***, the Apex Court has discussed the words “such consent”, in the context of a covenant by the lessor that he would not refuse consent except upon reasonable grounds in the case of respectable or responsible person. It was held that those words limit or qualify the lessee's covenant not to assign the demised premises without the consent in writing of the lessor have the effect of relieving the lessee from the burden of this covenant if the lessor withholds his consent unreasonably in case of proposed assignment to a respectable or responsible person. In the present case, these legal principles would not assist the arguments of respondent no. 1, as no such pleadings were filed to interpret the terms of the contract.

20. In ***New Delhi Municipal Committee***, the Apex Court held that the terms of Section 7 of the said Act provide a summary procedure for the recovery of arrears of rent. It is held that under Section 7 the Estate Officer may order any person who is in arrears of rent “payable” in respect of any public premises to pay the same within

such time and in such instalments as he may specify in the order; however, before the order is made, a notice must be issued calling upon the defaulter to show cause why such order should not be made and, if he raised any objection, the Estate Officer must consider the same and the evidence produced in support of it. In ***New India Assurance Co.***, the issue was discussed and decided on the procedure to be followed by the Estate Officer, in the facts of the case where the opponent had filed pleadings. In view of the different facts of the present case, and the well-settled legal principles in the decisions of the Apex Court discussed above, it is not necessary to discuss the decision of the Calcutta High Court relied upon by the learned counsel for respondent no. 1. None of the decisions relied upon by the learned counsel for respondent no. 1 are of any assistance to the arguments made to support the impugned order.

21. In the present case, in the absence of any pleadings by the respondents and of any evidence in rebuttal, no fault can be found with the Estate Officer's order passed relying upon the petitioner's evidence. Hence, the approach of the appellate court is not sustainable to reverse the Estate Officer's order in the absence of any pleading to support the letter produced before it and no proof of

its contents.

22. Hence, for the reasons recorded above, this is a fit case to interfere with the impugned order in the exercise of the Writ Jurisdiction under Article 227 of the Constitution of India.

23. The writ petition is therefore allowed by passing the following order:

- I) The impugned order dated 10th August 2010, passed by the City Civil Judge, Greater Bombay in Miscellaneous Appeal No. 129 of 2008 is quashed and set aside and the appeal is dismissed.
- II) The order dated 28th March 2026, passed by the Estate Officer in Case No. EO/E(99)(99-A)(99-B)(99-C) of 2003 is confirmed.

(GAURI GODSE, J.)